

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MSM
11-13-92

RULE REVIEW CHECKLIST

File No. 1967
DATE RECEIVED 11-10-92
REVIEW DATE 11-19-92
DUE DATE 11-24-92
~~(DIS)~~APPROVED 11-19-92
WITHDRAWN

Docket No. 05 0009 0710
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 11-13-92
REVISOR (DIS)APPROVED 11-18-92
FILED W/SEC. OF STATE 11-19-92
RETURNED TO AGENCY 11-20-92

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
May 26, 1992 Date published in State Register
Comments

Petition for Adoption of a Rule

Board's Authorizing Resolution
Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
299A.01 subd 6 Statutory Authority
✓ Small Business Statement
Expenditure of public money statement
8-23-92 Signature

Statement of Need and Reasonableness (if applicable)
✓ Small Business Statement
✓ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
~~September 8, 1992~~ Dated (30)/25 days before adoption
✓ Notice attached indicates it is attached
Copy of rule or summary attached

✓ Publication in State Register
~~September 14, 1992~~ Date (30)/25 days before adoption

missed but sent letter 180-day deadline from ~~missed but sent~~ effective date of law requiring rule (14.12) (both rules) amendments don't apply
✓ end of comment period (§ 14.26) (rules without hearing)
effective date of statutory authority (§ 14.29) (emergency rules)

Resolution Adopting
Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
~~November 10, 1992~~ Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Nancy Bode Name of SAAG representing agency

Notice of Submission to Attorney General (if applicable)

Affidavit of Mailing Notice to Attorney General (if

STATE OF MINNESOTA

Office of the Attorney General

TO : DAVE ORREN
Rules Coordinator
Department of Public Safety
211 Transportation Building

DATE : November 19, 1992

FROM : MARY JO MURRAY
Special Assistant
Attorney General

PHONE : 296-3258

SUBJECT : In the Matter of the Adopted Rule Relating to Vehicle Ignition Interlock Devices

The above-referenced rule has been approved as to its legality by the Attorney General on November 19, 1992.

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

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published 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.

Enclosures
cc: Nancy Bode
William Brown, Chief Judge
MaryAnn Hruby

MJM:jj.rules.bd4

Department of Public Safety

Adopted Permanent Rules Relating to Vehicle Ignition Interlock Devices

Rules as Adopted

IGNITION INTERLOCK DEVICES

7409.3700 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 7409.3700 to 7409.3770 have the meanings given them in this part and part 7409.0100.

Subp. 2. **AC.** "AC" is the abbreviation for alcohol concentration and means the number of grams of alcohol per 210 liters of breath.

Subp. 3. **Alcohol.** "Alcohol" means ethanol or ethyl alcohol.

Subp. 4. **Alcohol setpoint.** "Alcohol setpoint" means the minimum AC at which a BAIID is set to lock a motor vehicle's ignition.

Subp. 5. **Authorized person.** "Authorized person" means a participant or any other licensed driver who has completed the orientation provided for in part 7409.3750, subpart 4.

Subp. 6. **BAIID.** "BAIID" is the abbreviation for breath alcohol ignition interlock device and means a device designed to allow a vehicle ignition to start the vehicle engine when the AC test result is below the alcohol setpoint and to lock the vehicle ignition to prevent the vehicle engine from starting when the AC test result is at or above the alcohol setpoint.

Subp. 7. **Breath sample.** "Breath sample" means expired human breath containing primarily air from the deep lung.

Subp. 8. **Circumvention or bypass.** "Circumvention" or "bypass" means an overt, conscious attempt to provide an air sample to the BAIID other than a breath sample from an authorized person and thus to permit a person with an AC at or above the alcohol setpoint to start the vehicle engine.

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Circumvention or bypass includes the use of a human breath sample that has intentionally been altered so as to remove or reduce the amount of alcohol contained in the breath sample.

Subp. 9. **Commissioner.** "Commissioner" means the commissioner of the Department of Public Safety or an authorized agent.

Subp. 10. **Department.** "Department" means the Department of Public Safety or an authorized officer or agent.

Subp. 11. **Fail-safe.** "Fail-safe" means the BAIID must lock a motor vehicle's ignition.

Subp. 12. **Participant.** "Participant" means a person who has been issued a limited license under Minnesota Statutes, section 171.305, subdivision 5.

Subp. 13. **Service provider.** "Service provider" means a dealer, distributor, supplier, or service center of a BAIID used in Minnesota, designated by the manufacturer and approved by the department.

Subp. 14. **Sufficient cause to believe.** "Sufficient cause to believe" means grounds put forth in good faith that are not arbitrary, irrational, unreasonable, or irrelevant and that make the proposition asserted more likely than not, provided the grounds are based on at least one of the following sources:

A. written information from an identified person;

B. facts or statements supplied by a manufacturer of a BAIID;

C. facts or statements supplied by a designated service provider;

D. court documents and police records; and

E. facts of which the commissioner or the commissioner's employees have personal knowledge.

Subp. 15. **Tampering.** "Tampering" means an overt, conscious attempt to disable or disconnect the BAIID from its power source, or any other act intended to start the vehicle engine without providing a breath sample to the BAIID for analysis.

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7409.3710 PURPOSE AND SCOPE.

The purpose of parts 7409.3700 to 7409.3770 is to establish performance standards for BAIIDs and certification standards and fees for manufacturers of BAIIDs, to be used pursuant to Minnesota Statutes, section 171.305.

7409.3720 STANDARDS AND SPECIFICATIONS.

Subpart 1. **Alcohol setpoint.** The alcohol setpoint is 0.020 AC.

Subp. 2. **Breath samples.** A BAIID must meet all of the following specifications concerning breath samples and vehicle operation:

A. A BAIID must determine the AC of a breath sample.

B. A minimum pressure requirement of 12 inches of water is required for the BAIID to accept a breath sample for analysis of AC.

C. The BAIID must lock the vehicle ignition at least 90 percent of the time when the AC of the breath sample is 0.03 or more. The BAIID must lock the vehicle ignition at least 99.5 percent of the time when the AC of the breath sample is 0.04 or more.

D. The BAIID must lock the vehicle ignition no more than ten percent of the time when the AC of the breath sample is 0.01 or less. The BAIID must lock the vehicle ignition no more than 0.5 percent of the time when the AC of the breath sample is 0.00.

E. When the BAIID allows the vehicle engine to start, the BAIID must require a breath sample to determine AC at variable time intervals ranging from five to 30 minutes while the engine is running.

F. The BAIID must be prepared to accept a breath sample for analysis within three minutes of an AC result of 0.05 or less.

G. If the vehicle stalls after the BAIID has allowed the vehicle engine to start, the BAIID must permit the vehicle engine to start without requiring a breath sample for the next

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two minutes after the stall.

Subp. 3. **Power source.** The BAIID must be designed to be operated from a 12-volt DC vehicle battery. The BAIID must meet the requirements of this part when operated with automotive voltages of 11 to 16 volts DC. When operated with voltages of less than 11 volts or more than 16 volts, the BAIID must meet the requirements of this part or fail-safe.

Subp. 4. **Temperature.** The BAIID must meet the requirements of this part when operated within a temperature range of +85 degrees Celsius to -40 degrees Celsius (+185 degrees Fahrenheit to -40 degrees Fahrenheit). If the BAIID is exposed to temperatures above +85 degrees Celsius or below -40 degrees Celsius, then the BAIID must meet the requirements of this part or fail-safe. The BAIID must be ready for operation within five minutes of being turned on at -20 degrees Celsius (-4 degrees Fahrenheit).

