

RULE TEXT

A new Part 358 is added to Title 9 NYCRR to read as follows:

Part 358 - Handling of Ignition Interlock Cases Involving Certain Criminal Offenders.

Section 358.1 - Objective.

Section 358.2 - Applicability.

Section 358.3 - Definitions.

Section 358.4 - County Ignition Interlock Program Plan.

Section 358.5 - Approval Process and Responsibilities of Qualified Manufacturers.

Section 358.6 - Cancellation, suspension, and revocation of qualified manufacturers, and installation/service providers, and certified ignition interlock devices.

Section 358.7 - Monitoring.

Section 358.8 - Costs and maintenance.

Section 358.9 - Record Retention and Disposition.

Section 358.10 - Liability.

Section 358.1 - Objective.

This Part's objective is to promote public/traffic safety, offender accountability, and quality assurance through the establishment of minimum standards for the usage and monitoring of ignition interlock devices following a conviction of a violation of subdivision two, two-a, or three of section 1192 of the Vehicle and Traffic Law or any crime defined by the Vehicle and Traffic Law or Penal Law of which an alcohol-related violation of any provision of section 1192 is an essential element.

Section 358.2 Applicability.

This Part shall be applicable to every county, monitor, and operator, and shall govern qualified manufacturers and installation/service providers as to use, installation, and reporting with respect to ignition interlock devices

imposed upon the aforementioned criminal court population within New York State and be effective immediately except section 358.6 through 358.10 which shall be effective August 15, 2010.

Section 358.3 Definitions.

When used in this Part:

- (a) The term “blood alcohol concentration” or “BAC” shall mean the weight amount of alcohol contained in a unit volume of blood, measured as grams ethanol/ 100 ml. blood and expressed as %, grams %, % weight/volume (w/v), and % BAC. Blood alcohol concentration in this Part shall be designated as % BAC.
- (b) The term “certificate of completion” shall mean a document issued by the monitor after the conclusion of the ignition interlock period, including any extensions or modifications as may have occurred since the date of sentence which shows either completion of the operator’s sentence or a change in the conditions of probation or conditional discharge no longer requiring the need for a device.
- (c) The term “circumvent” shall mean to request, solicit or allow any other person to blow into an ignition interlock device, or to start a motor vehicle equipped with the device, for the purpose of providing the operator whose driving privileges is so restricted with an operable motor vehicle, or to blow into an ignition interlock device or start a motor vehicle equipped with the device for the purpose of providing an operable motor vehicle to a person whose driving privilege is so restricted or to tamper with an operable ignition interlock device.
- (d) The term “conviction” shall mean the entry of a plea of guilty or a verdict of guilty to a crime or youthful offender adjudication for a crime involving a violation of subdivision two, two-a, or three of section 1192 of the Vehicle and Traffic Law or any crime defined by the Vehicle and

Traffic Law or Penal Law of which an alcohol-related violation of any provision of section 1192 is an essential element.

- (e) The term “county” shall mean every county outside of the city of New York, and the City of New York as a whole.
- (f) The term “county executive” shall mean a county administrator, county manager, county director or county president and in cities with a population of one million or more, the mayor.
- (g) The term “division” shall mean the division of probation and correctional alternatives.
- (h) The term “drinking driver program” shall mean an alcohol and drug rehabilitation program established pursuant to section 1196 of the Vehicle and Traffic Law.
- (i) The term “failed tasks” shall mean failure to install the ignition interlock device or failure to comply with a service visit or any requirement resulting therefrom as prescribed by this Part.
- (j) The term “failed tests” shall mean a failed start-up re-test, failed rolling re-test, or missed rolling re-test.
- (k) The term “failure report recipients” shall mean all persons or entities required to receive a report from the monitor of an operator’s failed tasks or failed tests pursuant to a county’s plan which may include, but is not limited to the sentencing court, district attorney, operator’s alcohol treatment provider, and the drinking driver program, where applicable.
- (l) The term “ignition interlock device” shall mean any blood alcohol concentration equivalence measuring device which connects to a motor vehicle ignition system and prevents a motor vehicle from being started without first determining through a deep lung breath sample that the operator’s equivalent blood alcohol level does not exceed the calibrated setting on the device as required by standards of the department of health.

