

FINAL STATEMENT OF REASONS

1) The Update to the Initial Statement of Reasons

There are no changes to the department's initial statement of reasons, with exception to the following:

- The adoption of Section 127.02(d), page 13 of the initial statement of reasons, incorrectly identified the departmental implementation costs as \$2.5 million. The corrected costs to the department are \$5.7 million, which is consistent with the fees of \$95 and \$8 that were correctly identified in the proposed text and in the initial statement of reasons.

The department modified the originally proposed regulations and provided those amendments for public comment. Below are the changes made to the modified express terms.

§ 120.03. Notice of Non-Compliance.

The proposed adoption of subsection (b) was repealed because the subsection lacked clarity related to the process by which a provider becomes authorized by the department to submit the forms electronically. Because there is no process by which a provider becomes authorized, the department ultimately decided it best to remove this subsection and avoid any possible confusion.

§ 124.92. Termination of Suspension or Revocation.

As originally proposed, subsection (d) indicated that the department may determine additional out-of-state residency documents that will assist in verifying an applicant's out-of-state residence on a case-by-case basis. To avoid confusion, the department removed subsection (b) due to lack of necessity as the current list of approved documents is sufficient for an applicant to establish their out-of-state residency.

§ 125.12. Service and Maintenance of Ignition Interlock Devices.

Subsection (a)(1)(A)(i) was amended to clarify the term 'original form DL 920', by specifying that an original DL 920 will contain the green border around the form and will contain the manufacturer's stamp in the top left corner of the form. The manufacturer's stamp shall be an inked or embossed seal. The form DL 920 is a controlled document, meaning the form is not available on the internet and is sent to manufacturer's in bulk quantities. When reviewing the document to ensure it is an original, the departmental technician will look for the green border and the inked or embossed stamp in the top of the corner. When those features have been verified, the technician will sign the form verifying it as an original. A corresponding amendment is made to the form DL 920 to remove the words 'original copy' and replace with 'original.' The form revision date is unchanged as this form has not yet been made available to manufacturers.

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§ 127.00. Ignition Interlock Device Restriction for Pilot Program (Veh. Code § 23700). Subsection (f) was amended to make clear that the provisions of Section 127.00 do not apply to violations occurring on or after January 1, 2019. Violations occurring prior to January 1, 2019 fell under the pilot program of Vehicle Code section 23700 and, because many of those affected drivers could be in the adjudication process and still facing the penalties of the IID pilot program, the department ultimately determined that including subsection (f) is more beneficial to the affected drivers than removing the entire section.

The department will continue to receive DUI convictions from courts related to violations that occurred in the four counties involved in the pilot program and will enforce the sanctions and IID requirements accordingly for the next ten years. Pursuant to *Fox v. Alexis* (1985) 38 Cal.3d 621, and subsequent cases, the California appellate court held the driving privilege sanctions in effect at the time of the driver's violation of the law, not at the time of the conviction, control the Department's actions against the driver. For this reason, a driver with an offense date prior to January 1, 2019, is subject to the sanctions of the pilot program, Vehicle Code section 23700, and the applicable regulations.

§ 127.04. Exemption from Ignition Interlock Device Requirements for Pilot Program (Veh. Code § 23700).

Subsection (b) was amended to make clear that the provisions of Section 127.04 do not apply to violations occurring on or after January 1, 2019. Violations occurring prior to January 1, 2019 fell under the pilot program of Vehicle Code section 23700 and, because many of those affected drivers may qualify for an exemption, the department ultimately determined that including subsection (b) is more beneficial to the affected drivers than removing the entire section.

Pursuant to *Fox v. Alexis* (1985) 38 Cal.3d 621, and subsequent cases, the California appellate court held the driving privilege sanctions in effect at the time of the driver's violation of the law, not at the time of the conviction, control the Department's actions against the driver. For this reason, a driver with an offense date prior to January 1, 2019, is subject to the sanctions of the pilot program, Vehicle Code section 23700, and the applicable regulations.

§ 127.08. Reset of Ignition Interlock Restriction Term for Pilot Program (Veh. Code § 23700).

Subsection (b) was amended to make clear that the provisions of Section 127.08 do not apply to violations occurring on or after January 1, 2019. Violations occurring prior to January 1, 2019 fell under the pilot program of Vehicle Code section 23700 and many of those affected drivers are still affected by the IID reset provisions in Section 127.08. Because Section 127.08 contains rules specifically related to the pilot program and because those rules continue to impact drivers who have IIDs installed under the provisions of Vehicle Code section 23700, the department ultimately determined that including subsection (b) is more beneficial to the affected drivers than removing the entire section.

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Pursuant to *Fox v. Alexis* (1985) 38 Cal.3d 621, and subsequent cases, the California appellate court held the driving privilege sanctions in effect at the time of the driver's violation of the law, not at the time of the conviction, control the Department's actions against the driver. For this reason, a driver with an offense date prior to January 1, 2019, is subject to the sanctions of the pilot program, Vehicle Code section 23700, and the applicable regulations.

§ 127.10. Term of Restriction for Pilot Program (Veh. Code § 23700).

Subsection (b) was amended to make clear that the provisions of Section 127.10 do not apply to violations occurring on or after January 1, 2019. Violations occurring prior to January 1, 2019 fell under the pilot program of Vehicle Code section 23700 and affected drivers who have IIDs installed under the pilot program are still affected by the requirements of Section 127.10. The department determined that including subsection (b) is more beneficial to the affected drivers than removing the entire section.