Subp. 5. **Electromagnetic interference.** The BAIID must either fail-safe or meet the requirements of this part when exposed to radio frequency interference or electromagnetic interference sources normally found in an operating motor vehicle.

Subp. 6. **Tampering, circumvention, or bypass.** The BAIID must provide a method to detect tampering, circumvention, or bypass. The BAIID must have a method to ~~**prevent**~~ deter an unauthorized person from operating the BAIID. A warning label visible to front seat occupants must be attached to the BAIID stating: "It is a misdemeanor to circumvent, bypass, or tamper with this device."

Subp. 7. **Data recording.** A BAIID must record the following information:

A. the date and time of any attempt to tamper with, circumvent, or bypass the BAIID;

B. the date and time of any use of the vehicle or any attempt to use the vehicle, including all times that the vehicle engine was started or stopped;

C. the date, time, and AC of each breath sample

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provided to the BAIID;

D. the date and time of any malfunction of the BAIID;

E. the date and time that a breath sample was required under subpart 2, item E, and a breath sample was not provided;

F. the date a "service required" message was issued; and

G. the date service is performed.

Subp. 8. **Driver messages.** The BAIID must provide the following information to the driver:

A. BAIID readiness for acceptance of a breath sample, including samples required under subpart 2, item E;

B. either the AC of each breath sample or an indication for each breath sample of pass if the AC is below the alcohol setpoint or fail if the AC is at or above the alcohol setpoint; and

C. a notice to obtain service within seven days if a breath sample has an AC at or above the alcohol setpoint, if the BAIID detects tampering, circumvention, or bypass, or if a breath sample is not provided as required by subpart 2, item E.

Subp. 9. **Need for service.** The BAIID must meet the requirements of this part for a minimum period of 37 days without requiring intervening service.

Subp. 10. **Ignition lockout.** The BAIID must permanently lock the ignition if service under subpart 8, item C, or part 7409.3750, subpart 5, item A, is not obtained within seven days.

7409.3730 CERTIFICATION REQUIREMENTS.

Subpart 1. **Application for certification.** A manufacturer may submit a BAIID model to the commissioner for certification. Application for certification must be on a form prescribed by the department. Each application must be for only one model or type of BAIID. A manufacturer must make separate applications for models or types of BAIIDs that differ in any operational aspect. An application for certification must include, in addition to other information necessary to the administration of

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the pilot program that the department may require:

A. the name and address of the manufacturer;

B. the name and model number of the BAIID;

C. a detailed description of the BAIID, including instructions for installation and operation, and technical specifications describing the BAIID's accuracy, security, data collection and recording, tamper detection, and environmental features;

D. a certification by the manufacturer that all BAIIDs sold, offered for sale, leased, or installed in Minnesota will meet the requirements for certification set forth in these specifications;

E. a certification by the manufacturer that the requirements of part 7409.3760 have been met; and

F. a certification fee of $5,000.

Subp. 2. **Testing data.** For any BAIID model submitted for certification, the manufacturer must provide data from an independent laboratory approved by the department, demonstrating that the BAIID model meets each of the requirements of part 7409.3720. The data must be obtained from a production line unit or from production line units of the BAIID model. The data must include the following information:

A. The data must show the AC for a minimum of five human subjects with an AC ranging from 0.030 to 0.039. A minimum of three breath samples must be provided to the BAIID by each human subject for a total of 30 breath samples. The requirements of part 7409.3720, subpart 2, item C, must be met.

B. The data must show the AC for a minimum of five human subjects with an AC ranging from 0.040 to 0.049. A minimum of three breath samples must be provided to the BAIID by each human subject for a total of 30 breath samples. The requirements of part 7409.3720, subpart 2, item C, must be met.

Subp. 3. **Equipment.** For any BAIID model submitted for certification, two BAIIDs and the materials necessary to conduct 100 breath tests must be submitted by the manufacturer to the department. The BAIIDs must be installed in vehicles provided

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by the manufacturer for independent testing by the department, at no expense to the department.

Subp. 4. **Design changes.** The manufacturer shall notify the department in writing of any changes in the components, design, or installation and operation instructions of any BAIID model certified by the commissioner. The manufacturer shall supply supportive documentation to the department establishing that the changes do not affect the ability of the BAIID to comply with the requirements of part 7409.3720.

Subp. 5. **Length of certification.** Certification is effective until revocation under part 7409.3770, subpart 1, or expiration of the program established under Minnesota Statutes, section 171.305, whichever is earlier.

7409.3740 MANUFACTURER'S RESPONSIBILITIES.

Subpart 1. **Designated service provider.** Upon certification of the BAIID by the commissioner, the manufacturer shall submit to the department for approval its designated service providers. The manufacturer may designate itself as a service provider. To receive department approval, the manufacturer shall submit to the department:

A. certification from each service provider that the service provider's responsibilities as listed in parts 7409.3750 and 7409.3760 will be met; and

B. a certificate of insurance as required in part 7409.3760.

Subp. 2. **Installation instructions.** The manufacturer shall develop written instructions for installing the BAIID. The instructions must include inspection procedures to ensure the vehicle in which the BAIID will be installed is in a mechanical and electrical condition that will allow the BAIID to meet the specifications in part 7409.3720. The instructions must be provided to all service providers that will install the BAIID.

7409.3750 SERVICE PROVIDER'S RESPONSIBILITIES.

Subpart 1. **Service locations and hours.** A service

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provider shall provide for service locations as follows:

A. The service provider shall make available a minimum of one permanent installation and service location within the state. The permanent service center must establish and maintain reasonable business hours for a minimum of five days a week. A schedule stating those hours must be submitted to the department.

B. The service provider shall provide service locations so that there is a service location within 100 straight-line miles of the residence or employment site of any participant for service. Service locations may be provided through installation and service centers or through mobile service. A plan describing the service locations must be submitted to the department.

Subp. 2. **Security.** A service provider shall comply with all of the following security requirements:

A. Only authorized employees of the service provider, manufacturer, or department are permitted to observe the installation of the BAIID. Reasonable security measures must be taken to prevent other individuals from observing installation or obtaining access to installation materials.

B. The service provider shall not facilitate tampering, circumvention, or bypass of a BAIID. If the service provider is aware of a participant operating a vehicle that is not equipped with a BAIID, the service provider shall immediately notify the department.

C. A participant may not be employed by a manufacturer or service provider in a position that has access to installation instructions or materials.

Subp. 3. **Installation.** A service provider shall comply with the following installation service requirements:

A. Installation must be done in compliance with the installation instructions provided by the manufacturer and in accordance with accepted trade standards of the automotive repair industry.

B. The service provider shall inspect each vehicle

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before installing the BAIID. The inspection must include screening procedures to ensure the vehicle in which the BAIID is to be installed is in a mechanical and electrical condition that will allow the BAIID to meet the specifications in part 7409.3720. Conditions that the manufacturer has determined would prevent the BAIID from meeting the specifications of part 7409.3720, must be repaired before the BAIID is installed. The participant shall bear the costs of any repairs to the vehicle.