- (m) The term “installation/service provider” shall mean an entity approved by a qualified manufacturer that installs, services, and/or removes an ignition interlock device.
- (n) The term “lockout mode” shall mean circumstances enumerated in this Part which trigger the ignition interlock device to cause the operator’s vehicle to become inoperable if not serviced within five (5) calendar days.
- (o) The term “monitor” shall mean the local probation department where the operator is under probation supervision or any person(s) or entity (ies) designated in the county’s ignition interlock program plan for any operator granted conditional discharge.
- (p) The term “operator” shall mean a person who is subject to installation of an ignition interlock device following a conviction of a violation of subdivision two, two-a, or three of section 1192 of the Vehicle and Traffic Law or any crime defined by the Vehicle and Traffic Law or Penal Law of which an alcohol-related violation of any provision of section 1192 is an essential element.
- (q) The term “qualified manufacturer” shall mean a manufacturer or distributor of an ignition interlock device certified by the New York State department of health which has satisfied the specific operational requirements herein and has been approved as an eligible vendor by the division in the designated region where the county is located.
- (r) The term “region” shall mean counties comprising an area within New York State designated by the division where a qualified manufacturer is authorized and has agreed to service.
- (s) The term “start-up test” shall mean a breath test taken by the operator to measure the operator’s blood alcohol concentration prior to starting the vehicle’s ignition.

- (t) The term “start-up re-test” shall mean a breath test taken by the operator to measure the operator’s blood alcohol concentration required within five (5) to fifteen (15) minutes of a failed start-up test.
- (u) The term “rolling test” shall mean a breath test, administered at random intervals, taken by the operator while the vehicle is running.
- (v) The term “rolling re-test” shall mean a breath test, taken by the operator while the vehicle is running, within one (1) to three (3) minutes after a failed or missed rolling test.
 - (1) The term “failed rolling re-test” shall mean a rolling re-test in which the operator’s BAC is at or above the set point.
 - (2) The term “missed rolling re-test” shall mean failure to take the rolling re-test within the time period allotted to do so.
- (w) The term “service period” shall mean the length of time between service visits.
- (x) The term “service visit” shall mean a visit by the operator to or with the installation/service provider for purposes of having the ignition interlock device inspected, monitored, downloaded, recalibrated, or maintained. It shall also mean where applicable, the act by any operator of sending the portion of the interlock device that contains the data log and the breath testing module to the qualified manufacturer for the purposes of downloading the data, reporting to the monitor, and recalibrating the device.
- (y) The term “set point” shall mean a pre-set or pre-determined BAC setting at which, or above, the device will prevent the ignition of a motor vehicle from operating.
- (z) The term “STOP-DWI” shall mean special traffic options program-driving while intoxicated.
- (aa) The term “tamper” shall mean to alter, disconnect, physically disable, remove, deface, or destroy an ignition interlock device or any of its component seals in any way not authorized by this Part.

Section 358.4 County Ignition Interlock Program Plan.

- (a) Every county shall establish a county ignition interlock program plan with respect to usage of ignition interlock devices and monitoring the compliance of an operator subject to installation of an ignition interlock device as directed by a sentencing court. Such plan shall be approved by the county executive and become effective on or before August 15, 2010, and shall be filed with the division no later than June 15, 2010. Where a plan has been amended by the county, it shall be promptly filed with the division in advance of its effective date.
- (b) Every county shall develop a plan in consultation with the county's probation director, district attorney, and in New York City the district attorney from each of the five boroughs, sheriff or Police Commissioner where applicable, STOP-DWI Coordinator, a representative of its drinking driver program where applicable and where more than one program exists in the county, a representative designated by the county executive, a superior and local criminal court judge designated by the administrative judge for the county, and in New York City a superior and local criminal court judge designated by the deputy chief administrative judge, a representative of an agency providing legal services to those unable to afford counsel in criminal cases designated by the county executive. Nothing herein shall prohibit a county from consulting with other persons or entities as the county executive deems appropriate with respect to development of its plan.
- (c) Every plan shall specify monitoring by the probation department where the operator is subject to a period of probation supervision and may designate one or more alternative persons or entities, in lieu of the probation department, responsible for monitoring where an ignition interlock device has been imposed pursuant to a conditional discharge. An alternative person or entity may include but is not limited to the sheriff, police commissioner, district attorney, STOP-DWI coordinator, traffic safety board representative, drinking driver program, treatment alternative for

safer communities program, or any other similar individual, agency, or organization. Nothing shall preclude a county from sharing monitoring resources, including equipment, with another county to effectuate the provisions of this Part.

(d) Every plan at a minimum shall:

- (1) designate the persons or entities, or combination thereof, responsible for monitoring an operator's compliance with an ignition interlock requirement in cases where an operator does not receive a period of probation supervision; establish that where an operator is under probation supervision, the probation department selects the specific class and features of the ignition interlock device available from a qualified manufacturer in its region. The operator may select the model of the ignition interlock device, meeting the specific class and features selected by the probation department from a qualified manufacturer in the operator's region of residence;
- (2) establish that where an operator has received a sentence of conditional discharge, the monitor shall select the class of ignition interlock device available from a qualified manufacturer in its region for any such operator. The operator may select the model of the ignition interlock device from within the class designated by the monitor from a qualified manufacturer in the operator's region of residence;
- (3) in the event more than one qualified manufacturer does business within its region, the county shall establish an equitable procedure for manufacturers to provide ignition interlock devices without costs where an operator has been determined financially unable to afford the costs and has received a waiver from the sentencing court. The equitable procedure should be based upon proportion of ignition interlock devices paid to each qualified manufacturer by operators in the county;

