

Basis: These rules are promulgated pursuant to sections 24-4-103 and 42-2-132.5 C.R.S.

Purpose: These rules regulate the issuance of Interlock Restricted Licenses, the monitoring of driver compliance with Interlock Restricted Licenses, the extension of interlock restrictions and the Revocation of Interlock Restricted Licenses for non-compliance.

1. Definitions

- 1.1. Alcohol-Related Revocation—A license revocation taken against a driving privilege based at least in part on a violation of either section 42-2-126 or section 42-4-1301 C.R.S.
- 1.2. Applicant—Individual seeking reinstatement but who has an ignition interlock requirement under the provisions of section 42-2-132.5 C.R.S.
- 1.3. Circumvention—Attempted or successful bypass of the proper functioning of an Ignition Interlock Device, including, but not limited to, unauthorized emergency bypass, the operation of a vehicle without a properly functioning Ignition Interlock Device, the push start of an Interlock Vehicle, the disconnection or alteration of the Ignition Interlock Device, the introduction of a breath sample other than a deep lung sample from the driver of the Interlock Vehicle, the introduction of an intentionally contaminated or altered breath sample, continued operation of the Interlock Vehicle without providing a breath sample when required, continued operation of the Interlock Vehicle after the Ignition Interlock Device detects Excess Breath Alcohol Content. Circumvention does not include the attempted or successful bypass of the Ignition Interlock Device specifically authorized for that instance by the Interlock Provider, provided the Interlock Restricted Driver is not the individual operating or attempting to operate the vehicle pursuant to that authorization.
- 1.4. Department—Colorado Department of Revenue
- 1.5. Early Reinstatement—Reinstatement authorized by section 42-2-132.5(1.5) C.R.S.
- 1.6. Early Reinstatement Eligibility Date—The first anniversary of the inception of the first Alcohol-Related Revocation triggered by the last Qualifying Violation.
- 1.7. Extension Hearing—Hearing to determine the merits and the length of an extension or renewal of the Interlock Restriction under 42-2-132.5(d) C.R.S.
- 1.8. Excess Breath Alcohol Content—the level of breath alcohol at which an Ignition Interlock Device is required to prevent or discontinue normal operation of a motor vehicle as established by the Colorado Department of Public Health and Environment (CDPHE).
- 1.9. Hearing Officer—An authorized representative of the Executive Director of the Department, designated under the authority of Title 42 of the Colorado Revised Statutes.
- 1.10. Ignition Interlock Device—Device approved by CDPHE that prevents the ignition and discontinues the normal operation of a motor vehicle when an individual provides the device with a breath sample having an alcohol content above that established by CDPHE.
- 1.11. Interlock Probationary Driver's License—License issued under the provisions of repealed section 42-2-126.1 C.R.S. that restricts the driver to driving only vehicles equipped with an Ignition Interlock Device and only under the terms and conditions prescribed by a Hearing Officer.
- 1.12. Interlock Restricted Driver—Individual whose privileged to drive is restricted to the use of vehicles equipped with an Ignition Interlock Device under the provisions of either section 42-2-132.5 or repealed section 42-2-126.1 C.R.S.

