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# Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

<b>Agency/Board/Commission:</b>	Department of Safety
<b>Division:</b>	TN Highway Patrol
<b>Contact Person:</b>	Elizabeth Stroecker
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

<b>ADA Contact:</b>	Elizabeth Stroecker
<b>Address:</b>	312 Rosa L. Parks Ave., Nashville, TN 37243
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**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	1150 Foster Avenue		
Address 2:	McCord Hall Building Hearing Room 108		
City:	Nashville		
Zip:	37243		
Hearing Date:	08/10/2023		
Hearing Time:	1:00pm	<input checked="" type="checkbox"/> X CST/CDT <input type="checkbox"/> EST/EDT	

**Additional Hearing Information:**

[https://teams.microsoft.com/join/19%3ameeting\\_ZjFIMDEwZTYtYjMwOC00ZmlxLTg2Y2QtNjViMzhkMzEyMTA5%40thread.v2/0?context=%7b%22Tid%22%3a%22f345bebf-0d71-4337-9281-24b941616c36%22%2c%22Oid%22%3a%223e65be46-f4e6-4e59-a553-6097b28641fd%22%7d](https://teams.microsoft.com/join/19%3ameeting_ZjFIMDEwZTYtYjMwOC00ZmlxLTg2Y2QtNjViMzhkMzEyMTA5%40thread.v2/0?context=%7b%22Tid%22%3a%22f345bebf-0d71-4337-9281-24b941616c36%22%2c%22Oid%22%3a%223e65be46-f4e6-4e59-a553-6097b28641fd%22%7d)

**Revision Type (check all that apply):**

☐ Amendment  
☒ New  
☐ Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

<b>Chapter Number</b>	<b>Chapter Title</b>
1340-03-09	Rules of Ignition Interlock Device Program Licensees
<b>Rule Number</b>	<b>Rule Title</b>
1340-03-09-.01	Purpose and Scope
1340-03-09-.02	Definitions
1340-03-09-.03	Disciplinary Matrix
1340-03-09-.04	Denial, Suspension, or Permanent Revocation of License
1340-03-09-.05	Administrative Hearings

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

These rules are being created to comply with TCA § 55-10-420 that was passed in 2022 and effective in 2023. These rules establish the guidelines for how a company can be licensed to provide ignition interlock services. Additionally, the rules establish the penalty scheme for licensees who violate the rules the department has established.

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

**CHAPTER 1340-03-09  
RULES OF IGNITION INTERLOCK DEVICE PROGRAM LICENSEES  
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**1340-03-09-.01 PURPOSE AND SCOPE.**

To establish standardized rule violation categories and a statewide uniform disciplinary matrix of rule violation penalty guidelines for ignition interlock device manufacturers, subcontractors, service centers, and technicians pursuant to T.C.A. §§ 55-10-420.

**Authority:** T.C.A. §§ 55-10-420.

**1340-03-09-.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'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) Breath Reduction – Reducing the required breath volume for a test sample from 1.5 liters to 1.2 liters of breath volume per test sample due to a doctor-diagnosed medical condition.
- (7) 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. A wet bath simulator should not be utilized as the primary method for conducting BAIID calibrations and should only be used for calibrations when a dry gas standard cannot be obtained due to abnormal supply chain issues.

- (8) 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.
- (9) Certificate of Compliance - a certificate issued into A-list by the manufacturer which indicates that a participant has been compliant with the program conditions for the required period.
- (10) Circumvent - to bypass the correct operation of the BAID.
- (11) Commissioner - the Commissioner of the Tennessee Department of Safety and Homeland Security.
- (12) Compliance Determination Form – a form created by the Department that the manufacturer must use to notify the participant of compliance or non-compliance and the resulting extension of the ignition interlock requirement usage period.
- (13) Compliance-Based Removal - the authorized removal of the BAID as determined by the participant meeting terms set by T.C.A. § 55-10-425.
- (14) Department - the Tennessee Department of Safety and Homeland Security.
- (15) Hearing Officer - the officer designated by the Commissioner to preside over administrative hearings.
- (16) Ignition Interlock Program - the Department of Safety and Homeland Security's program of regulating BAIDs, manufacturers, service centers, and technicians in the State of Tennessee.
- (17) Ignition Interlock Provider – A BAID manufacturer that is licensed by the department pursuant to T.C.A. § 55-10-426.
- (18) Ignition Interlock Service Center Inspection Checklist - a form developed and published by the Ignition Interlock Program to be completed by the manufacturer or service center prior to initial and/or annual renewal inspection.
- (19) Ignition Interlock Usage Period – A three-hundred-sixty-five-consecutive-day period or the entire period of the person's driver's license revocation, whichever is longer.
- (20) In Writing – means either electronically or by regular mail.
- (21) Licensing Period –. The initial licensing period for a manufacturer, subcontractor, service center, or technician may be shorter or longer than one (1) year for any new applicant. This is to allow the Ignition Interlock Program to sync all license expirations and renewals with the Annual License Renewal District Schedule. The initial license application fee will be prorated at a monthly rate beginning on the date of the application. Once the license expiration and renewal cycle are in sync with the Annual License Renewal District Schedule, all subsequent licensing periods will be valid for a period of one year and will expire on the last day of the month. The Annual License Renewal District Schedule form is developed and published by the Ignition Interlock Program.
- (22) Manufacturer - a person or organization responsible for the design, construction, and/or production of the BAID, which has been approved and certified licensed by the Ignition Interlock Program as meeting all of the minimum requirements set forth in these rules.
- (23) 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.
- (24) 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.
- (25) Medical Waiver – A waiver issued by the Department to a person who has been diagnosed by two or more physicians as being unable to produce enough breath volume to operate an ignition interlock device after a breath reduction setting adjustment.
- (26) Non-Compliance - failure to meet the minimum requirements set forth in state law, these rules, a court order, or the device configuration requirements.

