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Mark Burghart, Secretary

Laura Kelly, Governor

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

A public hearing will be conducted by the Department of Revenue on September 27, 2019 at 9:00am to 11:00am in the KDOR Secretary Conference Room, 4th floor to consider the amended regulation for 92-56-2, ignition interlock device regulation. Copies of this proposed regulation may be found at <https://www.ksrevenue.org/prproposedregulations.html>.

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 regulation. All interested parties may submit written public comments on the proposed regulation prior to the hearing to Erin Starr, Financial Economist, Office of Research and Analysis, Mills Building, 109 SW 9th St., Topeka, Kansas 66612 or through e-mail at erin.l.starr@ks.gov.

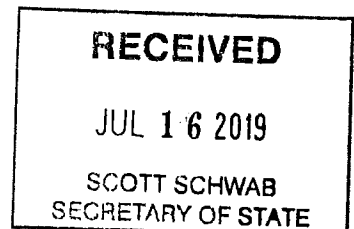
All interested parties will be given a reasonable opportunity to present their views, either orally or in writing or both, concerning the adoption of the proposed regulation. In order to give all parties an opportunity to present their views, it may be necessary to request that each participant limit 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 regulation and economic impact statement 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 Erin Starr at (785) 296-8042 or TTY (785) 296-6461. Disabled parking is located on the north side of the Mills Building on either side of 9th St. The north entrance to the Mills Building is accessible.

This regulation is proposed for adoption on a permanent basis. A summary of the proposed regulation and the economic impact follows:

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

Amended K.A.R. 92-56-2. The proposed K.A.R. 92-56-2 is an amendment to an existing regulation that would require breath alcohol ignition interlock device manufacturers to include camera technology in all breath alcohol ignition interlock devices (BAIID) installed in the State of Kansas. New subsection (l) explains the image capture requirements for State approved devices. New subsection (m) corrects a citation defect in the existing regulation. New subsection (n) sets out a time frame for ignition interlock device manufacturers to comply with the new digital image capture requirements.



Economic Impact:

In discussions with the BAID industry, the Department anticipates on average, an estimated impact of \$163.83 per individual. The increased cost is due to the addition of a camera requirement for all interlock devices. The estimated annual increase is \$738,467. Cost estimates are on the high end, as there is a likelihood that some of the BAID providers will not have additional costs (the cameras are already incorporated into equipment) or pass them on to the consumer.

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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;

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(H) encodes the corresponding time and date the breath sample was provided, a digital image of the individual who provided the sample, and BrAC of the individual who provided the breath sample into the device;

(I) 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

(J) 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,

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service, repair, calibration, use, removal, or performance of each ignition interlock device;

(B) all digital images and the associated data shall be retained in the device until the digital images and associated data are downloaded and stored by a manufacturer. The manufacturer shall store the downloaded digital images and associated data for three years after capture by the device;

(C) 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;

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

(~~D~~) (E) 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~~) (F) 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.

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(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~~ All 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

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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

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(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.

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

(k) 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) a digital image in accordance with the following:

(A) The digital image can identify the individual providing the breath sample in all lighting conditions;

(B) the capture of the digital image does not distract or impede the driver in any manner from the safe and legal operation of the vehicle; and

(C) the digital image is associated with the date, the time, and the individual's BrAC for each attempted use;

(4) 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) ~~(5)~~ the length of time the vehicle was operated; and

~~(5)~~ ~~(6)~~ any indication of tampering.

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

(l) The requirements of this regulation shall take effect for all device installations beginning 90 days after publication of this regulation in the Kansas register. Each manufacturer shall replace any currently installed device that does not meet the requirements of this regulation with a device that is compliant upon

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the first calibration following the date this regulation takes effect. (Authorized by
and implementing K.S.A. 8-1016; effective Oct. 23, 1989; amended July 5, 2002;
amended May 2, 2014; amended Nov. 6, 2015; amended P-
_____.)

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

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt along with the following to the Division of the Budget.

