

**RULES
OF
TENNESSEE DEPARTMENT OF SAFETY AND HOMELAND SECURITY
HIGHWAY PATROL DIVISION**

**CHAPTER 1340-03-06
RULES OF IGNITION INTERLOCK DEVICE PROGRAM**

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1340-03-06-.01 PURPOSE AND SCOPE.

To establish uniform statewide minimum standards for ignition interlock devices, for the certification of ignition interlock device manufacturers and service centers, and for program participant monitoring pursuant to T.C.A. §§ 55-10-417, 55-10-418, and 55-10-425.

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, and 55-10-425. **Administrative History:** Original rule filed December 17, 2012; effective May 31, 2013. Amendments filed February 19, 2020; effective May 19, 2020.

1340-03-06-.02 DEFINITIONS.

- (1) Accuracy Check - confirming the calibration of the equipment used for the BAIID's calibration.
- (2) Administrative Fee - a fee collected by the manufacturer from each participant.
- (3) A-List - the Department of Safety and Homeland Security's secure data reporting system.
- (4) Breath Alcohol Concentration (BrAC) - the amount of alcohol expressed in weight per volume (w/v) of breath based upon grams of alcohol per 210 liters (L) of breath.
- (5) Breath Alcohol Ignition Interlock Device (BAIID) - a device that is designed to allow a driver to start a vehicle if the driver's BrAC is below the set point and to prevent the driver from starting the vehicle if the driver's BrAC is at or above the set point.
- (6) Calibration - the process of testing and/or adjusting the BAIID to ensure accuracy by using a wet bath or dry gas standard as defined by the current National Highway Traffic Safety Administration (NHTSA) model specifications for calibration units.
- (7) Camera - a feature of the device that incorporates photo identification or digital images of the person who is providing the breath test in all light conditions.
- (8) Circumvent - to bypass the correct operation of the BAIID by starting the vehicle without first providing a breath test.

(Rule 1340-03-06-.02, continued)

- (9) Commissioner - the Commissioner of the Tennessee Department of Safety and Homeland Security.
- (10) Compliance-Based Removal - the authorized removal of the BAIID as determined by the participant meeting terms set by T.C.A. § 55-10-425.
- (11) Department - the Tennessee Department of Safety and Homeland Security.
- (12) Hearing Officer - the officer designated by the Commissioner to preside over administrative hearings.
- (13) Ignition Interlock Program - the Department of Safety and Homeland Security's program of regulating BAIIDs, manufacturers, service centers, and technicians in the State of Tennessee.
- (14) Ignition Interlock Service Center Inspection Checklist - a form (SF-1535) to be completed by the manufacturer or service center prior to initial and/or annual renewal inspection.
- (15) Manufacturer - a person or organization responsible for the design, construction, and/or production of the BAIID, which has been approved and certified by the Ignition Interlock Program as meeting all of the minimum requirements set forth in these rules.
- (16) Manufacturer Certificate of Compliance - a certificate of compliance issued by the manufacturer to a participant who has been compliant with the program conditions for the required period.
- (17) Manufacturer/Service Center Non-Compliance Fee - a fee charged to the manufacturer for non-compliance with any of the requirements stated in Chapter 1340-03-06.
- (18) Manufacturer Representative - an individual designated by the manufacturer as a direct point of contact for the ignition interlock program administrator in the State of Tennessee.
- (19) Non-Compliance - failure to meet the minimum requirements set forth in state law, these rules, a court order, or the device configuration requirements.
- (20) Normal Business Hours - standard workdays of Monday through Saturday between the hours of 7:00 am and 7:00 pm at a minimum of five (5) days per week, excluding state and federal holidays.
- (21) Participant - an individual who has been ordered by a court or the Department pursuant to the provisions of T.C.A. § 55-10-417 to operate a motor vehicle which has been equipped with a functioning BAIID.
- (22) Permanent Lockout - a condition where the device will not accept a breath test until serviced.
- (23) Probation - an entity appointed to investigate, supervise, and report on the conduct of program participants.
- (24) Program Administrator - an individual who is the direct point of contact with the general public, current and prospective service centers, manufacturers, and other government and private entities.
- (25) Random Retest - a breath test that is required after the initial engine start-up breath test and while the vehicle is being operated. Note: Commonly referred to as a rolling, random, or running retest.

(Rule 1340-03-06-.02, continued)

- (26) Real Time Reporting - the contemporaneous transmission of data any time a photo is captured to a specified monitoring entity as the event occurs or as soon as cellular reception permits.
- (27) Remove Interlock Restriction Letter - a letter issued by the Department to a participant indicating program compliance.
- (28) Residual Mouth Alcohol - alcohol found in the oral cavity that dissipates over a short period of time.
- (29) Service Center - the entity designated by the manufacturer and approved by the Ignition Interlock Program to provide services to include, but not limited to, installation, inspection, maintenance, and removal of the BAIID within Tennessee.
- (30) Service Center Certificate - a certificate provided by the Ignition Interlock Program once the Ignition Interlock Program is satisfied that the service center complies with all of the minimum requirements set forth in Chapter 1340-03-06.
- (31) Tampering - an attempt to physically disable, disconnect, adjust, or otherwise alter the proper operation of a BAIID and/or any of its components; to remove the BAIID and/or any of its components without authorization. Note: Disconnecting the handset once the vehicle is turned off is permissible unless the vehicle was turned off during a random retest.
- (32) Technician - a person affiliated with a service center and engaged in the installation, inspection, maintenance, and removal of BAIIDs in Tennessee.
- (33) Technician's Certificate of Training - a certificate issued to the technician by the manufacturer certifying that the technician has been properly trained in the installation, inspection, maintenance, and removal of BAIIDs in Tennessee.
- (34) Technician Training - type(s) of training provided to the technician by the manufacturer including hands-on training, paper materials, and training videos.
- (35) Temporary Lockout Code - a temporary code issued by the manufacturer to a participant whose BAIID is in lockout mode.
- (36) Violation - non-compliance with a law, regulation, or rule.

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, and 55-10-425. **Administrative History:** Original rule filed December 17, 2012; effective May 31, 2013. Amendments filed February 19, 2020; effective May 19, 2020.

