

**COLORADO**Department of Public
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

To: Members of the State Board of Health

From: Jeff Groff, Evidential Breath Alcohol Testing Program Manager, Laboratory Services Division (LSD)

Through: Dr. Laura Gillim-Ross, LSD Director - *LGR*

Date: January 5, 2015

Subject: Request for Rule Making Hearing
Proposed repeal of 5 CCR 1005-3- Breath Alcohol Ignition Interlock Devices

Dear State Board of Health Members,

The Department is recommending the repeal of the State Board of Health Rule 5 CCR 1005-3 alcohol ignition interlock devices. These rules, which are authorized but not required by statute, were promulgated in 2002. Stakeholders do not rely upon the rule but instead rely upon the statute and the Department's list. Because the rule does not provide any additional information and is unnecessarily redundant, the Department recommends that it be repealed. Repeal of the rule does not modify the role of the Department or the processes for the Department or Department of Revenue as mandated by § 42-2-132.5, C.R.S.

The recommended repeal does not pose any source of controversy, nor will there be a financial impact upon stakeholders.

Thank you for your consideration.

Jeff Groff - *JAG*
Laboratory Certification Program Manager
Laboratory Services Division
CDPHE

STATEMENT OF BASIS AND PURPOSE
AND SPECIFIC STATUTORY AUTHORITY
for repeal of

5 CCR 1005-3 Breath Alcohol Ignition Interlock Devices

Basis and Purpose.

Under Section § 42-2-132.5(9), C.R.S., the Board of Health has the authority to promulgate these rules concerning the approval of Breath Alcohol Ignition Interlock Devices (BAIID's). Pursuant to the Rules and Regulations of the Colorado State Board of Health, Ignition Interlock Devices (5 CCR 1005-3), the Colorado Department of Public Health and Environment reviews and approves such devices for use.

The Department's Evidential Breath Alcohol Testing (EBAT) program verifies the National Highway Traffic Safety Administration (NHTSA) approval of the device in accordance with Federal Register Volume 78, Number 89, Wednesday May 8, 2013 pp. 26849-67. Upon verification of NHTSA approval to the current Model Specifications for Breath Alcohol Ignition Interlock Devices, the Department will list the device on the approval list and publish it on our website for public access.

The purposes for repeal of 5 CCR 1005-3 are as follows:

- The current Rule 5 CCR 1005-3 does not provide additional benefit or processes that exceed existing Colorado statutory requirements.
- The processes currently outlined in the Rule 5 CCR 1005-3 do not exceed existing Federal requirements nor provide additional testing beyond what is required by NHTSA.

Specific Statutory Authority.

These rules are promulgated pursuant to the following statute: § 42-2-132.5(9), C.R.S.

SUPPLEMENTAL QUESTIONS

Is this rulemaking due to a change in state statute?

_____ Yes, the bill number is _____; rules are ___ authorized ___ required.
 No

Is this rulemaking due to a federal statutory or regulatory change?

_____ Yes
 No

Does this rule incorporate materials by reference?

_____ Yes
 No

Does this rule create or modify fines or fees?

_____ Yes
 No

REGULATORY ANALYSIS
for repeal of
5 CCR 1005-3 Breath Alcohol Ignition Interlock Devices

1. A description of the classes of persons who will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.
 - a. The Colorado Department of Revenue selects which Breath Alcohol Ignition Interlock Device is to be used from the Department's approved list when administering their Ignition Interlock Program. Repealing the rule does not modify the current process.
 - b. No financial impact or costs are associated with the proposed removal of the current Rule (5 CCR 1005-3).
2. To the extent practicable, a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons.

Quantitative Impact:
No quantitative impact is anticipated.

Qualitative Impact:
No qualitative impact is anticipated.
3. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

There are no identified costs anticipated to the Department or any other stakeholders by repealing this rule.
4. A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

The costs and benefits of the proposed rules:

 - Decreased redundancy.

The costs and benefits of inaction to the proposed rules:

 - Redundancy.
5. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

No financial impact is identified in the proposed rule repeal.
6. Alternative Rules or Alternatives to Rulemaking Considered and Why Rejected.

Not applicable
7. To the extent practicable, a quantification of the data used in the analysis; the analysis must take into account both short-term and long-term consequences.

N/A

STAKEHOLDER Comment
for repeal of
5 CCR 1005-3 Breath Alcohol Ignition Interlock Devices

The following individuals and/or entities were included in the development of these proposed rules:

- Brett Close - Operations Manager, Driver Services, Colorado Department of Revenue.

The following individuals and/or entities were notified that this rule-making was proposed for consideration by the Board of Health:

- Notification posted on LSD website in May 2014.
- Notification was shared with the Governor's Task Force on Drunk and Impaired Driving (TFDID) in May 2014.
- Notification was shared with officials from the Colorado Department of Revenue Driver Services Division who administer the Interlock program in May 2014.

