

**State of Kansas
Department of Revenue
Notice of Hearing on Proposed Administrative Regulations**

The public hearing originally scheduled by the Department of Revenue at 9:00 a.m. on Monday, September 7, 2015, notice of which was published in the July 2, 2015 issue of the Kansas Register has been rescheduled. The public hearing which will be conducted by the Department of Revenue has been rescheduled for Tuesday, October 6, 2015 at 9:00 a.m., in the Secretary's conference room, Room 230, Docking State Office Building, 915 SW Harrison, Topeka to consider amendments to ignition interlock device regulations.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written comments from the public on the proposed regulations. All interested parties may submit written public comments on the proposed regulations prior to the hearing to Kathleen Smith, Tax Specialist, Office of Policy and Research, Room 230, Docking State Office Building, 915 SW Harrison, Topeka, Kansas 66612 or through e-mail at kathleen.smith@kdor.ks.gov.

All interested parties will be given a reasonable opportunity to present their views, either orally or in writing or both, concerning the adoption of the proposed regulations. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Kathleen Smith at (785) 296-3081 or TTY (785) 296-6461. Disabled parking is located in State Parking Lot No. 2, south of the Docking Building facing Harrison Street. The east entrance to the Docking Building is accessible.

These regulations are proposed for adoption on a permanent basis. A summary of the proposed regulations and the economic impacts follows:

**Kansas Department of Revenue
Article 56. Ignition Interlock Devices**

Amendments to K.A.R. 92-56-1. The proposed K.A.R. 92-56-1 modifies and adds defined terms to Article 56 of Chapter 92 of the Kansas Administrative Regulations.

Economic Impact:

The Department of Revenue does not anticipate any impact on the department, other government agencies, or private businesses or individuals.

Amendments to K.A.R. 92-56-2. The proposed K.A.R. 92-56-2 modifies required technical specifications for State approved breath alcohol ignition interlock device (BAIID) installation and manages the BAIID manufacturer once it is approved to do business within the State.

Economic Impact:

The Department of Revenue does not anticipate any impact on the department, other government agencies, or private businesses or individuals.

A copy of these regulations and the economic impact statements may be obtained from the Kansas Department of Revenue, Office of Policy and Research, Room 230, Docking State Office Building, 915 SW Harrison, Topeka, Kansas 66612-1588 or via our website: www.ksrevenue.org.

92-56-1. Ignition interlock device; definitions. As used in this article, each of the following terms shall have the meaning specified in this regulation: (a) “Device” means “ignition interlock device,” as defined in K.S.A. 8-1013 and amendments thereto. This device uses microcomputer logic and internal memory and has a breath alcohol analyzer as a major component that interconnects with the ignition and other control systems of a motor vehicle. This device measures the breath alcohol concentration (BrAC) of an intended driver to prevent the motor vehicle from being started if the BrAC exceeds a preset limit and to deter and record any instances of circumvention or tampering.

(b) “Alcohol setpoint” means the breath alcohol concentration at which the ignition interlock device is set to lock the ignition. The alcohol setpoint is the normal lockpoint at which the ignition interlock device is set at the time of calibration. The alcohol setpoint shall be .03. The alcohol setpoint for retests shall be .03.

(c) “BrAC” means the breath alcohol concentration expressed as weight divided by volume, based upon grams of alcohol per 210 liters of breath.

(d) “BrAC fail” means the condition in which the ignition interlock device registers a BrAC value equal to or greater than the alcohol setpoint when the intended driver conducts an initial test or retest. This condition is recorded as a violation.

(e) “Breath sample” means the sample of alveolar or end-expiratory breath that is analyzed for the analysis of alcohol content after the expiration of at least 1.2 liters of air.

(f) “Circumvention” means an overt, conscious attempt to bypass the ignition interlock device by any of the following:

- (1) Providing samples other than the natural, unfiltered breath of the driver;
- (2) starting the vehicle without using the ignition switch; or
- (3) performing any other act intended to start the vehicle without first taking and passing a breath test.

(g) “Director” means director of vehicles, division of vehicles of the department of revenue.

(h) “Emergency bypass procedure” means the procedure that allows the driver to travel to a service provider and avoid a lockout. If used, the event shall be recorded in the event log, and the device shall be put into early service status. The emergency bypass procedure shall require the driver to provide a breath sample with a test result below the alcohol setpoint.

(i) “Fail-safe” means a condition in which the ignition interlock device cannot operate properly due to a problem, including improper voltage and a dead sensor. In fail-safe, the ignition interlock device will not permit the vehicle to be started.

(j) “Fixed site” means the building in which a service provider operates. The building shall have a separate waiting room, a bathroom, and a work area. The work area shall be accessible to only the service provider and the service provider’s employees while performing services.

