

735-064-0070

Ignition Interlock Device (IID) Requirement for Issuance of Hardship, Probationary or Hardship/Probationary Permits

(1) When a person whose driving privileges are suspended or revoked applies for a hardship, probationary or hardship/probationary permit, DMV will require the applicant to install an ignition interlock device (IID) in any vehicle operated by the applicant if the applicant's driving record shows any of the following:

(a) A current suspension based on a conviction for DUII in an Oregon court;

(b) A current IID required:

(A) As a condition of a DUII Diversion Agreement;

(B) By ORS 813.602(1) or (2) following the end of a suspension or revocation of driving privileges based on a conviction for DUII or any crime that carries a statutory minimum one, two or five year IID requirement; or

(C) As a result of DMV not receiving a *IID Certification – No Negative Report* (DMV form 735-7379) that would end the applicant's IID requirement.

(2) As a condition of a hardship, probationary or hardship/probationary permit, the IID must be installed, maintained and used in any vehicle the person operates for the duration of the person's IID requirement. The IID requirement may exceed the period the person's hardship, probationary or hardship/probationary permit is valid.

(3) When installation of an IID is required, DMV will not issue a hardship, probationary or hardship/probationary permit to the person until a provider submits an installation report form showing an approved device has been installed in each vehicle the person intends to operate during the permit period.

(4) Notwithstanding section (1) of this rule, DMV may issue a hardship, probationary or a hardship/probationary permit to a person who has not installed an IID if the person will only operate a vehicle(s) owned or leased by his or her employer during the course and scope of the person's employment. For purposes of ORS 813.606, DMV will place a notation on the driving record and on the hardship, probationary or hardship/probationary permit issued to the person that the person's employer has been informed of the IID requirement. To qualify, DMV must receive:

(a) A letter on business letterhead, signed by the employer, stating that the employer has been informed of the IID requirement and that the person is required to operate the employer's vehicle(s) in the course and scope of employment; or

(b) An Employer IID Exemption, (DMV form 735-6874) submitted by the employer.

(5) For purposes of ORS 813.606, a person who is self-employed is not an employee and DMV will not place an employer IID notification notation on the person's driving record.

(6) Notwithstanding section (1) of this rule, DMV may issue a hardship, probationary or hardship/probationary permit to a person who has not installed an IID if the person has been issued a medical exemption under OAR 735-070-0082.

(7) The hardship, probationary or hardship/probationary permit will contain a restriction that the person may only operate vehicles equipped with an IID. If the person operates a vehicle owned or leased by the person's employer in the course and scope of employment or has been issued a medical exemption, the hardship, probationary or hardship/probationary permit driving restrictions will state that the person must have in his or her possession a copy of the employer's IID exemption letter, a completed DMV Employer IID Exemption Form, an IID medical exemption letter issued by DMV, or an IID medical exemption approval issued by a court.

(8) The IID restriction in a hardship, probationary, or hardship/probationary permit will specify the length of time allowed for the person to travel to and from an IID provider's facility to have the IID checked or maintained.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.240, 807.270, 813.602

Stats. Implemented: ORS 807.240, 807.270, 813.602

735-070-0080

Ignition Interlock Device (IID) as Requirement Following DUII Suspension

(1) A person convicted by an Oregon Court of Driving Under the Influence of Intoxicants (DUII) must install and use an IID for the period of time specified in ORS 813.602 (1) or (2).

(2) DMV will suspend driving privileges for the period of time specified in Section 8, Chapter 577, Oregon Laws 2015 for failure to install an IID if proof that an approved IID has been installed in the person's vehicle is not submitted to DMV by the ending date of the DUII suspension. The proof must be an installation report form showing an approved device, as described in OAR 735-118-0010.

