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15 SEPT 2026

PUBLIC COMMENT REPORT
Proposed Rules for Breath Alcohol Ignition Interlock Devices, 5 CAR Pt. 21

PUBLIC COMMENTS:

Public comment period expired August 14, 2026.

Dayna Youhana, Intoxalock
Received August 6, 2026

On behalf of Consumer Safety Technology, LLC d/b/a Intoxalock, thank you for the opportunity to comment on the proposed changes to Arkansas Rules for Breath Alcohol Ignition Interlock Devices. Intoxalock is certified as an ignition interlock provider in 46 states, including Arkansas, and has been an ignition interlock provider for over 25 years. Through our experience serving jurisdictions across the country, we have developed a strong understanding of the operational, technical, and regulatory considerations necessary to support effective ignition interlock programs while promoting public safety and compliance. (Intoxalock's redline edits are attached.)

AGENCY RESPONSE:
Most, if not all, of the requested changes are regarding language specifically copied from the law, including "start" to "operate". Other suggested changes regarding inspections and corrective actions are not regarding proposed amendments and will be reviewed for future promulgations.

Cory LeBlanc, SmartStart
Received August 14, 2026

SmartStart submitted redline edits with noted comments. The redline edits are attached.

AGENCY RESPONSE:
Most suggested changes are not regarding proposed amendments and are requested changes to language that is copied directly from the statute. ADH will review the requests for future promulgations as applicable.

AGENCY RESPONSE:
Proceed to adoption.

Comments Regarding Proposed Rules for Breath Alcohol Ignition Interlock Devices
Title 5. Criminal Offenses, Chapter III. Generally, Department of Health, Subchapter A. Generally, Part 21. Arkansas Rules for Breath Alcohol Ignition Interlock Devices

Submitted: 08-06-2026

On behalf of Consumer Safety Technology, LLC d/b/a Intoxalock, thank you for the opportunity to comment on the proposed changes to Arkansas Rules for Breath Alcohol Ignition Interlock Devices. Intoxalock is certified as an ignition interlock provider in 46 states, including Arkansas, and has been an ignition interlock provider for over 25 years. Through our experience serving jurisdictions across the country, we have developed a strong understanding of the operational, technical, and regulatory considerations necessary to support effective ignition interlock programs while promoting public safety and compliance.

Below you will find Intoxalock's comments on the proposed rules, redlined suggested changes for specific sections (if applicable), and the rationale for the recommended changes.

Should you have questions, or need additional information, please contact Lillian Flores at lflores2@intoxalock.com.

Respectfully Submitted,

Dayna Youhana

Dayna Youhana
Director, State Regulatory Compliance

5 CAR § 21-102. Definitions. (3):

(3) “Breath alcohol ignition interlock device (BAIID)” means 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~~ operated if the driver has a breath alcohol content which exceeds the preset limit (set point);

COMMENT: Intoxalock suggests taking the opportunity to modernize language for electric vehicles by utilizing the term operated instead of started.

5 CAR § 21-102. Definitions. (9)(B):

(9) “Circumvention” means an overt, conscious attempt to bypass the ignition interlock device, whether by:

(B) ~~Starting~~ Operating the vehicle without using the ignition switch; or

COMMENT: Intoxalock suggests taking the opportunity to modernize language for electric vehicles by utilizing the term operating instead of starting.

5 CAR § 21-102. Definitions. (9)(C)(i-ii):

(C) Any other act:

(i) Intended to ~~start~~ operate the vehicle without first passing a breath test; and/or

(ii) Permitting a driver with a BrAC in excess of the alcohol set point to ~~start~~ operate the vehicle;

COMMENT: Intoxalock suggests taking the opportunity to modernize language for electric vehicles by utilizing the term operate instead of start.

5 CAR § 21-102. Definitions. (15)(B):

(15)(B) In a fail-safe condition the BAIID will not allow the vehicle to be ~~started~~ operated;

COMMENT: Intoxalock suggests taking the opportunity to modernize language for electric vehicles by utilizing the term operated instead of started.

5 CAR § 21-102. Definitions. (19)(A):

(19)(A) "Restart" means the allowance of the device for the driver to ~~start~~ operate the vehicle without having to give a breath sample.

COMMENT: Intoxalock suggests taking the opportunity to modernize language for electric vehicles by utilizing the term operate instead of start.

5 CAR § 21-102. Definitions. (24)(B):

(24)(B) Thereby allow a person with a breath alcohol above the alcohol set point to ~~start~~ operate the ~~engine~~ vehicle.

COMMENT: Intoxalock suggests taking the opportunity to modernize language for electric vehicles by utilizing the terms operate instead of start and vehicle instead of engine.