Pursuant to *Fox v. Alexis* (1985) 38 Cal.3d 621, and subsequent cases, the California appellate court held the driving privilege sanctions in effect at the time of the driver's violation of the law, not at the time of the conviction, control the Department's actions against the driver. For this reason, a driver with an offense date prior to January 1, 2019, is subject to the sanctions of the pilot program, Vehicle Code section 23700, and the applicable regulations.

§ 128.01. Exemption from Ignition Interlock Device Requirements.

Subsection (a) was amended to remove language indicating an exemption is subject to verification from the department. While the verification process at one time was limited to reviewing department records to ensure the applicant does not have a vehicle registered to them in California, the department currently does not conduct that review. Removing this language will ensure the rule is consistent with departmental procedures.

The proposed adoption of subsection (a)(2)(B) is repealed due to lack of necessity as the current list of approved documents is sufficient for an applicant to establish their out-of-state residency.

Amended Forms

Several forms were amended to ensure clarity and necessity. The form revision dates are unchanged as these documents have not yet been made available to the public and are pending approval by the Office of Administrative Law.

- Verification of Installation, form DL 920

The DL 920 was adopted in Section 125.12. The form was amended to remove the word 'copy' from Section 8 to ensure the DMV technician is verifying that the document submitted is an original. As explained above in the amendments to Section 125.12, an original will show the green border and the manufacturer's inked or embossed seal in the top left corner of the form.

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- Ignition Interlock Device Installation & Removal Request, form DL 925
The originally proposed DL 925 contained a privacy paragraph at the bottom of the page. Due to several clarity and necessity issues related to the information contained in the paragraph, the department determined the paragraph should be removed to avoid confusion.
- Application for Termination of Action, form DL 4006
The second page of the form DL 4006 is amended to remove reference the \$2 fee for a driver record and to remove the \$5 fee for a vehicle registration printout, as the department does not currently have costing prepared to adopt those fees in the form. Also, eliminating reference to the fees will prevent the department having to update the form DL 4006 if either fee is changed at a later date. The form is also amended to add the Vehicle Code sections that support the department collecting a cash deposit in the amount of \$35,000 for proof of financial responsibility (Vehicle Code section 16054.2), or a surety bond in the amount of \$35,000 (Vehicle Code section 16056). In calculating the deposit and bond amounts, the department used the maximum fees allowed by each statute.
- Ignition Interlock Device Exemption Request, form DL 4062
The form DL 4062 contains no changes, however, in its review, the Office of Administrative Law determined that the form lacked necessity where the instruction page instructs the applicant to mail the form back to the department. The necessity for this requirement lies in the fact that the form is processed at the department's headquarters in Sacramento and if the applicant were to deliver the form to a field office, inspector office, investigations office, or by any other means than by mail to the address provided on the form, there would be a delay in the review and processing of the request. Mailing the form to the department at the provided address will ensure the application is reviewed and processed as quickly as possible.
- Ignition Interlock Device Medical Exemption Request, form DL 4063
The originally proposed version of the form DL 925 contained a paragraph at the top of the form that notified the applicant that the department may verify the accuracy of the information contained on the form. As explained above in the amendments to Section 128.01(a), the department currently does not conduct the verification. Removing the language from the form will ensure the form is consistent with the regulation and with departmental procedures.

2) Imposition of Mandate on Local Agencies or School Districts

The department's regulatory action amending Sections 120.00, 124.92, and 124.95, and adopting Section 120.03 in Article 2.5, and amending Sections 125.00, 125.02, 125.12, 125.16, 125.18, 125.20, 125.22, 127.00, 127.02, 127.04, 127.08, and 127.10, and adopting Sections 125.21, 128.00, 128.01, and 128.02, in Article 2.55 of Chapter 1, Division 1 of Title 13, California Code of Regulations, does not impose any mandate on local agencies or school districts and imposes (1) no cost or savings to any state agency,

(2) no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, (3) no other discretionary cost or savings to local agencies, and (4) no cost or savings in federal funding to the state. No studies or data were relied upon to make this determination.

3) Summary of Comments Received and Department Response

The proposal was noticed on October 5, 2018, and made available to the public from October 5, 2018 through November 19, 2018. During the 45-day comment period, the department received a request for a public hearing. The public hearing was conducted on Monday, November 19, 2018, at the department's headquarters complex in Sacramento. The hearing was attended by representatives of several ignition interlock device manufacturers, most of whom submitted written comments to supplement their oral comment. Below is a summary of the written and oral comments and the department's response to those comments.

A. Siobhan Sheeran, Director, Regulatory Compliance and Communication LMG Holdings Incorporated

1. Article 2.55, Section 125.00(e)
Definition of "Authorized Installer"

Recommends that "and maintenance of all files" be removed from the definition. Many interlock providers centralize functions of reporting and file maintenance in an effort to provide consistent, thorough information to monitoring authorities. Authorized installers focus on proper installation, calibration, service, and removal. Reporting or administrative personnel specialize in reporting and maintenance of files.

Department's Response: The department has not proposed any changes to Section 125.00(e) and has determined that the definition of "authorized installer" is currently sufficient.

2. Article 2.55, Section 125.00(f)
Definition of "Participant File"

Recommends that the word "tangible" be removed from this definition so it can include and allow for electronic files. In an effort to go green, and increase our ability to respond quickly via electronic formats, LMG believes that "tangible" hard copy files are not required. Electronic versions of all documents can be stored electronically requiring less storage space and paper waste, and allows interlock providers to respond to requests for documents more quickly and easily.

Department's Response: The department has not proposed any changes to Section 125.00(f) and has determined that the definition of "participant file" is currently sufficient.