(k) “High BrAC” means a BrAC fail result for an initial test or retest that registers an alcohol setpoint of .08 or greater.

~~(l)~~ (l) “Lockout” means an instance in which the ignition interlock device will prevent the vehicle from starting. The vehicle cannot be operated until serviced by the service provider. A lockout occurs if any of the following events occurs:

(1) A driver incurs five or more violations between scheduled inspections with the service provider.

(2) A driver fails to submit to calibration and inspection as required by K.A.R. 92-56-4(b)(5), and the seven-day grace period has expired.

(3) A driver engages in circumvention or tampering.

~~(h)~~ (m) “Manufacturer” means the person, company, or corporation that produces an ignition interlock device and certifies to the division that the manufacturer’s representative and the manufacturer’s service providers are qualified to service and provide information on the manufacturer’s state-approved ignition interlock device. To be a manufacturer, the division shall approve and certify the manufacturer’s device for use in the state, and the approval and certification shall remain in effect.

~~(m)~~ (n) “Manufacturer’s representative” means a single individual based in Kansas and designated by a manufacturer to act on behalf of or represent the manufacturer in matters relating to this article and K.S.A. 8-1001 et seq., and amendments thereto.

~~(n)~~ (o) “Rolling retest” means a breath test that is required after the initial engine start-up breath test and while the engine is running. This term is also known as a retest or a running retest. The device shall require the driver of the vehicle to submit to a retest within 10 minutes of starting the vehicle. A rolling retest shall continue at randomized, variable intervals ranging from 10 to 45 minutes after the previous retest for the duration of the travel.

(⊖) (p) “Service provider” means an ignition interlock device technician that is authorized by a manufacturer to service a certified device on behalf of the manufacturer or the manufacturer’s representative. The ignition interlock device technician shall have a written agreement or authorization from a division-approved manufacturer or its manufacturer’s representative to service the manufacturer’s devices within Kansas.

(⊖) (q) “Services” means the installation, inspection, monitoring, calibration, maintenance, removal, replacement, and repair of division-approved ignition interlock devices within Kansas.

(⊖) (r) “Tampering” means an overt, conscious attempt to physically disable, bypass, adjust, or otherwise disconnect an ignition interlock device from its power source.

(⊖) (s) “Violation” means any of the following:

(1) The driver has blown a BrAC and ~~fails the initial breath test~~ fail when attempting to start the vehicle, ~~and the driver fails a breath test within the allowable time after a subsequent retest has been requested.~~

(2) The driver has blown a BrAC and fails the initial breath test fail when attempting a required rolling retest, ~~and the driver fails a breath test within the allowable time after a subsequent rolling retest has been requested.~~

(3) The driver fails to execute a valid rolling retest after a five-minute period.

(4) The driver fails to submit to a requested rolling retest by turning the vehicle off to avoid submitting to the rolling retest.

(5) The driver has blown a high BrAC during an initial breath test or rolling retest. (Authorized by and implementing K.S.A. 8-1016; effective Oct. 23, 1989; amended July 5, 2002; amended May 2, 2014; amended P-
_____.)

92-56-2. Ignition interlock device; certification and standards. (a) Each manufacturer of an ignition interlock device wanting to market the device in Kansas shall apply to the division of vehicles for certification of the device and submit the following information and equipment:

(1) The name and address of the manufacturer;

(2) the name and model number of the device;

(3) certification that the device meets the following criteria:

(A) Offers safe operation of the vehicle in which installed, works reliably and accurately in an unsupervised environment, and, when in fail-safe, prevents the vehicle from starting;

(B) offers protection against tampering and is able to detect and be resistant to circumvention;

(C) allows for a free restart of the vehicle's ignition within two minutes after the ignition has been turned off without requiring another breath test if the driver has not registered a BrAC fail or is not in the process of completing a retest;

(D) allows for a rolling retest of a subsequent breath test after the vehicle has been in operation;

(E) disables the ignition system if the BrAC of the person using the device equals or exceeds the alcohol setpoint of .03;

(F) incorporates an emergency bypass procedure;

(G) records each time the vehicle is started, the duration of the vehicle's operation, and any instances of tampering;

(H) displays to the driver all of the following:

(i) When the device is on;

(ii) when the device has enabled the ignition system; and

(iii) the date on which a lockout will occur; and

(I) alerts the driver with a five-minute warning light or tone that a rolling retest is required;

(4) a map and list of service providers and the address where the device can be obtained, repaired, replaced, or serviced 24 hours a day by calling a toll-free phone number;

(5) the name of any insurance carrier authorized to do business in this state that has committed to issue a liability insurance policy for the manufacturer;

(6) the name and address of the manufacturer's representative designated by the manufacturer to manage the manufacturer's statewide operations;

