



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 06, 2020

TIME: 1:38 PM

WSR 20-09-027

Agency: Washington State Patrol

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes No If Yes, explain:

Purpose: Ignition interlock technology has advanced significantly in recent years to accommodate a secure and reliable method of 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

Citation of rules affected by this order:

New: 204-50-092
 Repealed:
 Amended: 204-50-090
 Suspended:

Statutory authority for adoption: RCW 46.43.395, 46.37.005 and 46.04.215

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 19-24-071 on 12/02/2019 (date).

Describe any changes other than editing from proposed to adopted version:

204-50-092 Subsection 1(d) - changed the words "randomized or" to "standardized and"

204-50-092 Subsection 2(c) – struck the words "laws of the"

204-50-092 Subsection 7 - changed the phrase, "a secure and randomized code, randomized procedure, or manufacturer controlled remote connection procedure," to, "a secure and randomized code, standardized procedure, or manufacturer controlled standardized remoted connection."

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	<u>1</u>	Amended	<u>1</u>	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	<u>1</u>	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: April 6, 2020

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(~~(,)~~) 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 standardized and 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 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, standardized procedure, or manufacturer controlled standardized remote connection procedure used to temporarily override or deactivate a lockout condition on a certified ignition interlock device.