

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

PAUL J. TSCHIDA
Commissioner of Public Safety

TO:
ATTN: JERRY ANDERSON
Special Assistant Attorney General

DATE: 6/3/86

FROM: MARTHA J. CASSERLY MJC
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of the Rules of the State Department of Public Safety Governing Preliminary Screening Breath Test Devices - Standards and Minimum Specifications

The above-referenced rule has been approved as to its legality by the Attorney General on June 3, 1986.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC:pmf

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RR1280

Our File No. 1280 05.0009.07~~80~~08

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 5-22-86
DATE FOR REVIEW 5-30
DATE DUE 6-5

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved 6-3-86 mjc Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 6-3-86 Revisor approved 5.27.86 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 5.21.86 Date combined w/ FF

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency contains small biz statement

✓ Affidavit of Mailing Notice or rulemaking
2.14.86 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
2.17.86 At least 30/20 days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact combined w/ Order Adopting

N/A LCRAR Report or agency Affidavit

Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness contains smaller biz statement.

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

AG copy

Department of Public Safety

Adopted Rules Relating to Preliminary Screening Breath Test Devices

Rules as Adopted

7501.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of this chapter, the following terms have the meanings given them in this part.

Subp. 2. **Alcohol concentration.** "Alcohol concentration" means the number of grams of alcohol in 210 liters of breath.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of public safety of Minnesota.

Subp. 4. **Manufacturer.** "Manufacturer" means a manufacturer, dealer, distributor, or supplier of a screening device offered for sale to law enforcement agencies in Minnesota.

Subp. 5. **Negative result.** "Negative result" means a test of an individual by means of a screening device which indicates an alcohol concentration of less than 0.10.

Subp. 6. **Positive result.** "Positive result" means a test of an individual by means of a screening device that indicates an alcohol concentration of 0.10 or more.

Subp. 7. **Screening device.** "Screening device" means a device that by analysis of a sample of breath will indicate whether the alcohol concentration of an individual tested is more or less than 0.10.

7501.0200 PURPOSE AND SCOPE.

The purpose of parts 7501.0100 to 7501.0800 is to establish standards and minimum specifications for preliminary screening breath test devices, to be used pursuant to Minnesota Statutes, section 169.121, subdivision 6.

7501.0300 MINIMUM STANDARDS AND SPECIFICATIONS.

Screening devices used pursuant to Minnesota Statutes, section 169.121, subdivision 6, must meet the following minimum

standards and specifications:

A. Accuracy of the screening device must remain consistent during a storage life of one year from the date of purchase, at storage temperatures ranging between minus 30 degrees Fahrenheit to 120 degrees Fahrenheit.

B. The reading of a screening device after a sample of breath is properly taken must be ascertainable under reduced levels of illumination. The screening device must not indicate numerical results when the test result is positive.

C. Operation of the screening device must be simple enough that operators can be trained to use the screening device with four hours or less of formal instruction.

D. Each individual screening device must be packaged with a complete set of instructions as to how the device is to be properly used for taking and analyzing a sample of breath.

E. When a sample of breath is properly taken from a person with an actual alcohol concentration of 0.05 or less, the screening device must not indicate a positive result.

F. When a sample of breath is properly taken from a person with an actual alcohol concentration of 0.13 or more, the screening device must not indicate a negative result.

G. Other than as limited in items E and F, when a sample of breath is properly taken from a person with an actual alcohol concentration of 0.06 to 0.12, the screening device must not have a deviation greater than ± 0.02 alcohol concentration.

H. A screening device intended to perform more than one test and requiring periodic calibration must, once calibrated, retain its calibration within ± 0.01 alcohol concentration for a minimum of seven days when tested daily.

I. A screening device that is disposable after a single use, and of which the accuracy is affected by storage, must be labeled with an expiration date.