(7) not more than two ignition interlock devices for testing and review to the division upon the director's request; and

(8) a declaration on a form prescribed by the division that requires the following:

(A) The manufacturer, manufacturer's representative, and the manufacturer's service providers shall cooperate with the division, law enforcement, and court staff at all times, including the inspection of the manufacturer's installation, service, repair, calibration, use, removal, or performance of each ignition interlock device;

(B) the manufacturer shall provide all downloaded ignition interlock device data, reports, and information related to the ignition interlock device to the division, upon the director's request, in a division-approved electronic format;

(C) the manufacturer shall provide the alcohol reference value and type of calibration device used to check the ignition interlock device;

(D) the manufacturer shall provide the division with inquiry access to the manufacturer's ignition interlock device system management software for the management of state drivers; and

(E) the manufacturer or the manufacturer's representative shall provide a map of Kansas showing the area covered by each service provider's fixed site.

(b) Each certification issued by the division shall continue in effect for three years unless either of the following occurs:

(1) The manufacturer requests in writing that the certification be discontinued.

(2) The division informs the manufacturer and the manufacturer's representative in writing that the certification is suspended or revoked.

(c) If a manufacturer modifies a certified device, the manufacturer shall notify the division of the exact nature of the modification. A device may be required by the division to be recertified at any time. A modification shall mean a material change affecting the functionality, installation, communication, precision, or accuracy of a certified device.

(d) Each manufacturer of a certified device shall notify the division of the failure of any device to function as designed. The manufacturer and the manufacturer's representative shall provide an explanation for the failure and shall identify the actions taken by the manufacturer or the manufacturer's representative to correct the malfunctions.

(e) The manufacturer's device shall meet or exceed the model specifications for ignition interlock devices, as specified by the national highway traffic safety administration. The provisions of 78 fed. reg. 26862-26867 (2013), beginning with the text titled "B. Terms" on page 26862, are hereby adopted by

reference for purposes of this subsection. If state specifications vary from the federal specifications, the state specifications shall control.

(f) Each manufacturer of a certified device shall accumulate a credit of at least two percent of the gross revenues attributed to services provided in Kansas or to out-of-state services provided to Kansas residents. Any existing credit shall be made available to drivers who are restricted to operating a vehicle with a device and who are indigent as evidenced by eligibility for the federal food stamp program. The amount of the credit available shall be limited to the amount of the existing credit balance. The manufacturer and its service providers shall notify the manufacturer's customers of the existence of this indigent program by utilizing division notices and forms.

(g) Each manufacturer of a certified device shall submit a report to the division on or before January 31 of each year with the following information for the previous calendar year's activities:

(1) The number of ignition interlock devices initially installed on vehicles for Kansas drivers who were restricted to driving only with an ignition interlock device;

(2) the number of vehicles that had devices removed due to a failure in the device, a malfunction of the device, or a defect in the device and, for each vehicle, the driver's name, the driver's license number, the specific failure or operational problem that occurred during the period installed, and the resolution of each situation;

(3) the total number of devices in operation in Kansas on December 31 of the previous calendar year;

(4) the total number of devices removed;

(5) the total number of instances of circumvention;

(6) the total number of instances of tampering; and

(7) a summary of the following information:

(A) The number of indigent drivers that qualified for reduced fees;

(B) the number of drivers that applied for indigent classification and reduced fees but were denied;

(C) amounts credited to indigent drivers; and

(D) the ending credit balance.

(h) Each manufacturer and manufacturer's representative of a certified device shall make sales brochures and other informational materials available at

no cost to the state's community corrections and court services officers, the district courts, magistrate courts, municipal courts, and the division for distribution to potential drivers. These brochures and informational materials may be provided through electronic means if approved by the director.

(i) Each manufacturer shall provide to the division, on or before January 31 of each year for that calendar year, documentation indicating the normal prices and fees charged to a driver that are associated with the manufacturer's Kansas installation of devices. If the documentation regarding normal prices and fees charged changes during the course of that calendar year, the manufacturer and manufacturer's representative shall provide amended documentation to the division within seven days of the change.

(j) Each manufacturer shall have a service provider with a fixed site within each state judicial district on and after January 1, 2015, unless the following conditions are met:

(1) At least two manufacturers have a service provider located in the same judicial district.

(2) The director determines that a competitive market exists for ignition interlock services in the state judicial district and the absence of a manufacturer's

service provider in the state judicial district specified in paragraph (j)(1) does not create a competitive advantage for that manufacturer.

(3) The director approves the manufacturer to be absent from that state judicial district.

