**Section 1001.441 Procedures for Breath Alcohol Ignition Interlock Device** **Conditioned RDPs**

a) BAIID Required for RDP; Fee Required

1) The issuance of RDPs to a BAIID petitioner shall be conditioned upon the use of a Breath Alcohol Ignition Interlock Device (BAIID), as required by IVC Sections 6-205, 6-206 and/or 11-501.01. As provided in these Sections, a BAIID petitioner must pay a non-refundable fee of $30 per month on an annual basis, for a total annual payment of $360. This total annual payment must be paid in advance and prior to the issuance of any permit. Payment must be submitted in the form of a money order, check, or a credit card charge (with a pre-approved card), made payable to the Secretary of State.

2) A BAIID petitioner who is renewing an RDP and who also is eligible for the reinstatement of driving privileges less than 12 months from the date of the expiration of the current RDP at the time the petitioner renews the permit shall not be required to make an annual payment. If the petitioner has been scheduled for a formal hearing on a petition for reinstatement at the time of renewal, then petitioner shall pay the above-referenced fee in an amount equal to the number of months between the date of renewal and date of the hearing, plus an additional 3 months (not to exceed 12 months), times $30. If the petitioner does not have a formal hearing on a petition for reinstatement scheduled at the time of renewal, then the fee shall be paid for 9 months. If, however, the petitioner is denied reinstatement, then the petitioner must resume payment on an annual basis.

b) Notification of BAIID Requirements. The Secretary shall notify any BAIID petitioner who requests a hearing of the procedures for obtaining a BAIID and the BAIID requirements. Notification may be accomplished in one of the following ways, though not limited thereto: informal hearing officer; phone contact; written notification, or by electronic mail.

c) Type of Hearing Required. All hearings involving a BAIID petitioner seeking driving relief shall be formal hearings, except renewal of a RDP when the petitioner had no BAIID violations or if a monitor report indicated a BAIID violation had occurred, but the petitioner submitted an explanation to the BAIID Division that reasonably assured the Division that no violation had occurred may be done at an informal hearing. Any hearing involving a BAIID petitioner shall be conducted as any other hearing under this Part and all other applicable standards shall apply.

d) Petitioner Must Meet Requirements of Subpart D. The Secretary shall issue an RDP to a BAIID petitioner if, through the hearing process, the petitioner is determined to meet all of the requirements of this Subpart D and installs and utilizes a BAIID in all motor vehicles operated, by the BAIID petitioner and, where applicable, all motor vehicles owned by the BAIID petitioner as required by the RDP issued under this Subpart D. A BAIID permittee who does not meet the requirements of Subpart D at the time of renewal as a result of BAIID violations incurred during the monitoring period may only be renewed for a maximum of 12 months. The petitioner must come into compliance with all provisions of Subpart D during that 12-month renewal period. Failure to come into compliance with Subpart D will result in denial of renewal and for BMO permittees, restart the 1,826-day requirement in Sec. 1001.443. BAIIDs shall not be installed on, nor shall BAIID permittees operate motorcycles, motor driven cycles or commercial motor vehicles requiring a commercial driver's license.

e) Hearing Officer's Responsibilities; Petitioner's Responsibilities. Prior to the taking of evidence at the hearing:

1) The hearing officer shall ensure that the BAIID petitioner understands: all of the provisions and requirements of receiving a BAIID permit; that to obtain an RDP the BAIID petitioner must minimally meet all of the requirements of Section 1001.440 and install and utilize the BAIID; that a BAIID petitioner's agreement to install a BAIID or willingness to comply with the BAIID requirements does not guarantee issuance of an RDP; and that all costs associated with the BAIID are the responsibility of the BAIID petitioner; and

2) The BAIID petitioner shall advise the hearing officer that the petitioner understands all of the provisions and conditions of the BAIID requirements and whether the petitioner agrees to comply with the BAIID requirements. If the BAIID petitioner is unwilling to use the BAIID, or comply with this Section, the petitioner shall be advised that an RDP cannot be granted.

f) Decision. After the hearing, the hearing officer shall consider the evidence and the relief requested and make a recommendation as in any other hearing under this Part.

1) If the hearing officer does not determine that the relief requested should be granted, an order denying relief shall be prepared.

