



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 02, 2019

TIME: 8:11 AM

WSR 19-24-071

Agency: Washington State Patrol

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-04-024 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) Ignition interlock device security and unlock codes

Hearing location(s):

Date: Time: Location: (be specific) Comment:

January 9, 2020	8:30 am	106 11 th Avenue SW; Room 4015 Olympia, WA 98504	
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Date of intended adoption: January 10, 2020 (Note: This is NOT the effective date)

Submit written comments to:

Name: Kimberly Mathis, Agency Rules Coordinator

Address: 106 11th Avenue SW

Email: wsprules@wsp.wa.gov

Fax:

Other:

By (date) January 8, 2020

Assistance for persons with disabilities:

Contact Kimberly Mathis

Phone: 360-596-4017

Fax:

TTY:

Email: wsprules@wsp.wa.gov

Other:

By (date) January 8, 2020

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Ignition interlock technology has advanced significantly in recent years to accommodate a secure and reliable method of remotely unlocking ignition interlock devices during a lockout condition. This rule would allow ignition interlock manufacturers to utilize this technology while, at the same time, creating a secure and accountable method of testing and oversight of any use by the Washington State Patrol

Reasons supporting proposal: With the proper safeguards in place, lockout override technology is beneficial to all of the parties involved and allows for a more streamlined process while maintaining public safety and accountability

Statutory authority for adoption: RCW 43.43.395, 43.37.005, 46.04.215

Statute being implemented: RCW 43.43.395, 43.37.005, 46.04.215

Is rule necessary because of a:

Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Washington State Patrol Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	WSP – Ignition Interlock Unit	Seattle, WA	206-720-3018
Implementation:	WSP – Ignition Interlock Unit	Seattle, WA	206-720-3018
Enforcement:	WSP – Ignition Interlock Unit	Seattle, WA	206-720-3018

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

No: Please explain:

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- RCW 34.05.310 (4)(b) (Internal government operations)
- RCW 34.05.310 (4)(c) (Incorporation by reference)
- RCW 34.05.310 (4)(d) (Correct or clarify language)
- RCW 34.05.310 (4)(e) (Dictated by statute)
- RCW 34.05.310 (4)(f) (Set or adjust fees)
- RCW 34.05.310 (4)(g) ((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's analysis showing how costs were calculated. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: December 2, 2019

Name: John R. Batiste

Title: Chief

Signature:

WAC 204-50-090 Ignition interlock device security. (1) A manufacturer and its vendors, service center(s), and ignition interlock technicians must take all steps necessary to prevent tampering or physical circumvention of an ignition interlock device. These steps must include:

(a) Special locks, seals, and installation procedures that prevent or record evidence of tampering and/or circumvention attempts;

(b) Installation and/or use of all anticircumvention features required under this chapter;

(c) Breath anticircumvention features such as alternating breath flow, hum tone, breath temperature and any other impaired driving section approved anticircumvention features must be activated during all start up and random breath tests;

(d) Changes in software and ignition interlock device configuration, including anticircumvention features and the Washington state configuration profile will only be administered by the manufacturer.

(2) In addition, a service center or ignition interlock technician will affix to the ignition interlock device a label containing the following notation: "Warning - This ignition interlock device has been installed under the laws of the state of Washington. Attempts to disconnect, tamper with, or circumvent this ignition interlock device may subject you to criminal prosecution. For more information, call (insert manufacturer, vendor or service center's toll free number)."

(3) No owner or employee of a manufacturer, vendor or service center may authorize (~~or assist with the disconnection of an ignition interlock device, or enable~~) or employ the use of any (~~"emergency bypass" mechanism or any other "bypass"~~) procedure (~~that~~) which allows a (~~person restricted to use the~~) vehicle equipped with a functioning ignition interlock device(~~(r)~~) to start or operate (~~a vehicle~~) without providing all required breath samples. (~~Doing so may subject the person to criminal prosecution under RCW 46.20.750 and may cause the revocation of a manufacturer's, vendor's, service center, and/or ignition interlock technician's certification under chapter 204-50 WAC.~~)

(4) Except as provided in WAC 204-50-092, the sale or use of any type of (~~remote code~~) lockout override allowing (~~a restricted driver~~) any user to bypass a lockout condition (~~or any user to not provide a breath sample on vehicle start up~~) is prohibited.

(5) All known ignition interlock device circumventions or tampering must be reported to the impaired driving section in an impaired driving section approved electronic format within seven calendar days of determining that an ignition interlock device was circumvented or tampered with.

NEW SECTION

WAC 204-50-092 Lockout override. (1) Except as provided in subsection (2) of this section, the manufacturer may, in its discretion, authorize and provide a lockout override when a lockout occurs.

(a) The lockout override shall deactivate the lockout condition for a period of up to four hours. If the device has not been serviced by a service center prior to the expiration of the authorized lockout override period, a lockout override shall not be authorized again until the device has been physically inspected and the calibration checked at a service center.

(b) After a lockout override has been authorized by the manufacturer, the lockout override must be activated within a maximum of twenty hours. After twenty-four hours, the lockout override shall no longer be capable of overriding a lockout.

(c) The activation of a lockout override shall not render the interlock device or any attached components inactive. The interlock device must operate in the same manner as required in chapter 204-50 WAC, including all start up and random breath tests.

(d) All lockout override procedures must be randomized or secured to prevent unauthorized duplication during future lockout conditions or on other ignition interlock devices.

(2) A lockout override shall not be authorized in any of the following circumstances:

(a) To allow an ignition interlock technician to override a lockout; or

(b) To override any temporary lockout or mandatory waiting period; or

(c) When the vehicle equipped with an ignition interlock device is located in a state other than Washington or outside the United States, unless a lockout override is authorized by the laws of the jurisdiction in which the vehicle is located.

(3) All lockout override procedures must be tested by the impaired driving section prior to approval and use in Washington.

(a) Annual testing and evaluation of any lockout override method approved for use will be completed by the impaired driving section in accordance with WAC 204-50-040.

(b) Any proposed modification to an approved lockout override procedure must be completed in accordance with WAC 204-50-050.

(4) A manufacturer must notify the impaired driving section if any other lockout override procedures are in use in other jurisdictions and provide safeguards to ensure unapproved lockout override procedures will not be used in Washington.

(5) The authorization and activation of any lockout override must be reported by the manufacturer to the impaired driving section in an approved format within seven calendar days of authorization by the manufacturer.

(6) The activation of any lockout override must be displayed within the data log of the device, which is viewable by the impaired driving section. The data log must display all standard data log information while the lockout override is active.

(7) As used in this section, "lockout override" means a secure and randomized code, randomized procedure, or manufacturer controlled remote connection procedure used to temporarily override or deactivate a lockout condition on a certified ignition interlock device.