5 CAR § 21-103. The Office of Alcohol Testing role and functions. (a)(3)(B)

(B) Failure to positively respond and develop a plan to correct the deficiencies to the satisfaction of the office within thirty (30) days shall result in a revocation of the certificate of approval of the device for use in this state.

COMMENT: Intoxalock suggests revising subsection (B) to recognize that some deficiencies cannot reasonably be fully corrected within a 30-day period, particularly when they involve software development, manufacturing changes, or other complex technical modifications. Requiring an acceptable corrective action plan within 30 days encourages prompt engagement and accountability without creating an impractical standard that could result in revocation despite a manufacturer's good-faith efforts to address the identified deficiencies.

5 CAR § 21-103. The Office of Alcohol Testing role and functions. (b)(1)

(1) Inspections by office. The office shall inspect each manufacturer of such devices at least annually.

COMMENT: This provision states that the Office shall inspect each manufacturer at least annually but does not clearly define the scope or location of the inspection. Because ignition interlock devices are installed, serviced, and calibrated through authorized service centers, it is unclear whether the Office

intends to conduct inspections at the manufacturer's facilities, at one or more authorized service center locations, or through submission of records or other documentation.
The Office should clarify what constitutes the required annual inspection, including the intended inspection location, whether an annual report or other documentation must be submitted by the manufacturer, and any records or materials that will be reviewed. If authorized service centers are the intended inspection site, the rule should expressly state that inspections may occur at those locations. This clarification would better reflect program operations and ensure consistent compliance.

5 CAR § 21-104. Manufacturer/service provider (a)(1)(A)(ii)

~~(ii) Minimizes inconvenience to a sober user;~~ Strike

COMMENT: Intoxalock recommends striking (ii). The phrase "minimizes inconvenience" establishes a subjective standard that may generate complaints based on user convenience rather than device performance. A BAIID is intended to be used by anyone operating a vehicle in which it is installed, regardless of whether they are the restricted driver. Requiring the device to "minimize inconvenience" suggests that normal operational requirements constitute a deficiency, when they are an inherent part of the device's intended function. Proper functionality of the device is covered with (iv) and (v).

5 CAR § 21-104. Manufacturer/service provider (a)(1)(A)(vi)

(vi) Be manufactured by an entity that is responsible for installation, user training, and servicing and maintenance of the ignition interlock device, and that is capable of providing monitoring reports to the Office;

COMMENT: Section (vi) could be interpreted to require that the manufacturer directly perform or own the installation, training, servicing, and maintenance functions. Could the Office clarify whether these responsibilities may be fulfilled through authorized third-party service centers, provided the manufacturer remains ultimately responsible for compliance, service quality, and reporting? This clarification would help avoid unintended restrictions on common service models.

5 CAR § 21-104. Manufacturer/service provider (a)(1)(A)(vii-ix)

(vii) Be capable of randomly retesting the person's ~~blood~~ breath alcohol level while the motor vehicle's engine or motor is on, after providing adequate notice of the test to ensure the safe operation of the motor vehicle;

(viii) Be capable of capturing and storing the results of each test of the person's ~~blood~~ breath alcohol level while the ignition interlock device is installed; and

(ix) Be capable of capturing and storing a digital image of the person at the time of each test of the person's ~~blood~~ breath alcohol level.

COMMENT: Intoxalock suggests that blood alcohol level is updated to breath alcohol level to align with the operation of the ignition interlock device.

5 CAR § 21-104. Manufacturer/service provider (d)(1)(B)

(B) A reasonable number of installation and service facilities within the state, with reasonable business hours; and

COMMENT: The term "reasonable" is subjective and may lead to inconsistent interpretation. The Office should consider clarifying that service facilities are required to operate during the business hours submitted to or approved by the Office and made available to participants. This would establish a clear, objective standard while allowing flexibility for providers to determine their operating hours.

5 CAR § 21-104. Manufacturer/service provider (e)(2)(F)

(F) A clear communication of all ~~inappropriate~~ Lockouts and reportable events;

COMMENT: Intoxalock recommends revising subsection (F) to align the rule with the defined terminology used throughout the regulations and to provide greater clarity regarding reporting requirements.

5 CAR § 21-104. Manufacturer/service provider (f)(5)

~~(5) 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 Office of Alcohol Testing's list of approved devices.~~

COMMENT: Could the Office clarify the intent of striking this requirement? Specifically, if a manufacturer's approval is suspended, revoked, or voluntarily surrendered, who would be responsible for the costs associated with removing existing devices and installing replacement approved devices? Clarification of the parties' responsibilities would help avoid uncertainty for manufacturers, service providers, and participants.

Proposed Rulemaking

Rules for Breath Alcohol Ignition Interlock Devices ~~Title~~

Promulgated by: Department of Health

Title 5. Criminal Offenses

Chapter III. Generally, Department of Health

Subchapter A. Generally

Part 21. Arkansas Rules for Breath Alcohol Ignition Interlock Devices

Subpart 1. Generally

5 CAR § 21-101. Purpose and interpretation.

(a) The purpose of this part 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.