- (27) Normal Business Hours - standard workdays of Monday through Saturday between the hours of 7:00 am and 7:00 pm, at a minimum of four (4) hours per day and five (5) days per week, excluding state and federal holidays.
- (28) 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 that has been equipped with a functioning BAIID.
- (29) Permanent Lockout - a condition where the device will not accept a breath test until serviced.
- (30) Permanent Revocation - the indefinite revocation of an entity's or individual's license or ability to provide ignition interlock services or perform the actions authorized under this section.
- (31) Probation - an entity appointed to investigate, supervise, and report on the conduct of program participants.
- (32) 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.
- (33) Progressive Disciplinary Action Time Period (PDATP) - A four (4) year period beginning on the date of the initial violation of an Ignition Interlock Program Rule that will be used to determine Progressive Disciplinary Actions for multiple violations simultaneously committed by the licensee.
- (34) 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.
- (35) 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.
- (36) Remove Interlock Restriction Letter - a letter issued by the Department to a participant indicating program compliance.
- (37) Residual Mouth Alcohol - alcohol found in the oral cavity that dissipates over a short period of time.
- (38) Service Center - the entity designated by the manufacturer and licensed by the Ignition Interlock Program to provide services to include, but not limited to, installation, inspection, maintenance, and removal of the BAIID within Tennessee.
- (39) Service Center License - a certificate license 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.
- (40) Subcontractor - means an individual or entity, other than a service center or technician, seeking to provide intermediary services for a manufacturer, including opening and managing service centers and installing and monitoring ignition interlock devices.
- (41) Suspension – A penalty enforced for a law or rule violation that is considered temporary in nature with a set beginning date and end date. A suspension period can be extended indefinitely until compliance is achieved.
- (42) 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.
- (43) Technician - a person affiliated with a service center and engaged in the installation, inspection, maintenance, and removal of BAIIDs and is responsible for providing device orientation and hands-on training to the program participant in this state.
- (44) 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.

- (45) Technician Training - type(s) of training provided to the technician by the manufacturer including hands-on training, paper materials, and training videos.
- (46) Temporary Lockout Code - a temporary code issued by the manufacturer to a participant whose BAID is in lockout mode.
- (47) Violation - non-compliance with a law, regulation, or rule.

**Authority:** T.C.A. §§ 55-10-420.

### **1340-03-09-.03 DISCIPLINARY MATRIX**

- (1) A licensee who violates a statute, rule, or regulation applicable to their license is subject to penalties to be assessed by the department, including, but not limited to,
  - (a) Denial of ability to perform new installations of ignition interlock devices under this part;
  - (b) Denial of ability to open any new service centers;
  - (c) Requirement to pay for current customers to switch to new ignition interlock device, regardless of the manufacturer; or
  - (d) Suspension or permanent revocation of license, either temporarily or permanently.
  - (e) Violations have been divided into the following three (3) categories: Minor, Moderate, and Severe Violations.
  - (g) The ignition interlock manufacturer must reimburse all participant's monthly fees if extensions are overturned. (i.e., lease fees, calibration fees, taxes, etc.)
- (2) Manufacturer & Subcontractor Violations have been divided into three (3) categories:
  - (a) **Minor Violations** – include the following but are not limited to:
    - 1. One to four (1-4) overturned participant extensions during a PDATP.
    - 2. One to four (1-4) overturned certificates of compliance during a PDATP.
    - 3. Failure to maintain or provide a vehicle inspection report.
    - 4. Failure to respond to all service inquiries by phone within one (1) hour of initial contact by the customer during normal business hours.
    - 5. Failure to provide repair or replacement of any BAID within forty-eight (48) hours of initial contact by the customer.
    - 6. Failure to provide a license issued by the Department to the appropriate service center or technician.
    - 7. **Penalties** for Minor Violations by a Manufacturer or Subcontractor are as follows:
      - (i) First Offense within a licensing period – 30 Day Suspension of New BAID Installations.
      - (ii) Second Offense within a licensing period – 45 Day Suspension of New BAID Installations.
      - (iii) Third Offense within a licensing period – 60 Day Suspension of New BAID Installations.

