

Regulatory Flexibility Analysis for Small Businesses and Local Governments

1. Effect of rule:

These proposed regulatory amendments affect every county and the city of New York, qualified ignition interlock manufacturers doing business in New York State (NYS), their approved installation/service providers. There are three (3) approved Ignition Interlock Device (IID) manufacturers which also have contracts with the Division of Criminal Justice Services (DCJS) to provide services throughout NYS. DCJS recently issued a Request for Applications seeking additional interested manufacturers and/or distributors and is in the process of contracting with one additional company which has received certification of their IIDs by the Department of Health (DOH), and agrees to adhere to applicable regulatory and contractual requirements. There are approximately 250 approved installation/service providers in NYS.

2. Compliance requirements:

The existing rule implemented Chapter 469 of the Laws of 2009, commonly referred to as "Leandra's Law", provides for the monitoring of the use of court-ordered IIDs ordered upon defendants sentenced for a DWI misdemeanor or felony. It also established various reporting, recordkeeping, and other compliance requirements. The proposed regulatory amendments, (i) make minor modifications to incorporate certain statutory changes resulting from enactment of Chapter 169 of the Laws of 2013, (ii) establishes parameters with respect to reduced breath samples for certain operators and testing requirements consistent with revised National Highway Traffic Safety Administration (NHTSA) Breath Alcohol IID Model Specifications, (iii) makes limited revisions to improve program integrity and operational acceptability based on the experience of the field since implementation of the original rule, and (iv) addresses service delivery and individual accountability issues which have arisen. Among proposed regulatory changes are the following:

- Reflects the imposition and monitoring of IIDs installed in conjunction with interim probation supervision and in cases prior to sentencing pursuant to a court order.

- Clarifies that the period of IID restriction will commence from the earlier of the date of sentencing, or the date of installation in advance of sentencing and that a court may not authorize the operation of a motor vehicle by any individual whose license or privilege to operate a motor vehicle has been revoked.
- Establishes that monitors select the class and features of IIDs available from an available manufacturer in the region where an operator resides.
- Requires that the applicable monitor coordinate monitoring with the NYS Department of Corrections and Community Supervision (DOCCS) where the operator is under DOCCS supervision and promptly provide such agency with reports of any failed tasks or failed reports.
- Requires a court authorization for a reduction in breath sample to be consistent with NHTSA requirements and that every county plan establishes a procedure whereby the probation department and any other monitor be notified no later than five (5) business days from any such court approval.
- Requires all jurisdictions to submit an IID plan reflective of all operators who may be subject to IID installation and maintenance with monitoring ordered by a court in advance of sentencing or at sentencing, and to make modifications or updates, as required by DCJS. DCJS has required since 2014 that plans have procedures in this area and to amend plans to be consistent with law and regulatory provisions.
- Clarifies recent statutory changes to better ensure that youth adjudicated as Youthful Offenders of DWI and/or other alcohol related offenses are subject to IID installation and related compliance provisions.
- Clarifies recent statutory change that affected operators provide proof of installation compliance with the IID requirement to the court and the applicable monitor where such person is under probation or conditional discharge supervision.
- Requires manufacturers :
 - Provide documentation and verification of their respective Standby Letter of Credit (SLOC) as specified in the manufacturer's contract with New York State;
 - The SLOC was previously incorporated in DCJS 2013 contracts with manufacturers

- Adhere to any county plan real time reporting and emergency notification program requirements;
- Report a confirmatory failed test or re-test where the BAC is .05 percent or higher; and provide immediate written notice to DCJS and the DOH whenever their IID devices, services, and/or operations has been compromised or does not function as intended in NYS or any other state or jurisdiction or disapproved or suspended in whole or in part, revoked or otherwise cancelled by another state or jurisdiction or has received notice or communication from another state or jurisdiction that any such actions are imminent.

Additionally, as existing DOH regulations require prior approval with respect to any operational modification of IIDs, new regulatory language reiterates this requirement and for any manufacturer to provide necessary documentation to DOH and that any such manufacturer notify DCJS of any intent to do so and provide a written summary of any requested or approved modification.

3. Professional services:

It is not anticipated that any professional services will be required to comply with the proposed regulatory changes.

4. Compliance costs:

DCJS does not anticipate that the proposed rule revisions will result in any additional costs to local governments or small businesses. The proposed regulatory changes continue to allow each jurisdiction with the flexibility to choose one or more persons or entities responsible for monitoring conditional discharge cases where a defendant has been required to install and maintain a functioning IID in any vehicle which they own or operate. It also affords the same flexibility to cases involving individuals who agree, or are ordered, to install and maintain an IID in advance of sentencing. Since 2010, DCJS has annually applied for and received grant funding from the NYS Governor's Traffic Safety Committee (GTSC) in NHTSA monies to help offset local government costs in performing monitoring services. Currently, monies are distributed to the localities pursuant to a formula based on recent statistics of DWI conviction rates. DCJS is unaware of any local

government concerns with this formula. DCJS has recently received approval of approximately 1.2 million dollars for Federal fiscal year 2018, similar to the prior Federal fiscal year award.

