

# ARKANSAS REGISTER

## Transmittal Sheet



FILED

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W. J. "BILL" McCUEN  
SECRETARY OF STATE  
BY \_\_\_\_\_

W.J. "Bill" McCuen  
Secretary of State  
State Capitol  
Little Rock, Arkansas 72201-1094

For Office  
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Department Bureau of Public Health Programs, Office of Alcohol Testing

Contact Person Gay Horn, Director Telephone 661-2288

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Date

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Adopted by State Agency

10/27/94

### CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted  
In Compliance With Act 434 of 1967 As Amended.

SIGNATURE

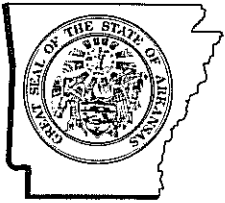
Director, Office of Alcohol Testing

TITLE

11/17/1994

DATE

007.25.94--003



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AR. REGISTER DIV.

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W.J. "BILL" McCUEN  
SECRETARY OF STATE  
LITTLE ROCK, ARKANSAS

BY \_\_\_\_\_

November 16, 1994

The Honorable W. J. "Bill" McCuen  
Secretary of State  
State Capitol Building  
Little Rock, AR 72201

Dear Mr. McCuen:

The Arkansas Regulations for Breath Alcohol Ignition Interlock Devices are hereby submitted to your office as the final step in the Administrative Procedures set forth in Act 583 of 1973. A Public Hearing was held October 3, 1994 at Arkansas Department of Health. No controversy arose and the Legislative Council and the Arkansas State Board of Health have given favorable reviews.

As required by Act 221 of 1977, a statement of the fiscal impact upon counties and municipalities is enclosed.

Sincerely,

Gay Horn, Director  
Office of Alcohol Testing

Enclosures

GH:nc

FISCAL IMPACT STATEMENT  
November 16, 1994

The fiscal impact upon counties and municipalities by Arkansas Regulations for Breath Alcohol Ignition Interlock Devices is conditioned upon the amount of implementation by individual courts. The individual court will be involved in the monitoring of reports from the installer of the device and any actions the court feels necessary.

Further, to prepare law enforcement officers for an encounter with such a device in the course of their duty, it will be necessary to provide information to all law enforcement agencies. This will be done by the Office of Alcohol Testing, Arkansas Department of Health. This information can then be incorporated into normal channels of training and information: training provided by the law enforcement agencies, Arkansas Department of Health, and Arkansas Law Enforcement Training Academy.

007.25.94-003

**FILED**

AR. REGISTER DIV.

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W.J. "BILL" McCUEN  
SECRETARY OF STATE  
LITTLE ROCK, ARKANSAS

BY \_\_\_\_\_

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

Effective December 15, 1994

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

4815 West Markham  
Little Rock, Arkansas

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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. References to statutory standards, regulations, or governmental agencies shall be read as referring to and including any amendments. 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.

**SECTION III. DEFINITIONS**

**Alcohol Setpoint or Failpoint** – The line of demarcation between PASS and FAIL of a breath test (see Calibration Setting).

**Approval** – The official endorsement of the Department of Health or its authorized representative documenting that the requirements of Arkansas Code § 5-65-118 as amended and these Regulations have been met (see Certification).

**Breath Alcohol Ignition Interlock Device** – (BAIID) an electronic device with microcomputer logic and internal memory, having a breath alcohol analyzer as a major component, that interconnects with the ignition and/or other control systems of a motor vehicle for the purpose of preventing that motor vehicle from being started if the driver has a breath alcohol content which exceeds the preset limit (setpoint). Further, its purpose is to deter and record attempts to circumvent or tamper with the device and to encourage the driver to adhere to the requirements of the court.

**Breath Alcohol Concentration (BrAC)** – the concentration of alcohol in the breath expressed in grams of alcohol per 210 liters of breath.

**Breath Sample** – a sample of breath that is analyzed for alcohol content.

**Calibration** – the act of checking, verifying or rectifying the accuracy of a device.

**Calibration Setting** – as described in Arkansas Code § 5-65-118, the calibration setting is defined in these Regulations as the "alcohol setpoint." The alcohol setpoint shall be 0.025g of alcohol per 210 liters of breath unless specified otherwise in writing by the court. (Act 298 of 1993 authorizes the court to establish "a specific calibration setting" in the range of .02 through .05.)