7501.0400 APPLICATION FOR APPROVAL, REQUIRED INFORMATION.

In each application submitted to the commissioner for approval of a screening device, the following information must

be included:

A. the name of the manufacturer, and the brand or trade name under which the screening device is to be marketed;

B. the maximum and minimum temperatures at which the screening device may be used and still provide an accurate result of the alcohol concentration;

C. a description of the screening device, the theory under which it operates, and instructions for its use; and

D. a certification from a nationally recognized independent testing laboratory that the screening device meets the minimum specifications and standards as set out by part 7501.0300.

7501.0500 APPLICATION FOR APPROVAL, SAMPLES REQUIRED.

Each application submitted to the commissioner for approval of a screening device must include:

A. in the case of a screening device disposable after one use, 50 samples of the device for use by the commissioner to verify that the information contained in the application for approval is correct;

B. in the case of a screening device not disposable after one use, one device with disposable components or other materials sufficient to conduct 50 tests of breath, with the screening device to be returned to the manufacturer after verification by the commissioner of the information contained in the application.

7501.0600 CERTIFICATE OF APPROVAL.

When the manufacturer of a screening device has complied with parts 7501.0400 and 7501.0500, and the commissioner is satisfied that the screening device submitted complies with the minimum standards and specifications set out by part 7501.0300, the commissioner may issue a certificate of approval. The commissioner shall act upon applications within 120 days unless other arrangements are made with the manufacturer. The manufacturer shall include in shipments of a device a copy of or reference to the Department of Public Safety certificate of

approval.

7501.0700 DURATION OF APPROVAL.

Approval of a screening device issued pursuant to part 7501.0600 remains effective until revoked. Approval may be revoked by the commissioner when:

A. The manufacturer changes the design or components of a screening device already approved. The manufacturer shall inform the commissioner of any changes in the components or design. The manufacturer shall supply supportive documentation that the changes will not affect the ability of the device to comply with part 7501.0300.

B. It appears to the commissioner that the screening device does not currently meet the minimum standards and specifications required by part 7501.0300.

7501.0800 RECERTIFICATION.

If a certificate of approval issued pursuant to part 7501.0600 is revoked by the commissioner, a new certificate of approval will be issued only after compliance by the manufacturer with parts 7501.0400 and 7501.0500.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN - 3 1986
Joan Anderson Growe
Secretary of State
2:24 PM

APPROVED AS TO FORM AND LEGALITY
June 3 19 86
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

Department of Public Safety

Proposed Rules Relating to Preliminary Screening Breath Test Devices

Rules as Proposed

7501.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of this chapter, the following terms ~~shall~~ have the meanings given them in this part.

Subp. 2. ~~**Blood-alcohol**~~ **Alcohol concentration.** " ~~Blood-alcohol~~ Alcohol concentration" means the ~~**percent-by-weight of alcohol in the blood, as defined by the**~~ number of grams of alcohol in ~~100 milliliters of blood~~ 210 liters of breath.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of public safety of ~~the state of~~ Minnesota.

Subp. 4. **Manufacturer.** "Manufacturer" means a manufacturer, dealer, distributor, or supplier of a screening device offered for sale to law enforcement agencies in ~~the state of~~ Minnesota.

Subp. 5. **Negative result.** "Negative result" means a test of an individual by means of a screening device which indicates ~~a blood alcohol~~ an alcohol concentration of less than 0.10 ~~**percent-by-weight**~~.

Subp. 6. **Positive result.** "Positive result" means a test of an individual by means of a screening device ~~**which**~~ that indicates ~~a blood alcohol~~ an alcohol concentration of 0.10 ~~**percent-by-weight**~~ or ~~**greater**~~ more.

Subp. 7. **Screening device.** "Screening device" means a device that by analysis of a sample of breath will indicate whether the ~~**blood-alcohol**~~ alcohol concentration of an individual tested is ~~**greater**~~ more or less than 0.10 ~~**percent-by-weight**~~.

7501.0200 PURPOSE AND SCOPE.

The purpose of parts 7501.0100 to 7501.0800 is to establish standards and minimum specifications for preliminary screening breath test devices, to be used pursuant to ~~the provisions of~~

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

Minnesota Statutes, section 169.121, subdivision 6.