- 1.13. Interlock Restricted License—License issued under the provisions of section 42-2-132.5 C.R.S. that restricts the driver to driving only vehicles equipped with a properly functioning Ignition Interlock Device.
- 1.14. Interlock Restriction—Requirement under the provisions of either section 42-2-132.5 or repealed section 42-2-126.1 C.R.S. that an individual's privilege to drive be restricted to driving only vehicles equipped with a properly functioning Ignition Interlock Device.
- 1.15. Interlock Provider—A contractor designated by the Department to be a provider of Ignition Interlock Devices.
- 1.16. Interlock Vehicle—Vehicle equipped with an Ignition Interlock Device installed by an Interlock Provider pursuant to an Interlock Lease between the Interlock Provider and the Interlock Restricted Driver.
- 1.17. Lockout—Instance where the Ignition Interlock Device has prevented the vehicle from starting due to Excess Breath Alcohol Content, exclusive of false positive readings as the result of mouth alcohol and/or contaminants.
- 1.18. Non-owner Affidavit—Affidavit filed by Applicant pursuant to section 42-2-132.5(a.5)(I) C.R.S. affirming that Applicant neither is the registered owner or co-owner of a motor vehicle in Colorado nor has access to a motor vehicle in Colorado in which an Ignition Interlock Device may be installed.
- 1.19. Owner Affidavit—Affidavit filed by Applicant pursuant to section 42-2-132.5(3)(a) C.R.S. affirming that Applicant has obtained at Applicant's expense an Ignition Interlock Device lease agreement for each motor vehicle on which Applicant's name appears on the registration and any other vehicle Applicant may drive during the period of the Interlock Restricted License.
- 1.20. Proof of Financial Responsibility for the Future—SR-22 form obtained from an insurance company.
- 1.21. Qualifying Violation—a violation of either section 42-2-126 or section 42-4-1301 C.R.S. A violation of either section 42-2-138 or section 42-4-1401 C.R.S. may also be a qualifying violation if it triggers a revocation under section 42-2-203 C.R.S. that includes a violation of section 42-4-1301 C.R.S.
- 1.22. Renewal Hearing—Hearing to determine the duration of an interlock restriction for the individual transferring from the Interlock Probationary Driver's License under repealed section 42-2-126.1 C.R.S. to an Interlock Restricted License under section 42-2-132.5 C.R.S.
- 1.23. Reporting Period—Discrete month defined by the first and last days of a calendar month and used to describe the period within which lockout(s) will count as one strike towards an extension of the interlock restriction under section 42-2-132.5(5)(d) C.R.S.
- 1.24. Revocation Hearing—Hearing to determine the merits and the proper end date of an action revoking the license of an Interlock Restricted Driver for non-compliance with the interlock restriction.

2. Reinstatement Requiring Ignition Interlock Restriction

- 2.1. An Applicant who is required to hold a restricted license pursuant to section 42-2-132.5(1) C.R.S. may reinstate and acquire an Interlock Restricted License by:
 - 2.1.1. Filing either an Owner Affidavit or a Non-owner Affidavit with the Department;

- 2.1.2. Satisfying all other conditions for reinstatement imposed by law;
 - 2.1.3. Satisfying all licensing conditions imposed by law; except that an Applicant whose Ignition Interlock Restricted License is issued based a Non-owner Affidavit will not be required to complete a test of driving skills until expiration of the period of interlock restriction.
- 2.2. An Applicant who is required to hold a restricted license pursuant to section 42-2-132.5(1) C.R.S. but who no longer resides in Colorado and therefore is not requesting a license may reinstate without acquiring an Interlock Restricted License by:
 - 2.2.1. Filing a Non-owner Affidavit with the Department; and,
 - 2.2.2. Satisfying all other conditions for reinstatement imposed by law.
- 2.3. An applicant who reinstates under 2.2 above is an Interlock Restricted Driver in Colorado for the period of one year from reinstatement should such applicant operate a motor vehicle in Colorado.

3. Early Reinstatement with an Interlock Restricted License

- 3.1. An Applicant whose license is subject to one or more Alcohol-Related Revocation triggered by the same driving episode and extending for more than one year is eligible for early reinstatement under section 42-2-132.5(1.5) C.R.S. and may reinstate and acquire an Interlock Restricted License on or after the Early Reinstatement Eligibility Date by:
 - 3.1.1. Filing an Owner Affidavit and attached interlock lease(s) with the Department;
 - 3.1.2. Filing Proof of Financial Responsibility for the Future with the Department, such proof being filed for each vehicle on which an Ignition Interlock Device is installed and maintained for the longer of three years or the duration of the Interlock Restricted License;
 - 3.1.3. Satisfying all other conditions for reinstatement imposed by law;
 - 3.1.4. Satisfying all licensing conditions imposed by law.
- 3.2. An applicant may have a hearing on the determination of the Early Reinstatement Date. The sole purpose of the hearing will be to determine whether the Early Reinstatement Date was properly calculated by the Department in accordance with section 42-2-132.5 C.R.S. and these rules.

