

THE FULL TEXT OF THE PROPOSED RULE AMENDMENT IS:

RULE TITLE:

RULE NUMBER:

Breath Alcohol Ignition Interlock Devices

15A-9

15A-9.001 – Authority

This chapter is promulgated pursuant to Sections 316.193, 316.1937, ~~and~~ 316.1938, 322.2715, and 322.16, Florida Statutes.

Specific Authority 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. Law Implemented 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. History–New 10-12-92, Amended 1-20-04, _____.

15A-9.002 – Purpose

The purpose of this chapter is to establish guidelines for certification and installation of Breath Alcohol Ignition Interlock Devices and implementing the use of such devices as required by Sections 316.193, 316.1937, ~~and~~ 316.1938, 322.2715, and 322.16, Florida Statutes.

Specific Authority 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. Law Implemented 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. History–New 10-12-92, Amended 1-20-04, _____.

15A-9.003 – Definitions

(1) through (2) No change.

(3) Breath sample. The volume of breath to be exhaled by the convicted person for the accurate operation of the Ignition Interlock Device. This will be 1.5 litres of breath volume per blow into the device.

~~(4)~~(3) Breath test. An analysis of the breath alcohol concentration of a deep lung breath sample.

~~(5)~~(4) Calibration. The process which ensures an accurate alcohol concentration reading on an ignition interlock device.

~~(6)~~(5) Certification. The testing and approval process required by the Department of Highway Safety and Motor Vehicles.

~~(7)(6)~~ Convicted person. The person required by the court or the department to drive only motor vehicles that have certified ignition interlock devices installed.

~~(8)(7)~~ Deep lung breath sample. Also called “alveolar breath sample.” An air sample which is the last portion of a prolonged, uninterrupted exhalation and which gives a quantitative measurement of alcohol concentration from which breath alcohol concentrations can be determined. “Alveolar” refers to the aveoli, which are the smallest air passages in the lungs, surrounded by capillary blood vessels and through which an interchange of gases occurs during respiration.

~~(9)(8)~~ Department. The Department of Highway Safety and Motor Vehicles.

~~(10)(9)~~ Device. A breath alcohol ignition interlock device.

~~(11)(10)~~ Emergency bypass. A one-time event, authorized by a service provider, that permits the ignition interlock device-equipped motor vehicle to be started without the requirement of passing the breath test.

~~(12)(11)~~ Fail point. A preset or predetermined breath alcohol level, defined in Section 316.1937, Florida Statutes.

~~(13)(12)~~ Free restart. The ability to start the engine again within three (3) minutes without completion of another breath test, when the condition exists where a breath test is successfully completed and the motor vehicle is started, but then the engine stops for any reason (including stalling).

~~(14)(13)~~ Ignition interlock device. A breath alcohol analyzer connected to a motor vehicle’s ignition. In order to start the motor vehicle engine, a convicted person must blow a deep lung breath sample into the analyzer, which measures the breath alcohol concentration. If the breath alcohol concentration exceeds the fail point on the ignition interlock device, the motor vehicle engine will not start.

~~(15)(14)~~ Lockout. The ability of the ignition interlock device to prevent a motor vehicle’s engine from starting.

~~(16)(15)~~ Manufacturer. The actual producer of the ignition interlock device who assembles the product and who may provide distribution and services.

~~(17)(16)~~ Motor vehicle. Any self-propelled motor vehicle not operated upon rails or guideway, but not including any motorcycle, bicycle, motorized scooter, electric personal assistive mobility device, or moped.

~~(18)(17)~~ Permanent lockout. A feature of the ignition interlock device in which a motor vehicle will not start until the ignition interlock device is reset by a service provider.

~~(19)(18)~~ Retest. An additional chance to provide a deep lung breath sample below the alcohol fail point.

~~(20)~~(19) Rolling retest. Additional deep lung breath samples required while the motor vehicle is in operation.

~~(21)~~(20) Service provider. The retail supplier of the approved ignition interlock devices.

~~(22)~~(21) Tampering. An unlawful act or attempt to disable or circumvent the legal operation of the ignition interlock device.

~~(23)~~(22) Temporary lockout. A feature of the ignition interlock device which will not allow the motor vehicle to start for time periods specified in Rule 15A-9.005, Florida Administrative Code, after a breath test result indicating a BrAC above the fail point.

~~(24)~~(23) Violation. An event, such as two (2) breath tests above the fail point upon initial startup, a refusal to provide a rolling retest deep lung breath sample, a rolling retest above the fail point, or tampering, which breaches the guidelines for use of the ignition interlock device.

~~(25)~~(24) Violation reset. A feature of the ignition interlock device in which a service reminder is activated due to a violation.

Specific Authority 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. Law Implemented 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. History–New 10-12-92, Amended 1-20-04,_____.

15A-9004 – When Ignition Interlock Devices are Required

Specific Authority 316.193, 316.1937, 316.1938, 322.271, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. Law Implemented 316.193, 316.1937, 316.1938, 322.16, 322.271, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. History–New 10-12-92, Amended 1-20-04.