- (iv) Fourth Offense within a licensing period – 90 Day Suspension of New BAIID Installations.

(b) **Moderate Violations** – include the following but are not limited to:

1. Five to nine (5-9) overturned participant extensions during a PDATP.
2. Five to nine (5-9) overturned certificates of compliance during a PDATP.
3. The overcharging of any participant fees set in the Rules.
4. Failure to provide notice before any software updates.
5. Failure to notify the Ignition Interlock Program of any state's certification or license revocation or suspension within seven (7) days of occurrence.
6. Failure to open at least one licensed service center in each of the eight (8) THP Districts within the first year of becoming a licensed BAIID manufacturer in Tennessee.
7. Failure to open and maintain licensed service centers at a distance no greater than one hundred (100) miles from each other within the geographic boundaries of Tennessee.
8. **Penalties** for Moderate Violations by a Manufacturer or Subcontractor are as follows:
  - (i) First Offense within a licensing period – 45 Day Suspension of New BAIID Installations.
  - (ii) Second Offense within a licensing period – 60 Day Suspension of New BAIID Installations.
  - (iii) Third Offense within a licensing period – 90 Day Suspension of New BAIID Installations.
  - (iv) Fourth Offense within a licensing period – License permanent revocation & permanent removal from Program.

(c) **Severe Violations** – include the following but are not limited to:

1. Ten or more (10+) overturned participant extensions during a PDATP.
2. Ten or more (10+) overturned certificates of compliance during a PDATP.
3. Installation of any BAIID that does not meet the most recent model specifications established by the National Highway Traffic Safety Administration (NHTSA).
4. Installation of any BAIID that does not meet all of the specified requirements described in the Approved BAIID Requirements Section: 1340-03-06.06 of the Ignition Interlock Program Rules.
5. Utilizing service center locations in Tennessee to conduct any type of installs, calibrations, servicing, or removal of the interlock device before the location has been inspected, approved, and licensed by the Ignition Interlock Program.
6. Sending customers to a service center outside of Tennessee for installs, calibrations, servicing, or removals without prior written approval through the Ignition Interlock Program.
7. The inability to submit all required reports electronically to the Ignition Interlock Program via the A-List automated reporting system.

8. **Penalties** for Severe Violations by a Manufacturer or Subcontractor are as follows:

- (i) First Offense within a licensing period – 60 Day Suspension of New BAIID Installations Up to License permanent revocation & permanent removal from the Program.
- (ii) Second Offense within a licensing period – 90 Day Suspension of New BAIID Installations Up to License permanent revocation & permanent removal from the Program.
- (iii) Third Offense within a licensing period – 120 Day Suspension of New BAIID Installations Up to License permanent revocation & permanent removal from the Program.
- (iv) Fourth Offense within a licensing period - License permanent revocation & permanent removal from the Program.

(3) Service Center Violations have been divided into three (3) categories:

(a) **Minor Violations** – include the following but are not limited to:

- 1. Service Center's license was not posted at the time of an interim or renewal inspection.
- 2. Service Center is unable to produce a technician's license during an interim or renewal inspection.
- 3. Service Center Hours of Operation are not properly posted.
- 4. Manufacturer's 24-hour Emergency Number is not posted.
- 5. Manufacturer's Price Sheet was not posted as required.
- 6. Compliance Based Removal Form not posted.
- 7. Manufacturer's Device Manual or Reference Guide was not provided to the customer at the time of installation.
- 8. Vehicle Inspection Not Conducted Prior to Installation of a BAIID.
- 9. Vehicle Inspection Report not completed and retained.
- 10. Failure to pass an accuracy check, improper storage, or failure to properly maintain the dry gas or wet bath calibration equipment, labels, logs, etc.

11. **Penalties** for a Minor Violation by a Service Center or Technician are as follows:

- (i) First Offense within a licensing period – A fifty-dollar (\$50.00) Noncompliance Fee will be assessed to the Service Center.
- (ii) Second Offense within a licensing period – A one-hundred-dollar (\$100.00) Noncompliance Fee will be assessed to the Service Center.
- (iii) Third Offense within a licensing period – A thirty (30) day suspension of all new BAIID installations.
- (iv) Fourth Offense within a licensing period – A sixty (60) day suspension of all new BAIID installations.