7501.0300 MINIMUM STANDARDS AND SPECIFICATIONS.

~~All~~ Screening devices used pursuant to Minnesota Statutes, section 169.121, subdivision 6, ~~shall~~ must meet the following minimum standards and specifications:

A. Accuracy of the screening device ~~shall~~ must remain consistent during a storage life of one year from the date of purchase, at storage temperatures ranging between minus 30 degrees Fahrenheit to 120 degrees Fahrenheit.

B. The reading of a screening device after a sample of breath is properly taken ~~shall~~ must be ascertainable under reduced levels of illumination. The screening device must not indicate numerical results when the test result is positive.

C. Operation of the screening device must be simple~~,~~ ~~so~~ enough that operators can be trained to use the screening device with four hours or less of formal instruction.

D. Each individual screening device must be packaged with a complete set of instructions as to how the device is to be properly used for taking and analyzing a sample of breath.

E. When a sample of breath is properly taken from a person with an actual ~~blood-alcohol~~ alcohol concentration of 0.05 ~~percent~~ or less ~~by-weight~~, the screening device ~~shall~~ must not indicate a positive result.

F. When a sample of breath is properly taken from a person with an actual ~~blood-alcohol~~ alcohol concentration of 0.13 ~~percent~~ or ~~greater-by-weight~~ more, the screening device ~~shall~~ must not indicate a negative result.

G. Other than as limited in items E and F, when a sample of breath is properly taken from a person with an actual ~~blood-alcohol~~ alcohol concentration of 0.06 ~~percent~~ to 0.12 ~~percent-by-weight~~, the screening device ~~shall~~ must not have a deviation greater than ± 0.02 ~~percent-blood-alcohol~~ alcohol concentration.

H. A screening device intended to perform more than one test and requiring periodic calibration must, once

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

calibrated, retain its calibration within ± 0.01 alcohol concentration for a minimum of seven days when tested daily.

I. A screening device that is disposable after a single use, and of which the accuracy ~~will be~~ is affected by storage, must be ~~labelled~~ labeled with an expiration date.

7501.0400 APPLICATION FOR APPROVAL, REQUIRED INFORMATION.

In each application submitted to the commissioner for approval of a screening device, the following information ~~shall~~ must be included:

A. the name of the manufacturer, and the brand or trade name under which ~~such~~ the screening device is to be marketed;

B. the maximum and minimum temperatures~~,~~ at which the screening device may be used and still provide an accurate result of the ~~blood-alcohol~~ alcohol concentration;

C. a description of the screening device, the theory under which it operates, and instructions for its use; and

D. a certification from a nationally recognized independent testing laboratory that the screening device meets the minimum specifications and standards as set out by part 7501.0300.

7501.0500 APPLICATION FOR APPROVAL, SAMPLES REQUIRED.

Each application submitted to the commissioner for approval of a screening device ~~shall~~ must include:

A. in the case of a screening device disposable after one use, 50 samples of ~~such~~ the device for use by the commissioner to verify that the information contained in the application for approval is correct;

B. in the case of a screening device not disposable after one use, one ~~such~~ device with ~~such~~ disposable components or other materials sufficient to conduct 50 tests of breath, with the screening device to be returned to the manufacturer after verification by the commissioner of the information contained in the application.

APPROVED IN THE OFFICE OF STATUTES BY:

7501.0600 CERTIFICATE OF APPROVAL.

When the manufacturer of a screening device has complied with ~~the provisions of~~ parts 7501.0400 and 7501.0500, and ~~it appears to the satisfaction of~~ the commissioner is satisfied that the screening device submitted complies with the minimum standards and specifications set out by part 7501.0300, the commissioner may issue a certificate of approval. The commissioner shall act upon ~~all~~ applications within ~~60~~ 120 days unless other arrangements are made with the manufacturer. The manufacturer shall include in ~~all~~ shipments of ~~his~~ a device a copy of or reference to the Department of Public Safety certificate of approval.