(3) A person may operate a vehicle(s) without an IID, if the person is medically unable to operate a vehicle equipped with an IID, and DMV grants a medical exemption from the IID requirement. To avoid suspension of driving privileges for failure to install an IID, the person must apply before the last day of the DUII suspension and submit to DMV:

(a) A written, signed statement from an IID provider that the provider is unable to adapt an IID to accommodate usage by the person because of the person's medical condition; and

(b) A written, signed statement from the person's medical doctor, doctor of osteopathy, naturopathic doctor, physician assistant or nurse practitioner containing the following information:

(A) The name of the exempting condition;

(B) Whether the condition is temporary or permanent and if temporary, when the condition will no longer prevent usage of an IID; and

(C) Whether the exemption is required because the condition results in the inability to sustain an exhaled breath sampling of five pounds of pressure for five seconds required to operate the device or results in a ketone level in the person's breath which will not allow the driver to successfully complete the test.

(4) When the application for a medical exemption is made under section (3) of this rule and approved by DMV, DMV will issue a medical exemption letter. The person must carry a copy of DMV's medical exemption letter while operating a vehicle that would otherwise require installation and use of an IID.

(5) DMV will reinstate driving privileges if during the suspension period for failure to install an IID, the person installs an IID or DMV grants the person a medical exemption.

(6) DMV will terminate the IID requirement at the end of the requirement described in ORS 813.602 if DMV has granted the person a medical exemption and the physician report indicates the medical condition or impairment is permanent.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 813.602

Stats. Implemented: ORS 813.602

735-070-0082

Medical Exemption from IID Requirement

(1) A person may qualify for a medical exemption from the ignition interlock device (IID) requirement under ORS 813.602(1) and (2) if the person provides satisfactory evidence to DMV

that due to a medical condition or impairment the person is unable to operate an IID or unable to safely operate a motor vehicle equipped with an IID. The following definitions apply:

(a) A “health care provider” is a person licensed, certified or otherwise authorized or permitted by law to administer health care in the State of Oregon. For purposes of these rules, the term health care provider is limited to: a chiropractic physician, nurse practitioner, and physician assistant.

(b) A “primary care provider” is a physician or health care provider who is responsible for supervising, coordinating and providing a person's initial and ongoing health care.

(c) “Unable to safely operate a motor vehicle equipped with an IID” means the person’s medical condition or functional impairment prevents the person from safely operating a motor vehicle when requested to perform an IID rolling retest while operating a motor vehicle equipped with an IID.

(2) To apply for a medical exemption a person must submit a completed IID Medical Exemption form (DMV form 735-6941). The form must be completed by both the person and the person’s primary care provider or the physician or health care provider providing specialized treatment to the person for the particular medical condition or functional impairment that prevents the person from operating an IID or prevents the person from safely operating a motor vehicle equipped with an IID.

(3) The person must fully complete the information in Section 1 of the IID Medical Exemption form, including:

(a) The reason(s) the person is required to install an IID; and

(b) An explanation of why the person believes he or she has a medical condition or functional impairment that prevents the operation of an IID or prevents safe operation of a vehicle equipped with an IID.

(4) Section 2 of the IID Medical Exemption form must be completed by the person’s primary care provider, or a physician or health care provider providing specialized treatment to the person for a medical condition or functional impairment that prevents the person from operating an IID or prevents the person from safely operating a motor vehicle equipped with an IID. The physician or health care provider must determine that in his or her professional opinion the person is unable to operate an IID or is unable to safely operate a vehicle equipped with an IID because of the person’s medical condition or functional impairment, including but not limited to a determination that:

(a) The person has a medical condition or functional impairment that does not allow the person to provide the necessary alveolar air or deep lung air sample to properly operate the device; or

(b) The person consistently has a ketone level in his or her breath which creates a false positive reading of over .020 blood alcohol concentration even though the person has had no alcohol.

(5) If the determination of the physician or health care provider described in section (4) of this rule is not based on subsection (a) or (b), the physician or health care provider must provide a detailed description of why the medical condition or functional impairment prevents the person from operating an IID or prevents the person from safely operating a motor vehicle equipped with an IID.

