



Common Sense Initiative

Mike DeWine, Governor
Jon Husted, Lt. Governor

Joseph Baker, Director

MEMORANDUM

TO: Joe Kirk, Ohio Department of Public Safety

FROM: Caleb White, Business Advocate

DATE: January 3, 2024

RE: CSI Review – Ignition Interlock Devices (OAC 4501-45-01 through 4501-45-11)

On behalf of Lt. Governor Jon Husted, and pursuant to the authority granted to the Common Sense Initiative (CSI) Office under Ohio Revised Code (ORC) section 107.54, the CSI Office has reviewed the abovementioned administrative rule package and associated Business Impact Analysis (BIA). This memo represents the CSI Office's comments to the Department as provided for in ORC 107.54.

Analysis

This rule package consists of eleven amended rules proposed by the Ohio Department of Public Safety (DPS) as a part of the statutory five-year review process. This rule package was submitted to the CSI Office on September 28, 2023, and the public comment period was held open through October 5, 2023. Unless otherwise noted below, this recommendation reflects the version of the proposed rules filed with the CSI Office on September 28, 2023.

Ohio Administrative Code (OAC) Chapter 4501-45 establishes the requirements manufacturers must meet to become licensed and have their ignition interlock devices certified by DPS. OAC 4501-45-01 establishes the definitions used in this chapter and is amended to add definitions for “disqualifying offense,” “ignition system,” and “offense,” clarify the amount alcohol in an individual’s breath the ignition interlock device is intended to measure, further clarify what constitutes an immobilizing or disabling, and rename a definition. OAC 4501-45-02 establishes the certification requirements for immobilizing or disabling devices. This rule is amended to remove a certified mail requirement, increase the time in which a manufacturer is to provide changes to their product liability from a postmark no later than three days of the effective date to thirty days, update the rule’s title, and to clarify, update, reorganize, and streamline language.

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OAC 4501-45-03 establishes the licensing requirements for ignition interlock device manufacturers. This rule is amended to change the timeline for in which a manufacturer must submit a license renewal application from thirty days prior to the license expiration date to between October 1st and December 30th of each year, eliminate a requirement for a manufacturer to inform DPS of a change in information from the manufacturer that is published on DPS' website, eliminate certified mail requirements, and to reorganize update and streamline language. This rule is also amended to add a requirement for a manufacturer to notify DPS if their license has been suspended, revoked, or de-certified in another state as well as if this action occurred on or before their approval in Ohio and the status and outcome of the appeal for this action.

OAC 4501-45-04 establishes the certification requirements for ignition interlock devices. This rule is amended to require rule to change the timeline for in which a manufacturer must submit a renewal application for the certification of an ignition interlock device from thirty days prior to the license expiration date to between October 1st and December 30th of each year, extend the increase the time in which a manufacturer is to provide changes to their product liability five days to thirty days, and to clarify, update, reorganize, and streamline language. This rule is also amended to add an exemption for each installer to inspect and monitor each ignition interlock device every thirty days by allowing devices enabled with real-time reporting to a court to be inspected and monitored every sixty days and require a manufacturer to initiate a permanent lockout when an offender fails to have their device inspected.

OAC 4501-45-05 establishes the grounds for the denial, suspension, or revocation of a license or certification. This rule is amended to add a list of disqualifying offenses and to allow the director of DPS to take an established disqualifying offense into account for five years if it is a misdemeanor and ten years if it is a felony so long as the conviction does not involve a violent offense, sexually oriented offense, child-related violent offense, or terrorism-related offense, as well as to update and streamline rule language. OAC 4501-45-06 sets forth the appeals process for the proposed denial, suspension, revocation, or

fine. This rule is amended to update language, eliminate a certified mail requirement, and allow the manufacturer to appeal a decision by the director to a common pleas court in the county in which the manufacturer is located—and if the manufacturer is not located in the state, to specify that the appeal is to take place in the Franklin County common pleas court.

OAC 4501-45-07 establishes the penalties for a manufacturer who either fails to file their annual report in a timely manner or fails to pay the fee associated with the annual report and is amended to eliminate a certified mail requirement. OAC 4501-45-08 outlines the process surrounding an assessment against a manufacturer who fails to file an accurate annual report or pay the fee

associated with the annual report. This rule establishes when the director of DPS may make such an assessment, how much the assessment may be, requires DPS to notify the manufacturer of an assessment, and sets forth the process to petition for reassessment, and the reassessment petition process. This rule is amended to allow a manufacturer to file a reassessment petition with a common pleas court in the county in which the manufacturer is located, eliminate a certified mail requirement, and update language.