C. The service provider shall provide a certificate of installation to the participant and the department upon completing installation of the BAIID. The certificate must include the following information:

(1) the participant's full name, address, date of birth, and telephone number;

(2) the full names and dates of birth of all authorized persons other than the participant;

(3) the vehicle's make, model, vehicle identification number, model year, license plate number, and state of registration;

(4) the vehicle owner's full name and date of birth;

(5) the serial number of the installed BAIID;

(6) the date of installation;

(7) the frequency of required service and monitoring; and

(8) any additional information necessary to the administration of the pilot program requested by the department.

Subp. 4. **Orientation.** The service provider shall provide an orientation to the participant and any other licensed driver authorized to operate the vehicle. The orientation must include information on the proper use of the BAIID, service locations, and procedures for regular service and emergency situations.

Subp. 5. **Service requirements.** A service provider shall comply with the following ongoing service requirements:

A. The service provider shall service and monitor the installed BAIID a minimum of every 30 days after initial

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installation. If during the regular service appointment the service provider determines the BAIID to be defective, it must be repaired or replaced within 24 hours of that determination. If the participant fails to obtain regular service, the service provider shall immediately notify the department.

B. Each time the BAIID is serviced, the service provider shall review the data recorded under part 7409.3720, subpart 7, and provide a copy to the department within five business days of the service date. The service provider shall immediately notify the department by telephone or facsimile if any of the following is indicated:

(1) tampering, circumvention, or bypass;

(2) failure to provide a breath sample as required under part 7409.3720, subpart 2, item E; or

(3) AC at or above the setpoint.

Immediate notification must be followed by written notice to the department within three days of the service.

C. The service provider must have and make known to all authorized persons a 24-hour toll-free telephone number for use in the event of questions or emergencies related to the BAIID.

D. The service provider shall respond to an emergency report related to the BAIID within one business day of the report. If the service provider determines the emergency to be the result of a defective BAIID, the service provider shall repair or replace the BAIID within 48 hours of that determination.

Subp. 6. **BAIID removal.** A service provider shall comply with the following requirements for BAIID removal:

A. Upon removal of the BAIID, the service provider shall restore the vehicle to its original operating condition. All wires that were connected to the BAIID must be reconnected and insulated.

B. If the service provider removes the BAIID and installs a different BAIID, the service provider shall notify the department by mail of the serial number of the newly

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installed BAIID. If the BAIID is installed in a replacement vehicle, the service provider shall submit a new certificate of installation to the department.

C. If the service provider removes the BAIID for reasons other than service, the service provider shall immediately notify the department by telephone or facsimile. If removal occurs after the department's normal business hours, notification must be made at the earliest time possible. Telephone notification must be followed by written notification within three days of removal of the BAIID.

Subp. 7. **Program evaluation.** The service provider shall submit a report to the department every six months containing the following information:

A. all written complaints received from authorized persons;

B. all incidents of customer error in operating the BAIID;

C. all incidents of mechanical or electrical conditions of the motor vehicle that may have affected the ability of the BAIID to meet the requirements of part 7409.3720;

D. all incidents of failure of a BAIID to meet the requirements of part 7409.3720 and the cause for the failure; and

E. all incidents of attempts to tamper with, circumvent, or bypass the BAIID and whether the participant was able to operate the vehicle.

Subp. 8. **Cost determination.** The cost of installation, monthly service, and monitoring must not vary according to the location of the residence or employment site of the participant.

Subp. 9. **Inspection.** To ensure compliance with the specifications in this part, the service provider shall make available any service location and any BAIID at the service location for inspection by a representative of the department during the service provider's reported business hours.

7409.3760 LIABILITY.

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Subpart 1. **Insurance coverage.** The manufacturer and each service provider shall maintain comprehensive general liability insurance in the amount of $1,000,000 per person and $3,000,000 per incident. All insurance policies must be endorsed to provide the department with 45 days prior written notice of cancellation, material change, or intent to lapse.

Subp. 2. **Indemnification.** The manufacturer and each service provider shall indemnify and hold harmless the department from any and all claims, demands, actions, and costs related to the BAIID program.

7409.3770 REVOCATION OF CERTIFICATION OR APPROVAL.

Subpart 1. **BAIID certification.** The department shall revoke the certification of the BAIID when it has sufficient cause to believe any of the following:

A. the BAIID model does not meet the requirements of part 7409.3720;

B. the manufacturer has changed the components, design, or installation and operation instructions in such a way that the requirements of part 7409.3720 are no longer met;

C. the manufacturer fails to maintain the liability insurance as required in part 7409.3760; or

D. the manufacturer fails to maintain a service provider as required in part 7409.3740, subpart 1.

Subp. 2. **Service provider.** The department shall revoke the approval of a designated service provider when it has sufficient cause to believe that the service provider is not meeting the requirements of part 7409.3750 or 7409.3760.

Subp. 3. **Review of denial or revocation of certification.** If a BAIID certification or a service provider approval is denied or revoked, the manufacturer or service provider may request review of the denial or revocation by the commissioner. The request must be in writing and made within 20 days of the notification of the denial or revocation. The commissioner shall issue a decision within 20 days of receiving a request for review. The commissioner's decision is a final agency action.

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY

Nov 19 1992

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 19 1992
Joan Anderson Growe
Secretary of State

3:35 PM
PRB

(6)

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF DRIVER AND VEHICLE SERVICES
BUREAU OF CRIMINAL APPREHENSION

In The Matter Of The Proposed Adoption Of Permanent Rules Of The State Department Of Public Safety Relating To Vehicle Ignition Interlock Devices	**AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT RULES**

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Helen Marinan, being sworn says:

That on the 3rd day of September, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice Of Intent To Adopt Rules by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the Department of Public Safety rulemaking mailing list. The mailing list is attached.

Helen Marinan
Helen Marinan

Subscribed and sworn
to before me this 8th day
of September, 19 92.

David E. Orren
Notary Public

DAVID E. ORREN
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My commission expires 4-9-98

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
BUREAU OF CRIMINAL APPREHENSION
DRIVER AND VEHICLE SERVICES DIVISION

Proposed Permanent Rules Of The Department Of Public Safety Relating To Vehicle Ignition Interlock Devices

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the State Department of Public Safety intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the proposed rules is Minnesota Statutes, section 171.305, subdivision 3. The Commissioner also has general rulemaking authority under Minnesota Statutes, section 299A.01, subdivision 6.

All persons have 30 days, until 4:30 p.m., October 14, 1992, in which to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the 30-day comment period. Any requests or comments must be received by the Department of Public Safety no later than 4:30 p.m. on October 14, 1992. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing must include his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Department will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Lowell Van Berkom, Bureau of Criminal Apprehension, 1246 University Avenue, St. Paul, Minnesota 55104, (612) 642-0700.

The proposed rules may be modified if the modifications are supported by data and views submitted to the Department and do not result in a substantial change in the proposed rules as noticed.

A free copy of the rules is available upon request from Lowell Van Berkom at the address and telephone number listed above.

The rules establish performance standards for Breath Alcohol Ignition Interlock Devices (BAIIDs). The rules also set out certification standards and fees for manufacturers of the devices. A BAIID is a breath alcohol sensing instrument that prevents a vehicle from starting if the driver's alcohol concentration exceeds a certain amount. For the most part, the rules contain device standards consistent with federal model standards for BAIIDs. BAIIDs will be used in a pilot program that targets a high risk population of drivers who have lost their licenses or driving privileges for three or more DWIs. To be eligible for a limited license under the program, a person must serve at least one-half of the required abstinence period, must complete all rehabilitation requirements, and must agree to drive a vehicle equipped with a BAIID. The purpose of the pilot program is to test the effectiveness of this relatively new technological DWI countermeasure.