Summarize Major Factual and Policy Issues Encountered and the Stakeholder Feedback Received. If there is a lack of consensus regarding the proposed rule, please also identify the Department's efforts to address stakeholder feedback or why the Department was unable to accommodate the request.

Stakeholder feedback has been minimal. No issues having been raised on the proposed changes.

Please identify health equity and environmental justice (HEEJ) impacts. Does this proposal impact Coloradoans equally or equitably? Does this proposal provide an opportunity to advance HEEJ? Are there other factors that influenced these rules?

None identified at this time.

DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**Laboratory Services Division****APPROVAL OF BREATH ALCOHOL IGNITION INTERLOCK DEVICES****5 CCR 1005-3**

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

1.1 Purpose and Scope.

This rule establishes the process and requirements for the evaluation and approval of breath alcohol ignition interlock devices by the Colorado Department of Public Health and Environment, Laboratory and Radiation Services Division and establishes the alcohol setpoint of breath alcohol concentration at which the device will prevent a driver from starting and operating a motor vehicle. This approval and rule making authority is stated in Colorado Revised Statutes section 42-2-132.5 (7)(a) & (b), 2001, as amended.

Approval of breath alcohol ignition interlock devices will be based on the device meeting or exceeding the model specifications as determined in the National Highway Traffic Safety Administration (NHTSA) "Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS)" published in the Federal Register, Vol. 57, No. 67, Tuesday, April 7, 1992, pp. 11772-87. Any material incorporated by reference in these rules does not include later amendments to or editions of the incorporated material.

A certified copy of the NHTSA "Model Specifications" is available for public inspection during regular business hours or can be obtained by contacting the Colorado Department of Public Health and Environment, ATTN: Director, Laboratory and Radiation Services Division, 8100 Lowry Boulevard, Denver, CO 80230. Certified copies shall be provided at cost upon request. Any material that has been incorporated by reference in these rules may be examined at any state publications depository library.

1.2 Definitions as Used in This Regulation.

"Alcohol setpoint" means the breath alcohol concentration at which the ignition interlock device is set to lock the ignition and prevent the vehicle from being started.

"Approved ignition interlock device," "breath alcohol ignition interlock device (BAIID)," or "ignition interlock" means a device approved by the Colorado Department of Public Health and Environment that

- 1) is installed in a motor vehicle, and
- 2) measures the breath alcohol content of the driver before a vehicle is started, and
- 3) periodically requires additional breath samples during vehicle operation, and
- 4) prevents a driver from starting a motor vehicle or continuing normal operation if the device measures an alcohol level above the level established by the Colorado Department of Public Health and Environment.

"Approved list" means a list of ignition interlock devices that have been approved by the Colorado Department of Public Health and Environment.

"CDPHE" means the Colorado Department of Public Health and Environment.

"Model specifications" means the specifications for the performance and testing of breath alcohol ignition interlock devices as determined in the National Highway Traffic Safety Administration (NHTSA) "Model

Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDS)" published in the Federal Register, Vol. 57, No. 67, Tuesday, April 7, 1992, pp. 11772-87. This rule does not include later amendments to or editions of the incorporated material.

1.3 Requirements for Approval.

1.3.1 All ignition interlock devices approved for use in Colorado for implementation of Colorado Revised Statutes (CRS) Section 42-2-132.5 (7)(a) & (b), 2001, as amended, must meet or exceed all of the performance requirements set forth in the National Highway Traffic Safety Administration's "Model Specifications for Breath Alcohol Ignition Interlock Devices" (Federal Register, Vol. 57, No. 67, Tuesday, April 7, 1992, pp. 11772-87). This rule does not include later amendments to or editions of the incorporated material.

1.3.2 In addition to meeting the model specifications, manufacturers or distributors of ignition interlock devices must provide required documentation to CDPHE as established in specific CDPHE protocols. This documentation will include

- 1) a written request to CDPHE for approval for each specific model of ignition interlock device, and
- 2) an affidavit from a nationally recognized, independent testing laboratory approved by CDPHE stating that each model of device has been tested and meets or exceeds the model specifications.

1.3.3 The NHTSA model specifications contain optional features specifications and optional features tests. Optional features specifications and optional features tests will not be considered by CDPHE for approval of the ignition interlock device. Optional features that are included by the manufacturer and tested by the nationally recognized laboratory will be used for informational purposes only.

1.4 Approved List of Ignition Interlock Devices.

CDPHE shall publish an approved list of ignition interlock devices. To obtain a copy, call (303) 692-3090.

1.4.1 CDPHE will update the approved list when a device is added or dropped.

1.4.2 Once a specific model is approved, no modification in design or operational concept may be made without prior written approval of CDPHE.

1.4.3 Any model of ignition interlock device that has received initial approval may be removed from the approved list if there is evidence that the device does not meet the model specifications when under actual use in Colorado.

1.5 Setpoint Value.

Approved ignition interlock devices will have an established alcohol setpoint value of 0.025 g/210 liters of breath.