(b)(1) The impact of this part is directed toward the:

(A) Manufacturer;

(B) Service provider;

(C) User of breath alcohol ignition interlock devices; and

(D) Department of Health.

(2) Contents will, of necessity, describe interactions with the:

(A) Courts; and

(B) Office of Driver Services of the Department of Finance and Administration.

(c)(1) This part shall be interpreted so as to favor the safety of the public.

(2) In the absence of a rule 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:

(A) The legislative enactment; and

(B) This part.

5 CAR § 21-102. Definitions.

As used in this part:

(1)(A) "Alcohol set point" or "fail point" means the Breath Alcohol Concentration (BrAC) at which an IID is set to prevent a vehicle from startingline of demarcation between "pass" and "fail" of a breath test.

Unless otherwise indicated, the proposed modifications to defined terms align with the AIIPA Standardized Definitions in the Ignition Interlock Device Best Practice Manual (May 2023).

(B) See "calibration setting";

(2)(A) "Approval" means 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 this part have been met.

(B) See "certification";

(3) "Breath alcohol ignition interlock device (BAIID)" or "IID" means an electronic device with microcomputer logic and internal memory, having a breath alcohol analyzer as a major component, that is designed to allow a driver to startinterconnects with the ignition and/or other control systems of a motor vehicle if for the purpose of preventing that motor vehicle from being started if the driver's BrAC has a breath alcohol content which exceeds the preset limit (is below the setpoint and to prevent the driver from starting the vehicle if the driver's BrAC is at or above the set point);

Reasoning: The proposed modification adds "IID".

(4) "Breath alcohol concentration (BrAC)" means the amount of alcohol in a given amount of breath expressed in grams of alcohol per two hundred ten liters (210L) of breath;

(5) "Breath sample" means normal expired human breath primarily containing air from the deep lung region;

(6) "Calibration" means the process of testing and adjustingact of checking, verifying, or rectifying the accuracy of a device to ensure accuracy by using a dry gas standard as defined by the current NHTSA Model Specifications for Calibration Units;

Reasoning: "Breath alcohol simulator" has been removed from the AIIPA definition, consistent with the proposed modification.

(7)(A) "Calibration setting" as described in Arkansas Code § 5-65-118, means in this part the "alcohol set point".

(B) The alcohol set point shall be at or above twenty-five thousandths grams (0.025g) of alcohol per two hundred ten liters (210L) of breath unless specified otherwise in writing by the Office of Driver Services.

Reasoning: The proposed modification reflects the agreement documented in the April 9, 2026 email with AR DFA.

(C) Acts 1993, No. 298 authorizes the court to establish "a specific calibration setting" in the range of two one hundredths (.02) through five one hundredths (.05);

(8)(A) "Certification" means 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 this part have been met.

(B) See "approval";

(9) "Circumvention" means ~~an overt, conscious attempt to~~ bypassing the correct operation of an IID~~ignition interlock device, whether~~ by~~:~~

~~(A) Providing samples other than the natural unfiltered breath of the driver;~~

~~(B) S~~ starting the vehicle, by any means, without ~~using the ignition switch; or~~

~~(C) Any other act:~~

~~(i) Intended to start the vehicle without~~ first passing an initial test ~~breath test; and/or~~

Reasoning: The proposed modification clarifies that the driver must first pass an initial test.

~~(ii) Permitting a driver with a BrAC in excess of the alcohol set point to start the vehicle~~;

Reasoning: The proposed modification clarifies that a passing breath test is required before the vehicle may be started.

(10) “Confirmatory Test” means a breath test in response to circumvention or a follow up to a breath sample registering over the alcohol set point.

(1~~0~~) "Department" means the Office of Alcohol Testing of the Department of Health;

(1~~2~~1) "Device" means the BAIID;

(1~~3~~2) "Director" means the Director of the Department of Health or designee thereof;

(143) "Driver" means 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 BAIID;

(154) "Dry-gas cylinder" means a cylinder containing a known concentration of ethyl alcohol mixed with nitrogen gas used to calibrate and check the calibration of a testing device;

~~(15)(A) "Fail-safe" means 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.).~~

Recommendation: Please consider deleting this definition and the corresponding reference to 5 CAR § 21-105(b)(4). A device cannot prevent a vehicle from being started in every circumstance, such as tampering. The NHTSA BAIID Model Specifications separately address tampering and circumvention under different voltage conditions (Test 4), extreme temperature and humidity (Test 5), vibration (Test 7), and tampering and circumvention (Test 9).