3. Article 2.55, Section 125.12

Subsections (a)(2)(D) and (E)

Subsection (a)(3)

Recommends that the references to requirement to keep hardcopies of summary reports, calibration results, logs, or photographs in a tangible participant file be removed and updated to allow for the information to be kept in secure electronic participant files. This supports efforts to go green, minimizes paper waste, and the documents can be shared quickly and easily electronically when needed.

Department's Response: The department has not proposed any changes to Section 125.12(a)(2)(D), (a)(2)(E), or (a)(3).

B. Julie Hall

Consumer Safety Technology (CST), LLC d/b/a Intoxalock

1. Article 2.55, Section 125.12

Subsections (a)(2) and (a)(3)

Recommends subsections (a)(2) and (a)(3) be revised so that a “hard copy” of each of these documents being retained in the participant’s file be changed to an “electronic copy” of each of these documents being retained in the participant’s file.

Department's Response: The department has not proposed amending Section 125.12(a)(2)(D), (a)(2)(E), (a)(2)(F), (a)(3)(B), (a)(3)(E), or (a)(3)(F) and is repealing subsection (a)(2)(G).

2. Article 2.5, Sections 120.00 and 120.03

Recommends that Rules 120.00 and 120.03 be revised as follows.

- A “paper copy” of each document required be changed to an “electronic copy” of each document required.
- An “original signature” where required be replaced with an “electronic signature” where required.

The rationale for “electronic records” in place of “paper records” is set forth in the commenter’s previous comment to Section 125.12. The rationale for “electronic signatures” in place of “original signatures” is based on the Uniform Electronic Transactions Act (See §1633.1 of the California Civil Code) and §16.5 of the California Government Code, both of which allow electronic signatures.

Department's Response: The commenter cites Section 120.00(c), (c)(1), (d), and (h)(3). These sections are not being amended in this action.

The commenter also cites Section 120.03(a) and (b), requiring a form DL 101A to be submitted to the department in paper form unless authorized to submit electronically.

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However, as the department explained in its Initial Statement of Reasons, any DUI program that is licensed by the Department of Health Care Services who has an Alcohol and Drug Program (ADP) License Number can electronically update a participant's enrollment, non-compliance, and completion certificate to the department.

3. Article 2.55, Section 125.00(a)

It is recommended that the definition of ignition interlock device be revised to provide clarity.

Department's Response: The department is not proposing to amend Section 125.00(a).

4. Article 2.55, Section 125.00(d)

Definition of 'Manufacturer'

During 2018, CST has worked with a number of other manufacturer's on other states ignition interlock rules including finalizing Oregon's ignition interlock rules. It was agreed by the manufacturer's, after much discussion, that the definition of manufacturer be revised to more accurately reflect that it is the person or organization that designs, constructs, or produces an ignition interlock device.

Department's Response: The department is not proposing to amend Section 125.00(d).

5. Article 2.55, Section 125.00(e)

Definition of 'authorized installer'

This revision is recommended based on the rationale previously set forth for Rule 125.12 (Service and Maintenance of Ignition interlock Devices) and Rule 120.00 (Purchase and Use of Notice of Completion Certificates).

Department's Response: The department is not proposing to amend Section 125.00(e).

6. Article 2.55, Section 125.00(f)

Definition of 'participant file'

The change to "electronic file" is based on the rationale previously set forth for Rule 125.12 (Service and Maintenance of Ignition interlock Devices) and Rule 120.00 (Purchase and Use of Notice of Completion Certificates).

Department's Response: The department is not proposing to amend Section 125.00(f).

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7. Article 2.55, Section 125.00(h)
Definition of ‘hardcopy’

The deletion of the definition of “hardcopy” is based on the rationale previously set forth for Rule 125.12 (Service and Maintenance of Ignition interlock Devices) and Rule 120.00 (Purchase and Use of Notice of Completion Certificates).

Department’s Response: The department is not proposing to amend Section 125.00(h).

8. Article 2.55, Section 125.00(i)
Definition of ‘pause of restriction’

The deletion of the definition “pause of restriction” is based on the repeal of §23700 of the Vehicle Code on January 1, 2019.

Department’s Response: The department is not proposing to amend Section 125.00(i).

9. Article 2.55, Section 125.00(j)
Definition of ‘reset of restriction’

The deletion of the definition “reset of restriction” is based on the repeal of §23700 of the Vehicle Code on January 1, 2019.

Department’s Response: The department is making a non-substantive amendment to subsection (j) to remove the revision date of the DL 920.

The department must retain the reset of restriction definition because DUI violations occurring prior to 1/1/19 will continue to be reported by the courts for several more years, and the reset of restriction provisions are still applicable to those violations.

10. Article 2.55, Section 125.02

Recommends amending subsection (b)(9) to require a policy limit be a minimum of \$1 million per occurrence and \$3 million in the aggregate. The liability insurance shall include coverage for manufacturing, defects in product design and materials, calibration, installation, and removal of devices. The certificate of insurance shall contain a statement that the insurance company will notify the department 30 days before cancellation of the insurance.

The recommendation of \$1M/\$3M product liability insurance for manufacturer’s is based on best practices of other states ignition interlock regulations (e.g., Arizona, Oregon, Missouri, New York, Virginia) to have product liability insurance coverage of \$1 million dollars per occurrence and \$3 million dollars aggregate to cover defects in design and materials as well as device manufacturing, calibration, installation, removal and all other accidents that may occur.

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Department's Response: The department is not proposing amendments to Section 125.02(b)(9).

11. Article 2.55, Section 125.02

Recommends adding a subsection that requires submission of a performance bond.