**Certification** – the official endorsement (Certificate of Approval) of the Department of Health or its authorized representative documenting that the requirements of Arkansas Code § 5-65-118 as amended and these Regulations have been met (see Approval).

**Circumvention** – an overt, conscious attempt to bypass the ignition interlock device whether by providing samples other than the natural unfiltered breath of the driver, or by starting the vehicle without using the ignition switch, or any other act intended to start the vehicle without first taking and passing a breath test and/or permitting a driver with a BrAC in excess of the alcohol setpoint to start the vehicle.

**Court** – the judge who sentences a person convicted of violating Arkansas Code § 5-65-103 or other law subsequently included under the provisions of Arkansas Code § 5-65-118, imposing the use of an ignition interlock device. This definition shall also mean any probation officers or other officers of the court assigned to the case of a driver using an ignition interlock device.



**Department** - the Arkansas Department of Health.

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

**Driver** - a motorist who has been convicted under Arkansas Code § 5-65-103 and given a sentence which includes the requirement that he/she not operate a motor vehicle during the time period stated in the court order unless the vehicle to be operated is equipped with a functioning and approved ignition interlock device and the driver has obtained a restricted driver's license as provided in Arkansas Code § 5-65-118. (May also mean anyone driving a vehicle fitted with an ignition interlock device.)

**Fail-safe** - a condition in which the ignition 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 ignition interlock device will not allow the vehicle to be started.

**Lockout** - a condition in which the vehicle ignition 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.

**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 alcohol 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, supplier of a device.

**Simulator Device** - a mechanism for introducing a simulated breath sample containing a specified concentration of alcohol to a device intended to measure the concentration of alcohol, for the purpose of calibrating the measuring device.

**Standard Reference** - a material, such as water containing alcohol, that is established by authority as the rule for measuring quantity or value.

**Tampering** - An overt, conscious attempt to physically disable or otherwise disconnect the ignition interlock device from its power source and thereby allow a person with a breath alcohol above the alcohol setpoint to start the engine.

## 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 to courts a list of those ignition interlock 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, as a minimum, 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 every six months.
2. **Testing of Device by Department.** The Department may conduct, or have conducted independently, tests on any of the approved ignition interlock devices to determine if the devices are operating within these Regulations shall remove from the list of approved ignition interlock devices any device, manufacturer, or service provider not found to be in compliance with these Regulations.

### C. Public Information and Involvement

1. **Warning Label.** The Department shall provide or assure that manufacturers 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.

2. **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.

**SECTION V. MANUFACTURER/SERVICE PROVIDER**

- A. Approval of Breath Alcohol Ignition Interlock Device, Manufacturer and Service Provider
1. **Requirements for Approval of Device.** The manufacturer requesting approval/certification of a BAIID shall submit:
    - a. a written application, certifying that the device: does not impede the safe operation of a vehicle; minimizes inconvenience to non-drinking vehicle operators; offers minimal opportunities for bypass; works accurately and reliably in unsupervised environments; and accurately measures the person's alcohol level;
    - b. a written commitment to user training, servicing, and maintenance of the system and reporting to specified authorities;
    - c. a written commitment to provide a 24-hour toll-free telephone number for emergencies and mechanical problems;
    - d. evidence of liability insurance, in the amount of one million dollars per occurrence, with three million dollars aggregate total. The liability insurance shall include coverage for defects in product design and materials as well as in the manufacturing, calibration, installation, and removal of devices. The proof of insurance shall include a statement from the insurance company that 30 days notice will be given to the Department before cancellation of the insurance.
    - e. evidence that the manufacturer and service provider indemnify and hold harmless the State of Arkansas, the Board of Health, the Department, and its officers, employees, and agents from all claims, demands, actions, and costs that may arise directly or indirectly out of any act or omission by the manufacturer relating to the installation, service, repair, use and removal of a device.
    - f. one BAIID unit, not installed in a vehicle;
    - g. a verifiable report of an independent testing laboratory indicating that the device meets or exceeds the standards of the National Highway Traffic Safety Administration for such devices as described in these Regulations;
    - h. a complete copy of the testing protocol used by the laboratory for the testing of the device and the results thereof.