1340-03-06-.03 MANUFACTURER APPLICATION PROCEDURES.

- (1) Any individual or business shall apply to be an approved and certified manufacturer using forms supplied by the Ignition Interlock Program.
 - (a) The Manufacturer Application (SF-1573) shall be completed in full and shall include the following:
 - 1. A list of all states for which you are currently an approved BAIID manufacturer.
 - 2. A list of all states where the BAIID manufacturer is currently or has previously been suspended or revoked within the last ten (10) years.

(Rule 1340-03-06-.03, continued)

3. A statewide criminal history background check performed through the Tennessee Bureau of Investigation (TBI) or a background check from the state through which the driver license is issued. If the manufacturer is not an individual but a business entity, the background check should be completed on the Manufacturer Representative.
 4. Verification that the manufacturer is not an employee of the Department.
 5. Verification that the BAIID meets or exceeds the most recent model specifications established by the National Highway Traffic Safety Administration (NHTSA).
 6. A Quality Assurance Plan (QAP) that includes the operating instructions for the BAIID and step-by-step instructions of the process for checking the accuracy of the calibration of the BAIID.
 7. Verification of current financial responsibility as stated in Rule 1340-03-06-.16.
 8. Verification that the manufacturer has the ability to submit automated reports via a web service program into A-List.
 9. A copy of the materials used to train the participant on the proper use of the BAIID.
 10. The physical addresses of planned installation locations in Tennessee. A certified manufacturer will have ninety (90) days to establish their service center locations within the geographical boundaries of Tennessee or the manufacturer will be removed from the certified manufacturer list and must reapply. At a minimum, each approved manufacturer must open and maintain one (1) service center in each of the eight (8) Tennessee Highway Patrol districts.
 11. A two hundred and fifty dollar (\$250.00) non-refundable application fee transferred by Automated Clearing House (ACH) to the Ignition Interlock Program.
- (b) All applications will be submitted to the Ignition Interlock Program by the Manufacturer Representative.
- (2) The applicant will be notified by U.S. mail or electronically of the approval or denial of the application. If the application is approved, the manufacturer will receive a certificate which shall be valid for one (1) year. If the application is denied, the applicant will be informed of the reason for denial.
- (3) In order to continue as an approved manufacturer, an application to renew must be submitted to the Ignition Interlock Program annually.
- (a) The renewal application consists of all the required information under (1)(a) and must be submitted to the Ignition Interlock Program at least sixty (60) days prior to the expiration of its current certificate.
 - (b) At the time the application to renew is submitted, a one hundred dollar (\$100.00) non-refundable renewal fee shall be transferred by ACH to the Ignition Interlock Program.
 - (c) If the application to renew, including background checks and proof of financial responsibility, is not submitted at a minimum of sixty (60) days prior to the expiration of

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the current certificate, the non-refundable renewal fee will increase to two hundred and fifty dollars (\$250.00).

- (d) If the appropriate renewal fee is not submitted, the application will be considered incomplete and will not be processed for renewal.
- (4) The Ignition Interlock Program shall notify the manufacturer of its decision before the expiration date of the current certificate. If approved, the manufacturer shall receive a certificate valid for one (1) year. If the re-certification is denied, the Ignition Interlock Program will inform the manufacturer of the reason for denial. The manufacturer shall have ten (10) days from the date the notification is sent to correct any deficiencies and notify the Ignition Interlock Program in writing of such correction. The manufacturer may also request a hearing pursuant to Rule 1340-03-06-.20.

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, and 55-10-425. **Administrative History:** Original rule filed December 17, 2012; effective May 31, 2013. Amendments filed February 19, 2020; effective May 19, 2020.

1340-03-06-.04 SERVICE CENTER APPLICATION PROCEDURES.

- (1) Any individual or business shall apply to be a certified service center using forms supplied by the Ignition Interlock Program.
- (a) The Service Center Application (SF-1377) shall be completed in full and shall include the following:
1. Name and physical address of individual or business applying to be a service center.
 2. A list of the names and a Technician Application (SF-1378) for each of the persons who will be installing, calibrating, servicing, or removing the BAIID.
 3. The individual's or business's experience in installing, servicing, and removing BAIIDs in other jurisdictions.
 4. A statewide criminal history background check of the owner and all technicians performed through the Tennessee Bureau of Investigation (TBI) or a background check from the state through which the driver license is issued.
 5. Verification that the service center owner and technicians are not employees of the Department.
 6. Verification of current financial responsibility as stated in Rule 1340-03-06-.16.
 7. A copy of the technicians' certificates of training issued by the manufacturer.
 8. The name of the manufacturer that the applicant is affiliated with.
 9. An Ignition Interlock Service Center Inspection Checklist (SF-1535).
 10. A two hundred and fifty dollar (\$250.00) non-refundable application fee per service center transferred by ACH to the Ignition Interlock Program.
- (b) All applications will be submitted to the Ignition Interlock Program by the affiliated Manufacturer Representative.

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- (2) Upon receipt of the application and fee, the Ignition Interlock Program will process the application and conduct an on-site inspection of the service center.
- (3) The applicant will be notified by U.S. mail or electronically of the approval or denial of the application. If the application is approved, the manufacturer and service center will receive a certificate which shall be valid for one (1) year. If the application is denied, the applicant's affiliated manufacturer will be informed of the reason for denial.
- (4) An entity desiring to become a service center must apply separately through each manufacturer that it intends to be affiliated with, including submission of an application, application fee, and all required information under (1)(a).
- (5) In order for a service center to maintain its certification, every year its affiliated manufacturer(s) shall submit an application to renew to the Ignition Interlock Program.
 - (a) The renewal consists of all the required information under (1)(a) for each service center and must be submitted to the Ignition Interlock Program at least sixty (60) days prior to the expiration of its current certificate.
 - (b) At the time the application to renew is submitted a one hundred dollar (\$100.00) non-refundable renewal fee for all service centers will be transferred by ACH to the Ignition Interlock Program.
 - (c) If the application to renew, including background checks, proof of financial responsibility, and the facility checklist, is not submitted at least sixty (60) days prior to the expiration of the current certificate, the non-refundable renewal fee will be increased to two hundred and fifty dollars (\$250.00) and the renewal inspection may be delayed.
 - (d) If the appropriate renewal fee is not submitted, the application will be considered incomplete and will not be processed for a renewal.
- (6) If the application to renew and all other required documents are received at least sixty (60) days prior to the expiration of the current certificate, the Ignition Interlock Program will notify the service center and its manufacturer of its decision before the expiration date of the current certificate. If approved, the manufacturer and the service center shall receive a certificate valid for one (1) year. This certificate shall be posted in a conspicuous place at the service center's office where it is clearly visible to the program participants. If the re-certification is denied, the Ignition Interlock Program will inform the manufacturer of the reason for denial. The manufacturer shall have ten (10) days from the date the notification is sent to correct any deficiencies and notify the Ignition Interlock Program in writing of such correction. The manufacturer may also request a hearing pursuant to Rule 1340-03-06-.20.