Effective May, 8, 2014, NHTSA implemented revised Breath Alcohol IID Model Specifications refining performance criteria and test methods for IIDs. NHTSA encourages States to determine how best to implement these Model Specifications to strengthen the quality of IIDs used and therefore each qualified manufacturer has submitted updated certifications regarding devices in use in New York.

There may be limited additional costs to one of the three qualified manufacturers, in that it will now require all operators with any IIDS to undergo service visits on a monthly basis through an operator service visit. Under NYS law, unless a court waives the IID cost upon an operator who claims inability to pay, the cost is borne by the operator. Previously, such operators removed and mailed the IID “data-head” to the IID manufacturer monthly. This practice prevented monthly inspection of the IID installation and the opportunity for technicians to detect any attempted tampering or circumvention by the operator, allowing for a potential public safety risk.

5. Economic and technological feasibility:

Proposed amendments do not require any additional technological requirements beyond those currently being utilized in NYS.

As of November 1, 2013, DCJS revised IID classification system requires that all Class 1, 2, and 3 devices to include the integration of a camera. This change was made effective prospectively with the installation of new devices. Additionally, many monitoring entities require Class II devices with advanced features of Global Positioning System (GPS) location of a vehicle and Real Time Reporting (RTR). The Rule amendments propose a new RTR definition to mean the contemporaneous transmission of data of particular events, as defined in Rule Section 358.5(c) (6), to a specified monitoring entity as the event occurs or as soon as cellular reception permits. Lastly, four counties require Class III devices, which have all the minimum required features of Classes I (camera) and II (GPS and RTR), also contain an emergency notification feature. Accordingly, proposed amendments include a new definitional term “Emergency Notification Program”.

6. Minimizing adverse impact:

DCJS does not anticipate that the proposed changes, which among its provisions revises or adds regulatory language to be consistent with Chapter 169 of the Laws of 2013, and current NHTSA specifications of IIDs, will have any adverse impact on local governments or small businesses. DCJS remains steadfast in its efforts to minimize adverse impact of the existing rule and any proposed changes upon local government, and has considered IID manufacturers input in crafting amendments to ensure any changes do not adversely impact service delivery or increase costs.

Since 2010 DCJS has annually submitted applications and been awarded grants from GTSC of NHTSA monies to help offset local government costs in performing monitoring services. The existing and proposed revised rule language have both been crafted to offer guidance and structure in plan development and implementation. Other features with respect to monitoring continue to afford considerable flexibility as to particular actions where feasible, yet ensure swift and certain action where necessary to achieve uniformity in the handling of certain failed tasks and failed tests, safeguard the public, and better guarantee offender accountability. The proposed regulatory revisions retain several regulatory provisions as to operator responsibility to assist the judiciary's consideration of financial "unaffordability" and minimize unnecessary waivers, and to ensure operators convey timely information to monitors, the courts, and installation/service providers. Further, the proposed regulatory amendments contains language that in the event of judicial waiver of an operator's IID cost , a manufacturer designated by the monitor bears the costs associated with installation and maintenance of the IID.

While DCJS regulatory language establishes that IID qualified manufacturers may elect to do business in one, two, three, or all four regions of NYS, all of the IID manufacturers have elected to do business throughout NYS. Rural and non-rural counties exist in three regions and proposed regulatory revisions do not alter the requirement that a manufacturer must be able to do business with all other counties within the region upon the same favorable terms which guarantee service availability of installation/service providers within 50 miles of any operators' residence statewide. Notably, operator IID costs do not vary from region to region.

DCJS continues to make model forms available which assist jurisdictions in application of Leandra's Law and its amendments. These forms are of particular assistance to those rural counties with limited staff resources to undertake form development independently. These forms also have been disseminated to all courts by the Office of Court Administration.

7. Small business and local government participation:

The existing rule was developed with the input of a workgroup which included local government representation. DCJS has considered feedback on the existing rule since its implementation provided by qualified manufacturers, and local jurisdictions, including county IID monitors. Opportunities for feedback included regular communications with qualified manufacturers, involving quarterly conference calls with the manufacturers and an annual manufacturers' conference hosted by DCJS. These annual conferences have been attended by both manufacturers and probation/CD monitoring agencies. Additionally, DCJS has communicated on the existing rule and proposed changes with local probation departments during probation professional association meetings and conferences. DCJS has (i) discussed changes with and received support of proposed revisions from the NYS Probation Commission, most recently on April 18, 2017, (ii) distributed a draft copy of the proposed revision to all Probation Directors and CD Monitors and all qualified manufacturers, (iii) discussed proposed revisions with qualified manufacturers, probation and CD monitors, and other interested State and local entities at the Annual IID Manufacturers Conferences held, and (iv) made additional revisions based on feedback received from these stakeholders to address certain service delivery issues raised. Overall, feedback was positive as to proposed regulatory changes.