

STATE OF NEW HAMPSHIRE

Inter-Department Communication

DATE: January 19, 2022

FROM: Michael A. Morrell
Acting Administrative Rules Director

AT (OFFICE): Legislative Services

SUBJECT: Emergency Rule Document #13322 Enhanced Technology Ignition Interlock Device Implementation

To: File

Attached is an emergency rule adopting Saf-C 9900 from the N.H. Department of Safety (Department) on enhanced technology ignition interlock device implementation (Document # 13322, effective 12-30-21). Pursuant to RSA 265-A:36, the Department is authorized to implement the State's alcohol ignition interlock program. This statute was amended by the Laws of 2018, 122:4. A portion of the chapter law became effective on January 1, 2022, while the remainder was effective January 1, 2019. Currently, the Department is working under rules which were adopted in 2012.

Item #8 of the Cover Sheet states that the emergency rule is necessary because of imminent peril to public health and safety and to avoid substantial fiscal harm to the state and its citizens. To the extent that an immediate need for rules currently exists, it appears to be directly attributable to the Department's inaction in implementing 2018, 122:4 and other statutes and federal regulations that became effective in 2013 or earlier.

The Department is correct in stating that all ignition interlock devices must be enhanced devices by January 1, 2022 and that the Department needs to adopt approval criteria for enhanced devices. However, it appears that the only devices in use that are not enhanced are those that are "grandfathered" because they were installed on or before January 1, 2019. Because interlock devices can only be required to be used for 1 to 2 years, it would seem that most of the grandfathered devices would no longer be in use. Further, the Department has criteria in place for non-enhanced devices that could, temporarily, be used for enhanced devices until the Department adopted interim or regular rules. The Department asserts that applying the current criteria "would not most effectively and safely implement the interlock program" for use with enhanced devices. However, this does not appear to rise to the level of necessitating emergency rules. The Department further contends that approval criteria for enhanced devices is needed now to reflect an update in federal regulations. But, these regulations first appeared in the *Federal Register* in 2013. Therefore, it does not appear that implementation is an emergency.

Further reasons stated for the use of emergency rules is the Department's belief that substantial fiscal harm could occur without rules on the criteria for licensure of interlock device providers. The emergency rules contain criteria for such licensure, but the statutory requirement for rules to license these providers dates back to 2013 or earlier. Instead of doing so at that time, the Department chose to use contracts with providers.

The Department acknowledges that it could have engaged in rulemaking prior to the May, 2018 legislation that enacted the enhanced device mandate, but has been delayed by other situations, such as the 2019 Randolph motorcycle accident and Covid-19.

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Please note that the JLCAR may not object to an emergency rule, but it may petition pursuant to RSA 541-A:18, IV for repeal if the grounds for an emergency rule are not met. Unless readopted, the emergency rule will expire on June 28, 2022.