Authority: T.C.A. §§ 4-3-2009, 55-10-417, and 55-10-425. **Administrative History:** New rule filed February 19, 2020; effective May 19, 2020.

1340-03-06-.05 GENERAL REQUIREMENTS.

- (1) The rules, regulations, and requirements established herein are minimums and may be exceeded by the service center or manufacturer. The Ignition Interlock Program reserves the right to implement new procedures and requirements not found in these rules on an interim basis until these rules are amended in order to comply with the requirements of any new legislation passed by the Tennessee General Assembly. Certified manufacturers and service centers will be notified of the new procedures or requirements in writing prior to the enactment of said procedure or requirement. Service centers and manufacturers may not

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- waive any requirement of these rules or pass any requirement imposed on the service center or manufacturers to a program participant through contract or other means.
- (2) The service center and manufacturer shall comply with all applicable state laws, administrative rules, and regulations.
 - (3) The manufacturer shall have the ability to accurately submit automated reports via a web service program into A-List. Upon request of the Ignition Interlock Program, incomplete or missing reports must be resubmitted into A-List within forty-eight business (48) hours.
 - (4) A service center shall provide and maintain their business within the geographical boundaries of Tennessee. The location will be easily accessible and open during normal business hours. The service center's hours of operation and the manufacturer's twenty-four (24) hour emergency phone number shall be posted in a conspicuous place at the service center's office where it is clearly visible to the program participants. If at any time the service center changes hours of service, the Ignition Interlock Program shall be immediately notified.
 - (5) Approved manufacturers must open and maintain service centers at a distance no greater than one hundred (100) miles from each other. If an existing service center closes, the manufacturer shall have thirty (30) days to submit an application for a replacement service center within that immediate geographic area.
 - (6) A service center shall comply with all minimum requirements for installation and any other Tennessee state and federal laws applicable to BAIIDs and manufacturers.
 - (7) All BAIIDs that are required by Tennessee courts or the Department shall have all calibrations, data downloads, and servicing completed at a certified service center's fixed facility within Tennessee unless otherwise authorized by the Ignition Interlock Program.
 - (8) All BAIIDs that are required by Tennessee courts or the Department shall only be installed and removed at a certified service center's fixed facility within Tennessee unless otherwise authorized by the Ignition Interlock Program.
 - (9) A manufacturer may request approval to recover a BAIID after ninety (90) consecutive delinquent days. The manufacturer may only remove the delinquent BAIID at an off-site location upon approval by the Ignition Interlock Program. The manufacturer and service center will hold the Department and the State of Tennessee harmless from any liability resulting from the recovery of a BAIID pursuant to this subsection. The option to recover a BAIID for delinquency must have been included in the contract signed by the program participant in order to be approved by the Ignition Interlock Program.

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, and 55-10-425. **Administrative History:** Original rule filed December 17, 2012; effective May 31, 2013. Rule was previously numbered 1340-03-06-.04 but was renumbered 1340-03-06-.05 with the introduction of a new rule 1340-03-06-.04 filed February 19, 2020; effective May 19, 2020. Amendments filed February 19, 2020; effective May 19, 2020.

1340-03-06-.06 APPROVED BAIID REQUIREMENTS.

- (1) Only BAIIDs that are alcohol specific fuel cell devices may be used. These must be capable of recording, through a reliable electronic information system, all reports required in these rules. It is mandatory that all BAIIDs meet or exceed the most recent model specifications established by the NHTSA. Adherence to these standards must be verified by a laboratory which subscribes to the quality code of the International Standards Organization of the American National Standards Institute — or another commensurate laboratory approved by the Ignition Interlock Program.

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- (2) All BAIIDs installed must include a camera component to comply with T.C.A. §§ 55-10-417 and 55-10-425. All BAIID cameras that are not integrated into the handset shall be mounted on the passenger side of the vehicle cabin facing toward the driver.
- (3) A photo should be captured when:
 - (a) An initial test is requested;
 - (b) A random retest is requested; or
 - (c) Any time a breath sample is provided.
- (4) All BAIIDs installed on a participant's vehicle, beginning six (6) months after the effective date of these rules, must be equipped with and utilize Real Time Reporting.
- (5) A breath alcohol content (BAC) of .020 or greater shall prevent the vehicle from starting and constitutes a failure for retests.
- (6) The BAIID must allow the participant to provide a minimum of three (3) retests within ten (10) minutes of any failed initial test or random retest.
- (7) The first random retest should occur five (5) to fifteen (15) minutes after initial start-up and subsequent tests should occur fifteen (15) to forty-five (45) minutes from the conclusion of the previous retest.
- (8) All installed devices must cause the vehicle's horn to blow and the hazard lights to flash upon a violation of a random retest and stop only upon the ignition being turned off or a passed retest.
- (9) A violation will be recorded for any of the following reasons:
 - (a) The engine is started without passing a breath test or while in a lockout state;
 - (b) The user fails or refuses to take a random retest;
 - (c) The user delivers a breath sample above the violation level of .020; or
 - (d) The user tampers with or attempts to circumvent the device.
- (10) Once five (5) violations have occurred, the user must return for service within seventy-two (72) hours or the device will lockout and prevent the vehicle from starting. This shall not apply to BAIIDs equipped with real time reporting technology.
- (11) The service center or manufacturer is authorized to issue a temporary lockout code to a participant whose device is in a permanent lockout mode. The temporary lockout code will allow the vehicle to be started one (1) time, provided a proper breath test is submitted and passed, and should be valid for a period of time not to exceed two (2) hours. The temporary lockout code shall only be issued one (1) time in a thirty (30) day period for the purpose of allowing a participant to drive their vehicle to a service center for service.
- (12) The BAIID manufacturer must notify the Ignition Interlock Program before any software changes are made to the BAIID.
- (13) All breath reductions of the BAIID shall be approved by the Ignition Interlock Program. The required breath volume shall be set at 1.5 liters unless granted a medical exemption. If a