I. Brief description of the proposed rule(s) and regulation(s).

The proposed K.A.R. 92-56-2 is an amendment to an existing regulation that would require breath alcohol ignition interlock device manufacturers to include camera technology in all breath alcohol ignition interlock devices (BAIID) installed in the State of Kansas. New subsection (l) explains the image capture requirements for State approved devices. New subsection (m) corrects a citation defect in the existing regulation. New subsection (n) sets out a time frame for ignition interlock device manufacturers to comply with the new digital image capture requirements.

II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)

The digital image capture requirement is required in other states, but is not federally mandated, Arizona, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Indiana, Kentucky, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Virginia, Washington, and West Virginia require digital image capture. The rules of the other states are not mandated federally. Each state listed has imposed their own rules and regulations that are similar to what is being requested for Kansas.

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III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The Department anticipates this regulation may have an economic impact upon manufacturers providing BAIID services within the State. The Department anticipates that some manufacturers may pass on the cost of digital image capture to their customers. Other manufacturers may not pass on the cost to acquire a competitive price advantage.

B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;

In discussions with the BAIID industry, the Department anticipates on average, an estimated impact of \$163.83 per individual. The increased cost is due to the addition of a camera requirement for all interlock devices. The estimated annual increase is \$738,467. Cost estimates are on the high end, as there is a likelihood that some of the BAIID providers will not have additional costs (the cameras are already incorporated into equipment) or pass them on to the consumer.

C. Businesses that would be directly affected by the proposed rule and regulation;

BAIID industry

D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;

The Division of Vehicles, in consultation with law enforcement officers and state prosecutors, have realized that there are existing burdens to investigating violators of K.S.A. 2017 Supp. 8-1018(a)(2) & (3) that effectively block many cases from being charged. It is a Class A misdemeanor if a person requests another to blow into a BAIID, or start a motor vehicle equipped with such device, providing an operable motor vehicle to a person whose driving privileges have been restricted to driving a motor vehicle equipped with a BAIID device. It is very difficult for prosecutors to establish a violation of K.S.A. 2017 Supp. 8-1018(a)(2) or (3) after the fact if no image is captured of the individual who blew into the BAIID. The division receives less than 30 of these reported conviction types a year and has proposed this regulation to assist law enforcement and prosecutors.

By including an image capture in all BAIID devices, the Division and law enforcement will have the tools necessary to better investigate situations where a driver with a BAIID installed is involved in a motor vehicle accident, is arrested for driving while impaired, or to support Division investigations relating to tampering that are reported from BAIID service providers. This information will assist the State in determining whether an installed BAIID was ineffective or whether the driver illegally circumvented the machine to enable vehicle operation.

The digital image capture requirement is required in other states. The Division is concerned that if this regulation is not approved, manufacturers may begin

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moving older, outdated BAIID devices, without digital image capture, into the State.

E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;

The agency has requested that each manufacturer provide a cost estimate showing how this change would affect the customer. This is a competitive market and each manufacturer is looking to access minimal costs to the customer in order to maintain their service here in Kansas.

F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

The total increase would be \$1,476,934.72 over a two-year span for new customers and a \$106,330.00 increase for current customers upgrading current device. Current customers would only see this install price during the first year. Cost estimates are on the high end, as there is a likelihood that some of the BAIID providers will not have additional costs (the cameras are already incorporated into equipment) or pass them on to the consumer.

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

YES NO

Give a detailed statement of the data and methodology used in estimating the above cost estimate.

A draft version of this economic statement, along with the proposed regulation, has been prepared by the Department of Revenue and circulated amongst the BAIID industry, State agencies, and other third parties, to determine if it is an acceptable, least intrusive method to ensure the individual providing a breath sample into a BAIID device is the same individual driving. To date, there have been no alternative methods suggested that could achieve the same result.

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES NO

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- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.**

This proposed regulation would not increase or decrease revenues of the cities, counties, or school districts.

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).**

A customer compliance working group was created to discuss the impact of requiring the installation of cameras to the interlock devices. Groups involved in discussions included BAID vendors, law enforcement, probation officers, KDOR-Driver Solutions, MADD, Kansas Traffic Safety Resource Office and the public.

- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).**

The regulation does not apply to an environmental rule.

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