(6) In completing Section 2 of the IID Medical Exemption form, the physician or health care provider must:

(a) Specify the medical condition or functional impairment that prevents the person from operating an IID or prevents the person from safely operating a vehicle equipped with an IID;

(b) State whether the medical condition or functional impairment is permanent or temporary, and if temporary, the projected length of time; and

(c) Specify why the medical condition or functional impairment prevents the person from operating an IID or prevents the person from safely operating a motor vehicle equipped with an IID.

(7) From the information provided on the IID Medical Exemption form, DMV will determine if the person qualifies for a medical exemption. If DMV determines from the information on the form that the person qualifies, DMV will issue a medical exemption. If DMV is unable to determine from the information provided that the person qualifies, DMV will deny the medical exemption.

(8) If the person's medical condition or functional impairment is temporary, DMV will issue a temporary IID medical exemption that expires on the date specified in Section 2 of the IID Medical Exemption form, or a date six months from the date of issuance if no date is provided. If the temporary condition or functional impairment continues beyond the expiration date of the temporary IID medical exemption, the person may submit a signed statement from the physician or health care provider who completed the Request for IID Medical Exemption form describing the person's continuing need for a medical exemption, or the person may submit a new application as set forth in sections (2) through (4) of this rule. From the information submitted DMV will determine if the person continues to qualify for a temporary IID medical exemption.

(9) Before granting or denying an IID medical exemption, DMV may require the person to provide additional information from a physician or health care provider or to obtain a statement from an IID provider that the device cannot be adjusted to accommodate the person's medical condition or functional impairment.

(10) A person who is granted an IID medical exemption by DMV will be issued a medical exemption letter. The person must carry the IID medical exemption letter issued by DMV when driving.

(11) A person who must install and use an IID as a condition of a DUII diversion agreement must obtain an IID medical exemption from the court. The person must submit a completed IID Medical Exemption form directly to the court that approved the DUII diversion agreement. The court must approve or deny the IID medical exemption request. DMV will not forward an IID Medical Exemption form to a court if it is submitted to DMV in error.

(12) A person may need both an IID medical exemption letter issued by DMV and an IID medical exemption approval issued by a court. An IID medical exemption letter issued by DMV is not valid if the person is required to install an IID as a condition of a DUII diversion. A medical exemption issued by a court is not valid if the requirement to install and use an IID is required for any reason other than a DUII diversion agreement. Both an IID medical exemption letter issued by DMV and IID medical exemption approval issued by a court must be carried by the person when driving.

(13) DMV may use a court-issued IID medical exemption letter to terminate an IID requirement at the end of the diversion agreement if there is no indication of either:

(a) The exemption granted by the court being temporary; or

(b) Prior to the end of the diversion agreement the person was required to install an ignition interlock device.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 813.602

Stats. Implemented: ORS 813.602

735-118-0000

Definitions Relevant to Ignition Interlock Devices

For purposes of these rules, OAR 735-118-0000 through 735-118-0050, the following definitions apply:

- (1) “Alcohol” means ethanol or ethyl alcohol.
- (2) “Alcohol set point” means the breath alcohol concentration at which an ignition interlock device is set to prevent a vehicle from starting.
- (3) “Breath Alcohol Concentration (BrAC)” means the amount of alcohol in a given amount of breath, expressed in weight per volume based upon grams of alcohol per 210 liters of breath.
- (4) “Breath sample” means normal expired human breath primarily containing air from the deep lung.
- (5) “Calibration” means service to a device provided by the provider to ensure the device is in proper working order, including a process to ensure the ignition interlock device remains capable of accurately analyzing a breath sample and downloading all the data collected on the device either from installation or last calibration of the device.
- (6) “Device” means an Ignition Interlock Device.
- (7) “DMV” means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.
- (8) “Ignition Interlock Device” means an instrument designed to measure the BrAC of an individual and which prevents a motorized vehicle from starting when the BrAC exceeds a predetermined and preset level.
- (9) “Lockout” means the device prevented the vehicle from starting as described in OAR 735-118-0040(4)(f);
- (10) “Manufacturer” means a person, company, or corporation who manufactures or produces an ignition interlock device.
- (11) “Manufacturer’s representative” is the individual designated by the manufacturer to act on behalf of or to represent the manufacturer in all matters regarding device certificate.
- (12) “Provider” means a person, company, corporation or representative who provides, installs, calibrates, rents or leases a device in the State of Oregon.
- (13) “Purge” means any mechanism by which a device cleanses or removes a previous breath sample from the device and specifically removes residual alcohol.
- (14) “Restart” means the ability to start the engine again without giving another breath sample when after a test is successfully completed and the vehicle is started, the engine later stops for any reason (including stalling) and must be restarted.
- (15) “Retest” means a breath sample required by the device after the initial engine start-up breath sample and while the engine is running.
- (16) “Tampering” means doing anything to a device that was ordered installed pursuant to ORS 813.602 that circumvents the operation of the device;
- (17) “Test Violation” means:
 - (a) Any attempt to start the vehicle by a person with a BrAC of 0.040 or higher unless a subsequent test performed within 10 minutes registers a BrAC lower than 0.040 and the digital images confirm the same person provided both samples;
 - (b) Failure to take any random retest unless a review of the digital image confirms that the vehicle was not being operated by the person required to have the IID at the time of the missed test; or

(c) Failure to pass any random retest due to a BrAC of 0.020 or higher unless a subsequent test performed within 10 minutes registers a BrAC lower than 0.020, and the digital images confirm the same person provided both samples.

Stat. Auth.: ORS 184.616, 184.619 & 813.600

Stats. Implemented: ORS 813.600

735-118-0050

Requirement and Reports

(1) The requirement that an approved ignition interlock device be installed and used in any vehicle operated by a person is a DMV requirement when:

(a) The person is applying to DMV for a hardship permit and an ignition interlock device is required for the person to qualify for a hardship permit; or

(b) The person is applying for full reinstatement following a suspension or revocation of driving privileges and due to the conviction(s) that caused the suspension or revocation the person is required to install an ignition interlock device.

(2) The requirement that an approved ignition interlock device be installed and used in any vehicle operated by a person is a court requirement when the person has entered a diversion agreement with a court.

(3) A provider must download the data collected by a device each time the provider calibrates the device, even if the provider determines calibration is unnecessary.

(4) For a person who has an ignition interlock device installed as a condition of a diversion agreement, a manufacturer, manufacturer's representative (or a provider authorized by a manufacturer or manufacturer's representative) must report installation of the device or *IID Negative Report* (DMV Form 735-7378) by a person to both the court that required the installation (or the court's designee) and to the district attorney or city prosecutor in the court's jurisdiction as required by Section 2, Chapter 577, Oregon Laws 2015.

(5) A manufacturer, manufacturer's representative (or a provider authorized by a manufacturer or manufacturer's representative) must complete and submit to DMV the *IID Certification – No Negative Report* (DMV form 735-7379) when a person required to install an IID has no negative report during the last 90 days of any requirement or, if the requirement has been extended, as soon as 90 days without a negative report occurs.

(6) A manufacturer, manufacturer's representative (or a provider authorized by a manufacturer or manufacturer's representative) must, upon request, provide to the person a *IID Certification – No Negative Report* (DMV form 735-7379) if the person had the device installed due to a diversion agreement and there is no negative report for at least six consecutive months.

(7) For purposes of this rule, a "negative report" is a report of tampering with an ignition interlock device, unauthorized removal of an ignition interlock device, lockout or a test violation recorded by an ignition interlock device.

Stat. Auth.: ORS 184.616, 184.619 & 813.600

Stats. Implemented: ORS 813.600 & 813.602