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reduction is approved the required breath volume shall not be set at less than 1.2 liters. The process for requesting a medical exemption breath reduction is as follows:

- (a) The client must obtain a plain-language statement from their primary care physician or pulmonary specialist that details why they are unable to utilize the BAIID.
- (b) The participant shall request permission from the Ignition Interlock Program to lower the required breath volume on the BAIID by sending the physician's statement to the Ignition Interlock Program at 1150 Foster Avenue, Nashville, TN 37210, by U.S. mail or electronically to safety.interlock@tn.gov.
- (c) The Ignition Interlock Program will review the documentation and forward approvals to the manufacturer.
- (d) The manufacturer will advise the service center how to calibrate the BAIID.

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, and 55-10-425. **Administrative History:** Original rule filed December 17, 2012; effective May 31, 2013. Rule was previously numbered 1340-03-06-.05 but was renumbered 1340-03-06-.06 with the introduction of a new rule 1340-03-06-.04 filed February 19, 2020; effective May 19, 2020. Amendments filed February 19, 2020; effective May 19, 2020.

1340-03-06-.07 SERVICE CENTER-OWNER/TECHNICIAN REQUIREMENTS.

- (1) Service center owner(s) shall not be an employee of the Department; shall not have been convicted of a felony or any crime involving violence, dishonesty, deceit, fraud, or indecency within ten (10) years prior to the date of the application or any conviction of vehicular homicide or vehicular assault regardless of the date of conviction; shall have and maintain a valid driver license; and shall comply with all administrative rules and regulations that the Department may promulgate concerning the Ignition Interlock Program.
- (2) Technician(s) who works for a service center shall not be an employee of the Department, shall not have been convicted of a felony or any crime involving violence, dishonesty, deceit, fraud, or indecency within ten (10) years of the date of the application or of vehicular homicide or vehicular assault regardless of the date of conviction; shall have and maintain a valid driver license; and shall comply with all administrative rules and regulations that the Department may promulgate concerning the Ignition Interlock Program. The technician shall not have been convicted of the offense of driving under the influence of an intoxicant in this or any other state two (2) or more times within ten (10) years from the date of the application, where none of these convictions occurred within five (5) years from the date of application or renewal. At no time may a technician who is required to operate a vehicle equipped with a BAIID utilize a device that the technician is certified to service.
- (3) Falsification on any application shall be sufficient grounds for denial of the application.
- (4) The manufacturer shall train all technicians in a timely manner to ensure the proper installation, servicing, and removal of the device prior to the inspection of the facility. The training of the technician shall include hands-on training by a representative of the manufacturer. Once the technicians are properly trained the manufacturer shall submit a Technician's Application and a certificate of training to the Ignition Interlock Program by U.S. mail or electronically. The certified technician shall only install and service the approved BAIID at fixed facilities that have been inspected and approved by the Ignition Interlock Program.

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, and 55-10-425. **Administrative History:** Original rule filed December 17, 2012; effective May 31, 2013. Rule was previously numbered 1340-03-06-.06 but

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1340-03-06-.08 BAIID INSTALLATION REQUIREMENTS.

- (1) A BAIID shall be installed, serviced, and removed in all makes and models of motor vehicles only by technicians who have been certified by the manufacturer of the BAIID in the installation, servicing, and removal of such device.
- (2) Under no circumstances will the participant be allowed to watch the installation or removal of the BAIID. Adequate security measures shall be taken to ensure that the installations and removals of BAIIDs shall not be visible to participants.
- (3) A reference and problem-solving guide developed by the manufacturer shall be given to the program participant at the time of the installation. This guide shall include information on the correct operation of the BAIID, a twenty-four (24) hour customer service phone number, service procedures, emergency procedures, and how the BAIID detects non-compliance.
- (4) Adequate security measures shall be taken to ensure that unauthorized personnel cannot gain access to materials such as tamper proof seals, installation instructions, and files of other BAIID program participants.
- (5) The service center is required to inspect all vehicles prior to installation and to determine whether the vehicle is in acceptable mechanical and electrical condition. For reasons of safety, a BAIID will not be installed unless the vehicle is capable of supporting such installation. The service center and the manufacturer shall maintain a log of such inspections.
- (6) The service center shall follow all written instructions from the manufacturer for the BAIID installation and removal. Installations shall be executed according to accepted trade standards and the manufacturer's instructions.
- (7) Tamper proof seals should be on every connection and must be proprietary to the manufacturer. A visual inspection should be done during each service visit to affirm that the seals are intact.
- (8) Removal of the BAIID shall be carried out so that the ignition may be operated in the same manner as before installation of the BAIID. All severed wires will be permanently soldered and insulated with heat-shrink wrap or its equivalent. Reasonable wear and tear is expected.

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, and 55-10-425. **Administrative History:** Original rule filed December 17, 2012; effective May 31, 2013. Rule was previously numbered 1340-03-06-.07 but was renumbered 1340-03-06-.08 with the introduction of a new rule 1340-03-06-.04 filed February 19, 2020; effective May 19, 2020. Amendments filed February 19, 2020; effective May 19, 2020.

1340-03-06-.09 ORIENTATION OF PROGRAM PARTICIPANT.

- (1) The service center shall conduct an orientation on the correct use of the BAIID for the program participant and for any family member or friend who may drive the vehicle. Program participants will be informed of the need to ensure that all vehicle users are adequately trained, which may require a subsequent visit.
 - (a) The service center shall advise the BAIID participant that residual mouth alcohol is the responsibility of the offender to prevent and avoid.
 - (b) The service center shall advise the BAIID participant that all breath tests must be performed within view of the camera.