~~(B) In a fail-safe condition the BAIID will not allow the vehicle to be started;~~

(16) "Initial Test" means a breath test provided before the vehicle is started.

(176)~~(A)~~ "Lockout" means a condition where the device will not accept a breath test until unlocked or serviced as defined in this section~~in which the vehicle will be completely disabled, after being given a visible and/or audible warning for a period of twenty-four (24) hours of impending lockout~~.

Reasoning: The proposed modification adds "in this section" to clarify the scope of the definition.

~~(B) The device will automatically disable the vehicle at a point in time when it is not in operation;~~

(18) "Lockout Override" means a method of overriding a lockout condition by unlocking a device so that a breath sample can be provided.

Reasoning: The proposed modification changes the defined term to "Lockout Override" for consistency with its use in the rules.

(197) "Office" means the Office of Driver Services;

(2018) "Rules" means all sections of Arkansas Rules for Breath Alcohol Ignition Interlock Devices unless otherwise specified;

(219)~~(A)~~ "Restart" means the time interval after the car is switched off during which ~~the allowance of the device for the driver to start~~ the vehicle may be started again without the delivery of another ~~having to give a~~ breath test~~sample~~.

~~(B) This allows for a driver to restart the vehicle within two (2) minutes and not be penalized for or endangered by a malfunctioning vehicle;~~

(2~~0~~) "~~Rolling r~~Retest" means a ~~subsequent~~ breath test which is required~~that must be conducted~~ after the initial engine start-up breath test and while the motor vehicle is in operation;

Reasoning: The proposed modification retains the existing phrase "while the motor vehicle is in operation" rather than substituting "while the engine is running."

(2~~1~~) "Service provider" means an approved vendor, service center, distributor, installer, or supplier of a device;

~~(22)(A) "Simulator device" means:~~

~~(B) A device that enables the operator to reproduce, under test conditions, phenomena likely to occur in actual performance;~~

~~(C) A device used to simulate or imitate a breath sample at a specific alcohol concentration; or~~

~~(D) An accessory to a testing device;~~

(2~~3~~) "Standard reference" means a material, such as ~~water~~ gas, containing alcohol that is established by authority as the rule for measuring quantity or value; ~~and~~

(25) "Standby" means to suspend the Retest requirements.

Reasoning: This definition was discussed during the most recent Workgroup meeting in Tennessee and at the recent AIIPA Conference. Several jurisdictions have adopted this feature to reduce technical violations, particularly in jurisdictions using Compliance Based Removal.

(26) "Start" or "Starting" means to manipulate a vehicle's inputs or systems or to activate a motor, thereby initiating the transition of a stationary vehicle into motor-powered, driver-controlled motion.

Reasoning: This definition is based on Missouri's approach. Several jurisdictions have adopted similar language to accommodate operation of ignition interlock devices in electric vehicles without replacing "start" throughout the rules.

(2~~4~~) "Tampering" means an ~~overt, conscious~~ attempt to~~:(A) P~~ physically disable~~, or otherwise~~ disconnect, adjust, or otherwise alter the proper operations of an IID ~~the BAIID from its power source; and~~

~~(B) Thereby allow a person with a breath alcohol above the alcohol set point to start the engine~~.

(28) “Violation” means a non-compliance with a law, regulation, or rule as defined in this section.

Reasoning: The proposed modification adds “in this section” to clarify the scope of the definition.

(29) “Violation Reset” means a feature of the device in which a service reminder is activated in response to a violation.

5 CAR § 21-103. The Office of Alcohol Testing role and functions.

(a) **Approval/certification by the Office of Alcohol Testing.**

(1) **Approval.**

(A) Upon the demonstration by the manufacturer of a BAIID that said device meets the criteria outlined in 5 CAR § 21-105, and that manufacturer is prepared to meet the requirements outlined in 5 CAR §§ 21-104 and 21-106, the Office of Alcohol Testing may issue a certificate of approval.

(B) This does not preclude the Department~~office~~ from making any additional requirements deemed necessary to carry out the intent of the law and this part.

Reasoning: The proposed modification uses terminology consistent with the definitions above.

(2) **List of approved/certified devices.** The Department~~office~~ 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**.

(A) Subsequent to approval, the failure of the manufacturer to meet the requirements set forth in 5 CAR §§ 21-104 and 21-106 shall result in a letter of reprimand and instructions for correction from the Department~~office~~.

(B) Failure to positively respond and correct the deficiencies to the satisfaction of the Department~~office~~ within thirty (30) days shall result in a revocation of the certificate of approval of the device for use in this state.

(b) **Monitoring by Department~~office~~.**

(1) **Inspections by Department~~office~~.** The Department~~office~~ shall inspect each ~~service provider~~ manufacturer 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~~ at least annually.