Requiring a performance bond would ensure that the charges for removing an ignition interlock device once certification is refused, suspended, or revoked and replacing with an approved ignition interlock device would be paid for by the manufacturer whose device is removed from the list of approved devices. A performance bond would also be applicable if the manufacturer became insolvent or discontinued doing business.

Department's Response: The department does not have statutory authority to require a performance bond.

12. Article 2.55, Section 125.12

Recommends amending subsection (a)(2) to remove the words 'and repair.'

It is recommended that "repairs" be removed as a responsibility of an authorized installer. This is based on the definition of an installer in Rule 125.00(e) where the responsibilities of an authorized installer are defined as installation, calibration, servicing, monitoring, and removal of ignition interlock devices. Further, this recommendation is based on the best practices of many manufacturer's being responsible for the repair of their own ignition interlock devices.

Department's Response: The department is not proposing amendments to Section 125.12(a)(2).

13. Article 2.55, Section 125.12

Recommends amending subsection (a)(2)(G) as follows:

If the participant is unable to return the vehicle for recalibration within 60 days due to military service, a family death, or similar event beyond the control of the participant, and the participant can document the event to the satisfaction of the installer prior to non-compliance being reported to the department by the installer, the installer may extend the time for recalibration as appropriate. A copy of the documentation shall be included in the participant's file. If the participant fails to return the vehicle for recalibration three times as scheduled, the installer shall complete and submit a Notice of Non-Compliance Ignition Interlock, form DL 921 (Rev. 1/2019), which is hereby incorporated by reference.

Pursuant to Sections 23575(d) and 23575.3(f)(2) of the California Vehicle Code if a person fails "three" or more times to comply with any requirement for the maintenance or

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calibration of the ignition interlock device must notify the court. Therefore, Rule 125.12(G) has been modified to comply with Sections 23575(d) and 23575.3(f)(2) of the California Vehicle Code.

Department's Response: Section 125.12(a)(2)(G) is being repealed because the calibration requirements are stated in Section 125.18. Additionally, the calibration requirements have been added to the second page of the DL 921 (rev. 1/2019).

14. Article 2.55, Section 125.12

Recommends amending subsection (a)(3) to remove repairs from the responsibility of the authorized installer.

This is based on the definition of an installer in Rule 125.00(e) where the responsibilities of an authorized installer are defined as installation, calibration, servicing, monitoring, and removal of ignition interlock devices. Further, this recommendation is based on the best practices of many manufacturer's being responsible for the repair of their own ignition interlock devices.

Department's Response: The department is not proposing amendments to Section 125.12(a)(3).

15. Article 2.55, Section 128.00

Recommends amending subsection (a) as follows:

(a) A person convicted of Vehicle Code section 23152(a), (b), (d), (e), or (g), or of Vehicle Code section 23153(a), (b), (d), (e), or (g), whose violation occurred on or after January 1, 2019, is ~~is~~ may be required to install an ignition interlock device that has been certified by the department, provide a form DL 920, pay any applicable fees and administrative service fees, as specified in Section 127.02 of this Article, pay all fines, may be required to serve jail time, may be required to serve probation, provide proof of financial responsibility, complete a DUI program, and have the ignition interlock device serviced every 60 days.

The changes to the Vehicle Code that take effect January 1, 2019 until January 1, 2026 make an individual whose license has been suspended for driving under the influence, eligible for a restricted driver's license without serving any period of suspension when the driver has an ignition interlock device installed on the vehicle they operate. The court may also order an ignition interlock device. However, if the court does not order an ignition interlock device, the person has the choice of applying for a restricted driver's license with an ignition interlock device, applying for a restricted driver's license without a device, or not applying for a restricted driver's license and serving the period of suspension. For these reasons, the term "is" has been changed to "may be".

Further, a person who applies for a restricted driver's license and installs an ignition interlock device will have to pay fines, likely have to serve jail time, may have to serve

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probation, provide proof of financial responsibility, complete a DUI program, submits proof of ignition interlock device installation and submits proof of ignition interlock device service every 60 days.

Department's Response: The department agrees that additional clarification is needed and is, therefore, making a non-substantive amendment to add the following language to Section 128.00(a):

(a) To obtain an ignition interlock restriction, a person convicted of Vehicle Code section 23152(a), (b), (d), (e), or (g), or of Vehicle Code section 23153(a), (b), (d), (e), or (g), whose violation occurred on or after January 1, 2019, is required to install an ignition interlock device that has been certified by the department, provide a form DL 920, and pay any applicable administrative service fees, as specified in Section 127.02 of this Article.

The addition of the remaining proposed amendments pertaining to fines, jail time, DUI program completion, and proof of financial responsibility are unnecessary, as these requirements are specified Vehicle Code.

16. Article 2.55, Section 128.01

Rather than allowing out of state residents to apply for an exemption from the ignition interlock device requirement, it is recommended that California require an ignition interlock requirement. California has a long state border with the potential for many out-of-state residents from Oregon, Nevada, Arizona to cross state lines and drive in California under the influence of alcohol with the potential for undesirable and devastating results. It is recommended that the state of California examine reciprocity with other states and the principle of one driver, one driver's license, and one driving record. There are currently two driver's license agreements among the states in support of this principle: The Drivers License Compact (DLC) and the Nonresident Violator Compact (NRVC).

Currently, the Virginia Alcohol Safety Action Program that oversees the ignition interlock program in the state of Virginia under the direction of Angela Coleman, VASAP Director, to create a nationwide reciprocity network to address offenders driving under the influence of alcohol outside their state of residency. There is great state interest in networking with other states to create reciprocity as it relates to ignition interlock devices.