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- (2) During orientation, the service center shall make the participant aware of the compliance-based removal requirements of T.C.A. § 55-10-425, as well as the Ignition Interlock Program website <https://www.tn.gov/safety/ignitioninterlock>, where the participant may read the entire compliance-based removal law. The summary of this law provided by the Ignition Interlock Program shall be posted in a conspicuous place at the service center's office.

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, and 55-10-425. **Administrative History:** Original rule filed December 17, 2012; effective May 31, 2013. Rule was previously numbered 1340-03-06-.08 but was renumbered 1340-03-06-.09 with the introduction of a new rule 1340-03-06-.04 filed February 19, 2020; effective May 19, 2020. Amendments filed February 19, 2020; effective May 19, 2020.

1340-03-06-.10 PROOF OF INSTALLATION OF A BAIID.

- (1) Within two (2) working days of installing a BAIID, the manufacturer shall enter the installation in A-List. This notice shall include:
 - (a) Name (as it appears on the participant's driver license), date of birth, and driver license number of the Ignition Interlock Program participant;
 - (b) Vehicle make, model and year, Vehicle Identification Number (VIN), and license plate number of the vehicle in which the BAIID is installed;
 - (c) BAIID model number and BAIID serial numbers of the handset, camera, and relay; and
 - (d) Next calibration and monitoring check date of the BAIID.
- (2) If the participant is on supervised probation, the manufacturer will notify Probation of the installation of the BAIID by U.S. mail or electronically.

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, and 55-10-425. **Administrative History:** Original rule filed December 17, 2012; effective May 31, 2013. Rule was previously numbered 1340-03-06-.09 but was renumbered 1340-03-06-.10 with the introduction of a new rule 1340-03-06-.04 filed February 19, 2020; effective May 19, 2020. Amendments filed February 19, 2020; effective May 19, 2020.

1340-03-06-.11 MONITORING REQUIREMENTS.

- (1) At the time of servicing or calibration of the BAIID, the technician is required to conduct an inspection to determine if there is evidence of tampering or circumventing the device. The technician should also confirm that the tamper proof seals are intact. A technician shall not conduct a calibration or service any BAIID unless the vehicle is present at the approved facility and is in mechanically operable condition. Participants shall not be allowed to remove or install any component of the BAIID during the time of servicing or calibration.
- (2) Within two (2) working days of performing any removal of a device, whether the removal was authorized or unauthorized, the manufacturer shall report the removal in A-List and if applicable also to Probation.
- (3) Servicing, inspecting, and monitoring of each BAIID and all of its components shall occur thirty (30) days after the initial installation and at least every thirty (30) days thereafter. The thirty (30) day BAIID calibration schedule is calculated to begin with the date of the previous calibration service. The technician shall only service, calibrate, or remove the BAIID at a service center location within the geographical boundaries of Tennessee or at a location that has been approved by the Ignition Interlock Program.

(Rule 1340-03-06-.11, continued)

- (4) The manufacturer shall maintain records on every program participant, including the results of every monitoring check. Violations or evidence of non-compliance, and the reasons for such, will be submitted to A-List within forty-eight (48) hours of detection.
- (5) Within two (2) working days of performing a monitoring check, the manufacturer shall send the following information by electronic transmission to A-List and, if applicable, to Probation:
 - (a) BrAC above 0.020%;
 - (b) Evidence of tampering or circumventing the device;
 - (c) Failing to take or skipping a random retest if the driver is in the vehicle;
 - (d) Failing a random retest;
 - (e) Removing or causing the removal of the BAIID at any time during the three hundred sixty-five (365) day consecutive day period;
 - (f) Failing to appear at the BAIID service center when required for calibration, monitoring, or inspection of the device;
 - (g) Name and driver license number of the participant;
 - (h) Date of next scheduled monitoring check; and
 - (i) Odometer reading at the end of each monitoring period.
- (6) If the use of a BAIID is a bond condition or a requirement of supervised probation, under no circumstance shall a BAIID be removed without authorization from the court or Probation. This only applies to participants not required to have a BAIID under T.C.A. § 55-10-425 or by the Department.

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, and 55-10-425. **Administrative History:** Original rule filed December 17, 2012; effective May 31, 2013. Rule was previously numbered 1340-03-06-.10 but was renumbered 1340-03-06-.11 with the introduction of a new rule 1340-03-06-.04 filed February 19, 2020; effective May 19, 2020. Amendments filed February 19, 2020; effective May 19, 2020.

1340-03-06-.12 REPAIR, REPLACEMENT, OR VEHICLE TRANSFER OF A BAIID.

- (1) The service center or manufacturer shall respond to all service inquiries by phone within one (1) hour of initial contact during normal business hours. Repair or replacement of any BAIID shall be conducted within forty-eight (48) hours of initial contact. The manufacturer shall notify the Ignition Interlock Program of any changes in the BAIID by submitting a transfer report into A-List within forty-eight (48) hours of the changes. The transfer report must include the vehicle year, make, model, VIN, license plate number, and odometer reading, as well as the BAIID's model number; serial numbers of the handset, relay, and camera; and the next calibration date.
- (2) The service center shall be available to answer questions and to troubleshoot any mechanical problems relating to the BAIID in the vehicle, or to repair/replace an inoperable or malfunctioning BAIID during normal business hours.

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, and 55-10-425. **Administrative History:** Original rule filed December 17, 2012; effective May 31, 2013. Rule was previously numbered 1340-03-06-.11 but was renumbered 1340-03-06-.12 with the introduction of a new rule 1340-03-06-.04 filed February 19, 2020; effective May 19, 2020. Amendments filed February 19, 2020; effective May 19, 2020.

1340-03-06-.13 PROGRAM COMPLIANCE-BASED REMOVAL/NON-COMPLIANCE REPORT.