(2) **Testing of device by Departmentoffice.**

(A) The Departmentoffice may conduct, or have conducted independently, tests on any of the approved BAIIDs to determine if the devices are operating within this part.

(B) The Departmentoffice shall remove from the list of approved devices any device, manufacturer, or service provider not found to be in compliance with this part.

(c) **Complaints.** The Departmentoffice shall make available to users and the public a reasonable means of filing complaints or giving feedback about the:

(1) Service provider;

(2) Device; or

(3) Misuse of such devices.

5 CAR § 21-104. 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:

(i) Does not impede the safe operation of a vehicle;

(ii) Minimizes inconvenience to non-drinking vehicle operators a sober user;

(iii) Offers minimal opportunities for bypass Minimize the opportunities to be bypassedcircumvented;

Reasoning: The proposed modification replaces an undefined term with defined terminology.

(iv) Works accurately and reliably in unsupervised environments; and

(v) Properly and Accurately accurately measures the person's blood alcohol level;

Reasoning: The proposed modification uses terminology consistently with its use elsewhere in the rules.

(vi) IsBe manufactured by an entity that is responsible for installation, user training, and servicing and maintenance of the ignition interlock device, and that is capable of providing monitoring reports to the DepartmentOffice;

(vii) Provides a three (3) minute Restart;

Reasoning: The proposed three-minute Restart period is consistent with the 2013 NHTSA BAIID Model Specifications.

(viii) Requires a Confirmatory Test;

Reasoning: The proposed modification is intended to satisfy the requirements of HB 1875.

(a) In response to a failed Initial Test or a Circumvention, an internal audible and visual indicator will come on to alert the driver that a confirmatory test is in progress.
(b) The device will allow ten (10) minutes for the confirmatory test to be completed.
(c) The confirmatory test set point value is 0.025 g/210L.
(d) Once a confirmatory test is in progress, failure to deliver a breath sample in which the result is below the alcohol setpoint or delivering a single breath test in which the result is at or above the alcohol setpoint will activate an alarm, as prescribed in 5 CAR § 21-105, until the driver shuts off the engine,
(e) The Restart feature will be disabled, and
(f) An initial test violation or circumvention violation or will be recorded in the data storage system as appropriate.
(g) If the confirmatory test is passed, the device will enter the normal retest sequence as provided by these rules.

(ix) ~~Be capable of~~ Requires a retest~~randomly retesting the person's blood alcohol level while the motor vehicle's engine or motor is on, after providing adequate notice of the test to ensure the safe operation of the motor vehicle~~;

(a) The first retest will be required at a randomly variable interval ranging from five (5) to fifteen (15) minutes after passing the initial test and starting the vehicle's engine. Subsequent retests will be required at a randomly variable interval ranging from fifteen (15) to forty-five (45) minutes from the conclusion of the previous retest for the duration of the travel.
(b) An internal audible and visual indicator will come on to alert the driver that a retest is in progress.
(c) The device will allow ten (10) minutes for the retest to be completed.
(d) The retest set point value is 0.025 g/210L.
(e) Once a retest is in progress, failure to deliver a breath sample in which the result is below the alcohol setpoint or delivering a single breath test in which the result is at or above the alcohol setpoint will activate an alarm, as prescribed in 5 CAR § 21-105, until the driver shuts off the engine,
(f) The Restart feature will be disabled,
(g) A retest violation will be recorded in the data storage system, and a new retest sequence will immediately be initiated following the same sequence outlined herein.

(h) If the retest is passed, the device will enter the normal retest sequence as described in this subsection.

(x) Is capable of offering a Standby feature in accordance with the requirements below:

Reasoning: The proposed Standby provisions are based on Oklahoma regulations. The one-hour duration was changed to eight hours to accommodate normal business hours.

(a) The driver activates the event through the device's handset or secure mobile application provided by the manufacturer; or
(b) The device automatically activates the event, so long as no movement is being detected; and
(c) The event is not activated when a retest request is in progress; and
(d) The event automatically disables after eight (8) hours has lapsed, or upon detection of vehicle movement, or by the driver disabling the event through the device's handset or secure mobile application provided by the manufacturer; and
(e) Upon disabling the event, the device immediately requests a retest and resumes normal retest requirements.; and
(f) If the vehicle is turned off during the event, the free restart feature shall not be active and no retest will be requested.; and
(g) The device records the events associated with the functionality in the data storage system.

(xi) Will have an approved anti circumvention feature(s) activated at all times.

(~~v~~xii~~i~~) Is~~B~~e capable of capturing and storing the results of each test of the person's blood alcohol level while the ignition interlock device is installed; and

(~~i~~xiii) Is~~B~~e capable of capturing and storing a digital image of the person at the time of each test of the person's blood alcohol level and in conjunction with a violation.