4. Monitoring Compliance with the Interlock Restriction

- 4.1. The Interlock Restricted Driver must have the Ignition Interlock Device and its installation in the Interlock Vehicle inspected by the Interlock Provider at least once every 60 days. Failure to do so will cause the Interlock Restricted Driver to be subject to termination of the Interlock Lease and will subject the Interlock Restricted Driver to a suspension of all driving privileges until such time as the Interlock Restricted Driver reinstates the lease or provides a new lease and satisfies all reinstatement requirements imposed by law. Such suspension will take effect thirty days from the date of notice of suspension sent by the Department.
 - 4.1.1. At each inspection, the Interlock Provider will download the information stored in the Interlock Device regarding all driving attempts and will analyze the information to determine whether there have been any Lockouts or Circumventions during the period since the prior inspection.
 - 4.1.2. The Interlock Provider will advise the Interlock Restricted Driver of any detected Lockouts

or Circumventions. An Interlock Provider's failure to provide such information, however, will not impair the Department's ability to take an action based on Lockouts or Circumventions.

- 4.2. The Interlock Provider will report Lockouts to the Department in Reporting Period increments. Lockouts in three of any twelve consecutive Reporting Periods will result in an extension of the Interlock Restriction. If the Interlock Restricted Driver is beyond the period of Interlock Restriction at the time that Lockouts sufficient to cause an extension are reported to the Department, then the Interlock Restriction will be renewed.
- 4.3. The Interlock Provider will report Circumventions to the Department as they are detected. Circumventions detected by the Interlock Provider will result in an investigation by the Department into the circumstances of the reported Circumvention. If the Department determines that a Circumvention actually occurred, the investigation will be forwarded to an appropriate law enforcement agency for report under section 42-2-132.5(5)(b) C.R.S. and possible prosecution.
- 4.4. Based on a Circumvention investigated by the Department or based on direct observations, a peace officer may file a record of the Circumvention with the Department pursuant to section 42-2-132.5(5) C.R.S. and may file criminal charges in the court of proper jurisdiction under the provisions of section 42-2-126.3 and 42-2-116(6)(b) C.R.S.
- 4.5. A Circumvention by an Interlock Restricted Driver will result in a revocation of all driving privileges in accordance with and for the period prescribed in section 42-2-132.5 C.R.S. Such revocation will take effect immediately upon receipt either of a record of conviction under section 42-2-116(6)(b) C.R.S. or of a record other than a conviction under section 42-2-132.5(5)(b) C.R.S.
- 4.6. An Interlock Restricted Driver may have a hearing on any action taken by the Department while monitoring compliance with the Interlock Restriction. Except for an Extension Hearing, the request for hearing will not postpone the effectiveness of any action taken by the Department. In the event of a request for Extension Hearing, the Department may postpone the effective date of the extension or renewal until the determination at hearing.
 - 4.6.1. The sole issue at hearing for a suspension under 4.1 above is whether the Interlock Restricted Driver was in compliance with the terms of the lease and had the inspection performed as required.
 - 4.6.2. The only issues at hearing for an extension or renewal of the Interlock Requirement under 4.2 above are whether Lockouts occurred in three of any twelve consecutive Reporting Periods and, if so, a determination of an appropriate extension period. The Hearing Officer shall consider all reporting periods completed as of the date of the hearing. However, a Reporting Period may not be used as a strike for more than one extension or renewal action.
 - 4.6.2.1. The Hearing Officer may consider the following as aggravating for the purposes of determining an appropriate extension period:
 - 4.6.2.1.1. Two or more Lockouts in any one month.
 - 4.6.2.1.2. Lockouts in more than three of the months under consideration at the hearing.
 - 4.6.2.1.3. A reported breath alcohol level in excess of 0.05 grams per 210 liters of breath which reading contributed to a Lockout.
 - 4.6.2.1.4. A pattern of readings consistent with attempted drinking and driving

regardless of whether such readings contributed to Lockouts.