(1) Program Compliance Criteria:

- (a) A participant who is required to install and use a functioning BAIID shall be required to maintain the BAIID in working order for a three hundred and sixty-five (365) consecutive day period or for the entire period of the driver license revocation period, whichever is longer. The BAIID cannot be lawfully removed from the vehicle during the required period, except for necessary maintenance, replacement, or repair as determined by the Ignition Interlock Program. If the participant fails to comply with the requirements of T.C.A. § 55-10-425, the entire required period will restart on the date the BAIID is reinstalled and properly functioning.
- (b) If a participant fails to appear at the service center when required for the monthly calibration, monitoring, and inspection of the device, the entire required period will restart.
- (c) During the final one hundred and twenty (120) day period for which the BAIID is required, the participant shall not:
 1. Attempt to start or operate the vehicle with a BrAC in excess of 0.02% (The participant shall not be in violation if a subsequent retest within ten (10) minutes shows a BrAC of two hundredths of one percent (0.02%) or less and review of the digital images associated with each test confirms that the same participant performed both tests);
 2. Tamper with or circumvent the BAIID;
 3. Fail to take or skip a random retest;
 4. Fail a random retest with a BrAC in excess of 0.02%;
 5. Remove or cause the BAIID to be removed at any time during the three hundred sixty-five (365) consecutive day period; or
 6. Fail to appear at the service center when required for a monthly calibration, monitoring, and inspection of the device.

(2) Successful Certificate of Compliance:

Upon completion of the period for which the participant is required to use a BAIID, the participant shall request that the manufacturer certify that the participant has complied with the conditions for the required period. The manufacturer shall determine whether the participant has complied with the conditions for the required period and either issue a certificate of compliance for the participant or notify the participant of non-compliance and the resulting extension of the BAIID requirement. If the manufacturer determines that the participant has complied with the conditions for the required period it shall upload the certificate of compliance into A-List within three (3) business days from the date of the participant's last calibration appointment.

(3) Program Non-Compliance:

- (a) If the manufacturer notifies the participant that its records indicate the participant has not complied with the conditions of the BAIID during the required period, the participant may either accept the extension of the BAIID requirement or request that the manufacturer reconsider the finding of non-compliance, based on evidence of

(Rule 1340-03-06-.13, continued)

compliance provided by the participant. If the manufacturer confirms the finding of non-compliance, the participant may either accept the extension of the BAIID requirement or request an administrative compliance review by the Ignition Interlock Program.

- (b) A participant may request, in writing, an administrative compliance review by the Ignition Interlock Program, and the participant shall include in the request any evidence of compliance. This request for review must be made within thirty (30) days from the date of notification by the manufacturer of the extension. The Ignition Interlock Program shall review any evidence provided by the participant and the records provided by the manufacturer within thirty (30) days of receiving the request and shall notify the participant and the manufacturer of the Ignition Interlock Program's determination by mail. If the Ignition Interlock Program determines that the participant has complied for the required period, the manufacturer shall issue a certificate of compliance to the participant. If the Ignition Interlock Program determines that the participant has not complied for the required period, the participant may seek judicial review of the Ignition Interlock Program's administrative compliance review determination as provided by T.C.A. § 4-5-322.

(4) Compliance-Based Removals:

- (a) Prior to lawfully removing the BAIID of a compliance-based program participant, the manufacturer must first receive written authorization from the Ignition Interlock Program. Once the manufacturer receives written authorization from the Ignition Interlock Program for removal of the BAIID, the manufacturer must contact their appropriate service center to authorize the removal of the BAIID from the program participant's vehicle. The manufacturer may in good faith rely on a participant's Remove Interlock Restriction Letter issued by the Department.
- (b) A participant is required to only operate a vehicle that is equipped with a BAIID until they obtain a valid driver license without the ignition interlock restriction (code 16).

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, and 55-10-425. **Administrative History:** Original rule filed December 17, 2012; effective May 31, 2013. Rule was previously numbered 1340-03-06-.12 but was renumbered 1340-03-06-.13 with the introduction of a new rule 1340-03-06-.04 filed February 19, 2020; effective May 19, 2020. Amendments filed February 19, 2020; effective May 19, 2020.

1340-03-06-.14 TOLL OF THE REQUIRED CONSECUTIVE DAY PERIOD.

- (1) A participant whose vehicle is inoperable due to damage from an accident or other uncontrollable circumstance where the participant's intoxication was not a proximate cause; or due to repairs based on normal wear and tear of a vehicle, or due to a recall, may request the Ignition Interlock Program toll the required consecutive day period, beginning on the date of the incident that led to the vehicle being inoperable. The participant must submit proof to the manufacturer that the vehicle was involved in a traffic crash, is being repaired, or was rendered inoperable due to some other circumstance beyond the participant's control.
- (2) If the vehicle was in an accident and a law enforcement agency issued a crash report, the crash report must be submitted. Other proof may consist of, but is not limited to:
 - (a) A written statement from the insurance company regarding repairs;
 - (b) A written statement from a repair shop showing the damage being repaired and the estimated time of completion for repairs; or
 - (c) Other documentation acceptable to the Ignition Interlock Program.

(Rule 1340-03-06-.14, continued)

- (3) The manufacturer shall forward the request and documentation to the Ignition Interlock Program within five (5) business days of receipt.
- (4) The Ignition Interlock Program shall notify the participant and the manufacturer by U.S. mail or electronically, if the tolling period has been granted or denied, and, if denied, the reason for the denial.
- (5) At the end of any thirty-day toll period, if no new request has been submitted and granted, then the required consecutive day period shall resume with the participant being required to maintain a BAIID for the period of time that was remaining on the day the tolling period began.

Authority: T.C.A. §§ 4-3-2009, 55-10-417, and 55-10-425. **Administrative History:** New rule filed February 19, 2020; effective May 19, 2020.

1340-03-06-.15 FEES.