Department's Response: Statute specifies that individuals who own a vehicle that is not driven in California are not required to install an ignition interlock device.

**C. Toby Taylor
Smart Start, Inc.**

1. Article 2.5, Section 124.92(b)

Recommends amending subsection (b) to modify documents used to establish out-of-state residency.

Commenter believes the document(s) accepted to prove out-of-state residency should mirror the California residency requirements for new Driver License and Identification Cards of the California DMV.

Smart Start would also like to note this language is a barrier to entry and will decrease program participation in direct conflict with the recommendations of the National Highway Traffic Safety Administration's (NHTSA) publication Case Studies of Ignition Interlock Programs and contribute to a possible increase in alcohol related traffic crashes.

Department's Response: This section pertains to DUI offenders who move to another state and are therefore exempt from the requirement to complete a California DUI treatment program under existing law. This proposed action simply expands the number of existing acceptable residency documents. Additionally, the documents identified are consistent with proof of residency options available for driver's license and identification card applicants.

The department disagrees that the proposed language creates a barrier to entry. These individuals are not subject to mandatory IID installation, per Vehicle Code section 23575(h). The exemption from IID installation for out-of-state residents is specified in Vehicle Code 23575(g) and the medical exemption is specified in Vehicle Code 23575(h).

2. Article 2.5, Section 124.92

Recommends eliminating subsection (d) allowing for use of additional documents to be used on a case by case basis to prove out-of-state residency.

Department's Response: Subsection (d) is adopted to specify that the department may accept additional out-of-state residency documents to assist in verifying out of state residency on a case-by-case basis. This provision is necessary for applicants who do not have documents identified in subsection (b) but perhaps have other documentation that can establish residency. This language is consistent with the process used in other licensing programs, such as with AB 60 driver licenses in Section 16.10(d) of Article 2.0 and commercial driver licenses in Section 26.01(e) of Article 2.1.

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3. Article 2.55, Section 125.00(a)
Recommends amending definition of ‘ignition interlock device’ to require the device to be equipped with a camera.

Commenter agrees with the American Association of Motor Vehicle Administrators (AAMVA) that camera can be used as an anti-circumvention measure and detection tool. The Association of Ignition Interlock Program Administrators (AIIPA) notes the following benefits of utilizing cameras: confirmation of person submitting breath sample, tool in tampering investigations, tool in probation violation investigations and serves as a deterrent to circumvention. A camera can provide positive user identification related to every event recorded and improves program integrity by increasing Operator accountability. This modification will also reflect the fact that the installation of an ignition interlock device into electric and hybrid vehicles may require other technical adaptations than “locking the ignition”.

Department’s Response: The department is not proposing any amendments to subsection 125.00(a).

4. Article 2.55, Section 125.00
Recommends adopting the definition of ‘bypass’.

Commenter believes this definition, as defined by the AIIPA and modified by Smart Start, needs to be added since it is referenced in § 125.19 of this Article.

Department’s Response: The department removed the definition of ‘bypass’ in a rulemaking action approved in 2018. At that time, the department determined that it was necessary to remove the definition to avoid confusion as the provisions of SB 1046 adopted a definition different from that used by the federal government. Because there is still the possibility of confusion, the department is not proposing to include the word ‘bypass’ in the definitions.

5. Article 2.55, Section 125.00(e)
Amend the definition of ‘Manufacturer’ as follows:

“Manufacturer” means any individual, partnership, or corporation who is responsible for the design, construction and production engaged in the manufacturing or assembling of ignition interlock devices and that is certified to the current version of the International Organization of Standardization (ISO) 9001 standard by an ISO accredited registrar with offices in the United States.

Commenter believes this definition should be clarified and incorporated as defined by the AIIPA and amended by AAMVA and Smart Start. The ISO 9001 requirement also conforms to the “Manufacturer Oversight” Best Practice Recommendation of AAMVA

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and ensures a quality Management System is utilized by the manufacturer and is independently audited by third party.

Department's Response: The department is not proposing any amendments to subsection 125.00(e).

6. Article 2.55, Section 125.00(g)
Recommends amending the definition of 'Participant file'

Commenter believes this modification will alleviate the burdensome requirement to retain physical, paper files at each service center. This should increase participant confidentiality, security and maintain the chain of custody. Commenter believes these documents, and all documents in the IID program at the service center level, should remain digital and/or be converted to digital thus allowing electronic storage and retrieval.

Department's Response: The department is not proposing any amendments to subsection 125.00(g).

7. Article 2.55, Section 125.00
Recommends adopting definition of 'Camera' as follows:

(1) "Camera" means a peripheral device that is electronically tethered to the ignition interlock device that captures an image of the driver's seat in conjunction with any breath test, bypass, or upon conclusion of a rolling retest if the person failed to deliver a breath sample below the setpoint within the time frame allowed.

Commenter believes this term should be defined and is incorporated into the sections that follow.

Department's Response: The department is not currently proposing to adopt a definition of 'camera,' as having cameras installed in an ignition interlock device is not required by statute.

8. Article 2.55, Section 125.00
Recommends adopting the definition of 'permanent lockout' as follows:

"Permanent Lockout" is a condition where the device will not accept a breath test until unlocked by an authorized installer or as permitted herein.

Commenter believes this definition should be incorporated as defined by the AIIPA and amended by Smart Start. This definition also conforms to the AIIPA "Emergency Override" Best Practice Recommendation and the AAMVA Best Practice

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Recommendation for override of a “Standard Lockout”. Commenter also believes this modification should be made to conform to the “Model Guideline for State Ignition Interlock Programs” published by NHTSA.