2) If the hearing officer determines that an RDP should be granted, an order granting an RDP shall be prepared with the additional requirement that the RDP is conditioned upon the installation and continued use of a BAIID . All RDPs issued under this Section shall require continued use of the BAIID until the driving privileges of the petitioner are reinstated.

g) Installation of BAIID. Upon the issuance of an RDP under this Section, the Secretary shall make available a list of certified BAIID providers to the BAIID permittee. In addition to the other requirements under this Part, the BAIID permittee may operate the vehicle for 14 days from the issuance of the RDP without a BAIID installed, solely for the purpose of taking the vehicle to a BAIID provider or installer for installation of a BAIID. The permittee must be the individual who takes the vehicle to the installer to have the BAIID installed, and must have a reference image taken by the installer at the time of installation. Within 7 days from the date of the installation of the BAIID, the installer or BAIID provider must notify the Secretary that a BAIID has been installed in the vehicles designated by the BAIID permittee. Proof of installation shall be by such means as determined by the Secretary from the installer or BAIID provider. Failure to comply with these requirements will result in the denial of driving relief and the cancellation of any RDP issued.

h) Petitioner's Responsibilities – Driving with a BAIID. Any BAIID petitioner receiving an RDP under this Section must comply with the following requirements:

1) Operate only vehicles with an installed, operating BAIID certified by the Secretary whether the vehicle is owned, rented, leased, loaned, or otherwise in the possession of the BAIID permittee as required by the RDP issued under this Section.

2) Except when a BAIID has been installed that may be read remotely, take the vehicle with the BAIID installed to the BAIID provider or installer or send the appropriate portion of the BAIID to the BAIID provider or installer within the first 30 days for an initial monitor report to help the BAIID permittee learn how to correctly use the BAIID, and thereafter not longer than every 60 days for the purposes of calibration and having a monitor report of the BAIID's activity prepared and sent to the Secretary by the BAIID provider or installer.

3) If a BAIID has been installed that permits the BAIID permittee to mail in a portion of the BAIID to be read and calibrated, or that allows the BAIID to be read remotely, that BAIID permittee shall be required to bring the vehicle into a BAIID installation site at least once every 6 months so that the BAIID and all wiring and connections related to the BAIID may be inspected for signs of tampering or circumvention.

4) Within 5 working days after any service or inspection notification, take the vehicle with the BAIID installed to the BAIID provider or installer or send the appropriate portion of the BAIID to the BAIID provider or installer, as instructed, for a monitor report.

5) Maintain a journal of events recording unsuccessful attempts to start the vehicle, failures to successfully complete a running retest, any problems with the BAIID and the name of the driver operating the vehicle at the time of the event. If BAIIDs have been installed on multiple vehicles pursuant to Section 1001.443, a separate journal must be kept for each vehicle, recording unsuccessful attempts to start the vehicle, failures to successfully complete a running retest, any problems with the BAIID, and the name of the driver operating the vehicle at the time of the event.

6) Ensure that the BAIID camera is aimed, and the person using the BAIID is situated, so that the camera captures a clear and accurate image of the individual blowing into the BAIID, including a sufficiently wide angle that it will be possible to determine whether the individual blowing into the BAIID is seated in the driver's seat and whether a circumvention device has been inserted into the mouthpiece of the BAIID.

7) Shall not have a BAIID removed or uninstalled from the BAIID permittee's vehicle prior to notifying the Secretary and surrendering the RDP to the Secretary or the Secretary's designee.

i) Review of Monitor Reports; Sanctions for Failure to Comply. Upon receipt or nonreceipt of monitor reports, the Secretary shall review them and take the action specified in this subsection (i). Failure of the BAIID permittee to comply with the requirements of this Subpart D shall be made part of the BAIID permittee's record of performance to be considered at future formal hearings.

1) For any BAIID permittee whose monitor reports show 10 or more unsuccessful attempts to start the vehicle, or a failure to successfully complete a running retest, during the initial monitor period, the Secretary shall send a warning letter to the BAIID permittee indicating that future unsuccessful attempts to start the vehicle or failure to successfully complete a running retest will result in the Secretary sending a letter to the BAIID permittee asking for an explanation of the unsuccessful attempts to start the vehicle or the failure to successfully complete a running retest;