- (4) through any available funding earmarked for such purpose, establish a distribution formula for probation supervision and/or monitoring purposes associated with this Part;
- (5) establish a procedure whereby the probation department and any other monitor will be notified no later than five (5) business days from the date an ignition interlock condition is imposed by the sentencing court, any waiver of the cost of the device granted by the sentencing court, and of any intrastate transfer of probation or interstate transfer of any case which either has responsibility to monitor. Such procedure shall also establish a mechanism for advance notification as to date of release where local or state imprisonment is imposed; and
- (6) establish a procedure governing failure report recipients, including method and timeframe with respect to specific notification and circumstances. At a minimum the procedure shall be consistent with the provisions of section 358.7(d) with respect to sentencing court and district attorney notification of specific failed tasks and failed tests reports.

Section 358.5 Approval Process and Responsibilities of Qualified Manufacturers.

- (a)
 - (1) On or after August 15, 2010, only a qualified manufacturer may conduct business in New York State with respect to any operator. An interested manufacturer of a certified ignition interlock device seeking to conduct business within New York State shall apply to the division to become a qualified manufacturer in one or more designated regions of New York State.
 - (2) The four regions of the state by counties for purposes of this Part are as follows:
 - (i) Region 1: Allegany, Cattaraugus, Cayuga, Chautauqua, Chemung, Erie, Genesee, Livingston, Monroe, Niagara, Ontario, Orleans, Schuyler, Seneca, Steuben, Wayne, Wyoming, and Yates;

- (ii) Region 2: Broome, Chenango, Clinton, Cortland, Essex, Franklin, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Oneida, Onondaga, Oswego, St. Lawrence, Tioga, and Tompkins;
- (iii) Region 3: Albany, Columbia, Delaware, Dutchess, Greene, Montgomery, Orange, Otsego, Putnam, Rensselaer, Rockland, Saratoga, Schenectady, Schoharie, Sullivan, Ulster, Warren, and Washington; and
- (iv) Region 4: Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, and Westchester.

- (b) (1) The format and content of any application shall be established by the division. The application deadline for any manufacturer seeking approval of the division as a qualified manufacturer to conduct business by August 15, 2010 shall be on or before May 12, 2010. Thereafter, applications may be filed at any time for division approval by manufacturers seeking to conduct business after August 15, 2010. The application shall require at a minimum that the manufacturer submit relevant information, reports, and other documents requested by the division with respect to competitive pricing, service performance, select one or more regions in which it shall agree to conduct business, and certify that it will comply with all applicable provisions specified in this Part with respect to service delivery. In addition, the manufacturer or its representative shall provide a signed statement that the manufacturer or its representative will indemnify and hold harmless the State of New York, the division, the department of health, every county where it does business, and their officers, employees and agents from all claims, demands and actions as a result of property damage and/or injury or death to persons which arise, directly or indirectly, out of any act or omission by the manufacturer, its representative,

or installation/service providers relating to the installation, service, inspection, maintenance, repair, use and/or removal of the ignition interlock device.

- (2) Every manufacturer who applies shall provide a thorough description of each device intended for use in New York State, provide proof of such certification by the department of health for each device intended for use in New York State, and the fee structure associated with that specific device. Descriptive information about the device shall include but not be limited to: make and model of device, special features of the device such as camera, reporting capabilities, removable head, global positioning satellite, and real-time or next day reporting. Fee structure information shall include any and all fees charged to the operator, including but not limited to installation fee, monthly fee, any special service fees, shipping fee, and de-installation fee. The proposed fee structure shall take into consideration and be based upon an anticipated ten percent (10%) waiver of the fees by sentencing courts due to operator unaffordability. On or about February 15, 2011 and annually thereafter, the division shall review requests by qualified manufacturers for rate adjustments which shall include information submitted by qualified manufacturers involving unaffordability waivers granted by courts. At its discretion, the division shall approve rate adjustments where appropriate.
- (3) The division shall classify all certified ignition interlock devices into categories based upon features and provide such list to every county. This classification system and subsequent device classification is subject to change by the division as new information becomes available. Upon review of a manufacturer's application, the division shall make a determination whether the manufacturer satisfies all requirements to be designated a qualified manufacturer and provide notification to the applicant and every county within

the region that the qualified manufacturer may conduct business. Every qualified manufacturer shall enter into a contractual agreement for a minimum period of three years with the division setting forth the requirements of the qualified manufacturer and all of its installation/service providers consistent with this Part and the application submission approved by the division.