Department’s Response: The department has not proposed an amendment to adopt the definition of ‘permanent lockout,’ however, the department anticipates a future action related to the AIIPA recommendations and NHTSA guidelines.

9. Article 2.55, Section 125.00

Recommends adopting the definition of ‘early recall’ as follows:

(n) “Early Recall” means a response of the ignition interlock device due to a service requirement of the device or an action of the driver which requires service of the device or downloading of the electronic log within seven (7) days at which point the device will enter a Permanent Lockout.

Commenter believes this definition should be incorporated as defined by the AIIPA and amended by Smart Start.

Department’s Response: The department has not proposed an amendment to adopt the definition of ‘permanent lockout,’ however, the department anticipates a future action related to the AIIPA recommendations and NHTSA guidelines.

10. Article 2.55, Section 125.00

Recommends adopting the definition of ‘mobile unit’ as follows:

A “Mobile Unit” is a commercial vehicle provided by the manufacturer or manufacturer’s agent that is certified, equipped and operated by an authorized installer employed by the manufacturer or manufacturer’s agent, to conduct installations, calibrations, removals and general services. A mobile service unit will operate under all the requirements of this chapter.

Commenter believes this definition should be incorporated.

Department’s Response: The department has not proposed an amendment to adopt the definition of ‘mobile unit.’

11. Article 2.55, Section 125.00

Recommends adopting the definition of ‘manufacturer’s agent’ as follows:

“Manufacturer’s Agent” means the entity that is affiliated with the manufacturer and authorized to act on behalf of the manufacturer in the state of California.

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Commenter believes this definition should be clarified and incorporated.

Department's Response: The regulation is consistent with statute in that Vehicle Code section 13386 requires the department to ensure that ignition interlock devices meet certification requirements, however, the department may also periodically require manufacturers to indicate in writing whether the devices continue to meet certification requirements.

12. Article 2.55, Section 125.00

Recommends adopting the definition of 'lockout override' as follows:

Lockout Override- means a method of overriding a lockout condition in order to provide a breath sample.

Commenter believes this definition should be incorporated as defined by the AIIPA and modified by Smart Start.

Department's Response: The department is not proposing an amendment to adopt the definition of 'lockout override.'

13. Article 2.55, Section 125.02

Recommends adopting the following proposed language to require annual certification of devices:

An ignition interlock device shall not be installed, or used as part of a program for driving under the influence offenders unless the model or type of device has been certified annually by the department in accordance with the requirements of this article.

Commenter believes this modification should be made to conform with 13386 to the "Model Guideline for State Ignition Interlock Programs" published by NHTSA. This allows the State to identify and manage device modifications and the flexibility to implement new programmatic and technical changes.

Department's Response: This action is to amend ignition interlock device rules to ensure compliance with the provisions of SB 1046. The department anticipates a future regulatory action related to the NHTSA guidelines.

14. Article 2.55, Section 125.02

Recommends adopting subsections to add additional retest provisions, including requiring the retest set point value to be an alcohol concentration of 0.03 and requiring a distinct audible and/or visual indicator to alert the driver that a retest is in progress.

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Commenter believes these recommendations help to clarify the device response to a random retest and incorporates certain aspects of the “Retests” Best Practice Recommendation of the AIIPA. Commenter also believes this modification should be made to conform to the “Model Guideline for State Ignition Interlock Programs” published by NHTSA.

Department’s Response: The department has determined that the proposed language sufficiently establishes the random retest requirements. However, the department anticipates future rulemaking related to the AIIPA recommendations.

15. Article 2.55, Section 125.02

Recommends removing reference to an ‘individual, partnership, or corporation’

Commenter believes this requirement should be modified in accordance with the “Model Guideline for State Ignition Interlock Programs” published by NHTSA to ensure the scientific validity of the program.

Department’s Response: The department has not proposed amendments to subsection (b), however, the department anticipates a future rulemaking action related to the NHTSA guidelines.

16. Article 2.55, Section 125.02(b)(4) and (b)(5)

Recommends amending to require data, specified in subsection (b)(4), and certification, specified in subsection (b)(5), to be current within five years.

Commenter recommends this change for consistency with the terms used elsewhere in this section. Commenter also believes this modification should be made to conform to the “Model Guideline for State Ignition Interlock Programs” published by NHTSA.

Department’s Response: The department has not proposed amendments to subsection (b), however, the department anticipates a future rulemaking action related to the NHTSA guidelines.

17. Article 2.55, Section 125.02(b)(9)

Recommends amending to require the policy limit be \$1 million per occurrence and \$3 million in the aggregate.

Commenter believes this change helps to ensure the integrity of the program by raising the current requirement to correspond with the national standard.

Department’s Response: The department has not proposed any amendments to Section 125.02(b)(9).

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18. Article 2.55, Section 125.02(b)(10), (b)(11), (b)(12)
Recommends amending sections to add ‘manufacturer’s agent’ to protect the State of California and ignition interlock customers.

Department’s Response: The department is not proposing any amendments to Section 125.02(b)(10), (b)(11), or (b)(12).

19. Article 2.55, Section 125.02
Propose adding subsection to require a bond in an amount of two hundred thousand dollars (\$200,000) be used to reimburse expenses related to the installation, monitoring or removal of the ignition interlock device incurred by any person who is ordered or required to equip a motor vehicle with an ignition interlock device and who documents a loss because of insolvency or discontinuance of business of the ignition interlock manufacturer or manufacturer’s agent.