2) For any BAIID permittee whose monitor reports show 10 or more unsuccessful attempts to start the vehicle after the initial monitor report period, the Secretary shall send the BAIID permittee a letter asking for an explanation of the unsuccessful attempts to start the vehicle. If a response is received within 21 days after the date of the Secretary's letter and it reasonably assures the Secretary that no violation occurred, no further action will be taken. If a response is not received within 21 days or does not reasonably assure the Secretary, the failure to comply will be made part of the BAIID permittee's record of performance;

3) For any BAIID permittee whose monitor reports show a failure to successfully complete a running retest, after the initial monitor report period, the Secretary shall send the BAIID permittee a letter asking for an explanation of the failure to successfully complete a running retest. If a response is received within 21 days after the date of the Secretary's letter and it reasonably assures the Secretary that no violation occurred, no further action will be taken. If a response is not received within 21 days or does not reasonably assure the Secretary, the failure to comply will be made part of the BAIID permittee's record of performance;

4) For any BAIID permittee whose monitor reports show a BrAC reading of 0.05 or more or a pattern of BrAC readings consistent with the use of alcoholic beverages, regardless of any other provision contained in this Section, there shall arise a rebuttable presumption that the BAIID permittee consumed alcoholic beverages. In every case, the Secretary shall send a letter asking for an explanation of the BrAC reading or the pattern of BrAC readings consistent with the use of alcoholic beverages. If a response is received within 21 days after the date of the Secretary's letter and it reasonably assures the Secretary that the BAIID permittee did not consume alcoholic beverages, no further action will be taken. If a response from a BAIID permittee is not received within 21 days or does not reasonably assure the Secretary, the failure to comply will be made part of the BAIID permittee's record of performance to be considered by the hearing officer at the next hearing;

5) For any BAIID permittee who fails a running retest, or fails to take a running retest, the Secretary shall send the BAIID permittee a letter asking for an explanation of the incident. If a response is received within 21 days after the date of the Secretary's letter and it reasonably assures the Secretary that no violation occurred, no further action will be taken. If a response is not received within 21 days or does not reasonably assure the Secretary, the failure to comply will be made part of the BAIID permittee's record of performance;

6) For any BAIID permittee whose initial monitor report or subsequent monitor reports show any tampering with or unauthorized circumvention of the BAIID, or if physical inspection by an installer shows any tampering with or unauthorized circumvention of the BAIID, the Secretary shall send the BAIID permittee a letter asking for an explanation of the tampering or unauthorized circumvention. If a response is received within 21 days after the date of the Secretary's letter and it reasonably assures the Secretary that no violation occurred, no further action will be taken. If a response is not received within 21 days or does not reasonably assure the Secretary, then the Secretary shall immediately cancel the RDP and authorize the immediate removal/uninstallation of the BAIID.

7) For any BAIID permittee required to submit a letter of explanation, if a review of the images taken at the time of the violation indicates the BAIID camera was prevented from taking clear and accurate images of the individual blowing into the mouthpiece, the explanation shall automatically be rejected and the appropriate sanction, as set forth in this subsection (i), shall be imposed.

8) If review of the images captured by the BAIID indicates the camera is obstructed or the BAIID permittee, other person attempting to start the vehicle, or the camera is positioned in such a manner as to prevent a clear image of the face of the person blowing into the BAIID, the Secretary shall send notification to the BAIID permittee to properly adjust the camera and/or to position himself or herself in a manner that will allow for a clear image of the operator of the BAIID, and informing the permittee that the camera must not be obstructed. If, after notification is sent, a review of images captured by the BAIID discloses that the camera is still obstructed or is not taking clear images of the operator, the RDP may be cancelled.

9) Failure to Submit a BAIID for Monitoring in a Timely Manner.  Unless notified by a BAIID provider pursuant to subsection (j)(2), all monitor reports shall be submitted to the Secretary within 67 days after the previous monitor report. If the Secretary fails to receive a BAIID permittee's monitor reports in the 67 days, the Secretary will conduct an informal inquiry (will attempt to contact the BAIID provider and permittee by telephone or e-mail) for the purpose of determining the cause for this failure. If it is determined or if it appears that the BAIID permittee failed to take in a vehicle with the BAIID for timely monitor reports or failed to send the appropriate portion of the BAIID, utilizing a traceable package delivery service, to the BAIID provider or installer for timely monitor reports, the Secretary will send a letter to the BAIID permittee stating that, if the BAIID is not taken in for a monitor report within 10 days after the date of the letter, any permits issued to the BAIID permittee will be cancelled.