7501.0700 DURATION OF APPROVAL.

Approval of a screening device issued pursuant to part 7501.0600 ~~shall remain in force and effect for a period of two years, except that such~~ remains effective until revoked. Approval may be revoked by the commissioner when:

A. The manufacturer changes the design or components of a screening device already approved. ~~It shall be the duty of~~ The manufacturer ~~to~~ shall inform the commissioner of any changes in the components or design. The manufacturer shall supply supportive documentation that the changes will not affect the ability of the device to comply with part 7501.0300.

B. It appears to the commissioner that ~~such~~ the screening device does not currently meet the minimum standards and specifications required by ~~the provisions of~~ part 7501.0300.

7501.0800 RECERTIFICATION.

If a certificate of approval issued pursuant to part 7501.0600 ~~expires or~~ is revoked by the commissioner, a new certificate of approval will be issued only after compliance by the manufacturer with ~~the provisions of~~ parts 7501.0400 and 7501.0500.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD870

Agency: Department of Public Safety

Division: Bureau of Criminal Apprehension

Agency Contact: Nancy Kelly

Minnesota Rules: Parts 7501.0100 to 7501.0800

Title: Proposed Rules Relating to Preliminary Screening Breath Test Devices

Type of Rules: Permanent

Incorporations by Reference: None

Steven C. Cross
Revisor of Statutes

Ron Ray
Assistant Revisor
Phone: 296-0945

Date: January 8, 1986

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

In the Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Preliminary Screening Breath Test Devices - Standards and Minimum Specifications.

FINDINGS OF FACT AND CONCLUSIONS AND ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above captioned rules without a public hearing was published in the State Register on February 17, 1986, and was sent by the United States Mail to all persons on the list maintained by the Department of Public Safety pursuant to Minnesota Statutes Section 14.14 Subd. 1a, on February 14, 1986. All interested and affected persons were afforded an opportunity to submit comments for 30 days after the Notice. No requests for a hearing were received within the 30-day comment period. No one requested to be notified of submission of the rules to the Attorney General. The need for and the reasonableness of the proposed rules are adequately and fully set forth in the Statement of Need and Reasonableness which is incorporated herein. The rules as originally proposed are adopted without any changes.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules Governing Preliminary Screening Breath Test Devices - Standards and minimum specifications, are adopted this 21 day of May 1986, pursuant to authority vested in me by Minnesota Statutes Section 299A.01, Subd. 6 and Minn. Stat. section 169.128, 169.121, subd. 6.

STATE OF MINNESOTA

Paul J. Tschida

PAUL J. TSCHIDA
COMMISSIONER OF PUBLIC SAFETY

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

In the Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Preliminary Screening Breath Test Devices - Standards and Minimum Specifications.

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 28th day of January, 1986, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Department of Public Safety for that purpose and be published in the State Register.

STATE OF MINNESOTA

Paul J. Tschida

PAUL J. TSCHIDA
COMMISSIONER OF PUBLIC SAFETY

Department of Public Safety
Bureau of Criminal Apprehension

In The Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Preliminary Screening Breath Devices - Standards and Minimum Specifications.

NOTICE OF INTENT TO ADOPT RULES WITHOUT A HEARING

Notice is hereby given that the State Department of Public Safety is proposing to adopt the above entitled rules without a public hearing. The Commissioner of Public Safety has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow procedures set forth in Minn. Stat. Sections 14.22 through 14.28.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the proposed rules. Public comments are encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for comment, and any change proposed. The proposed rules may be modified prior to final adoption if modifications are supported by the data and views submitted to the Department of Public Safety and do not result in a substantial change in the proposed language.

If 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will be held. The written request must be specific on which rule(s) a hearing is desired. Identification of the portion of the proposed rule addressed, the particular objection, the suggested modifications, and the reasons or data relied upon to support the suggested modifications are requested. Any person requesting a public hearing should state his or her name and address. In the event a public hearing is required, the department will proceed according to the provisions of Minn. Stat. Sections 14.131 through 14.20.

Persons who wish to submit comments or a written request for a public hearing, or persons who wish to receive a free copy of this notice and/or a free copy of the proposed rules, should address their correspondence to the address below and include the name of the rulemaking:

Frank Dolejsi
Bureau of Criminal Apprehension
1246 University Avenue
St. Paul, MN 55155

The Department's authority to adopt the proposed rules is contained Minn. Stat. §169.128 and 169.121, subd. 6. A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available free from the Department of Public Safety upon request to the above address.