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 upon request from Lowell Van Berkom at the address and telephone number listed above.

In preparing these rules, the Department has considered the requirements of Minnesota Statutes, section 14.115, in regard to the impact of the proposed rules on small businesses. The adoption of the rules will affect small businesses which are engaged in building, distributing, installing, calibrating, and removing BAIIDs. Other small businesses affected by the proposed rules are employers of potential participants in the program. The Department has considered the methods for reducing the impact of the rules on small businesses, as required by section 14.115. The Department's primary concern in proposing and adopting these rules is the safety of all citizens who use the highway system. In general, the Department has developed the proposed rules to impose as small a burden as possible, consistent with public safety. This applies to all businesses, not just small businesses. After considering the methods for reducing the impact of the rules on small businesses, the Department has concluded that it is inconsistent with public safety to make specific exceptions to the rules for small businesses. The Department's evaluation of the applicability of the methods contained in Minnesota Statutes, section 14.115, subdivision 2, for reducing the impact of the proposed rules is addressed further in the Statement Of Need And Reasonableness.

Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption of the rules.

Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land.

In accordance with Minnesota Statutes, section 16A.128, subdivision 1a, pertaining to fees, the Department has notified the Commissioner of Finance of the Department's intent to adopt rules in the above-entitled matter. A copy of the Department's notice and the Commissioner of Finance's approval are attached to the Statement Of Need And Reasonableness.

In accordance with Minnesota Statutes, section 16A.128, subdivision 2a, the Department has sent a copy of this notice and a copy of the proposed rules to the Chairs of the House Appropriations Committee and the Senate Finance Committee prior to submitting this notice to the State Register.

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rules, must submit the written request to Lowell Van Berkom at the address and telephone number listed above.

8-25-92
Date

Thomas H. Frost, Commissioner
Department of Public Safety

Gerald L. Hasselbrink
Attorney At Law
St. Joseph, Minnesota 56374

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STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF DRIVER AND VEHICLE SERVICES
BUREAU OF CRIMINAL APPREHENSION

In The Matter Of The Proposed Adoption Of Permanent Rules Of The State Department Of Public Safety Relating To Vehicle Ignition Interlock Devices

AFFIDAVIT OF CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Joan Lundberg, being sworn says:

I hereby certify that the attached list is of persons and associations who have requested that their names be placed on the Department of Public Safety rulemaking mailing list, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a, 14.22, or 14.30. I certify that this list is accurate, complete, and current as of the 3rd day of September, 1992.

Joan Lundberg
Joan Lundberg

Subscribed and sworn
to before me this 8th day
of September, 19 92.
David E Orren
Notary Public

DAVID E. ORREN
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RAMSEY COUNTY
My commission expires 4-9-98

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STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF DRIVER AND VEHICLE SERVICES
BUREAU OF CRIMINAL APPREHENSION

In The Matter Of The Proposed Adoption of Permanent Rules Of The State Department Of Public Safety Relating To Vehicle Ignition Interlock Devices

AFFIDAVIT OF MAILING DISCRETIONARY NOTICE OF INTENT TO ADOPT RULES

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Helen Marinan, being sworn says:

That on the 3rd day of September, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice Of Intent To Adopt Rules by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the attached discretionary mailing list. This list is of persons and associations that have expressed, to the agency, interest in this rulemaking proceeding, and persons and associations as practical to improve the notification of all parties that might be interested in this rulemaking proceeding.

Helen Marinan
Helen Marinan

Subscribed and sworn to before me this 8th day of September, 19 92.

David E. Orren
Notary Public

DAVID E. ORREN
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My commission expires 4-9-98

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
BUREAU OF CRIMINAL APPREHENSION
DRIVER AND VEHICLE SERVICES DIVISION

Proposed Permanent Rules Of The Department Of Public Safety Relating To Vehicle Ignition Interlock Devices

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the State Department of Public Safety intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the proposed rules is Minnesota Statutes, section 171.305, subdivision 3. The Commissioner also has general rulemaking authority under Minnesota Statutes, section 299A.01, subdivision 6.

All persons have 30 days, until 4:30 p.m., October 14, 1992, in which to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the 30-day comment period. Any requests or comments must be received by the Department of Public Safety no later than 4:30 p.m. on October 14, 1992. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing must include his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Department will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Lowell Van Berkom, Bureau of Criminal Apprehension, 1246 University Avenue, St. Paul, Minnesota 55104, (612) 642-0700.

The proposed rules may be modified if the modifications are supported by data and views submitted to the Department and do not result in a substantial change in the proposed rules as noticed.

A free copy of the rules is available upon request from Lowell Van Berkom at the address and telephone number listed above.

The rules establish performance standards for Breath Alcohol Ignition Interlock Devices (BAIIDs). The rules also set out certification standards and fees for manufacturers of the devices. A BAIID is a breath alcohol sensing instrument that prevents a vehicle from starting if the driver's alcohol concentration exceeds a certain amount. For the most part, the rules contain device standards consistent with federal model standards for BAIIDs. BAIIDs will be used in a pilot program that targets a high risk population of drivers who have lost their licenses or driving privileges for three or more DWIs. To be eligible for a limited license under the program, a person must serve at least one-half of the required abstinence period, must complete all rehabilitation requirements, and must agree to drive a vehicle equipped with a BAIID. The purpose of the pilot program is to test the effectiveness of this relatively new technological DWI countermeasure.

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 upon request from Lowell Van Berkom at the address and telephone number listed above.

In preparing these rules, the Department has considered the requirements of Minnesota Statutes, section 14.115, in regard to the impact of the proposed rules on small businesses. The adoption of the rules will affect small businesses which are engaged in building, distributing, installing, calibrating, and removing BAIIDs. Other small businesses affected by the proposed rules are employers of potential participants in the program. The Department has considered the methods for reducing the impact of the rules on small businesses, as required by section 14.115. The Department's primary concern in proposing and adopting these rules is the safety of all citizens who use the highway system. In general, the Department has developed the proposed rules to impose as small a burden as possible, consistent with public safety. This applies to all businesses, not just small businesses. After considering the methods for reducing the impact of the rules on small businesses, the Department has concluded that it is inconsistent with public safety to make specific exceptions to the rules for small businesses. The Department's evaluation of the applicability of the methods contained in Minnesota Statutes, section 14.115, subdivision 2, for reducing the impact of the proposed rules is addressed further in the Statement Of Need And Reasonableness.

Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption of the rules.

Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land.

In accordance with Minnesota Statutes, section 16A.128, subdivision 1a, pertaining to fees, the Department has notified the Commissioner of Finance of the Department's intent to adopt rules in the above-entitled matter. A copy of the Department's notice and the Commissioner of Finance's approval are attached to the Statement Of Need And Reasonableness.

In accordance with Minnesota Statutes, section 16A.128, subdivision 2a, the Department has sent a copy of this notice and a copy of the proposed rules to the Chairs of the House Appropriations Committee and the Senate Finance Committee prior to submitting this notice to the State Register.