4.6.2.1.5. Lockouts occurring in the final six months of an Interlock Restriction.

4.6.2.1.6. A prior Extension or Renewal of the Interlock Requirement.

4.6.2.2. The Hearing Officer may consider the following as mitigating for the purposes of determining an appropriate extension period:

4.6.2.2.1. Only one Lockout in each of only three months and none in the other months under consideration.

4.6.2.2.2. Isolated alcohol readings subsequent to the last Lockout, such readings indicating that the Interlock Restricted Driver walked away from an attempt to start the vehicle after consuming alcohol.

4.6.2.2.3. Initiation of voluntary alcohol treatment or therapy after the last Lockout.

4.6.2.2.4. More than one year remaining on the Interlock Restriction immediately prior to the effective date of the extension under consideration.

4.6.2.2.5. Any other factors that the Interlock Restricted Driver may submit in mitigation.

4.6.3. The only issues at a revocation hearing under 4.5 above are whether there was a Circumvention as defined herein and, if so, whether the term of the revocation was properly calculated. The Hearing Officer shall have no discretion to lessen the revocation period prescribed by section 42-2-132.5(5)(a) & (b) C.R.S.

5. Transition from Interlock Probationary Driver's License to Interlock Restricted License.

5.1. An Interlock Restricted Driver who holds an Interlock Probationary Driver's License and whose Interlock Restriction extends beyond calendar year 2001 is eligible for Early Reinstatement in 2001.

5.2. A Hearing Officer will determine eligibility for Early Reinstatement at the Renewal Hearing. Renewal Hearings will be scheduled upon request of the Interlock Restricted Driver holding an Interlock Probationary Driver's License, but in no event will a Renewal Hearing be scheduled more than one month prior to the expiration of the current Interlock Probationary Driver's License document.

5.2.1. Based on aggravating and mitigating factors set forth below, the Hearing Officer will determine the duration of the continuing Interlock Restriction pursuant to section 42-2-132.5(1.5)(d) C.R.S. Aggravating factors that arise before January 1, 2001 may not be used to extend the Interlock Requirement beyond the time required for an Interlock Probationary Driver's License under repealed section 42-2-126.1 C.R.S.

5.2.1.1. The Hearing Officer may consider the following as aggravating for the purposes of determining the duration of the continuing Interlock Restriction:

5.2.1.1.1. Any aggravating factor set forth above in 4.6.2.1.

5.2.1.1.2. Any Circumvention.

5.2.1.1.3. Failure to maintain or complete any required alcohol education and

treatment program.

5.2.1.1.4. Failure to maintain the Ignition Interlock Device as required under the Interlock Probationary Driver's License program.

5.2.1.2. The Hearing Officer may consider the following as mitigating for the purposes of determining the duration of the continuing Interlock Restriction:

5.2.1.2.1. No report indicating an attempt to drive after consuming alcohol within the 6 months preceding the hearing.

5.2.1.2.2. No attempted driving outside the restrictions set forth during the term of the Interlock Probationary Driver's License.

5.2.1.2.3. More than one year remaining on the Interlock Restriction at the time of the Renewal Hearing.

5.2.1.2.4. Any other factors that the Interlock Restricted Driver may submit in mitigation.

5.2.2. Before allowing Early Reinstatement, the Hearing Officer will determine whether the Interlock Restricted Driver is prepared to meet all reinstatement and licensing requirements imposed by law. The Hearing Officer has the discretion to issue another Interlock Probationary Driver's License for a sufficient time to allow the Interlock Restricted Driver to accomplish requirements for reinstatement. However, in no event will an Interlock Probationary Driver's License be issued to extend beyond December 31, 2001.