You are hereby advised, pursuant to Minn. Stat. Section 14.115, "Small business consideration in rulemaking," that the proposed rules may have an impact on some small businesses in Minnesota. The portions of the rules which may affect small businesses include:

1. Requiring that a preliminary screening breath test device retain its

calibration with ±0.01 alcohol concentration for a minimum of seven days. This should not be a burden on manufacturers of those devices since all PBT's currently in use meet this standard.

2. The two year renewal requirement for approval of PBT devices is eliminated, but requires supportive documentation when design changes are made. This will be a less cumbersome procedure for approval of devices.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the date of submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written request to the above address.

Please be advised that Minn. Stat. Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. Minn. Stat. Section 10A.01, Subd. 11 defines a lobbyist as any individual: (a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or (b) who spends more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

The department estimates that there will be no cost to local public bodies in the state to implement the rules for the two years immediately following their adoption, within the meaning of Minnesota Statutes Section 14.11, Subd. 1. Any costs incurred by local jurisdictions in the permit issuance process can be recovered through imposition of a fee authorized by the rules.

A copy of the proposed rules is attached to this notice.

STATE OF MINNESOTA

Jan 28, 1986
DATE

Paul Tschida
PAUL J. TSCHIDA
COMMISSIONER OF PUBLIC SAFETY

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Preliminary Screening Breath Devices - Standards and Minimum Specifications.

AFFIDAVIT OF MAILING NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

Cheryl Gebhart, being first duly sworn, deposes and says:

That on the 14th day of February, 1986, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the Notice of Intent to Adopt Rules With Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Department of Public Safety for the purpose of receiving notice of the proposed adoption of rules by this department and, if applicable, on all persons and organizations on a discretionary mailing list.

Cheryl Gebhart

Subscribed and sworn to before me

this 19 day of Feb.

1986

MICHAEL P. [illegible]
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires [illegible] 1987

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Preliminary Screening Breath Devices - Standards and Minimum Specifications.

CERTIFICATE OF MAILING LIST

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. Section 14.14 Subd. 1a, that their names be placed on file with and maintained by the State Department of Public Safety for the purpose of receiving notice of the proposed adoption of rules by this department, is accurate and complete as of 9:00 a.m., this this 14th day of February, 1986.



Department of Public Safety
Bureau of Criminal Apprehension

Proposed Rules Relating to Preliminary Screening Breath Test

Notice of Intent to Adopt Rules without a Hearing

Notice is hereby given that the State Department of Public Safety is proposing to adopt the above entitled rules without a public hearing. The Commissioner of Public Safety has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow procedures set forth in Minn. Stat. Sections 14.22 through 14.28.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the proposed rules. Public comments are encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for comment, and any change proposed. The proposed rules may be modified prior to final adoption if modifications are supported by the data and views submitted to the Department of Public Safety and do not result in a substantial change in the proposed language.

If 25 or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will be held. The written request must be specific on which rule(s) a hearing is desired. Identification of the portion of the proposed rule addressed, the particular objection, the suggested modifications, and the reasons or data relied upon to support the suggested modifications are requested. Any person requesting a public hearing should state his or her name and address. In the event a public hearing is required, the department will proceed according to the provisions of Minn. Stat. Sections 14.131 through 14.20.

Persons who wish to submit comments or a written request for a public hearing, or persons who wish to receive a free copy of this notice and/or a free copy of the proposed rules, should address their correspondence to the address below and include the name of the rulemaking:

Frank Dolejsi
Bureau of Criminal Apprehension
1246 University Avenue
St. Paul, MN 55155

The Department's authority to adopt the proposed rules is contained Minn. Stat. § 169.128 and 169.121, subd. 6. A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the date and information relied upon to support the proposed rules has been prepared and is available free from the Department of Public Safety upon request to the above address.