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rules, must submit the written request to Lowell Van Berkom at the address and telephone number listed above.

8-25-92
Date

Thomas H. Frost, Commissioner
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Ignition Interlock Systems of Iowa
3100 Justin Drive, Suite E
Urbandale, IA 50322

Stat 299A.01 subd 6

The commissioner of public safety shall have the power to promulgate such rules pursuant to chapter 14, as are necessary to carry out the purposes of laws 1969, chapter 1129. In addition, the commissioner may prescribe by rule fees for the rental of films from the department.

end of comment period Oct 14, 1990

~~Would have cited 171.305 subd 4 regarding fees.~~ - no 171.305 subd 3

Stat Authority
cited 171.305 subd 3
should have cited
171.305 subd 4
or subd 3 and 4
see attached

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subd 4 - gives authority
to change fees

missed 180 day deadline
pursuant to 14.12
but sent letters
of apology to
LCARR, Gov etc
letters are in packet

in the account may be appropriated to the
levelop alcohol-impaired driver education
in elementary and secondary schools. The
delines for the distribution of the grants. At
o local school districts; and

a separate account to be known as the trau-
account. $100,000 is annually appropriated
uman services for traumatic brain injury case
oney in the account is annually appropriated
and maintain the traumatic brain injury and
ction 144.662 and to reimburse the commis-
nable cost of services provided under section

lment laws. A person whose license has been
23 may not be issued another license at the end
on has complied with all applicable registration
ons 168.041 and 168.042.

1 c 292 art 8 s 3; 1991 c 301 s 9; 1991 c 333 s 30

nce. In any case where a person's license has been
voked under section 65B.67, 169.121, 169.123,
may issue a limited license to the driver includ-

ttendance at a chemical dependency treatment or
ne use of the driver's license;
e by a homemaker is necessary to prevent the sub-
medical, or nutritional needs of the family of the

ndary institution of education by an enrolled stu-
on the use of the driver's license.
a limited license may impose such conditions and
s judgment are necessary to the interests of the pub-
examination as to the driver's qualifications. The
ation of particular vehicles, to particular classes and
ular conditions of traffic. The commissioner may
ted license affirmatively demonstrate that use of pub-
an alternative to a limited license would be a signifi-

ion, "homemaker" refers to the person primarily per-
ousehold of residents consisting of at least the person
d or other dependents.
by the commissioner shall clearly indicate the limita-
erating under the limited license shall have the license
operating as a driver.
issue a limited license, the commissioner shall consider
f prior convictions and the entire driving record of
by the driver annually.

Subd. 2. **60-day waiting period.** A limited license shall not be issued for a period of 60 days to an individual whose license or privilege has been revoked or suspended for commission of the following offenses:

(1) any felony in the commission of which a motor vehicle was used; or

(2) failure to stop and disclose identity as required under section 169.09, in the event of a motor vehicle accident resulting in the death or personal injury of another.

Subd. 2a. **180-day waiting period.** Notwithstanding subdivision 2, a limited license shall not be issued for a period of 180 days to an individual whose license or privilege has been revoked or suspended for commission of the offense of manslaughter resulting from the operation of a motor vehicle or criminal vehicular homicide or injury under section 609.21.

[For text of subd 3, see M.S.1990]

Subd. 4. **Penalty.** A person who violates a condition or limitation of a limited license issued under subdivision 1 or fails to have the license in immediate possession at all times when operating a motor vehicle is guilty of a misdemeanor. In addition, a person who violates a condition or limitation of a limited license may not operate a motor vehicle for the remainder of the period of suspension or revocation, or 30 days, whichever is longer.

History: *1991 c 270 s 3-5; 1991 c 333 s 31*

171.305 IGNITION INTERLOCK DEVICE; PILOT PROGRAM; LICENSE CONDITION.

Subdivision 1. **Definition.** "Ignition interlock device" or "device" means breath alcohol ignition equipment designed to prevent a motor vehicle's ignition from being started by a person whose alcohol concentration exceeds the calibrated setting on the device.

Subd. 2. **Pilot program.** The commissioner shall establish a one-year statewide pilot program for the use of an ignition interlock device by a person whose driver's license or driving privilege has been canceled and denied by the commissioner for an alcohol or controlled substance related incident. After one year the commissioner shall evaluate the program and shall report to the legislature by February 1, 1993, on whether changes in the program are necessary and whether the program should be permanent. No limited license shall be issued under this program after August 1, 1992.

Subd. 3. **Performance standards.** The commissioner shall specify performance standards for ignition interlock devices, including standards relating to accuracy, safe operation of the vehicle, and degree of difficulty rendering the device inoperative.

Subd. 4. **Certification.** The commissioner shall certify ignition interlock devices that meet the performance standards and may charge the manufacturer of the ignition interlock device a certification fee.

Subd. 5. **Issuance of limited license.** The commissioner may issue a limited license to a person whose driver's license has been canceled and denied due to an alcohol or controlled substance related incident under section 171.04, subdivision 1, clause (8), under the following conditions:

(1) at least one-half of the person's required abstinence period has expired;

(2) the person has completed all rehabilitation requirements; and

(3) the person agrees to drive only a motor vehicle equipped with a functioning

reasonable and ordinary control over a motor vehicle, the period of cancellation or denial will be based on the recommendation of the physician and the department unless the cancellation period in item B or C applies. If the department and the treating physician do not agree on the cancellation period, the physician's statement and the person's medical history will be submitted to the Medical Review Board for its recommendation upon the request of the individual or the physician.

B. If a person has a driving-related episode, the person's driver's license will be canceled for a period of six months from the date of the episode.

C. If a person has a driving-related episode that resulted from the use of alcohol or a controlled substance, the person's driver's license will be canceled for a period of one year from the date of the episode.

Subp. 5b. **Notice.** The commissioner shall notify a person whose driver's license has been or is subject to cancellation, suspension, or denial. The notification must be in writing and be personally served or sent by first-class mail to the person's last known address shown on department records. The notice must contain:

A. the reason for the cancellation, suspension, or denial;

B. the length of withdrawal;

C. a statement that a person has a right to an administrative review; and

D. the requirements for reinstatement of the person's driver's license.

The notice is deemed received three days after mailing by the department to the last known address of the person shown on department records.

Subp. 6. **Reinstatement or issuance.** ~~For reinstatement,~~ The commissioner shall ~~require (1)~~ reinstate or issue the driver's license of a person whose license has been suspended, canceled, or denied when:

A. the period of suspension, if any, has expired;

B. the person has paid the suspension reinstatement fee as required by statute;

C. no withdrawal of the person's driver's license is outstanding;

D. the requirements that resulted in suspension, cancellation, or denial have been completed; and

E. the person submits a physician's statement ~~containing favorable long and short term prognoses for the episode free control of the person's condition, indicating that the person is cooperating in the treatment of the condition, and indicating the person is medically qualified to exercise reasonable and proper control over a motor vehicle on the public roads, and (2) a statement by the applicant indicating the date of the last episode of loss of consciousness or voluntary control~~, on a form prescribed by the commissioner, indicating:

(1) the date of each of the person's episodes since the previous physician's statement;

(2) the cause of each episode;

(3) the person is cooperating in the treatment of the condition;

(4) a favorable prognosis for the control of the person's diabetic condition; and

(5) the person is medically qualified to exercise reasonable and ordinary control over a motor vehicle on the public roads.

