

ARKANSAS REGISTER

Transmittal Sheet

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For Office
Use Only:

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Name of Agency Arkansas Department of Health

Department Public Health Laboratory/Office of Alcohol Testing

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Electronic Copy of Rule submitted under ACA 25-15-218 by:

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CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with Act 434 of 1967 the Arkansas Administrative Procedures Act. (ACA 25-15-201 et. seq.)

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BY _____
**ARKANSAS REGULATIONS
FOR
BREATH ALCOHOL
IGNITION INTERLOCK DEVICES**

Second Revision

Effective April 1, 2015

ARKANSAS DEPARTMENT OF HEALTH
OFFICE OF ALCOHOL TESTING
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LITTLE ROCK, ARKANSAS 72215-8509

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SECTION I. AUTHORITY

The following Regulations for breath alcohol ignition interlock devices are duly adopted and promulgated by the Arkansas Department of Health as approved by the Arkansas State Board of Health pursuant to the authority expressly conferred by the laws of the State of Arkansas, Act 298 of 1993 as amended, the same being Arkansas Code, Title 5, Chapter 65, Section 118.

SECTION II. PURPOSE AND INTERPRETATION

The purpose of these Regulations is to provide safeguards necessary to protect the health and safety of the citizens of Arkansas by establishing criteria for the use of Breath Alcohol Ignition Interlock Devices.

The impact of these Regulations is directed toward the manufacturer, service provider, and user of breath alcohol ignition interlock devices and the Arkansas Department of Health. Contents will, of necessity, describe interactions with the courts and the Department of Finance and Administration, Office of Driver Services.

These Regulations shall be interpreted so as to favor the safety of the public. In the absence of a regulation specifically addressing a particular matter, there shall be applied reasonable, just, and equitable procedures and substantive decisions which are predictable from the spirit and intent of the legislative enactment and these Regulations.

Department - the Arkansas Department of Health's Office of Alcohol Testing

Device – the BAID

Director - the Director of Arkansas Department of Health or designee thereof.

Driver - a motorist who is required, either by the Office of Driver Services or by court order, to operate only motor vehicles equipped with a functioning and approved BAID.

Dry-gas Cylinder – a cylinder containing a known concentration of ethyl alcohol mixed with nitrogen gas used to calibrate and check the calibration of a testing device.

Fail-safe - a condition in which the interlock device cannot operate properly due to some problem (e.g., improper voltage, temperature exceeding operating range, dead sensor, etc.). In a fail-safe condition the BAID will not allow the vehicle to be started.

Lockout - a condition in which the vehicle will be completely disabled, after being given a visible and/or audible warning for a period of 24 hours of impending lockout. The device will automatically disable the vehicle at a point in time when it is not in operation.

Office – the Office of Driver Services

Regulations (these) - all sections of Arkansas Regulations for Breath Alcohol Ignition Interlock Devices unless otherwise specified.

Restart - the allowance of the device for the driver to start the vehicle without having to give a breath sample. (This allows for a driver to restart the vehicle within two minutes and not be penalized for or endangered by a malfunctioning vehicle.)

Rolling Retest - a subsequent breath test that must be conducted after initial start while the motor vehicle is in operation.

Service Provider - an approved vendor, service center, distributor, installer, or supplier of a device.

Simulator Device – a device that enables the operator to reproduce, under test conditions, phenomena likely to occur in actual performance; a device used to simulate or imitate a breath sample at a specific alcohol concentration; an accessory to a testing device.

SECTION IV. DEPARTMENT ROLE AND FUNCTIONS

A. Approval/Certification by the Department

1. **Approval.** Upon the demonstration by the manufacturer of a BAIID that said device meets the criteria outlined in Section VI.A. and B., and that manufacturer is prepared to meet the requirements outlined in Section V and Section VII, the Department may issue a Certificate of Approval. This does not preclude the Department from making any additional requirements deemed necessary to carry out the intent of the law and these regulations.
2. **List of Approved/Certified Devices.** The Department shall maintain and periodically, when updated, or upon request, provide a list of devices and their manufacturers and approved service providers that have been issued a Certificate of Approval.
3. **Revocation of Approval/Certification.** Subsequent to approval, the failure of the manufacturer to meet the requirements set forth in Section V or Section VII shall result in a letter of reprimand and instructions for correction from the Department. Failure to positively respond and correct the deficiencies to the satisfaction of the Department within 30 days shall result in a revocation of the Certificate of Approval of the device for use in this state.

B. Monitoring by Department

1. **Inspections by Department.** The Department shall inspect each service provider of such devices while a device is being installed and while a monitoring visit is being conducted on an installed unit at least once a year.
2. **Testing of Device by Department.** The Department may conduct, or have conducted independently, tests on any of the approved BAIIDs ignition interlock devices to determine if the devices are operating within these Regulations. The Department shall remove from the list of approved devices any device, manufacturer, or service provider not found to be in compliance with these Regulations.

C. **Complaints.** The Department shall make available to users and the public a reasonable means of filing complaints, or giving feedback about the service provider, the device, or the misuse of such devices.

2. **Requirements for BAIID System Approval.** In order to obtain approval/certification by the Department, the manufacturer shall comply with the requirements in Section V.A.,B., and C., and provide, in writing to the Department, satisfactory assurance that the service provider(s) will fulfill the requirements in Section V.C.,D., and E.

B. Manufacturer Responsibilities

1. **Modifications.** The manufacturer of such device shall notify the Department, in writing, of any material modification or alteration in the components, design or installation, and operating instructions of any device approved for use in this state and shall provide the Department satisfactory proof that these modifications or alterations do not adversely affect the ability of the device to satisfy the requirements of Section VI.A. and/or B.
2. **Mouthpieces and Parts.** The manufacturer shall provide an adequate supply of mouthpieces if required. Service providers shall be provided an adequate inventory of parts and supplies by the manufacturer.