You are hereby advised, pursuant to Minn. Stat. Section 14.115, "Small business consideration in rulemaking," that the proposed rules may have an impact on some small businesses in Minnesota. The portions of the rules which may affect small businesses include:

1. Requiring that a preliminary screening breath test device retain its calibration with ±0.01 alcohol concentration for a minimum of seven days. This should not be a burden on manufacturers of those devices since all PBT's currently in use meet this standard.

2. The two year renewal requirement for approval of PBT devices is eliminated, but requires supportive documentation when design changes are made. This will be a less cumbersome procedure for approval of devices.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the date of submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written request to the above address.

Please be advised that Minn. Stat. Chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. Minn. Stat. Section 10A.01, Subd. 11 defines a lobbyist as any individual: (a) engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

public officials; or (b) who spends more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

The department estimates that there will be no cost to local public bodies in the state to implement the rules for the two years immediately following their adoption, within the meaning of Minnesota Statutes Section 14.11, Subd. 1. Any costs incurred by local jurisdictions in the permit issuance process can be recovered through imposition of a fee authorized by the rules.

A copy of the proposed rules is attached to this notice.

January 28, 1986

Paul J. Tschida
Commissioner of Public Safety

Rules as Proposed

7501.0100 DEFINITIONS.

Subpart 1. **Scope.** For purposes of this chapter, the following terms ~~shall~~ have the meanings given them in this part.

Subp. 2. **~~Blood-alcohol~~ Alcohol concentration.** "~~Blood-alcohol~~ Alcohol concentration" means the ~~percent by weight of alcohol in the blood, as defined by the~~ number of grams of alcohol in ~~100 milliliters of blood~~ 210 liters of breath.

Subp. 3. **Commissioner.** "Commissioner" means the commissioner of public safety of ~~the state of~~ Minnesota.

Subp. 4. **Manufacturer.** "Manufacturer" means a manufacturer, dealer, distributor, or supplier of a screening device offered for sale to law enforcement agencies in ~~the state of~~ Minnesota.

Subp. 5. **Negative result.** "Negative result" means a test of an individual by means of a screening device which indicates ~~a blood-alcohol~~ an alcohol concentration of less than 0.10 ~~percent by weight~~.

Subp. 6. **Positive result.** "Positive result" means a test of an individual by means of a screening device ~~which~~ that indicates ~~a blood-alcohol~~ an alcohol concentration of 0.10 ~~percent by weight~~ or ~~greater~~ more.

Subp. 7. **Screening device.** "Screening device" means a device that by analysis of a sample of breath will indicate whether the ~~blood-alcohol~~ alcohol concentration of an individual tested is ~~greater~~ more or less than 0.10 ~~percent by weight~~.

7501.0200 PURPOSE AND SCOPE.

The purpose of parts 7501.0100 to 7501.0800 is to establish standards and minimum specifications for preliminary screening breath test devices, to be used pursuant to ~~the provisions of~~ Minnesota Statutes, section 169.121, subdivision 6.

7501.0300 MINIMUM STANDARDS AND SPECIFICATIONS.

~~All~~ Screening devices used pursuant to Minnesota Statutes, section 169.121, subdivision 6, ~~shall~~ must meet the following minimum standards and specifications:

A. Accuracy of the screening device ~~shall~~ must remain consistent during a storage life of one year from the date of purchase, at storage temperatures ranging between minus 30 degrees Fahrenheit to 120 degrees Fahrenheit.

B. The reading of a screening device after a sample of breath is properly taken ~~shall~~ must be ascertainable under reduced levels of illumination. The screening device must not indicate numerical results when the test result is positive.

C. Operation of the screening device must be simple~~, so~~ enough that operators can be trained to use the screening device with four hours or less of formal instruction.

D. Each individual screening device must be packaged with a complete set of instructions as to how the device is to be properly used for taking and analyzing a sample of breath.

E. When a sample of breath is properly taken from a person with an actual ~~blood-alcohol~~ alcohol concentration of 0.05 ~~percent~~ or less ~~by weight~~, the screening device ~~shall~~ must not indicate a positive result.