(c) Every qualified manufacturer shall:

- (1) adhere to all regulatory provisions of the department of health with respect to certification, testing, labeling, reporting and any additional requirements, and shall also specifically adhere to its responsibilities contained in this Part;
- (2) agree that an ignition interlock device shall conform to national highway traffic safety administration standards and department of health specifications, be calibrated at a set point of .025 BAC percent, and also require the operator after passing the start-up test allowing the engine to start, to submit to an initial rolling test within a randomly variable interval ranging from five to fifteen minutes. Subsequent rolling tests shall continue to be required at random intervals not to exceed thirty (30) minutes for the duration of the travel. A start-up re-test shall be required within five (5) to fifteen (15) minutes of a failed start-up test. A rolling re-test shall be required within one (1) to three (3) minutes after a failed or missed rolling test. An ignition interlock device shall enter into a lockout mode upon the following events: one failed start-up retest, one missed start-up re-test, one failed rolling re-test or one missed rolling re-test within a service period, or one missed service visit;
- (3) agree to adhere to a maximum fee/charge schedule with respect to all operator's costs associated with such devices, offer a payment plan for any operator determined to be

financially unable to pay the cost of the ignition interlock device where a payment plan is so ordered, and provide a device free of fee/charge to the operator where the cost is waived by the sentencing court, or pursuant to such other agreement as may be entered into for provision of the device. Any contractual agreement between the operator and the qualified manufacturer or its installation/service providers shall permit an early termination without penalty to the operator when a certificate of completion has been issued, where the sentence has been revoked, and whenever the operator has been transferred to a jurisdiction where the manufacturer does not do business. Nothing shall prevent a qualified manufacturer from lowering the fee/charge schedule during the course of an operator's contract and/or the contractual agreement with the division;

- (4) agree to service every county within a region and ensure that there shall be an installation/service provider within 50 miles from the operator's residence or location where the vehicle is parked or garaged, whichever is closest and ensure repair or replacement of a defective ignition interlock device shall be made available within the same 50 mile radius by a fixed or mobile installation/service provider, or through a qualified manufacturer sending a replacement, within 48 hours of receipt of a complaint, or within 72 hours where an intervening weekend or holiday. Mobile servicing may be permissible provided that the above facility requirements are met and a specific mobile servicing unit with regular hours is indicated;
- (5) guarantee that an installation/service provider or the manufacturer shall download the usage history of every operator's ignition interlock device within thirty (30) calendar days between service visits or if the operator fails to appear for a service visit(s) as soon thereafter as the device can be downloaded, and provide the monitor with such

information and in such format as determined by the division. Further guarantee that the installation/service provider shall take appropriate, reasonable and necessary steps to confirm any report of failed tasks, failed tests, circumvention, or tampering and thereafter notify the appropriate monitor within three (3) business days of knowledge or receipt of data, indicating:

- (i) installation of a device on an operator's vehicle(s);
 - (ii) report of a failed start-up re-test;
 - (iii) report of a missed start-up re-test;
 - (iv) report of a failed rolling re-test;
 - (v) report of a missed rolling re-test;
 - (vi) report of the device entering lockout mode;
 - (vii) failure of an operator to appear at a scheduled service visit; or
 - (viii) report of an alleged circumvention or tampering with the ignition interlock devices as prohibited by paragraphs (a), (c) or (d) of subdivision (9) of section 1198 of the Vehicle and Traffic Law, or an attempt thereof;
- (6) provide, no more than monthly to the operator upon his or her request, the operator's usage history, including any report of failed tasks, failed tests, circumvention, or tampering. An operator may only make one request during any month for such information. Such request shall be in writing and provide either an email address or self-addressed stamped envelope;
- (7) agree to safeguard personal information with respect to any operator and any reports and provide access to such records only as authorized herein, by law, or by court order. All records maintained by the manufacturer and any of its installation/service providers with

respect to ignition interlock devices in New York State shall be retained in accordance with section 358.9;

- (8) ensure that the installation/service provider complies with division and county reporting requirements in providing information and reports as may be necessary with respect to an operator's use of the ignition interlock device;
- (9) establish and distribute to the division, its installation/service providers, and any county where it does business prior to August 15, 2010, or if subsequently approved as a qualified manufacturer prior to doing business in the state, a current list of all installation/service providers in the county, including business name, address and telephone number and maintain a toll-free 24 hour telephone number to be called from anywhere in the continental United States for an up-to-date listing of installation/service providers in the continental United States and for emergency assistance. Distribute an up-to-date listing of New York State installation/service providers to the division;
- (10) provide written certification to the division in a format prescribed by the division that all installation/service providers:
 - (i) have been trained in advance as to installation, maintenance, troubleshooting, set point requirement of .025 BAC percent, and recalibration of such manufacturer's devices;
 - (ii) have instructions as to installation and usage of such manufacturer's devices;
 - (iii) have agreed to comply with their manufacturer's service agreements;
 - (iv) have agreed to comply with the provisions of section 358.5(c) and (d);
 - (v) have agreed to provide hands-on training to the operator, any member of the same family or household, or any owner of a motor vehicle in which an ignition

interlock device is being installed, with a valid driver's license who appears with the operator at installation to receive training as to the operation of an installed device on the vehicle, and to provide written or video instructional material to the operator;