(b) **Moderate Violations** – include the following but are not limited to:

- 1. Allowing Customers to Watch Installs or Removals.



2. Failure to Install, Service, & Remove Devices in all Makes and Models only by Licensed Technicians.
3. Failure to Secure Customer Files, Tamper Seals, Etc.
4. Improper Removal of the Interlock Device
5. Failure to Conduct Proper Orientation for the customer and anyone who shares the vehicle.
6. Failure to provide a BAIID Ignition Interlock Program Requirements brochure to new customers.
7. Failure to Comply with the Monitoring Requirements or to Conduct the Monthly Vehicle Inspections for Tampering, etc.
8. The overcharging of any fees set by the Program Rules.
9. Failure for the service center to be easily available and remain open during normal business hours.
10. Failure to provide repair or replacement of a BAIID within (48) hours of initial contact by the customer, and/or failure to report any changes by submitting a transfer report into A-list within (48) hours of the changes.

11. **Penalties** for a Moderate Violation by a Service Center or Technician are as follows:

- (i) First Offense within a licensing period – A thirty (30) day suspension of all new BAIID installations.
- (ii) Second Offense within a licensing period – A sixty (60) day suspension of all new BAIID installations.
- (iii) Third Offense within a licensing period – A ninety (90) day suspension of all new BAIID installations.
- (iv) Fourth Offense within a licensing period – A one hundred twenty (120) day suspension of all new BAIID installations.

(c) **Severe Violations** – include the following but are not limited to:

1. Failure to Comply with Service Center Owner Requirements or the Service Center or Technician Licensing Requirements.
2. Failure to Comply with Technician Rule Requirements or the Technician Training Requirements.
3. Failure to comply with the minimum requirements for installation and any other state and federal laws applicable to BAIIDS and BAIID manufacturers.
4. Conducting the installation, calibrations, servicing, or removals of a BAIID at any location other than a licensed service center's fixed facility within the State of Tennessee, without prior written approval from the Ignition Interlock Program.
5. Failure to place tamper-proof seals that are proprietary to the BAIID manufacturer on every connection during the installation.
6. Failure to follow all written instructions from the manufacturer for the installation and removal of the BAIID.

7. Failure to schedule servicing, inspections, and monitoring of each BAID and all of its components thirty (30) days after the initial installation and at least every thirty (30) days thereafter.
8. **Penalties** for a Severe Violation by a Service Center or Technician are as follows:
  - (i) First Offense within a licensing period – A sixty (60) day suspension of all new BAID installations.
  - (ii) Second Offense within a licensing period – A ninety (90) day suspension of all new BAID installations.
  - (iii) Third Offense within a licensing period – A one hundred twenty (120) day suspension of all new BAID installations.
  - (iv) Fourth Offense within a licensing period – License permanent revocation and permanent removal from the Ignition Interlock Device Program.
- (4) All other violations not specifically listed shall be left to the sole discretion of the Department.
- (5) If a licensee commits multiple violations simultaneously, the violation with the highest degree of Disciplinary Action shall be enforced. All other violations shall be noted and shall count toward Progressive Disciplinary Action if future violations occur within the same category within the PDATP.
- (6) The PDATP will begin on the date of the issuance of the license the violation was upheld and will be used for the calculation of progressive Disciplinary Actions.
- (7) More than four (4) offenses in the same category within a four (4) year period the PDATP could result in a penalty of a temporary suspension of the license up to permanent revocation of the license.

**Authority:** T.C.A. §§ 55-10-420.

#### **1340-03-09-.04 DENIAL, SUSPENSION, OR PERMANENT REVOCATION OF LICENSE**

- (1) The denial of a license either on initial issuance or renewal is subject to administrative review.
  - (a) The applicant must request a review in writing, either by electronic mail or regular mail, to the ignition interlock division. The ignition interlock division will forward the request to the Colonel of the highway patrol or their designee for review and a final determination. The applicant must submit all information necessary to show why the denial of the license or renewal was incorrect with the request.
  - (b) The Colonel or their designee must review the information from the application or renewal, the licensee's history, and the information provided by the licensee, and must render a written determination, either through electronic mail or regular mail, within thirty (30) business days.
  - (c) The decision of the colonel or designee is reviewable under § 4-5-322.

**Authority:** T.C.A. §§ 55-10-420.

#### **1340-03-09-.05 ADMINISTRATIVE HEARINGS.**

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

- (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, permanent 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.
    - 4. 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. §§ 55-10-420.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: June 7, 2023

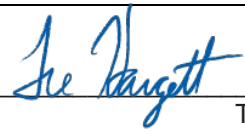
Signature: *Elizabeth R. Stroecker*

Name of Officer: Elizabeth Stroecker

Title of Officer: Director of Legislation

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Filed with the Department of State on: 6/7/2023



Tre Hargett  
Secretary of State

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