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 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.** An ignition interlock device utilized under these Regulations shall be calibrated at least once every 60 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 on site or if no longer an official site, by the manufacturer, for a period of three years or shall be submitted to the Department. Copies of these records shall be provided or the records shall be made available for copying by the Department 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 and type of standard used;
  - d. the unit type and identification number of the BAIID checked; and
  - e. the description of the vehicle in which the BAIID is installed, including license plate number, vehicle identification number, and state, make, model, year, and color.

#### D. Service Provider Responsibilities

1. **Service.** A service provider shall provide the following minimum service:
  - a. repair and/or calibration within three business days after service is requested;
  - b. a reasonable number of installation and service facilities within the state, with reasonable business hours;
  - c. access to a 24-hour toll-free telephone number to answer questions, and to deal with mechanical problems and emergencies related to the device.
2. **Security.**
  - a. Installation of the device must be done in an area that is secured from unauthorized persons. Necessary precautions must be taken to prevent accessibility of items such as tamper seals and installation instructions and any observation of installation. Only trained, authorized personnel and the Department inspectors shall have access to the area during installation, or to the instructions and seals.
  - b. A service provider is prohibited from assisting or facilitating any tampering, or circumvention of a device. A service provider may not install a device on a vehicle owned or operated by any of its employees.
  - c. Failure of a service provider to assure complete integrity of the interlock system shall result in a loss of approval status for the provider.
3. **Vehicle Inspection.** The service provider shall inspect each vehicle before installing the device to insure the vehicle is in a mechanical and electrical condition that will allow the device to meet the specifications in Section VI.B.
4. **Directions for Installation of Devices.** An ignition interlock device utilized under these Regulations shall be installed by the manufacturer or by private sector service providers in conformance with the directions of the manufacturer.
5. **Tamper Protection.** The installation of the device shall include tamper-proof hardware and/or void seals and heat seal plastic that will provide evidence of any tampering.
6. **Warning Label.** The service provider shall affix in a visible but unobtrusive area on or very near the device, the Warning Label described in Section IV.C.1..

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 these Regulations. The driver is to be instructed to keep a copy of the court order in the vehicle for inspection.

The service provider shall provide a copy of the record of calibration with instructions to the responsible driver for keeping the record in the vehicle for inspection by law enforcement or court officials or representatives of the Department at the time of monitoring.

#### E. Monitoring of Devices

1. **Frequency of Monitoring.** At the time of the 60-day calibration, the device and vehicle shall be monitored and a report promptly provided in a manner prescribed by the Department.
2. **Monitoring Report.** The report shall provide a minimum of the following: name of assigned driver, vehicle identification number, vehicle license plate number, 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.
  - e. Violation by a manufacturer or service provider of any of the provisions of these Regulations.
  - f. Provision of materially false or inaccurate information relating to a device's performance standards by a manufacturer or service provider.

- g. Modification or alteration of the components, design or installation and operation instructions in such a way that the requirements of Section VI.B.1. are no longer satisfied.
2. **Effective Date.** A revocation of an approval becomes effective 15 days after notification is sent to the manufacturer by certified mail.
3. **Appeal.** A manufacturer may appeal a denial or revocation of approval. This request shall be submitted to the Department, in writing, within 15 days of the receipt of a notice of denial or revocation of approval.
4. **Cost of Removal and Replacement of Device.** After denial or revocation of approval, or voluntary surrender of an approval, a manufacturer shall be responsible for any costs connected with the removal of its devices from customers' vehicles and the installation of another device from the department's list of approved devices.



**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 ignition interlock device shall

1. meet or exceed the standards of the National Highway Safety Administration (N.H.T.S.A.) as published in Volume 57, No. 67 of the Federal Register on April 7, 1992 for Breath Alcohol Ignition Interlock Devices, as amended;
2. not impede safe operation of the vehicle in which the device is installed;
3. work reliably and accurately in an unsupervised environment and in a fail-safe condition shall cause the vehicle not to start;
4. 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 setpoint), 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;
5. visibly and/or audibly indicate to others in the area when a device is indicating the driver has not met the requirements for a rolling retest, 60-day calibration and maintenance, or any other required function.