Commenter believes this change safeguards the integrity of the program by providing financial relief in the event of loss or damage due to failure of the manufacturer or manufacturer’s agent to perform in accordance with the laws and regulations of the state of California.

Department’s Response: Statute does not currently authorize the department to collect a bond from manufacturers.

20. Article 2.55, Section 125.02
Proposes adding a subsection to require a Quality Assurance Plan in accordance with Appendix A of the model specifications for breath alcohol ignition interlock devices as published as a Notice in the Federal Register, Vol. 78, No. 89, Wednesday, May 8, 2013, on pages 26849-26867.

Commenter believes this modification should be made to conform to the “Model Guideline for State Ignition Interlock Programs” published by NHTSA and allow the State to confirm the calibration processes utilized by the manufacturer in the State.

Department’s Response: Manufacturers currently provide their quality assurance plan to the independent laboratory. There is no need for the department to require the plan as part of its certification process.

21. Article 2.55, Section 125.02(b)(16)
Proposes increase the application fee to offset the increased administrative costs related to the annual certification.

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Smart Start also believes this modification should be made to conform to the “Model Guideline for State Ignition Interlock Programs” published by NHTSA.

Department’s Response: The department is authorized by statute to collect fees in an amount that is sufficient to cover the costs of administering the ignition interlock device program. The fee is currently \$100. At this time, there are no changes being made to the program that would require the department to amend the fee.

22. Article 2.55, Section 125.12

Proposes amending subsection (a)(2) to specify that device repairs must be performed by the manufacturer.

Commenter believes only the device manufacturer should be authorized to make device repairs.

Department’s Response: The department is not proposing amendments to Section 125.12(a)(2).

23. Article 2.55, Section 125.12

Proposes adding language to allow for a lockout override procedure.

Commenter believes this modification should be made to conform with the “Lockout Override” Best Practice Recommendation of AAMVA.

Department’s Response: The department is not proposing amendments to Section 125.12, nor is it proposing the adoption of rules related to lockout override procedures.

24. Article 2.55, Section 125.12

Recommends modifying current subsection (a)(2)(B) to the following:

Service shall include, but not be limited to, physical inspection of the device and vehicle for tampering, ~~calibration of the device~~, and download monitoring of the data contained within the device's memory.

Department’s Response: The department is not proposing amendments to Section 125.12(a)(2)(B). Further, Vehicle Code section 23573 requires the vehicle be calibrated at each service and inspection.

25. Article 2.55, Section 125.12

Recommends modifying current subsection (a)(2)(E) to allow for the implementation of calibration language. Commenter provides the following suggested amendment:

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Each time a device is serviced, the manufacturer, manufacturer's agent or authorized installer shall verify the accuracy of the device in accordance with subsection (b), a hardcopy of the calibration results shall be included in the participant's file.

Department's Response: The department is not proposing amendments to Section 125.12(a)(2)(E).

26. Article 2.55, Section 125.12

Recommends modifying subsection (a)(3) to the following:

Conducts ~~physical~~ a tamper inspections every time the device is serviced, or given routine inspection, maintenance, ~~or repair~~, or is replaced.

Commenter believes this modification should be made as "physical" is not defined and limits the scope of the inspection.

Department's Response: The department is not proposing amendments to Section 125.12(a)(3).

28. Article 2.55, Section 125.12

Recommends amending subsection (a)(3)(C) to remove the words 'or circumvent.'

Commenter believes this term should be removed as it is not defined.

Department's Response: The department is not proposing amendments to Section 125.12(a)(3)(C).

29. Article 2.55, Section 125.12

Recommends adding new subsection (b) adopting language related to dry gas alcohol standards and additional rules that identify the calibration processes.

Commenter believes only a dry gas standard should be utilized in device calibration.

Department's Response: The department has not proposed amending regulations to adopt provisions related to dry gas alcohol standards, as that is not a requirement of the Vehicle Code.

30. Article 2.55, Section 125.12

Recommends modifying current subsection (c)(1) as follows:

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The manufacturer shall terminate access to ~~obtain~~ all participant files from an authorized installer being replaced, and shall provide access to the participant files to the new installer.

Commenter believes a separated employee should not have continued access to participant information and that a new employee will need this access to service the devices. This should be a standard practice among manufacturers, manufacturer's agents and authorized installers.

Department's Response: The department is not proposing amendments to Section 125.12(c)(1).

31. Article 2.55, Section 125.21
Amend subsection (a) as follows:

An manufacturer or authorized installer shall verify eligibility with the department prior to installing or removing an ignition interlock device by one or more of the following methods:

Commenter reasons that some manufacturers utilize a call center and administrative staff to verify this information and Smart Start believes this should be a business decision.

Department's Response: The department is not proposing this change at this time, as we are unaware that some manufacturers use call center and administrative staff in making these inquiries. However, this may be considered as part of a future regulatory action.

32. Article 2.55, Section 128.01
Recommends removing subsections (a)(2)(A)(1) through (14).

Commenter recommends referencing these exemptions already established in Section 124.92, of Article 2.5, as this will help redundancy in future revisions.

Department's Response: The proof of residency requirements established in 124.92 are contained in Article 2.5, driving under the influence programs. The department determined it necessary to ensure Article 2.55 identifies proof of residency requirements as they related to the ignition interlock device program.