- (vi) have been informed of New York State law governing circumvention of ignition interlock devices and penalties associated therewith;
- (vii) have agreed to safeguard personal information with respect to any operator and any reports and provide access to such records only as authorized herein, by law, or court order; and
- (viii) have been made aware that non-compliance will result in immediate removal and updating the listing of installation/service providers identified in section 358.5(c) (9). An installation/service provider may be reinstated by the division, at its discretion, upon satisfactory proof from the qualified manufacturer of corrective action;

(11) conduct annual quality assurance audits or reviews of installation/service providers to ensure compliance with applicable laws, regulations and any contractual agreements and provide the division with yearly sworn statements that such audits have been conducted. Failure to conduct quality assurance audits may result in removal of the qualified manufacturer from doing business in the State of New York. Nothing shall preclude the division and/or its representative from conducting random audits and quality assurance audits or reviews;

(12) take all reasonable steps necessary to prevent tampering or circumvention of the ignition interlock device and promptly notify the division, the applicable county's monitor and

- district attorney of any reasonable belief that an employee of an installation/service provider has attempted to alter or has altered ignition interlock data or has been otherwise involved in tampering or circumventing an ignition interlock device of any operator or any attempt thereof. Failure to notify the monitor and the district attorney may result in removal of the qualified manufacturer from doing business in the State of New York;
- (13) provide immediate notice to the division and the applicable county monitor(s) of any removal of any installation/service provider and the reasons for such;
 - (14) provide immediate notice to the division and the department of health whenever the manufacturer's device has been disapproved, suspended, revoked, or otherwise cancelled by another state or jurisdiction;
 - (15) submit reports, as requested and in such format as determined by the division, for each model or type of certified device, including, but not limited to:
 - (i) operator and other vehicular user operation error;
 - (ii) faulty automotive equipment that directly impacts successful implementation and use of the device;
 - (iii) apparent misuse or attempts to circumvent or tamper/bypass a device;
 - (iv) device malfunctions, including action taken by the manufacturer to correct such malfunctions;
 - (v) deficiencies in device calibration stability; and
 - (vi) operator, vehicular user, and installation/service provider complaints;
 - (16) provide documentation and verification of insurance (to be submitted upon each policy issuance or renewal) covering product liability, including coverage in New York State, with a minimum policy limit of \$1 million per occurrence, and \$3 million aggregate total.

The manufacturer shall provide a signed statement holding harmless the State of New York, the division, every county, and their employees and agents from all claims, demands, and actions, as a result of damage or injury to persons or property that may arise, directly or indirectly, out of any act or omission by the manufacturer or their installation/service provider relating to the installation, service, repair, use and/or removal of an ignition interlock device;

- (17) submit any other information determined by the division to be relevant to the effectiveness, reliability and value of ignition interlock devices as a sentencing sanction; and
 - (18) agree that the consequences of a failure to adhere to any manufacturer requirements specified in this Part may result in removal of the qualified manufacturer from doing business in the State of New York.
- (d) Every qualified manufacturer shall ensure that its installation/service providers comply with the following additional requirements:
- (1) the ignition interlock device shall be installed in any vehicle(s) owned or operated by the operator within seven (7) business days of the operator's request for installation of the device;
 - (2) provide to all operators, at the time of device installation a hardcopy statement of fees/charges clearly specifying warranty details, schedule of lease payments where applicable, any additional costs anticipated for routine recalibration, service visits, and shipping where the device includes the direct exchange method of servicing, and listing any items available without charge if any, along with a list of installation/service providers in their respective county, a toll-free 24 hour telephone number to be called

from anywhere in the continental United States to secure up-to-date information as to all installation/service providers located anywhere in the continental United States and for emergency assistance, and a technical support number available during specified business hours to reach a trained staff person to answer questions and to respond to mechanical concerns associated with the ignition interlock device;

- (3) record the odometer reading of the motor vehicle in which the ignition interlock device is installed and during all service visits;
- (4) remove an ignition interlock device and return the vehicle to normal operating condition only after having received a certificate of completion or a letter of de-installation from the monitor as authorized pursuant to section 358.7 of this Part. Where at the time of removal the installation/service provider notices any failed tests that have not been backed up by a successful re-test, the monitor shall be notified for approval before the removal is made. Where the device includes direct exchange method of servicing, the qualified manufacturer shall report to the monitor before removal is made. If a device is removed for repair and cannot be reinstalled immediately, a substitute device shall be provided;
- (5) installation shall be performed in a professional manner by persons trained and authorized by the manufacturer pursuant to section 358.5(c) (10);
- (6) installation shall be performed according to the manufacturer's detailed written instructions, with calibration to the required set point of .025 BAC percent and in a manner so as to ensure proper vehicular operation;
- (7) at the time of installation permanently affix the warning label notice prescribed by the department of health in a highly visible location on the installed ignition interlock device;