**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.
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 Department of Finance and Administration, Office of Driver Services, providing a complete record of installation, calibration, maintenance checks, and usage records of any or all of their ignition interlock devices placed in service in Arkansas.
4. **Notice to Department.** The Office of Driver Services will notify the Department upon discovery of any abnormality or possible infraction of these Regulations observed concerning the use of ignition interlock devices or the installation or the function of these devices.
5. **Availability of Records.** The Office of Driver Services will make available to the Department any records on ignition interlock devices not otherwise prohibited by law.

**SECTION VIII. USER/DRIVER****A. Rules for the Use of Breath Alcohol Ignition Interlock Devices**

1. **Personal Responsibility.** The owner of the vehicle in which a BAIID is to be installed will be responsible for the cost of any repairs necessary to get the vehicle in a condition to allow the installed device to meet the requirements specified in Section VI.B.
2. **Post Installation Inspection.** After installation of the device, an inspection should be made by the owner and installer to insure the installation was performed properly and that it does not interfere with the normal operation of the vehicle.
3. **Calibration Record.** Documentation of calibration shall be kept in the vehicle at all times for inspection by a service provider, a law enforcement officer, or officer of the court.
4. **Court Order for Installation.** A copy or the original court order shall be kept in the vehicle for inspection by law enforcement or other appropriate officials.
5. **Proper Use of Device.** An ignition interlock device shall be used in accordance with the prescribed procedures of the manufacturer. These procedures shall include a minimum 15-minute waiting period between the last drink of an alcoholic beverage and time of blowing into the ignition interlock device. Failure of the test shall mean the driver is above the prescribed allowable breath alcohol concentration (alcohol setpoint).

**SECTION IX. COURT RESPONSIBILITIES****A. Notification of Court Order to Install Device**

1. **Notice to Office of Driver Services.** The court ordering the installation of a BAID shall notify the Office of Driver Services of such order.
2. **Notice to Service Provider.** The court shall contact the service provider of choice from the list supplied by Arkansas Department of Health specified in Section IV.A.2., identifying the driver who has been ordered to have the device installed on his or her vehicle. In some cases, the court may need to identify the specific vehicle that is to have the device installed. The driver is to be given a copy of the court order to present to the service provider.

**B. Establishing the Alcohol Setpoint**

1. **Recommended Setpoint.** The court is authorized by § 5-65-118 to establish the alcohol setpoint. The recommended level for this point is .025 and unless otherwise specified in writing by the court, is the level that will be used.

**SEVERABILITY**

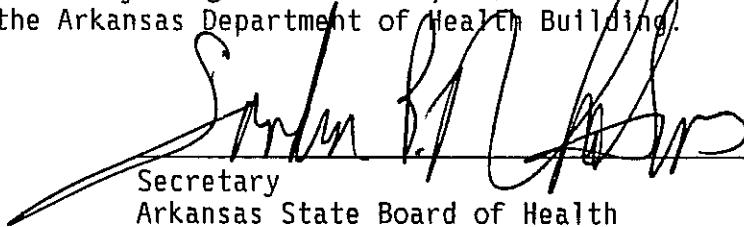
If any provision of these Regulations or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Regulations which can be given effect without the invalid provision or application and to this end the provisions of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

**REPEAL**

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

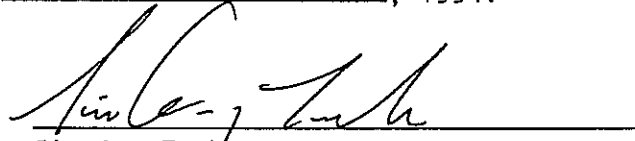
**CERTIFICATION**

This will certify the foregoing Regulations were adopted by the Arkansas State Board of Health at a regular session of the Board held in Little Rock, Arkansas on the 27<sup>th</sup> day of October, 1994 and after a Public Hearing on the 3<sup>rd</sup> day of October, 1994 held in Little Rock, Arkansas at the Arkansas Department of Health Building.



Secretary  
Arkansas State Board of Health

The foregoing Regulations, having been filed in my office, are hereby in compliance with the Administrative Procedures Act 434 of 1967, as amended, this 3<sup>rd</sup> day of October, 1994.



Jim Guy Tucker  
Governor