OAC 4501-45-09 each immobilizing or disabling device to have a conspicuously placed warning label warning against any tampering, circumventing, or misuse of the device. This rule is amended to streamline the rule's language. OAC 4501-45-10 establishes the requirements surrounding manufacturer audits and inspections and requires manufacturers to maintain certain records related to ignition interlock devices. This rule is amended to clarify that records are to be kept regarding the removal of ignition interlock devices, require a manufacturer to maintain documentation of the total ignition interlock devices in use in Ohio at any given time and the number of devices installed in any calendar year, and update language. OAC 4501-45-11 incorporates by reference various materials used throughout the chapter and is amended to update references and to add two new references.

During early stakeholder outreach, DPS distributed the proposed rules via email on June 28th, 2023, to Lifesafer, Smart Start, A&A Product Company, Alcohol Detection Systems, Alcolock, B.E.S.T. Labs, Intoxalock, LowCost Interlock, RoadGuard Interlock, and SkyFine USA. In response to this outreach DPS received various grammatical and structural change suggestions, as well as more substantive feedback from Smart Start, Lifesafer, Alcolock, and Intoxalock. Smart Start had several suggestions surrounding certification, changes in calibration periods for ignition interlock devices, a requirement surrounding the notification of DPS for the modification of an ignition interlock device, and a clarification surrounding the ability of an immobilizing or disabling device to measure blood alcohol concentration. DPS chose to accept all of Smart Start's suggestions, other than those related to certification. Lifesafer noted that there is not a list of immobilizing or disabling devices on DPS' website asked for clarification surrounding the expiration of a manufacturer license, stated concern over requiring new testing for modifications if they are minor updates, and raised a concern over the length of criminal history reviews. In response to these comments DPS clarified the expiration of the license and the lack of a list of immobilizing and disabling devices, as well as updated the requirement to notify DPS when modifying an ignition interlock device. Alcolock suggested adding blocking functions for ignition interlock devices that are connected to hybrid or electric vehicles, changing the measurement for alcohol concentration in an individual's breath, several changes to definitions and language usage, a correction of a reference, a clarifying change, and a change to make requirements more in line with National Highway Traffic Safety Administration requirements. Changes were made in response to all of these suggestions other than

the correction of a reference as the reference was intentionally written to be broader. Intoxalock provided comments surrounding disqualifying offences, the need to clarify the difference between immobilizing or disabling devices and ignition interlock devices, clarifying language, changes to the installation site inspections, specifying the number of times a retest is allowed, and the need to change rule titles and forms. In response, DPS adopted a variety of changes to address these comments but did not make changes related to disqualifying offenses and installation site inspection requirements.

During the CSI public comment period, DPS received two comments. The first comment came from Lifesafer and asked for clarification surrounding a specification ignition interlock device is required to be tested for by an independent testing laboratory. DPS responded to this comment and clarified the intent of the language. The second comment came from Intoxalock and asked for clarifying changes to be made to the proposed rules to clarify the difference between immobilizing or disabling devices and ignition interlock devices, clarification regarding the application of disqualifying offense limitations, clarifying changes surrounding retesting procedures for ignition interlock devices as a part of their certification requirements, and for a visual review by a manufacturer to be allowed in lieu of an onsite review of an ignition interlock device. DPS in response made changes to clarify the difference between immobilizing or disabling devices and ignition interlock devices and to clarify the applicability of disqualifying offenses. DPS, however, elected not to make changes to restarting procedures as it is based on a National Highway Traffic Safety Administration recommendation but did clarify the procedure for the commenter. Finally, DPS chose not to permit visual inspections rather than an onsite inspection as the two inspection methods have different functions and DPS maintains that only an onsite inspection will allow the manufacturer to verify that the installer or contractor is appropriately trained and has a complete understanding of device installation, monitoring, calibration, and removal.

The business community impacted by the rules includes eleven currently licensed ignition interlock manufacturers and 160 installer vendors. The adverse impact created by the rules includes the application fees associated with the application for the certification of a device (\$100) and manufacturer license (\$100), as well as the fee (5% of the manufacturers net profit) and other costs associated with a manufacturer's annual report background check costs (\$35-60), laboratory analyses, and assessment costs, as well as the penalties for a failure to meet these requirements (failure to file an annual report on time results in a fee that is the greater of \$50 or 10% of the annual report fee and after sixty days can result in a penalty of \$50 per day up to \$3,000). DPS states that these costs can vary from several thousand dollars to as much as \$50,000 and can take six weeks to seven months to update their devices to meet the outlined requirements. DPS states that these adverse impacts are necessary to ensure a standard level of service and performance to those who use an immobilizing or disabling device in their vehicle and to fulfil the agency's statutory obligation to

license ignition interlock device manufacturers.

Recommendations

Based on the information above, the CSI Office has no recommendations on this rule package.

Conclusion

The CSI Office concludes that DPS should proceed in filing the proposed rules with the Joint Committee on Agency Rule Review.