- (8) be equipped with the necessary tools and equipment to ensure proper ignition interlock device installation and removal;
- (9) perform installations and maintenance, including recalibrations, within a secure area of the installation/service provider's or qualified manufacturer's business establishment or at a location serviced by a mobile unit to prevent unauthorized persons from observing or accessing secured items such as tamper seals and installation, data download, transmission, or recalibration instructions;
- (10) maintain records of installation and maintenance work performed on the devices;
- (11) screen vehicles for mechanical and electrical conditions that would interfere with the functioning of the device, such as low battery or alternator voltage, defective horn, untuned engine, and frequent stalling;
- (12) prior to installation, require that the operator complete mechanical repairs or adjustments where necessary for the proper functioning of the device. In such event, the seven (7) day installation period in paragraph one shall commence when repairs or adjustments are completed;
- (13) prior to installation of the ignition interlock device, obtain and record the following information from every operator:
 - (i) photo identification;
 - (ii) the name and policy number of his/her automobile insurance;
 - (iii) the vehicle identification number (VIN) of all motor vehicles owned or routinely driven by the operator, and a statement disclosing the names of all other individuals who operate the motor vehicle(s) owned or driven by the operator; and

- (iv) a notarized affidavit from the registered owner of the vehicle granting permission to install the device if the vehicle is not registered to the operator;
- (14) if, during the installation, the operator fails to pass the initial breath test, the installation will be halted and the monitor notified;
- (15) after installation during any service visit, recalibrate as necessary or required in this Part and check the device and vehicle to ensure proper operation;
- (16) notify the monitor and county probation department when an ignition interlock device has been installed on an operator's vehicle(s) within three (3) business days of installation;
- (17) complete the following with respect to service visits:
 - (i) document photo identification from the operator during all required in-person services;
 - (ii) provide service/monitoring of the ignition interlock device as required herein;
 - (iii) recalibrate as necessary the ignition interlock device at each service visit;
 - (iv) check for signs of circumvention or tampering; and
- (18) adhere to any other applicable state or federal requirement.

Section 358.6 Cancellation, suspension, and revocation of qualified manufacturers, installation/service providers, and certified ignition interlock devices.

- (a) Any of the following reasons may result in revocation of a certified ignition interlock device or removal of a qualified manufacturer or installation/service provider:
 - (1) when there is a voluntary request by a manufacturer to cancel certification of a device;
 - (2) when notified by the department of health that a device no longer meets their regulatory standards;
 - (3) when a device is discontinued by the manufacturer;

- (4) when the manufacturer's liability insurance is terminated or cancelled;
- (5) when the manufacturer or installation/service provider conceals or attempts to conceal its true ownership;
- (6) when materially false or inaccurate information is provided relating to a device's performance standards;
- (7) when there are defects in design, materials, or workmanship causing repeated failures of a device;
- (8) when the manufacturer or installation/service provider knowingly permits nonqualified service technicians to perform work;
- (9) when a manufacturer or installation/service provider assists users with circumventing or tampering with a device;
- (10) when service or the submission of required reports is not provided in a timely manner as required by this Part;
- (11) when the manufacturer or installation/service provider refuses to provide an ignition interlock device free of charge to an operator who has received a judicial waiver;
- (12) when there is a pattern of substandard customer service;
- (13) when a manufacturer or installation/service provider interferes with or obstructs a review or investigation by the division or any designee;
- (14) when there are any other violations of the provisions contained in this Part, including division and department of health regulations, or any ignition interlock contractual agreement;
- (15) upon notification of disapproval, suspension, revocation, or cancellation of a manufacturer's device by another state or jurisdiction;

- (16) when a manufacturer or installation/service provider provides gratuities or any other personal incentives to a state or local official or any monitor for purposes of soliciting business; and
- (17) when a manufacturer or installation/service provider conducts business in New York State outside of the designated region or regions of operation approved by the division.

Section 358.7 Monitoring.