- (1) Whenever a participant ordered to install a BAIID pursuant to T.C.A. § 55-10-409 or § 55-10-417 asserts to the court that the participant is indigent and financially unable to pay for a BAIID, the court shall conduct a full and complete hearing as to the financial ability of the participant to pay for such device and, thereafter, make a finding as to the indigency of such participant. Any participant who has been declared indigent by the court pursuant to T.C.A. § 55-10-419(d), upon providing a copy of the Proof of Indigency Form signed by the judge, shall not be refused service by a manufacturer as long as funds are available in the Electronic Monitoring Indigency Fund (EMIF). The manufacturer shall submit the required documentation to the State Treasury Department to recover the costs associated with the lease, purchase, installation, removal, and maintenance of BAIIDs or with any other cost or fee associated with a BAIID required by this part.
- (2) The fees for leasing, buying, monitoring, servicing, installing, and removing the BAIID shall be at a reasonable rate set by the manufacturer.
- (3) The fee for installation of a BAIID shall not exceed an hourly rate of seventy-five dollars (\$75.00) per hour with a three (3) hour maximum.
- (4) Manufacturers shall charge reasonable and customary fees, not to exceed a total of one hundred and twenty-five dollars (\$125.00) per month for leasing, monitoring, and maintenance of BAIIDs. If a participant is extended in the program due to non-compliance, the fee for the leasing, monitoring, and maintenance of the BAIID will not exceed five dollars (\$5.00) per day or one hundred and twenty-five dollars (\$125.00) per month during the extension, whichever is less.
- (5) Manufacturers shall charge reasonable and customary fees, not to exceed a total of seventy-five dollars (\$75.00), for the removal of the BAIID.
- (6) Manufacturers shall charge reasonable and customary fees, not to exceed a total of fifty dollars (\$50.00), for resetting a BAIID that is in permanent lockout mode due to five (5) or more violations.
- (7) Manufacturers may charge reasonable and customary fees, not to exceed a total of twenty-five dollars (\$25.00), for a temporary lockout code.
- (8) A manufacturer shall charge an annual administrative fee of twelve dollars and fifty cents (\$12.50) to each new BAIID user. This fee will be collected from each participant at the time of the installation of the BAIID and again annually for the duration of the required period. By the fifth (5th) day of each month, the manufacturer shall send the Ignition Interlock Program

(Rule 1340-03-06-.15, continued)

the proceeds from this fee by an ACH transfer and a report of the participants' names, driver license numbers.

- (9) The fee rates shall be posted in a conspicuous place at the service center's office.
- (10) All manufacturers will pay a BAIID certification fee of five dollars (\$5.00) per BAIID per month by ACH transfer to the Ignition Interlock Program by the tenth (10th) day of each month. The manufacturer will submit a monthly report listing the name, date of birth, and BAIID installation date of all current participants as well as the total BAIID certification fees submitted for the month.

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, 55-10-418, 55-10-423, and 55-10-425.

Administrative History: Original rule filed December 17, 2012; effective May 31, 2013. Rule was previously numbered 1340-03-06-.13 but was renumbered 1340-03-06-.15 with the introduction of new rules 1340-03-06-.04 and 1340-03-06-.14 filed February 19, 2020; effective May 19, 2020. Amendments filed February 19, 2020; effective May 19, 2020.

1340-03-06-.16 FINANCIAL RESPONSIBILITY REQUIREMENTS.

- (1) The manufacturer shall maintain comprehensive general liability insurance in the amount of at least one million dollars (\$1,000,000.00) per occurrence with a three million dollar (\$3,000,000.00) aggregate total liability that shall cover defects or problems with product design and materials; workmanship during manufacture; and BAIID calibration, installation, use, and removal. The manufacturer shall provide the Ignition Interlock Program written notice forty-five (45) days prior to cancellation, material change, or lapse of the insurance policy.
- (2) The service center shall maintain comprehensive general liability insurance in the amount of at least one hundred thousand dollars (\$100,000.00) per occurrence with a three hundred thousand dollar (\$300,000.00) aggregate total liability that shall cover defects or problems with the BAIID calibration, installation, use, and removal. The manufacturer shall provide the Ignition Interlock Program written notice forty-five (45) days prior to cancellation, material change, or lapse of the insurance policy held by any of its service centers.

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, and 55-10-425. **Administrative History:** Original rule filed December 17, 2012; effective May 31, 2013. Rule was previously numbered 1340-03-06-.14 but was renumbered 1340-03-06-.16 with the introduction of new rules 1340-03-06-.04 and 1340-03-06-.14 filed February 19, 2020; effective May 19, 2020. Amendments filed February 19, 2020; effective May 19, 2020.

1340-03-06-.17 LIABILITY.

- (1) The service center and manufacturer shall protect, save, and hold harmless the State, all State Departments, Agencies, Boards, and Commissions, as well as all officials, employees, agents, and servants of the State of Tennessee (all in their official and individual capacities, both current and former), from any and all claims, demands, expenses, and liability arising out of any omission by the service center or manufacturer in the performance of its duties set forth in the law or these rules.

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, and 55-10-425. **Administrative History:** Original rule filed December 17, 2012; effective May 31, 2013. Rule was previously numbered 1340-03-06-.15 but was renumbered 1340-03-06-.17 with the introduction of new rules 1340-03-06-.04 and 1340-03-06-.14 filed February 19, 2020; effective May 19, 2020. Amendments filed February 19, 2020; effective May 19, 2020.

1340-03-06-.18 AUDITS AND INSPECTIONS.

- (1) Service centers shall be subject to unannounced inspections and reviews of all records and to being temporarily placed out of service, suspension, or revocation of certification, if sufficient cause exists as determined by the Ignition Interlock Program that the service center does not meet the requirements of any applicable law or these rules. The scope of service center inspections can be found on SF-1508 On-Site Inspection and SF-1512 On-Site Interim Inspection.
- (2) Service centers shall be subject to an accuracy check on their dry gas and wet bath equipment. The accuracy check by the Ignition Interlock Program will consist of:
 - (a) Verification that the certification label, lot number, and expiration date are on the dry gas tank;
 - (b) Verification of the empty wet bath solution bottle's lot number and expiration date for the current solution being used;
 - (c) Verification that the equipment is stored and used in a climate-controlled environment;
 - (d) Inspection of the tubing leading from the solution tower to the BAIID for wet bath stations, ensuring:
 1. Maximum length of six (6) inches,
 2. No moisture, and
 3. Cleanliness;
 - (e) Verification that the wet bath solution is being changed after a maximum of thirty (30) days or thirty (30) calibrations, whichever comes first (Note: Service centers must maintain a log of the dates when the wet bath solution is changed; the log must also contain the solution lot number, bottle number, and BrAC value);
 - (f) Verification that the temperature of the wet bath solution is thirty-four (34) degrees Celsius at a quantity of five hundred (500) milliliters; and
 - (g) Verification that the BrAC in the dry gas and wet bath solution is accurate (.005 +/-) according to the manufacturer's QAP.
- (3) If the Ignition Interlock Program finds that the service center is not in compliance at the time of an interim or renewal inspection, a non-compliance fee will be assessed to the service center's manufacturer. The ACH will transfer all non-compliance fees to the Ignition Interlock Program. The manufacturer will submit a detailed payment report to the Ignition Interlock Program on the day that the non-compliance fees are paid. The report will contain a list of service centers incurring fees and the non-compliance fees associated with each.
 - (a) If the cause of non-compliance is a minor violation of these rules and is corrected immediately, the manufacturer(s) must pay a non-compliance fee of fifty dollars (\$50) for the inspection.
 - (b) If the cause of non-compliance cannot be immediately corrected, the manufacturer(s) must pay a non-compliance fee of one hundred dollars (\$100) to cover the expenses incurred by the Ignition Interlock Program re-inspection.