15A-90041– Medical Considerations

(1) In consideration of a medical condition, a minimum breath sample of 1.0 litres of breath volume per blow may be considered, if the convicted person is certified by a licensed pulmonologist to have a lung condition which will render the convicted person incapable of blowing a breath sample into an ignition interlock device, after appropriate review by the Medical Review Board of such medical condition and certification.

(2) When a medical condition exists in the convicted person which makes such person incapable of properly operating the ignition interlock device, the convicted person may submit a medical report from an appropriate specialist to the Medical Review Board who shall review and

issue a finding of the medical incapacity. Pursuant to the authority under Section 322.2715, F.S., the use of the ignition interlock requirement may be waived or modified.

(a) If a medical waiver has been approved for a convicted person seeking a hardship license, the convicted person shall not be entitled to a hardship license until the required installation period of the ignition interlock device prescribed in Section 322.2715, F.S. expires, in addition to the time requirements outlined in Section 322.271, F.S.

(b) If a medical waiver has been approved for a convicted person seeking permanent reinstatement of the driver's license, the convicted person will not be entitled to such reinstatement until the required installation period of the ignition interlock device prescribed in Section 322.2715, F.S. expires.

Specific Authority 316.193, 316.1937, 316.1938, 322.271, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. Law Implemented 316.193, 316.1937, 316.1938, 322.16, 322.271, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. History–New_____.

15A-9.005 Specifications.

Specific Authority 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. Law Implemented 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. History–New 10-12-92, Amended 1-20-04.

15A-9.006 Procedure for Ignition Interlock Device Approval.

Specific Authority 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. Law Implemented 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. History–New 10-12-92, Amended 1-20-04.

15A-9.007 Certification.

Specific Authority 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. Law Implemented 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. History–New 10-12-92, Amended 1-20-04.

15A-9.008 Installation and De-installation.

Specific Authority 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. Law Implemented 316.193, 316.1937, 316.1938, 322.2715,

322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. History–New 10-12-92, 1-20-04.

15A-9.009 Servicing.

Specific Authority 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. Law Implemented 316.193, 316.1937, 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. History–New 10-12-92, Amended 1-20-04.

15A-9.010 Monitoring.

Specific Authority 316.193, 316.1937, 316.1938, 322.2715, 322.16 322.292 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. Law Implemented 316.193, 316.1937, 316.1938, 322.292, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. History–New 10-12-92, Amended 1-20-04.

15A-9.011 Warning Label.

Specific Authority 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. Law Implemented 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. History–New 10-12-92, Amended 1-20-04.

15A-9.012 Liability.

(no change)

15A-9.013 Auditing of Administrative Offices and Service Providers.

Specific Authority 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. Law Implemented 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. History–New 10-12-92, Amended 1-20-04.

15A-9.014 Forms.

Specific Authority 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. Law Implemented 316.193, 316.1937, 316.1938, 322.2715, 322.16 FS., Federal Register Vol. 57, No. 67, pages 11772-11787. History–New 10-12-92, Amended 1-20-04.

NAME OF PERSON ORIGINATING PROPOSED RULE: Barbara Lauer, Bureau of Driver Education and DUI Programs, Division of Drivers Licenses, Department of Highway Safety and Motor Vehicles, Room B211, Neil Kirkman Building, Tallahassee, Florida 32399-0571, (850)617-2505.

NAME OF SUPERVISOR OR PERSON WHO APPROVED THE PROPOSED RULE: Sandra C. Lambert, Director, Division of Drivers Licenses

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: September 15, 2006

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: October 6, 2006

DATE NOTICE OF PROPOSED RULE AMENDMENT PUBLISHED IN FAW: November 3, 2006

CHAPTER 15A-9

STATEMENT OF FACTS AND CIRCUMSTANCES JUSTIFYING THE RULE

The 2002 Legislature amended Section 316.193, F.S., to require the ignition interlock device to be installed on the vehicles used by certain persons convicted of driving under the influence (DUI). The purpose of the proposed rule action is to establish a process to review cases in which drivers with documented medical issues are unable to utilize the ignition interlock device at the designated setting.

FEDERAL COMPARISON STATEMENT

A federal rule on the same subject as that covered by the proposed amendments to this rule does not exist.

SUMMARY OF RULE

The proposed rule action allows for the review of cases in which drivers with documented medical issues are unable to utilize the ignition interlock device. The proposed rule allows for consideration of a reduction in the allowable minimum breath sample for convicted persons unable to provide an adequate breath sample at the standard setting, and provides conditions for the license reinstatement of convicted persons that are otherwise incapable of properly operating the ignition interlock device.

SUMMARY OF HEARING

The proposed rule development was noticed in the October 6, 2006, Florida Administrative Weekly, Volume 57, Number 67. The proposed rule amendment was noticed in the November 3, 2006, Florida Administrative Weekly, Volume 32, Number 44. No request for a workshop was received by the agency. A Notice of Public Hearing advertising the January 30, 2007, Governor and Cabinet Meeting was noticed in the January 12, 2007, Florida Administrative Weekly, Volume 33, Number 02.