REPEALER. *Minnesota Rules*, parts 7410.2600; and 7410.2610, subparts 4 and 5, are repealed.

Department of Public Safety

Proposed Permanent Rules Relating to Vehicle Ignition Interlock Devices

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Public Safety intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the proposed rules is *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the proposed rules is *Minnesota Statutes*, section 171.305, subdivision 3. The Commissioner also has general rulemaking authority under *Minnesota Statutes*, section 299A.01, subdivision 6.

All persons have 30 days, until 4:30 p.m., October 14, 1992, in which to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the 30-day comment period. Any requests or comments must be received by the Department of Public Safety no later than 4:30 p.m. on October 14, 1992. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing must include his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Department will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Lowell Van Berkom, Bureau of Criminal Apprehension, 1246 University Avenue, St. Paul, Minnesota 55104, (612) 642-0700.

The proposed rules may be modified if the modifications are supported by data and views submitted to the Department and do not result in a substantial change in the proposed rules as noticed.

A free copy of the rules is available upon request from Lowell Van Berkom at the address and telephone number listed above.

The rules establish performance standards for Breath Alcohol Ingition Interlock Devices (BAIIDs). The rules also set out certification standards and fees for manufacturers of the devices. A BAIID is a breath alcohol sensing instrument that prevents a vehicle from starting if the driver's alcohol concentration exceeds a certain amount. For the most part, the rules contain device standards consistent with federal model standards for BAIIDs. BAIIDs will be used in a pilot program that targets a high risk population of drivers who have lost their licenses or driving privileges for three or more DWIs. To be eligible for a limited license under the program, a person must serve at least one-half of the required abstinence period, must complete all rehabilitation requirements, and must agree to drive a vehicle equipped with a BAIID. The purpose of the pilot program is to test the effectiveness of this relatively new technological DWI countermeasure.

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 upon request from Lowell Van Berkom at the address and telephone number listed above.

In preparing these rules, the Department has considered the requirements of *Minnesota Statutes*, section 14.115, in regard to the impact of the proposed rules on small businesses. The adoption of the rules will affect small businesses which are engaged in building, distributing, installing, calibrating, and removing BAIIDs. Other small businesses affected by the proposed rules are employers of potential participants in the program. The Department has considered the methods for reducing the impact of the rules on small businesses, as required by section 14.115. The Department's primary concern in proposing and adopting these rules is the safety of all citizens who use the highway system. In general, the Department has developed the proposed rules to impose as small a burden as possible, consistent with public safety. This applies to all businesses, not just small businesses. After considering the methods for reducing the impact of the rules on small businesses, the Department has concluded that it is inconsistent with public safety to make specific exceptions to the rules for small businesses. The Department's evaluation of the applicability of the methods contained in *Minnesota Statutes*, section 14.115, subdivision 2, for reducing the impact of the proposed rules is addressed further in the Statement Of Need And Reasonableness.

Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption of the rules.

Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land.

In accordance with *Minnesota Statutes*, section 16A.128, subdivision 1a, pertaining to fees, the Department has notified the Commissioner of Finance of the Department's intent to adopt rules in the above-entitled matter. A copy of the Department's notice and the Commissioner of Finance's approval are attached to the Statement Of Need And Reasonableness.

In accordance with *Minnesota Statutes*, section 16A.128, subdivision 2a, the Department has sent a copy of this notice and a copy of the proposed rules to the Chairs of the House Appropriations Committee and the Senate Finance Committee prior to submitting this notice to the *State Register*.

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney

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.

General, or who wish to receive a copy of the adopted rules, must submit the written request to Lowell Van Berkom at the address and telephone number listed above.

Dated: 25 August 1992

Thomas H. Frost, Commissioner
Department of Public Safety

Rules as Proposed (all new material)

IGNITION INTERLOCK DEVICES

7409.3700 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 7409.3700 to 7409.3770 have the meanings given them in this part and part 7409.0100.

Subp. 2. **AC.** "AC" is the abbreviation for alcohol concentration and means the number of grams of alcohol per 210 liters of breath.

Subp. 3. **Alcohol.** "Alcohol" means ethanol or ethyl alcohol.

Subp. 4. **Alcohol setpoint.** "Alcohol setpoint" means the minimum AC at which a BAIID is set to lock a motor vehicle's ignition.

Subp. 5. **Authorized person.** "Authorized person" means a participant or any other licensed driver who has completed the orientation provided for in part 7409.3750, subpart 4.

Subp. 6. **BAIID.** "BAIID" is the abbreviation for breath alcohol ignition interlock device and means a device designed to allow a vehicle ignition to start the vehicle engine when the AC test result is below the alcohol setpoint and to lock the vehicle ignition to prevent the vehicle engine from starting when the AC test result is at or above the alcohol setpoint.

Subp. 7. **Breath sample.** "Breath sample" means expired human breath containing primarily air from the deep lung.

Subp. 8. **Circumvention or bypass.** "Circumvention" or "bypass" means an overt, conscious attempt to provide an air sample to the BAIID other than a breath sample from an authorized person and thus to permit a person with an AC at or above the alcohol setpoint to start the vehicle engine. Circumvention or bypass includes the use of a human breath sample that has intentionally been altered so as to remove or reduce the amount of alcohol contained in the breath sample.

Subp. 9. **Commissioner.** "Commissioner" means the commissioner of the Department of Public Safety or an authorized agent.

Subp. 10. **Department.** "Department" means the Department of Public Safety or an authorized officer or agent.

Subp. 11. **Fail-safe.** "Fail-safe" means the BAIID must lock a motor vehicle's ignition.

Subp. 12. **Participant.** "Participant" means a person who has been issued a limited license under *Minnesota Statutes*, section 171.305, subdivision 5.

Subp. 13. **Service provider.** "Service provider" means a dealer, distributor, supplier, or service center of a BAIID used in Minnesota, designated by the manufacturer and approved by the department.

Subp. 14. **Sufficient cause to believe.** "Sufficient cause to believe" means grounds put forth in good faith that are not arbitrary, irrational, unreasonable, or irrelevant and that make the proposition asserted more likely than not, provided the grounds are based on at least one of the following sources:

A. written information from an identified person;

B. facts or statements supplied by a manufacturer of a BAIID;

C. facts or statements supplied by a designated service provider;

D. court documents and police records; and

E. facts of which the commissioner or the commissioner's employees have personal knowledge.

Subp. 15. **Tampering.** "Tampering" means an overt, conscious attempt to disable or disconnect the BAIID from its power source, or any other act intended to start the vehicle engine without providing a breath sample to the BAIID for analysis.

7409.3710 PURPOSE AND SCOPE.

The purpose of parts 7409.3700 to 7409.3770 is to establish performance standards for BAIIDs and certification standards and fees for manufacturers of BAIIDs, to be used pursuant to *Minnesota Statutes*, section 171.305.

7409.3720 STANDARDS AND SPECIFICATIONS.

Subpart 1. **Alcohol setpoint.** The alcohol setpoint is 0.020 AC.

Subp. 2. **Breath samples.** A BAIID must meet all of the following specifications concerning breath samples and vehicle operation:

A. A BAIID must determine the AC of a breath sample.

B. A minimum pressure requirement of 12 inches of water is required for the BAIID to accept a breath sample for analysis of AC.