C. Calibration

1. **Requirements for Calibration.** A BAIID utilized under these Regulations shall be calibrated at least once every 67 days using either a wet alcohol standard or a compressed gas standard at a manufacturer approved service provider site.
2. **Records of Calibration.** The calibration records shall be maintained by the service provider or the manufacturer for a period of three (3) years. Copies of these records shall be provided as requested. These records must reflect all pertinent information and provide a credible account of the condition of each device over the period of use.
3. **Required Details.** Each record shall include:
 - a. the name of the person performing the calibration;
 - b. the date;
 - c. the alcohol value, lot number, expiration date, and type of standard used;
 - d. the unit type and identification number of the BAIID checked; and

6. **Warning Label.** Manufacturers shall provide the service providers with a warning label to affix to every unit installed in a vehicle. The warning label shall state essentially:

**WARNING! ANY ACTUAL OR ATTEMPTED
TAMPERING OR CIRCUMVENTION OF THIS
DEVICE CAN SUBJECT YOU TO CRIMINAL
AND CIVIL LIABILITY.**

7. **Instructions to Users.** At the time of installation, detailed operational instructions shall be given to individuals who will be operating the vehicle. In addition to the manufacturer's instructions, this information shall include a copy of Section VIII of these Regulations. The driver is to be instructed to keep a copy of the order of installation in the vehicle for inspection.

E. Monitoring of Devices

1. **Frequency of Monitoring.** At the time of the calibration, the device and vehicle shall be monitored and a report promptly provided to the Office.
2. **Monitoring Report.** The report shall provide a minimum of the following: name of assigned driver, vehicle identification number, vehicle license plate number, mileage, period of review covered in the report, a clear communication of all inappropriate events, and a report of the pattern of vehicle use.
3. **Report of Tampering.** At the time of calibration, the device and vehicle shall be inspected for evidence of tampering, abuse, and for proper function. The monitoring report shall include any fact concerning the improper operation of the device or vehicle. The removal of the Warning Label or any other label, seal or tag shall be noted in the report on this device.

F. Denial, Suspension or Revocation of Certification/Approval of a Device

1. **Cause for Loss of Approval/Certification.** The Department may deny, suspend or revoke approval/certification of any device for any of the following reasons.
 - a. Defects in design, materials, or workmanship causing repeated failures of a device.
 - b. Termination or cancellation of a manufacturer's liability insurance.
 - c. Discontinuance of the manufacturer's business.
 - d. Voluntary request by a manufacturer to cancel approval of a device.

SECTION VI. BREATH ALCOHOL IGNITION INTERLOCK DEVICES

A. Criteria for Approved Devices: Features.

The programmable features of the device shall comply to a reasonable degree with the state's current list of acceptable features and required driver sanctions.

B. Criteria for Approved Devices: Capabilities.

The properly installed BAID shall

1. meet or exceed the current standards of the National Highway Traffic Safety Administration (NHTSA) as published in Volume 78, No. 89 of the Federal Register on May 8, 2013, in the model specifications for Breath Alcohol Ignition Interlock Devices (BAIDs);
2. use fuel cell technology or other alcohol-specific sensing technology approved by the Department.
3. not impede safe operation of the vehicle in which the device is installed;
4. work reliably and accurately in an unsupervised environment and in a fail-safe condition shall cause the vehicle not to start;
5. visibly and/or audibly indicate to the user or any person near the device that
 - a. the unit is on,
 - b. the unit has enabled the ignition system of the vehicle in which it is installed,
 - c. the unit is in need of service or calibration,
 - d. the failure of the breath sample obtained by the device (alcohol value exceeds set point), and
 - e. any other indicator or signal that may be required by the Department. The device may augment visible signals or indicators with audible ones approved by the Department;

SECTION VII. RECORDS AND REPORTING

A. Records to be Provided by the Manufacturer/Service Provider

1. **Service Provider Sites.** Subsequent to approval of a device, the manufacturer or designated representative shall furnish the Department with the following information about each service provider site immediately upon establishing those sites: business name, owner's name, description of business, names and qualifications of personnel trained and authorized to perform installations and monitoring, specific location of the business, hours of business, telephone number, and emergency number. A copy of the training certificate/ documentation shall be provided to the Department.
2. **Reports to Courts.** The manufacturer or designated representative, or the service provider shall furnish to the sentencing court a report of all activities required to be recorded by the device, including physical evidence of tampering or attempted tampering and any attempts at circumvention of the ignition interlock device. The report to the court shall include notice of any automatic lockout. These reports shall be made as soon as possible, but not longer than two weeks after discovery.
3. **Report to Office of Driver Services.** The manufacturer or designated representative, or the service provider shall report to the Office, providing a complete record of installation, calibration, maintenance checks, and usage records of any or all of their devices placed in service in Arkansas.
4. **Notice to Department.** The Office will notify the Department upon discovery of any abnormality or possible infraction of these Regulations observed concerning the use, installation, or function of these devices.
5. **Availability of Records.** The Office will make available to the Department any records on BAIDs not otherwise prohibited by law.

SEVERABILITY

If any provision of these Regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Regulations which can be given effect without the invalid provision or application and to this end the provisions of these Regulations are declared to be severable.

REPEAL

All Regulations and parts of Regulations in conflict herewith are hereby repealed.

CERTIFICATION

This will certify that the Rules and Regulations for Alcohol Testing were adopted by the State Board of Health of Arkansas at a regular session of said Board held at Little Rock, Arkansas, on the 22nd day of January, 2015.



Nathaniel Smith, MD, MPH
Secretary, Arkansas State Board of Health