- (a) (1) Any monitor shall receive notification pursuant to its county plan of all operators which it has responsibility to monitor within five (5) business days of the sentencing court's order imposing the condition of an ignition interlock device and of an operator's release from imprisonment, in accordance with section 358.4(d)(3). Such monitor shall obtain proof of installation by the operator and installation/service provider. The installation/service provider shall provide notification of installation of an ignition interlock device to the appropriate monitor and probation department in accordance with section 358.5 (d) (16) and the operator in accordance with subdivision (c) of this section;
- (2) Where a monitor learns that the operator no longer owns or operates a motor vehicle in which an ignition interlock device has been installed, the monitor may issue a letter of de-installation directly to the installation/service provider which authorizes removal of the device;
- (b) (1) Where the operator is under probation supervision and resides in another county at the time of sentencing or subsequently desires to reside in another county, upon intrastate transfer of probation, the receiving county probation department selects the specific class and features of the ignition interlock device available from a qualified manufacturer in its region. Thereafter, the operator may select the model of the ignition interlock device

meeting the specific class and features selected by the receiving county probation department from a qualified manufacturer in the operator's region of residence. Where intrastate transfer occurs after sentencing and the installation of a different device is required as a result of the transfer, the device shall be installed within ten (10) business days of relocation. All intrastate transfer of probation shall be in accordance with Part 349;

- (2) Where an operator has received a sentence of conditional discharge and resides in another county at the time of sentencing or thereafter, the receiving county monitor shall select the class of ignition interlock device available from a qualified manufacturer in its region for any such operator. The operator may select the model of the ignition interlock device from within the class designated by the monitor from a qualified manufacturer in the operator's region of residence. The receiving county monitor shall perform monitor services and the sentencing court retains jurisdiction of the operator. Upon knowledge, the monitor of the sentencing county shall provide necessary operator information in advance to the receiving county monitor. The receiving county monitor shall notify the sentencing court and county district attorney pursuant to paragraph (d) of this section;
- (3) Where an operator, subject to probation supervision or a sentence of conditional discharge, resides or desires to reside out-of-state and is an offender subject to the interstate compact for adult offender supervision pursuant to section two hundred fifty-nine-mm of the executive law, the governing rules of such compact shall control. Additionally, Part 349 shall apply with respect to transfer of supervision of probationers. Where transfer is permitted, the receiving state retains its authority to accept or deny the transfer in accordance with compact rules. Where an operator is subject to probation

supervision and is granted reporting instructions and/or acceptance by a receiving state, the sending probation department selects the specific class and features of the ignition interlock device available from a qualified manufacturer in the receiving state.

Thereafter, the operator may select the model of the ignition interlock device meeting the specific class and features selected by the sending county probation department from a qualified manufacturer in the receiving state region. The device shall be installed prior to relocation or return where feasible. A qualified manufacturer shall make necessary arrangements to ensure the county monitor in New York State and the receiving state receive timely reports from the manufacturer and/or installation/service provider; and

- (4) Where an operator resides or desires to reside out-of-state, is not subject to the interstate compact for adult offender supervision and such compact's governing rules, and has been given permission to return or relocate by the sentencing court or monitor, the same provisions with respect to selection specified in paragraph three of this subdivision applies and the device shall be installed prior to relocation or return. A qualified manufacturer shall make necessary arrangements to ensure the county monitor receives timely reports from the manufacturer and/or installation/service provider. Pursuant to the compact, an operator convicted of his or her first DWI misdemeanor is not subject to the compact.

(c) Every operator shall:

- (1) have installed and maintain a functioning ignition interlock device in any vehicle(s) he or she owns or operates within ten (10) business days of the condition being imposed by the court or if sentenced to imprisonment upon release from imprisonment, whichever is applicable and to have the device installed in accordance with this Part and, within three

- (3) business days of installation, submit proof of installation to the court, county probation department, and any other designated monitor. Nothing in this Part shall preclude an operator from having installed a certified ignition interlock device in excess of the class and/or features authorized herein;
- (2) submit to service visits within thirty (30) calendar days of prior installation or service visits for the collection of data from the ignition interlock device and/or for inspection, maintenance, and recalibration purposes where the device does not automatically transmit data directly to the monitor; and submit to an initial service visit within thirty (30) calendar days of installation and service visits within sixty (60) calendar days of prior service visits where the device either automatically transmits data directly to the monitor for inspection, maintenance, or recalibration purposes or the device head is sent to the qualified manufacturer every thirty (30) calendar days for such purposes, including data download. However, an operator shall only remove the device head upon receipt of a new device head;
- (3) provide the installation/service provider and the monitor prior to installation of the ignition interlock device, the following information:
- (i) his/her photo identification/license for examination purposes;
 - (ii) the name and policy number of his/her motor vehicle insurance;
 - (iii) the vehicle identification number (VIN) of all motor vehicles owned or routinely driven by the operator, and a statement disclosing the names of all other individuals who operate the motor vehicle(s) owned or driven by the operator; and
 - (iv) a notarized affidavit from the registered owner of the vehicle granting permission to install the device if the vehicle is not registered to the operator;