C. The BAIID must lock the vehicle ignition at least 90 percent of the time when the AC of the breath sample is 0.03 or more. The BAIID must lock the vehicle ignition at least 99.5 percent of the time when the AC of the breath sample is 0.04 or more.

D. The BAIID must lock the vehicle ignition no more than ten percent of the time when the AC of the breath sample is 0.01 or less. The BAIID must lock the vehicle ignition no more than 0.5 percent of the time when the AC of the breath sample is 0.00.

E. When the BAIID allows the vehicle engine to start, the BAIID must require a breath sample to determine AC at variable time intervals ranging from five to 30 minutes while the engine is running.

F. The BAIID must be prepared to accept a breath sample for analysis within three minutes of an AC result of 0.05 or less.

G. If the vehicle stalls after the BAIID has allowed the vehicle engine to start, the BAIID must permit the vehicle engine to start without requiring a breath sample for the next two minutes after the stall.

Subp. 3. **Power source.** The BAIID must be designed to be operated from a 12-volt DC vehicle battery. The BAIID must meet the requirements of this part when operated with automotive voltages of 11 to 16 volts DC. When operated with voltages of less than 11 volts or more than 16 volts, the BAIID must meet the requirements of this part or fail-safe.

Subp. 4. **Temperature.** The BAIID must meet the requirements of this part when operated within a temperature range of +85 degrees Celsius to -40 degrees Celsius (+185 degrees Fahrenheit to -40 degrees Fahrenheit). If the BAIID is exposed to temperatures above +85 degrees Celsius or below -40 degrees Celsius, then the BAIID must meet the requirements of this part or fail-safe. The BAIID must be ready for operation within five minutes of being turned on at -20 degrees Celsius (-4 degrees Fahrenheit).

Subp. 5. **Electromagnetic interference.** The BAIID must either fail-safe or meet the requirements of this part when exposed to radio frequency interference or electromagnetic interference sources normally found in an operating motor vehicle.

Subp. 6. **Tampering, circumvention, or bypass.** The BAIID must provide a method to detect tampering, circumvention, or bypass. The BAIID must have a method to prevent an unauthorized person from operating the BAIID. A warning label visible to front seat occupants must be attached to the BAIID stating: "It is a misdemeanor to circumvent, bypass, or tamper with this device."

Subp. 7. **Data recording.** A BAIID must record the following information:

A. the date and time of any attempt to tamper with, circumvent, or bypass the BAIID;

B. the date and time of any use of the vehicle or any attempt to use the vehicle, including all times that the vehicle engine was started or stopped;

C. the date, time, and AC of each breath sample provided to the BAIID;

D. the date and time of any malfunction of the BAIID;

E. the date and time that a breath sample was required under subpart 2, item E, and a breath sample was not provided;

F. the date a "service required" message was issued; and

G. the date service is performed.

Subp. 8. **Driver messages.** The BAIID must provide the following information to the driver:

A. BAIID readiness for acceptance of a breath sample, including samples required under subpart 2, item E;

B. the AC of each breath sample; and

C. a notice to obtain service within seven days if a breath sample has an AC at or above the alcohol setpoint, if the BAIID detects tampering, circumvention, or bypass, or if a breath sample is not provided as required by subpart 2, item E.

Subp. 9. **Need for service.** The BAIID must meet the requirements of this part for a minimum period of 37 days without requiring intervening service.

Subp. 10. **Ignition lockout.** The BAIID must permanently lock the ignition if service under subpart 8, item C, or part 7409.3750, subpart 5, item A, is not obtained within seven days.

7409.3730 CERTIFICATION REQUIREMENTS.

Subpart 1. **Application for certification.** A manufacturer may submit a BAIID model to the commissioner for certification.

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Application for certification must be on a form prescribed by the department. Each application must be for only one model or type of BAIID. A manufacturer must make separate applications for models or types of BAIIDs that differ in any operational aspect. An application for certification must include, in addition to other information necessary to the administration of the pilot program that the department may require:

A. the name and address of the manufacturer;

B. the name and model number of the BAIID;

C. a detailed description of the BAIID, including instructions for installation and operation, and technical specifications describing the BAIID's accuracy, security, data collection and recording, tamper detection, and environmental features;

D. a certification by the manufacturer that all BAIIDs sold, offered for sale, leased, or installed in Minnesota will meet the requirements for certification set forth in these specifications;

E. a certification by the manufacturer that the requirements of part 7409.3760 have been met; and

F. a certification fee of $5,000.

Subp. 2. **Testing data.** For any BAIID model submitted for certification, the manufacturer must provide data from an independent laboratory approved by the department, demonstrating that the BAIID model meets each of the requirements of part 7409.3720. The data must be obtained from a production line unit or from production line units of the BAIID model. The data must include the following information:

A. The data must show the AC for a minimum of five human subjects with an AC ranging from 0.030 to 0.039. A minimum of three breath samples must be provided to the BAIID by each human subject for a total of 30 breath samples. The requirements of part 7409.3720, subpart 2, item C, must be met.

B. The data must show the AC for a minimum of five human subjects with an AC ranging from 0.040 to 0.049. A minimum of three breath samples must be provided to the BAIID by each human subject for a total of 30 breath samples. The requirements of part 7409.3720, subpart 2, item C, must be met.

Subp. 3. **Equipment.** For any BAIID model submitted for certification, two BAIIDs and the materials necessary to conduct 100 breath tests must be submitted by the manufacturer to the department. The BAIIDs must be installed in vehicles provided by the manufacturer for independent testing by the department, at no expense to the department.

Subp. 4. **Design changes.** The manufacturer shall notify the department in writing of any changes in the components, design, or installation and operation instructions of any BAIID model certified by the commissioner. The manufacturer shall supply supportive documentation to the department establishing that the changes do not affect the ability of the BAIID to comply with the requirements of part 7409.3720.

Subp. 5. **Length of certification.** Certification is effective until revocation under part 7409.3770, subpart 1, or expiration of the program established under *Minnesota Statutes*, section 171.305, whichever is earlier.

7409.3740 MANUFACTURER'S RESPONSIBILITIES.

Subpart 1. **Designated service provider.** Upon certification of the BAIID by the commissioner, the manufacturer shall submit to the department for approval its designated service providers. The manufacturer may designate itself as a service provider. To receive department approval, the manufacturer shall submit to the department:

A. certification from each service provider that the service provider's responsibilities as listed in parts 7409.3750 and 7409.3760 will be met; and

B. a certificate of insurance as required in part 7409.3760.

Subp. 2. **Installation instructions.** The manufacturer shall develop written instructions for installing the BAIID. The instructions must include inspection procedures to ensure the vehicle in which the BAIID will be installed is in a mechanical and electrical condition that will allow the BAIID to meet the specifications in part 7409.3720. The instructions must be provided to all service providers that will install the BAIID.

7409.3750 SERVICE PROVIDER'S RESPONSIBILITIES.

Subpart 1. **Service locations and hours.** A service provider shall provide for service locations as follows:

A. The service provider shall make available a minimum of one permanent installation and service location within the state. The permanent service center must establish and maintain reasonable business hours for a minimum of five days a week. A schedule stating those hours must be submitted to the department.

B. The service provider shall provide service locations so that there is a service location within 100 straight-line miles of the residence or employment site of any participant for service. Service locations may be provided through installation and service centers or through mobile service. A plan describing the service locations must be submitted to the department.