F. When a sample of breath is properly taken from a person with an actual ~~blood-alcohol~~ alcohol concentration of 0.13 ~~percent~~ or ~~greater by weight~~ more, the screening device ~~shall~~ must not indicate a negative result.

G. Other than as limited in items E and F, when a sample of breath is properly taken from a person with an actual ~~blood-alcohol~~ alcohol concentration of 0.06 ~~percent~~ to 0.12 ~~percent by weight~~, the screening device ~~shall~~ must not have a deviation greater than ±0.02 ~~percent blood-alcohol~~ alcohol concentration.

H. A screening device intended to perform more than one test and requiring periodic calibration must, once calibrated, retain its calibration within ±0.01 alcohol concentration for a minimum of seven days when tested daily.

I. A screening device that is disposable after a single use, and of which the accuracy ~~will be~~ is affected by storage, must be ~~labelled?~~ labeled with an expiration date.

7501.0400 APPLICATION FOR APPROVAL, REQUIRED INFORMATION.

In each application submitted to the commissioner for approval of a screening device, the following information ~~shall~~ must be included:

A. the name of the manufacturer, and the brand or trade name under which ~~such~~ the screening device is to be marketed;

B. the maximum and minimum temperatures~~,~~ at which the screening device may be used and still provide an accurate result of the ~~blood alcohol~~ alcohol concentration;

C. a description of the screening device, the theory under which it operates, and instructions for its use; and

D. a certification from a nationally recognized independent testing laboratory that the screening device meets the minimum specifications and standards as set out by part 7501.0300.

7501.0500 APPLICATION FOR APPROVAL, SAMPLES REQUIRED.

Each application submitted to the commissioner for approval of a screening device ~~shall~~ must include:

A. in the case of a screening device disposable after one use, 50 samples of ~~such~~ the device for use by the commissioner to verify that the information contained in the application for approval is correct;

B. in the case of a screening device not disposable after one use, one ~~such~~ device with ~~such~~ disposable components or other materials sufficient to conduct 50 tests of breath, with the screening device to be returned to the manufacturer after verification by the commissioner of the information contained in the application.

7501.0600 CERTIFICATE OF APPROVAL.

When the manufacturer of a screening device has complied with ~~the provisions of~~ parts 7501.0400 and 7501.0500, and ~~it appears to the satisfaction of~~ the commissioner is satisfied that the screening device submitted complies with the minimum standards and specifications set out by part 7501.0300, the commissioner may issue a certificate of approval. The commissioner shall act upon ~~all~~ applications within ~~60~~ 120 days unless other arrangements are made with the manufacturer. The manufacturer shall include in ~~all~~ shipments of ~~his~~ a device a copy of or reference to the Department of Public Safety certificate of approval.

7501.0700 DURATION OF APPROVAL.

Approval of a screening device issued pursuant to part 7501.0600 ~~shall remain in force and effect for a period of two years, except that such~~ remains effective until revoked. Approval may be revoked by the commissioner when:

A. The manufacturer changes the design or components of a screening device already approved. ~~It shall be the duty of~~ The manufacturer ~~to~~ shall inform the commissioner of any changes in the components or design. The manufacturer shall supply supportive documentation that the changes will not affect the ability of the device to comply with part 7501.0300.

B. It appears to the commissioner that ~~such~~ the screening device does not currently meet the minimum standards and specifications required by ~~the provisions of~~ part 7501.0300.

7501.0800 RECERTIFICATION.

If a certificate of approval issued pursuant to part 7501.0600 ~~expires or~~ is revoked by the commissioner, a new certificate of approval will be issued only after compliance by the manufacturer with ~~the provisions of~~ parts 7501.0400 and 7501.0500.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

In the Matter of the Proposed Adoption of Rules of the State Department of Public Safety Governing Preliminary Screening Breath Test Devices - Standards and Minimum Specifications.

STATEMENT OF NEED AND REASONABLENESS

The above captioned rules are amendments to existing rules of the State Department of Public Safety. The captioned rules were last adopted December 2, 1971.

The need to adopt these rules arises because of modifications and technological advances made in preliminary screening breath test (PBT) devices as well as law changes that have occurred since the rules were first promulgated in 1971.