~~(k) If a driver completes six months of calibrations without the driver's device generating a lockout or high BrAC, the service provider shall extend the driver's calibration period interval from 30 days to 60 days.~~

(4) Each device shall be capable of uniquely identifying and recording all of the following:

- (1) Each time the vehicle is attempted to be started;
- (2) each time the vehicle is started;
- (3) the results of all tests, retests, or failures as being a malfunction of the device or a result of the driver not meeting the requirements;
- (4) the length of time the vehicle was operated; and
- (5) any indication of tampering.

The features required of the manufacturer's installed device shall be enabled to capture the information required by this subsection. (Authorized by

and implementing K.S.A. 8-1016; effective Oct. 23, 1989; amended July 5, 2002;
amended May 2, 2014; amended P-_____.)



Nick Jordan, Secretary
Lisa Kaspar, Director

Sam Brownback, Governor

**KANSAS DEPARTMENT OF REVENUE
ECONOMIC IMPACT STATEMENT
K.A.R. 92-56-1**

I. Summary of Proposed Regulation.

The proposed K.A.R. 92-56-1 modifies and adds defined terms to Article 56 of Chapter 92 of the Kansas Administrative Regulations.

II. Reason or Reasons the Proposed Regulation is Required, Including Whether or not the Regulation is Mandated by Federal Law.

Due to the requirement of a “fixed site” for BAIID vendors in all of our 31 judicial districts in Kansas, the Department of Revenue has deemed it necessary to define fixed site. The Department of Revenue would also like for the definition of “Violation” to be separated as attempting to start a vehicle and attempting to a required rolling retest.

These proposed regulations will improve services to Kansas citizen by achieving the following objectives:

1. Ensure that geographic coverage of BAIID providers throughout the entire state are held to the same standards.
2. Ensure “violations” are defined and recorded properly.

These proposed regulations track with Federal recommendations made by the National Highway and Traffic Safety Administration. Where State law or regulation varies from Federal recommendations, the State law and/or regulation shall control. In such circumstances, variance from Federal recommendations will not impact State/Federal relations nor affect any Federal/State income streams.

III. Anticipated Economic Impact upon the Kansas Department of Revenue.

The adoption of this regulation will not have any economic impact upon the Department of Revenue.

IV. Anticipated Financial Impact upon other Government Agencies and upon Private Business or Individuals.

The Kansas Department of Revenue does not anticipate that these proposed definitional changes in proposed K.A.R. 92-56-1 will have substantial impact on any economic impact upon other government agencies, private businesses or individuals.

V. Description of any Less Costly or Less Intrusive Methods that were Considered by the Department of Revenue for Achieving the State Purpose of the Regulation and the Reason that those Methods were Rejected in Favor of the Proposed Regulation.

The Kansas Department of Revenue has determined that the proposed regulation is the least costly method for achieving its purpose. The Department has conducted a series of meetings with BAID providers and affected government stakeholders (Kansas Attorney General's Office, Kansas Department of Health and Environment and Kansas Highway Patrol) to explore the repercussions of proposed regulations and have developed this proposed regulation with their feedback.

Nick Jordan, Secretary
Lisa Kaspar, Director

Sam Brownback, Governor

**KANSAS DEPARTMENT OF REVENUE
ECONOMIC IMPACT STATEMENT
K.A.R. 92-56-2**

VI. Summary of Proposed Regulation.

The proposed K.A.R. 92-56-2 modifies required technical specifications for State approved breath alcohol ignition interlock device (BAIID) installation and manages the BAIID manufacturer once it is approved to do business within the State.

VII. Reason or Reasons the Proposed Regulation is Required, Including Whether or not the Regulation is Mandated by Federal Law.

The Kansas Department of Revenue has deemed it necessary to require that all drivers visit their BAIID provider every 30 days for calibration. Currently, a driver can have their calibration interval extended from 30 days to 60 days contingent on the driver's device not generating a lockout or high BrAC in the preceding six months.

1. The State's existing regulations complicate program oversight when requirements vary from person to person.

VIII. Anticipated Economic Impact upon the Kansas Department of Revenue.

The adoption of this regulation will not have any economic impact upon the Department of Revenue.

IX. Anticipated Financial Impact upon other Government Agencies and upon Private Business or Individuals.

The Kansas Department of Revenue does not anticipate that these proposed definitional changes in proposed K.A.R. 92-56-2 will have substantial impact on any economic impact upon other government agencies, private businesses or individuals.

X. Description of any Less Costly or Less Intrusive Methods that were Considered by the Department of Revenue for Achieving the State Purpose of the Regulation and the Reason that those Methods were Rejected in Favor of the Proposed Regulation.

The Kansas Department of Revenue has determined that the proposed regulation is the least costly method for achieving its purpose. The Department has conducted a series of meetings with BAIID providers and affected government stakeholders (Kansas Attorney General's Office, Kansas Department of Health and Environment and Kansas Highway Patrol) to explore the repercussions of proposed regulations and have developed this proposed regulation with their feedback.