- (4) present photo identification/license for examination purposes during any in-person service visit; and
 - (5) provide the monitor with documentation requested by the monitor as to vehicle(s) owned or driven by the operator. Prior to an operator legally driving an employer's vehicle within the scope of his or her employment, the operator must provide satisfactory proof to the monitor that the employer has been notified of the operator's driving privilege is restricted and necessitates installation and maintenance of a functioning ignition interlock device and such employer grants permission for the operator to drive the employer's vehicle without the device only for business purposes. Such exemption for business purposes shall not apply to any vehicle owned by a business entity all or partly owned or controlled by the operator. Any operator shall provide satisfactory proof to the monitor that any other person who rents, leases, or loans a motor vehicle to him or her has been notified that the operator's driving privilege is restricted and necessitates installation of the ignition interlock device on any vehicle he or she owns or operates and that the person grants permission for the operator to install the device on such vehicle(s) and operate the vehicle(s). Further, prior to return of any vehicle which is leased, rented, or loaned, the operator shall comply with service visit requirements of this Part;
- (d) (1) Upon learning of the following events:
- (i) that the operator has failed to have installed the ignition interlock device on his/her own vehicle(s) or vehicle(s) which he/she operates;
 - (ii) that the operator has not complied with service visits requirements;
 - (iii) a report of alleged tampering with or circumventing an ignition interlock device or an attempt thereof;

- (iv) a report of a failed start-up re-test;
- (v) a report of a missed start-up re-test;
- (vi) a report of a failed rolling re-test;
- (vii) a report of a missed rolling re-test; and/or
- (viii) a report of a lockout mode;

the applicable monitor shall take appropriate action consistent with public safety. Where under probation supervision, the county probation department shall adhere to Part 352.

With respect to any operator sentenced to conditional discharge, the monitor shall take action in accordance with the provisions of its county ignition interlock program plan.

At a minimum, any monitor shall notify the appropriate court and district attorney, within three (3) business days, where an operator has failed to have installed the ignition interlock device on his/her own vehicle(s) or vehicle(s) which he/she operates, where the operator has not complied with a service visit requirement, any report of alleged tampering with or circumventing an ignition interlock device or an attempt thereof, any report of a lock-out mode, and/or any report of a failed test or re-test where the BAC is .05 percent or higher.

- (2) The monitor may recommend modification of the operator's condition of his or her sentence or release whichever is applicable as otherwise authorized by law, including extension of his/her ignition interlock period, a requirement that the operator attend alcohol and substance abuse treatment and/or drinking driver program, referral to the department of motor vehicles to determine whether the department may suspend or revoke the operator's license, or recommend revocation of his/her sentence or release.

- (3) Where the operator is under supervision by the division of parole, the monitor shall coordinate monitoring with the division of parole and promptly provide the parole agency with reports of any failed tasks or failed tests.
- (e) Any monitor may disseminate relevant case records, including failed tasks or failed reports not otherwise sealed or specifically restricted in terms of access by state or federal law to appropriate law enforcement authorities, district attorney, treatment agencies, licensed or certified treatment providers, the judiciary, for law enforcement and/or case management purposes relating to criminal investigations and/or execution of warrants, supervision and/or monitoring of ignition interlock conditions, and treatment and/or counseling. Personal information in any financial disclosure report shall only be accessible to the monitor, court, and district attorney for purposes related to determination of financial affordability. Case record information is not to be used for noncriminal justice purposes and shall otherwise only be available pursuant to a court order. In all such instances, those to whom access has been granted shall not secondarily disclose such information without the express written permission of the monitor that authorized access.

Section 358.8 Costs and maintenance.

- (a) Any operator shall pay the cost of installing and maintaining the ignition interlock device unless the operator has been determined to be financially unable to afford the cost of the ignition interlock device by the sentencing court whereupon such cost may be imposed pursuant to a payment plan or waived.
- (b) Any operator who claims financial inability to pay for the device shall submit in advance of sentencing three (3) copies of his or her financial disclosure report, on a form prescribed by the division, to the sentencing court which shall distribute copies to the district attorney and defense counsel. The report shall enumerate factors which may be considered by the sentencing court

with respect to financial inability of the operator to pay for the device and shall include, but not be limited to income from all sources, assets, and expenses. This report shall be made available to assist the court in determining whether or not the operator is financially able to afford the cost of the ignition interlock device, and if not whether to impose a payment plan. Where it is determined that a payment plan is not feasible, the court shall determine whether the fee/charge for the device shall be waived.

Section 358.9 Record Retention and Disposition.

Record retention and disposition of all records of the county, any qualified manufacturer, and installation/service provider with respect to this Part shall be in accordance with the applicable Records Retention and Disposition Schedule promulgated by the state education department.

Section 358.10 Liability.

Nothing contained in the Part shall impose liability upon the division, the State of New York, or any county, for any damages related to the installation, monitoring or maintenance of an ignition interlock device or an operator's use or failure to use such devices.