33. Article 2.5, Section 128.01
Recommends amending subsections (a)(3)(A) and (a)(3)(A)2. to the following:

(A) To request a medical exemption from the ignition interlock device requirements under Vehicle Code section 23575.3, the person shall mail ~~one or more of the following~~ to the Department of Motor Vehicles, Mandatory Actions Unit indicating the participant

is physically incapable of delivering 1.5 liters of breath to activate an ignition interlock device:

2. An original document from the person's medical ~~doctor~~ ~~provider~~ indicating that the person is physically incapable of ~~cannot~~ delivering breathe with 1.5 liters of breath sufficient strength to activate an ignition interlock device, which must also include the medical ~~doctor's~~ ~~provider's~~ license or certificate number and signature.

Smart Start believes form DL 4063 should be modified to include the 1.5 liter breath volume reference. Smart Start also believes a medical doctor should make the breath volume determination.

Department's Response: The form DL 4063 does have space for a medical provider to certify that the driver is unable to provide the 1.5 liters of breath.

DMV uses the term 'medical provider' to ensure consistency throughout all DMV forms, including forms utilized by the Driver Safety Branch. The DL 4063 mirrors the Driver Medical Evaluation (DS 326).

**D. Nate Solov
Senator Jerry Hill's Office**

1. Regulations need to be clarified so first time offenders are considered "mandatory" if they voluntarily choose to install an IID immediately after their arrest. This will allow the DMV to collect the correct fee and ensure that first time offenders get credit from the courts for time served with the IID.

Department's Response: Regulatory changes are not necessary to address this concern. The regulations are broad enough to cover any statutory credit afforded to a first offender.

Additionally, all first-time DUI offenders (non-injury) seeking ignition interlock device restrictions are required to pay the \$95 ASF under the proposed regulations. However, they are not required to pay the \$8 ASF specified in Vehicle Code section 23575.3, as they are not subject to mandatory ignition interlock device installation.

**E. Mary Klotzbach
MADD**

1. The current interpretation of the Proposed Action, allowing only multiple offenders, offenders who have killed someone or are responsible for great bodily harm to have the day-to-day credit and not the first time offender who has not caused harm or death is in direct opposition to the spirit of the law. It is a gross misrepresentation to the spirit of the law.

Department's Response: The regulations do not address credit, as the legal authority for credit is specified in statute.

4) Modifications to the Originally Proposed Regulatory Text

Pursuant to the requirements of Government Code section 11346.8(c), and section 44 of Title 1 of the California Code of Regulations, the Department of Motor Vehicles provided notice of changes made to the proposed regulations. The changes were made in response to feedback received from the Office of Administrative Law during its initial review of the proposed regulations. Interested parties were provided with the notice of modification, modified express terms, statement of reasons, and forms, and the department posted those documents on its internet website on March 18, 2019. The 15-day comment period began on March 19, 2019 and ended on April 3, 2019 with the department having received one comment.

F. Julie Hall Consumer Safety Technology (CST), LLC d/b/a Intoxalock

1. Article 2.5, Section 120.03, Subsection (b)
Recommends that subsection (b) be undeleted and remain a part of the CCR, as removing this subsection means that the department is no longer providing the opportunity to submit the form DL 101A electronically.

Department's Response: The subsection was removed because it made reference to a process by which the department 'authorizes' an entity to electronically transmit DL 101A forms to the department. There is no process by which an entity is authorized to submit forms electronically so the department determined that the regulations would be clearer if the subsection was removed.

2. Article 2.55, Section 125.00, Subsection (j)
Recommends subsection (j) be amended to identify the January 1, 2019 repeal date.

Department's Response: The department proposed no changes to subsection (j), however, this amendment is not necessary as the term "reset of restriction" only appears in section 127.08, which identifies the January 1, 2019 date requested by the commenter.

3.
Article 2.55, Section 125.02
Subsection (b)(15)

Article 2.55, Section 125.12

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Subsection (a)(1)(A)(i)

Article 2.55, Section 125.12
Subsection (a)(2)(G)

Article 2.55, Section 125.12
Subsection (b)

Article 2.55, Section 125.18
Subsection (a)

Department's Response: The commenter provided proposed additions and deletions from various sections that were not being amended in the modified regulatory text.

Forms were made available to the commenters during the 45-day comment period. Upon receiving the comments to the 15-day modification, the commenter was again provided with the forms referenced in the regulations. Forms were also made available on the department's website during both comment periods.

5) Documents Incorporated by Reference

The following documents were incorporated by reference:

- Notice of Non-Compliance, form DL 101A (Rev. 10/1999)
- Application for Termination of Action, form DL 4006 (New 1/2019)
- Fee Schedule Agreement, form OL 160 (New 1/2019)
- Verification of Installation, form DL 920 (Rev. 1/2019)
- Notice of Non-Compliance, form DL 921 (Rev. 1/2019)
- Ignition Interlock Device Installation and Removal Request, form DL 925 (Rev. 1/2019)
- Notice to Employers, Ignition Interlock Restriction, form DL 923 (Rev. 1/2019)
- Ignition Interlock Device (IID) Exemption Request, form DL 4062 (New 1/2019)
- Ignition Interlock Device (IID) Medical Exemption Request, form DL 4063 (New 1/2019)

The above referenced forms are not published in the California Code of Regulations because it would be impractical and cumbersome to do so; however, the documents were made available to interested parties during the 45-day comment period by posting on the department's website with the Notice of Proposed Action, Initial Statement of Reasons, and Proposed Text, and with the Notice of Modification, Modified Regulatory Text, and Statement of Reasons for the Modifications. One comment was received during the 15-day comment period where the commenter requested copies of the forms OL 160, REG 920, REG 921, and REG 922. The department provided those forms to the commenter, however, no comments were received related to those forms.

6) Determination of Alternatives

The department has determined that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.