j) Immediate Cancellation of BAIID RDP. Any one of the following shall be grounds for immediate cancellation of an RDP issued under this Section:

1) Any law enforcement report showing operation of a vehicle by a BAIID permittee without a BAIID as required by the RDP issued under this Section. The law enforcement officer shall, at the time of the stop, confiscate the RDP and send it, or a copy of it, along with the report, to the Secretary;

2) Notification from a BAIID provider or installer on a removal/uninstallation report form stating that the BAIID installed in a BAIID permittee's vehicle has been removed and/or is no longer being utilized by the permittee, as required by subsection (d), including a removal or uninstallation caused by the BAIID permittee's failure to pay lease or rental fees owed to the BAIID provider, unless the permittee has notified the Secretary that the permittee is no longer utilizing the BAIID and surrendered the BAIID permit to the Secretary as required in subsection (h). This notification shall be sent to the Secretary no more than 7 days after the removal/uninstallation;

3) Any law enforcement report involving a DUI;

k) Hearing to Contest Cancellation of BAIID RDP. Any BAIID permittee whose RDP is cancelled as provided in this Section may request a hearing to contest the cancellation within 60 days from the effective date of the cancellation. The hearing will be scheduled and held on an expedited basis. The hearing will be conducted as any other formal hearing under this Part. Any BAIID permittee whose RDP is cancelled under the provisions of this Section and who is required to abstain from alcohol/drugs (whose alcohol/drug use was classified at High Risk-Dependent) and who admits to consuming alcoholic beverages may not request a hearing to contest the cancellation.

1) The purpose of a hearing to contest a BAIID cancellation is to determine whether the BAIID Division acted in accordance with its rules, procedures and guidelines in entering the cancellation of driving privileges, based upon the evidence available to it at the time of its initial decision. If it is determined at the hearing that the BAIID Division did not act in accordance with its rules, procedures and guidelines, the Department of Administrative Hearings will enter an Order rescinding the cancellation. If it is determined at the hearing that the BAIID Division acted in accordance with its rules, procedures and guidelines, the Department of Administrative Hearings will enter an Order either affirming the cancellation or an Order affirming, but terminating, the cancellation. A termination will be entered when the petitioner provides additional credible evidence at the hearing regarding the petitioner's alleged violation of the rules of the BAIID program, or that the BAIID Division was misinformed or did not have all the essential facts at the time of its initial decision. The findings of fact must articulate the additional facts and circumstances cited in the Order of Termination that support the rationale for concluding that the public safety and welfare is better served by a termination.

2) Any BAIID permittee whose RDP is cancelled for any reason provided for in this Section, and whose cancellation was terminated after a formal hearing to contest the cancellation, is immediately eligible to petition for another formal hearing if the petitioner's RDP has expired by the time that the final order from the formal hearing has been entered. If the RDP has not expired, then a new RDP will be issued with the same expiration date as the cancelled RDP.

3) Any BAIID permittee whose RDP is cancelled for any reason provided for in this Section, and whose cancellation was rescinded after a formal hearing to contest the cancellation, will be issued a new RDP with the same expiration date as the cancelled RDP. If the RDP has expired, the petitioner is immediately eligible to petition for another formal hearing.

l) No Hearing for 90 Days After Cancellation. Any BAIID permittee whose RDP is cancelled for any reason as provided for in this Section shall not be granted another hearing for any type of driving relief for 90 days from the date of the cancellation, except to contest the cancellation as provided in subsection (k). In the event a hearing is held pursuant to subsection (k) and the cancellation is affirmed, the BAIID permittee shall not be granted another hearing for driving relief for 30 days from the date of the order affirming the cancellation.

m) Formal Order – Content. Any formal order entered that grants the issuance of an RDP as provided for in this Section shall, in addition to all other requirements, clearly indicate the following:

1) That the RDP is issued conditioned upon BAIID installation and proper usage of the BAIID by the permittee; and

2) That the BAIID permittee is aware of all conditions and terms of BAIID installation and proper usage of the BAIID, and the permittee accepts those conditions and terms as conditions precedent to the issuance of the RDP.

n) RDPs – Content. Any RDPs issued as provided for in this Section shall, in addition to all other requirements, clearly indicate:

1) That the RDP is issued pursuant to the BAIID requirements of this Section, and that a vehicle operated by a BAIID permittee must be equipped with an installed, properly operating BAIID;