(xiv) Will activate a violation reset in response to the device recording any of the following:

(a) An initial test violation.
(b) A circumvention violation, and
(c) A retest violation.
(d) When a violation reset is activated, the device will initiate a unique audible and/or visual cue that will warn the driver that the device will enter a permanent lockout in five (5) days. This event will be uniquely recorded in the data storage

system and will simultaneously start a countdown that culminates in the permanent lockout.

~~(a)~~(e) Anytime a device is submitted pursuant to a violation reset the device will be calibrated as provided for in this subsection.

(B) A written commitment to:

(i) User training, servicing, and maintenance of the system; and

(ii) Reporting to specified authorities;

(C) A written commitment to provide a twenty-four-hour toll-free telephone number for:

(i) Emergencies; and

(ii) Mechanical problems;

(D)(i) Evidence of liability insurance, in the amount of at least one million dollars ($1,000,000) per occurrence, with three million dollars ($3,000,000) aggregate total.

(ii) 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.

(iii) The proof of insurance shall include a statement from the insurance company that thirty (30) days' notice will be given to the Office of Alcohol Testing before cancellation of the insurance;

(E) Evidence that the manufacturer and service provider indemnify and hold harmless the State of Arkansas, the State Board of Health, the Office of Alcohol Testing, 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 (1) BAIID unit, not installed in a vehicle;

(G) A verifiable report of an independent testing laboratory indicating that the device meets or exceeds the current standards of the National Highway Traffic Safety Administration for such devices as described in this part; and

(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 Office of Alcohol Testing, the manufacturer shall:

(A) Comply with the requirements in subsections (a) – (c) of this section; and

(B) Provide, in writing to the Office of Alcohol Testing, satisfactory assurance that the service provider or providers will fulfill the requirements in subsections (c) – (d) of this section.

(b) **Manufacturer responsibilities.**

(1) **Modifications.** The manufacturer of such device shall:

(A) Notify the Office of Alcohol Testing, 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

(B) Provide the Office of Alcohol Testing satisfactory proof that these modifications or alterations do not adversely affect the ability of the device to satisfy the requirements of 5 CAR § 21-105(a) and/or (b).

(2) **Mouthpieces and parts.**

(A) The manufacturer shall provide, one (1) mouthpiece per sixty-seven (67) day service interval free of charge, an adequate supply of mouthpieces if required.

Recommendation: Please consider limiting the number of free mouthpieces provided. Without a defined limitation, a driver could request an unlimited supply, creating an open-ended cost for manufacturers or service providers.

(B) 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 this part shall be calibrated at least once every sixty-seven (67) days, or within five (5) days of a Violation Reset, using ~~either a wet alcohol standard or~~ a compressed gas standard at a manufacturer-approved service provider site.

(2) A device will enter Lockout if the device has not been serviced within sixty-seven (67) days or within five (5) days of a Violation Reset.

(3) A lockout override code may be provided by the manufacturer to unlock the device for a period of eight (8) hours, after which the device must revert to Lockout.

Reasoning: No specific duration is recommended by the referenced standard. Eight hours provides a full business day for the device to be serviced.

(4) The activation of a lockout override will be uniquely recorded in the data storage system and will not render the interlock device or any attached components inactive. The device must operate in the same manner as required in this subsection.

(2) **Records of calibration.**

(A) The calibration records shall be maintained by the service provider or the manufacturer for a period of three (3) years.

(B) Copies of these records shall be provided as requested.

(C) 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 the:

(A) Name of the person performing the calibration;

(B) Date;

(C) Alcohol value;

(D) Lot number;

(E) Expiration date;

~~(F) Type of standard used;~~

(~~G~~ F) Unit type and identification number of the BAIID checked; and

(~~H~~ G) Description of the vehicle in which the BAIID is installed, including the:

(i) License plate number and state; and

(ii) Vehicle:

(a) Identification number;

(b) Make;

(c) Model;

(d) Year; ~~and~~

(e) Color; and ~~.~~

(f) Odometer reading.

(d) **Service provider responsibilities.**

(1) **Service.** A service provider shall provide the following minimum service:

(A) Installation, ~~R~~repair, ~~and/or~~ calibration, and removal ~~or both within three (3) business days after service is requested~~ of the ignition interlock;

Reasoning: The proposed modification recognizes that Service Providers also perform these services.

(B) A reasonable number of installation and service facilities within the state, with reasonable business hours; and

(C) Access to a twenty-four-hour toll-free telephone number to answer questions and to deal with mechanical problems and emergencies related to the device.

(2) **Security.**

(A)(i) Installation of the device must be done in an area that is secured from unauthorized persons.

(ii) Necessary precautions must be taken to prevent:

(a) Accessibility of items such as tamper seals and installation instructions; and

(b) Any observation of installation.