Throughout the rules the term "blood alcohol concentration" is changed to "alcohol concentration" to reflect the terminology change enacted in Minnesota Laws 1978, Ch. 727.

Part 7501.0300B. - This change provides that the screening device must not indicate numerical results when the test is positive. The PBT's are meant to be screening devices under 169.121, Subd. 6. If the devices give a numerical reading at .10 and above there will be a temptation to use the actual reading in place of an evidentiary test.

The performance standard for the PBT's are not as rigid as those for evidentiary tests. If a numerical value is displayed at .10 and above it would cause unnecessary conflict with the evidentiary test in court proceedings.

The "fail" displayed at 0.10 AC and above would release the officer from any decision making other than requiring an evidentiary test.

The language would allow for devices that could give numerical values below 0.10 AC for other screening purposes (such as work release or juvenile comsumption testing).

All currently approved "PBT's" have "pass, warn, fail" displays and do not display a numerical value.

Part 7501.0300H. - This section requires that a PBT device hold its calibration for a minimum of seven days. It sets forth the variance allowed ($\pm$.010AC) and the frequency of testing to assure stability.

This testing sequence has been applied to all currently certified PBT's. In each instance the devices met the criteria.

The PBT's are not calibrated before each test since they are used under field condition. This requires that calibration be done at a central location where a simulator is available. The criterion set forth in this section is important to maintaining the accuracy of these devices.

Part 7501.0700 and 7501.0800. - This change removes the two year renewal requirement for approved devices and requires the manufacturer to supply information when design changes are made to ensure compliance. The commissioner retains the right to revoke such approval should such devices fail to meet minimum standards and specifications for any reason.

These rules may have some impact on small businesses in Minnesota, and the department has considered the methods for reducing the impact as required by Minn. Stat. Section 14.155, subd. 2. The Universe of small businesses potentially affected by these rules are manufacturers of preliminary breath test screening devices.

Part 7501.0300B. - The requirement set in this section will not be an additional burden to manufactures of PBT devices. All approved "PBT's" in use currently meet this requirement.

Part 7501.0300H. - The performance standard set out in this section will not ee an additional burden to manufacturers of PBT devices. All of the approved PBT's in use currently meet this requirement. This section is necessary to ensure the accuracy of these devices.

Part 7501.0700 and 7501.0800. - This section allows for less stringent renewal requirements for approved devices. It has been the commissioner's experience that the two year renewals have proved to be both cumbersome and unnecessary. This section specifies that when design changes are made that supportive documentation be supplied. This will alleviate any problems with elimination of the renewal requirement and will be less burdensome.

PAUL J. TSCHIDA
COMMISSIONER

In the Matter of the Adoption
of Rule of the the State Department
of Public Safety Governing Preliminary
Screening Breath Test Devices - Standards
and Minimum Specifications.

DECLARATION OF COUNSEL

I, Jerry Anderson, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is 80-0001-0708.

DATED: 5/22/86

ATTORNEY'S NAME
SPECIAL ASSISTANT
ATTORNEY GENERAL

(Please return the approved rules directly to the Department of Public Safety, Room 211, Transportation Building.)

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT of Public Safety

Office Memorandum

TO: Judith Wehrwein
Attorney General's Office

DATE: May 23, 1986

FROM: Nancy Kelly
Administrative Assistant

PHONE: 296-8453

SUBJECT: Preliminary Breath Test Rules

I have enclosed a copy of the signed declaration of counsel which I neglected to send with the rule record to you on May 19. This should make the record complete. Thank you.

Enclosure

RECEIVED
MAY 27 1986
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT of PUBLIC SAFETY

Office Memorandum

TO : Judith Wehrwein
Attorney General's Office

DATE: May 22, 1986

FROM : Nancy Kelly NK
Administrative Assistant

PHONE: 296-8453

SUBJECT: Rulemaking for Review and Approval

Enclosed are all required documents, materials exhibits for the following rulemaking:

1. Preliminary Screening Breath Test Devices

After you have acted upon these rules, please return them directly to me.