2) That the provisions of the RDP also allow the BAIID permittee to drive to and from the BAIID provider or installer for the purposes of installing the BAIID within 14 days after the issuance of the RDP, or obtaining monitor reports, and any necessary servicing.

o) Use of Monitor Reports. The Secretary shall gather all available monitor reports and images and any other information relative to the permittee's performance and compliance with the BAIID requirements under this Subpart D. The reports, images and information may be used as evidence at any administrative hearing conducted by the Secretary under this Part.

p) Modification or Waiver of BAIID

1) The Secretary may make a medical or physical BAIID modification or waiver for RDPs issued under this Section. When a BAIID permittee provides a report from a physician stating the permittee is physically unable to produce an adequate breath sample to operate the BAIID, the Secretary may allow the permittee to install a BAIID that operates with a lower breath sample requirement. The Secretary may, at the Secretary's discretion, obtain a review of the physician's report by the Secretary's Medical Advisory Board.

2) When a BAIID permittee is the owner of only one vehicle, this modification may also be granted if an immediate family member who resides with the BAIID permittee must drive the vehicle and the immediate family member is unable to provide an adequate breath sample to operate the BAIID.

q) Employment Exemption from BAIID Requirements. In determining whether a BAIID permittee is exempt from the BAIID requirements pursuant to the waiver provided for in IVC Sections 6-205 and 6-206, the following shall apply:

1) The term "employer" shall not include an entity owned or controlled in whole or in part by the permittee or any member of the permittee's immediate family, unless the entity is a corporation and the permittee and the permittee's immediate family own a total of less than 5% of the outstanding shares of stock in the corporation. Immediate family shall include spouse, children, children's spouses, parents, spouse's parents, siblings, siblings' spouses and spouse's siblings;

2) The exemption shall not apply where the employer's vehicle is assigned exclusively to the BAIID permittee or the BAIID permittee uses the vehicle for commuting to and from employment or for other personal use.

3) Appropriate limits will be established for necessary on-the-job driving. The days, hours and mileage limits will not exceed those necessary for the accomplishment of the BAIID permittee's primary employment and shall be limited to a maximum of 12 hours per day and 6 days per week unless the request for increased limits is substantially documented, such as through an employer's verification of the BAIID permittee's work schedule.

4) An exemption also may be granted to a BAIID permittee who can prove that the permittee duties include test-driving vehicles not owned by the permittee. The exemption will be limited to this purpose and to no more than a 5-mile radius from the permittee's place of employment.

5) The Secretary will also inform a BAIID permittee whose employment exemption is terminated that the permittee remains eligible to have an interlock BAIID installed in the permittee's personal vehicle and the employer's vehicle without a hearing. Failure to have the BAIID installed by the date designated by the Secretary will result in the termination of the BAIID permittee's RDP.

r) Decertification of BAIID Providers and BAIID. The Secretary must notify the BAIID permittee of the decertification of a BAIID provider or the decertification of a particular type of BAIID. The BAIID permittee must then select a new BAIID provider or type of BAIID from the list of approved BAIID providers maintained by the Secretary. The BAIID permittee must inform the Secretary of that selection within 7 days after the receipt of notification from the Secretary. The BAIID permittee must complete registration with a new BAIID provider and/or installation of a new BAIID within 21 days after the receipt of the notification from the Secretary. Failure to complete these steps within the 21-day period may result in cancellation of the BAIID permittee's RDP. All costs related to any change in BAIID provider or BAIID shall be paid by the BAIID permittee.

s) Reciprocity with Other States. The Secretary will honor the BAIID requirements imposed by other states on Illinois drivers and drivers licensed in other states, for offenses committed in other states, and will reciprocate other states' recognition of BAIID requirements imposed by Illinois on drivers licensed in Illinois, or licensed in other states for offenses committed in Illinois.

t) Monitor Reports Received after Reinstatement. If the Secretary receives a monitor report after the BAIID permittee's driving privileges have been reinstated showing a violation that would have led to reinstatement being denied, the Secretary shall cancel the driving privileges and notify the permittee of the cancellation. The permittee shall be further notified that the permittee may apply to have the permit reissued, conditioned upon reinstalling the BAIID and payment of all applicable fees, unless otherwise prohibited by this Section. The Secretary shall also notify the permittee of the right to request a hearing to contest the cancellation.

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