(iii) Only trained, authorized personnel and the Office of Alcohol Testing inspectors shall have access to the:

(a) Area during installation; or

(b) Instructions and seals.

(B)(i) A service provider is prohibited from assisting or facilitating any tampering or circumvention of a device.

(ii) 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 may result in a loss of approval status for the provider.

(3) **Vehicle inspection.**

(A) 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 5 CAR § 21-105(b).

(B) At the time of installation or service, the vehicle must be operational.

(C) No service beyond removal shall be performed on a non-operational vehicle.

(4) (A) **Directions for installation of devices.** A BAIID utilized under this part shall be installed by the manufacturer or by private sector service providers in conformance with the directions of the manufacturer.

(B) The driver will provide the manufacturer or private service provider with the program length required by the Office of Driver Services.

Reasoning: This information is needed to determine when the final download should occur and when the compliance review should be conducted.

(5) **Tamper protection.** The installation of the device shall include tamper-proof hardware and/or void seals or heat-seal plastic that will provide evidence of any tampering.

(6) **Warning label.**

(A) Manufacturers shall provide the service providers with a warning label to affix to every unit installed in a vehicle.

(B) 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.**

(A) At the time of installation, detailed operational instructions shall be given to individuals who will be operating the vehicle.

(B) In addition to the manufacturer's instructions, this information shall include a copy of 5 CAR § 21-106.

(C) The driver is to be instructed to keep a copy of the order of installation in the vehicle for inspection.

(D) A detailed list of all fees that may be assessed shall be made available~~provided~~ to the user, including but not limited to fees paid to the manufacturer or service provider.

Reasoning: This information is already made available to drivers through the lease, online resources, the Customer Care Center, and other channels.

(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 of Driver Services.

(2) **Monitoring report.** The report shall provide a minimum of the following:

(A) Name of assigned driver;

(B) Vehicle identification number;

(C) Vehicle license plate number;

(D) ~~Mileage~~ Odometer reading;

(E) Period of review covered in the report; and

(F) Any violation(s)~~clear communication of all inappropriate events; and~~ .

~~(G) A report of the pattern of vehicle use.~~

(3) **Report of tampering.**

(A) At the time of calibration, the device and vehicle shall be inspected for:

(i) Evidence of tampering;

(ii) Abuse; and

(iii) Proper function.

(B) The monitoring report shall include any fact concerning the improper operation of the device or vehicle.

(C) The removal of the warning label or any other label, seal, or tag shall be noted in the report on this device.

(f) **Removal of devices**

Reasoning: The proposed removal provisions are included pursuant to HB 1875.

(1) Once the driver has completed the period for which they are required to use the ignition interlock device, the driver will request a Final Download Service to enable the Service Provider to retrieve the data necessary to make a compliance determination.

(2) Within 10 business days of the Final Download Service, the Service Provider will review the device data to determine whether, during the final sixty (60) days of the original period or during an extension of the original period, the driver:

(A) Committed an Initial Test violation pursuant to 5 CAR § 21-104 (a)(1)(A)(viii) and the digital image captured by the device shows a different person took and passed the confirmatory test or the Confirmatory Test was refused, or

(B) Committed a Retest Violation pursuant to 5 CAR § 21-104 (a)(1)(A)(ix) by failing to take the retest and the digital image captured by the device shows the driver was in the driver's seat when the retest began, or

(C) Committed a Retest Violation pursuant to 5 CAR § 21-104 (a)(1)(A)(ix) and the digital image captured by the device shows a different person took and passed the confirmatory test or the Confirmatory Test was refused, or

(D) Failed to have the IID serviced and monitored at least every sixty-seven (67) days for proper use and accuracy by an authorized Service Provider.

(3) After review of the device data to verify the driver has satisfied the compliance requirements, the Service Provider will either issue a Certificate of Compliance or a Notice of Violation to the driver's email address then on file with the Service Provider.

(4) Upon receipt of a Certificate of Compliance, the driver may:

have the device removed.

(5) Upon receipt of a Notice of Violation, the driver may

(A) Accept the extension of the ignition interlock requirement; or

(B) Request that the Service Provider reconsider the finding of a violation, which may be based on evidence of compliance by the person. If the Service Provider:

(i) Confirms the finding of a violation, the ignition interlock period will be extended for sixty (60) days. The driver may demand removal of the ignition interlock device, and the Service Provider must notify the Office of Driver Services of the removal.

(g) **Denial, suspension, or revocation of certification/approval of a device.**

(1) **Cause for loss of approval/certification.** The Office of Alcohol Testing 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 this part;

(F) Provision of materially false or inaccurate information relating to a device's performance standards by a manufacturer or service provider; or

(G) Modification or alteration of the components, design, or installation and operation instructions in such a way that the requirements of 5 CAR § 21-105(b)(1)(A) are no longer satisfied.