(Rule 1340-03-06-.18, continued)

- (4) Failing a facility inspection may delay a service center's re-inspection for a maximum of thirty (30) days.

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, and 55-10-425. **Administrative History:** Original rule filed December 17, 2012; effective May 31, 2013. Rule was previously numbered 1340-03-06-.16 but was renumbered 1340-03-06-.18 with the introduction of new rules 1340-03-06-.04 and 1340-03-06-.14 filed February 19, 2020; effective May 19, 2020. Amendments filed February 19, 2020; effective May 19, 2020.

1340-03-06-.19 DENIAL, SUSPENSION, OR REVOCATION OF CERTIFICATION.

- (1) Failure to comply with any requirements set forth in the law or these rules may result in a penalty of being placed temporarily out of service; being assessed a non-compliance fee; or the denial, suspension, or revocation of the service center's or manufacturer's certification, which may prevent the service center from installing, inspecting, and/or removing BAIDs. Other reasons for denial, suspension, or revocation may include, but are not limited to the following:
 - (a) Non-compliance with any of the minimum requirements stated in Chapter 1340-03-06;
 - (b) Providing false or inaccurate information to the Ignition Interlock Program;
 - (c) Assisting or enabling the participant's circumvention of or tampering with the BAID;
 - (d) Installing devices other than those supplied by the service center's manufacturer.
- (2) If a service center's or manufacturer's certification is revoked subsequent to the administrative hearing process, the manufacturer will be responsible for all costs associated with the removal of their BAIDs. Manufacturers aggrieved by the application of this rule have a right to request a hearing pursuant to Rule 1340-03-06-.20.
- (3) If a manufacturer's certification is revoked, suspended, or canceled for any reason in any other state, the manufacturer shall notify the Ignition Interlock Program within seven (7) days.
- (4) Submission of certification fees and non-compliance fees will be the sole responsibility of the manufacturer for their respective service centers. If a manufacturer is more than thirty (30) days delinquent in the payment of any required BAID administrative, certification, or non-compliance fees listed in Rules 1340-03-06-.03, 1340-03-06-.04, 1340-03-06-.14, 1340-06-06-.15, or 1340-03-06-.18, the manufacturer's or service center's certification will be suspended until there is proof that all of the delinquent fees have been paid.

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, and 55-10-425. **Administrative History:** Original rule filed December 17, 2012; effective May 31, 2013. Rule was previously numbered 1340-03-06-.17 but was renumbered 1340-03-06-.19 with the introduction of new rules 1340-03-06-.04 and 1340-03-06-.14 filed February 19, 2020; effective May 19, 2020. Amendments filed February 19, 2020; effective May 19, 2020.

1340-03-06-.20 ADMINISTRATIVE HEARINGS.

- (1) A manufacturer may request in writing an administrative hearing within ten (10) days of written notification of any suspension, revocation, or denial of certification.
- (2) All hearings shall be recorded. A copy of the recording will be provided to the complainant upon receipt of a written request.

(Rule 1340-03-06-.20, continued)

- (3) Only the Hearing Officer is allowed to ask questions during hearings, and the rules of evidence shall not apply.
- (4) The Hearing Officer shall open and preside over each hearing as follows:
 - (a) Read or permit a member of the Ignition Interlock Program to read the reason for suspension, revocation, or denial of certification;
 - (b) Permit an attorney to attend and speak and answer questions on behalf of a manufacturer;
 - (c) Accept documentary proof;
 - (d) Hear the testimony of witnesses, if any;
 - (e) Ask questions, if deemed appropriate;
 - (f) Reconvene the hearing within seven (7) working days for other witnesses unable to attend, if deemed appropriate; and
 - (g) Conclude the hearing.
- (5) At the conclusion of the hearing, the Hearing Officer shall take the matter under advisement and render a written "Hearing Officer's Determination" within fifteen (15) working days of the date of the hearing.
- (6) Appeal of the Hearing Officer's Determination:
 - (a) In the event the manufacturer wishes to appeal the Hearing Officer's Determination, the party shall file a written appeal with the Administrative Support Bureau Lieutenant Colonel within fifteen (15) working days of the date of the Final Hearing Officer's Determination.
 - (b) The Administrative Support Bureau Lieutenant Colonel, acting as the Commissioner's Designee, shall review the Hearing Officer's Determination.
 1. Such review shall be solely on the record compiled by the Hearing Officer, which shall include the recording of the hearing and any documentation submitted during the hearing.
 2. The Lieutenant Colonel shall review the record and render a written decision in thirty (30) working days.
 3. Such decision shall be the final decision of the Department.
- (6) Any party wishing to appeal the Administrative Support Bureau Lieutenant Colonel's decision shall have sixty (60) days from the date of the decision to file a Petition for Review in the Chancery Court of Davidson County, pursuant to T.C.A. § 4-5-322.

Authority: T.C.A. §§ 4-3-2009, 55-10-412, 55-10-417, and 55-10-425. **Administrative History:** Original rule filed December 17, 2012; effective May 31, 2013. Rule was previously numbered 1340-03-06-.18 but was renumbered 1340-03-06-.20 with the introduction of new rules 1340-03-06-.04 and 1340-03-06-.14 filed February 19, 2020; effective May 19, 2020. Amendments filed February 19, 2020; effective May 19, 2020.