(2) **Effective date.** A revocation or suspension of an approval becomes effective fifteen (15) days after notification is sent to the manufacturer by certified mail.

(3) **Appeal.**

(A) A manufacturer may appeal a denial, suspension, or revocation of approval.

(B) This request shall be submitted to the Office of Alcohol Testing, in writing, within fifteen (15) days of the receipt of a notice of denial or revocation of approval which will stay the proposed action until a final determination has been published by the Department.

Reasoning: The proposed stay prevents a financial penalty from being imposed before a final determination is issued.

(4) **Suspension.** Upon suspension a provider must cease accepting new customers but must continue to calibrate, service, and monitor existing customers for the duration of the suspension.

~~(5) **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 Office of Alcohol Testing's list of approved devices.~~

5 CAR § 21-105. 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 BAIID 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 (BAIIDs);

(2) Use fuel cell technology or other alcohol-specific sensing technology approved by the Office of Alcohol Testing;

(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~~; and

(5) ~~Visibly and/or audibly~~ Audibly indicate to the driver~~user or any person near the device that~~:

Recommendation: Please consider retaining the requirement for visual indicators to ensure accessibility for deaf and hard-of-hearing users and to support compliance with applicable ADA requirements.

(A) The unit is on;

(B) The unit has enabled the ~~ignition system of the~~ vehicle in which it is installed to start;

(C) The unit is in need of service or calibration;

(D) The failure of the breath sample obtained by the device (alcohol value is at or above~~exceeds~~ the set point); ~~and~~

(E)~~(i)~~ The time remaining in a restart, confirmatory test or retest~~Any other indicator or signal that may be required by the office~~.

Reasoning: This provision provides an additional reason to retain a visual display or indicator.

(F~~ii~~) The device may augment ~~visible signals or~~ indicators with audible ones approved by the Department~~office~~; and

(6) ~~Visibly and/or audibly~~ Audibly indicate to others in the area when a device has recorded a~~is indicating the driver has not met the requirements for~~:

(A) A ~~rolling retest~~rolling retest violation; or

(B) A confirmatory test violation~~calibration and maintenance; or~~

~~(C) Any other required function.~~

5 CAR § 21-106. Records and reports to be provided by the manufacturer or service provider.

(a) **Service provider sites.**

(1) Subsequent to approval of a device, the manufacturer or designated representative shall furnish the Office of Alcohol Testing with the following information about each service provider site immediately upon establishing those sites:

(A) Business name;

(B) Owner's name;

(C) Description of business;

(D) Names ~~and qualifications~~ of personnel trained and authorized to perform installations, calibrations, and monitoring;

(E) Specific location of the business;

(F) Hours of business;

(G) Telephone number; and

(H) Emergency number.

(2) A copy of the training certificate~~/documentation~~ for each person shall be provided to the Department~~office~~.

(b) **Reports to courts.**

(1) The manufacturer, designated representative, or the service provider shall furnish, upon request, to the sentencing court a report of all activities required to be recorded by the device, including:

(A) Physical evidence of tampering or attempted tampering; and

(B) Any attempts at circumvention of the ignition interlock device.

(2) The report to the court shall include notice of any automatic lockout.

(3) These reports shall be made as soon as possible, but not longer than two

(2) weeks after ~~discovery~~receipt of such request.

Reasoning: The proposed modification aligns the timing requirement with the change to "upon request."

(c) **Report to Office of Driver Services.** The manufacturer or designated representative, or the service provider shall report to the Office of Driver Services, providing a complete record of installation, calibration, maintenance checks, and usage records of any or all of their devices placed in service in Arkansas.

(d) **Notice to Office of Alcohol Testing.** The Office of Driver Services will notify the Office of Alcohol Testing upon discovery of any abnormality or possible infraction of this part observed concerning the use, installation, or function of these devices.

(e) **Availability of records.** The Office of Driver Services will make available to the Office of Alcohol Testing any records on BAIIDs not otherwise prohibited by law.

5 CAR § 21-107. Rules for the use of breath alcohol ignition interlock devices.

(a) **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 5 CAR § 21-105(b).

(b) **Post-installation inspection.** After installation of the device, an inspection should be made by the owner and installer to ensure the installation:

(1) Was performed properly; and

(2) Does not interfere with the normal operation of the vehicle.

(c) **Order for installation.** A copy or the original order shall be kept in the vehicle for inspection by law enforcement or other appropriate officials.

(d) **Proper use of device.**

(1) A BAIID shall be used in accordance with the prescribed procedures of the manufacturer.

(2) These procedures shall include a minimum fifteen-minute waiting period between the:

(A) Last drink of an alcoholic beverage; and

(B) Time of blowing into the device.

(3) Failure of the test shall mean the driver is above the prescribed allowable breath alcohol concentration (alcohol set point).