Subp. 2. **Security.** A service provider shall comply with all of the following security requirements:

A. Only authorized employees of the service provider, manufacturer, or department are permitted to observe the installation of the BAIID. Reasonable security measures must be taken to prevent other individuals from observing installation or obtaining access to installation materials.

B. The service provider shall not facilitate tampering, circumvention, or bypass of a BAIID. If the service provider is aware of a participant operating a vehicle that is not equipped with a BAIID, the service provider shall immediately notify the department.

C. A participant may not be employed by a manufacturer or service provider in a position that has access to installation instructions or materials.

Subp. 3. **Installation.** A service provider shall comply with the following installation service requirements:

A. Installation must be done in compliance with the installation instructions provided by the manufacturer and in accordance with accepted trade standards of the automotive repair industry.

B. The service provider shall inspect each vehicle before installing the BAIID. The inspection must include screening procedures to ensure the vehicle in which the BAIID is to be installed is in a mechanical and electrical condition that will allow the BAIID to meet the specifications in part 7409.3720. Conditions that the manufacturer has determined would prevent the BAIID from meeting the specifications of part 7409.3720, must be repaired before the BAIID is installed. The participant shall bear the costs of any repairs to the vehicle.

C. The service provider shall provide a certificate of installation to the participant and the department upon completing installation of the BAIID. The certificate must include the following information:

(1) the participant's full name, address, date of birth, and telephone number;

(2) the full names and dates of birth of all authorized persons other than the participant;

(3) the vehicle's make, model, vehicle identification number, model year, license plate number, and state of registration;

(4) the vehicle owner's full name and date of birth;

(5) the serial number of the installed BAIID;

(6) the date of installation;

(7) the frequency of required service and monitoring; and

(8) any additional information necessary to the administration of the pilot program requested by the department.

Subp. 4. **Orientation.** The service provider shall provide an orientation to the participant and any other licensed driver authorized to operate the vehicle. The orientation must include information on the proper use of the BAIID, service locations, and procedures for regular service and emergency situations.

Subp. 5. **Service requirements.** A service provider shall comply with the following ongoing service requirements:

A. The service provider shall service and monitor the installed BAIID a minimum of every 30 days after initial installation. If during the regular service appointment the service provider determines the BAIID to be defective, it must be repaired or replaced within 24 hours of that determination. If the participant fails to obtain regular service, the service provider shall immediately notify the department.

B. Each time the BAIID is serviced, the service provider shall review the data recorded under part 7409.3720, subpart 7, and provide a copy to the department within five business days of the service date. The service provider shall immediately notify the department by telephone or facsimile if any of the following is indicated:

(1) tampering, circumvention, or bypass;

(2) failure to provide a breath sample as required under part 7409.3720, subpart 2, item E; or

(3) AC at or above the setpoint.

Immediate notification must be followed by written notice to the department within three days of the service.

C. The service provider must have and make known to all authorized persons a 24-hour toll-free telephone number for use in the event of questions or emergencies related to the BAIID.

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D. The service provider shall respond to an emergency report related to the BAIID within one business day of the report. If the service provider determines the emergency to be the result of a defective BAIID, the service provider shall repair or replace the BAIID within 48 hours of that determination.

Subp. 6. **BAIID removal.** A service provider shall comply with the following requirements for BAIID removal:

A. Upon removal of the BAIID, the service provider shall restore the vehicle to its original operating condition. All wires that were connected to the BAIID must be reconnected and insulated.

B. If the service provider removes the BAIID and installs a different BAIID, the service provider shall notify the department by mail of the serial number of the newly installed BAIID. If the BAIID is installed in a replacement vehicle, the service provider shall submit a new certificate of installation to the department.

C. If the service provider removes the BAIID for reasons other than service, the service provider shall immediately notify the department by telephone or facsimile. If removal occurs after the department's normal business hours, notification must be made at the earliest time possible. Telephone notification must be followed by written notification within three days of removal of the BAIID.

Subp. 7. **Program evaluation.** The service provider shall submit a report to the department every six months containing the following information:

A. all written complaints received from authorized persons;

B. all incidents of customer error in operating the BAIID;

C. all incidents of mechanical or electrical conditions of the motor vehicle that may have affected the ability of the BAIID to meet the requirements of part 7409.3720;

D. all incidents of failure of a BAIID to meet the requirements of part 7409.3720 and the cause for the failure; and

E. all incidents of attempts to tamper with, circumvent, or bypass the BAIID and whether the participant was able to operate the vehicle.

Subp. 8. **Cost determination.** The cost of installation, monthly service, and monitoring must not vary according to the location of the residence or employment site of the participant.

Subp. 9. **Inspection.** To ensure compliance with the specifications in this part, the service provider shall make available any service location and any BAIID at the service location for inspection by a representative of the department during the service provider's reported business hours.

7409.3760 LIABILITY.

Subpart 1. **Insurance coverage.** The manufacturer and each service provider shall maintain comprehensive general liability insurance in the amount of $1,000,000 per person and $3,000,000 per incident. All insurance policies must be endorsed to provide the department with 45 days prior written notice of cancellation, material change, or intent to lapse.

Subp. 2. **Indemnification.** The manufacturer and each service provider shall indemnify and hold harmless the department from any and all claims, demands, actions, and costs related to the BAIID program.

7409.3770 REVOCATION OF CERTIFICATION OR APPROVAL.

Subpart 1. **BAIID certification.** The department shall revoke the certification of the BAIID when it has sufficient cause to believe any of the following:

A. the BAIID model does not meet the requirements of part 7409.3720;

B. the manufacturer has changed the components, design, or installation and operation instructions in such a way that the requirements of part 7409.3720 are no longer met;

C. the manufacturer fails to maintain the liability insurance as required in part 7409.3760; or

D. the manufacturer fails to maintain a service provider as required in part 7409.3740, subpart 1.

Subp. 2. **Service provider.** The department shall revoke the approval of a designated service provider when it has sufficient cause to believe that the service provider is not meeting the requirements of part 7409.3750 or 7409.3760.

Subp. 3. **Review of denial or revocation of certification.** If a BAIID certification or a service provider approval is denied or revoked, the manufacturer or service provider may request review of the denial or revocation by the commissioner. The request must be in writing and made within 20 days of the notification of the denial or revocation. The commissioner shall issue a decision within 20 days of receiving a request for review. The commissioner's decision is a final agency action.

(K)

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF DRIVER AND VEHICLE SERVICES
BUREAU OF CRIMINAL APPREHENSION

In The Matter Of The Proposed Adoption Of Rules Of The State Department Of Public Safety Relating To Vehicle Ignition Interlock Devices

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES WITHOUT A PUBLIC HEARING

(1) Notice of the Commissioner's intent to adopt the above-entitled rules was published in the State Register on September 14, 1992, and was sent by United States mail to all persons on the list maintained by the Department pursuant to Minnesota Statutes, sections 14.14, subdivision 1a, and 14.22, on September 3, 1992. (2) The Statement Of Need And Reasonableness was prepared before the Notice Of Intent To Adopt Rules was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public. A copy of the Statement Of Need And Reasonableness was sent to the Legislative Commission To Review Administrative Rules when it became available to the public. (3) Before the Notice was submitted to the State Register, a copy of the Notice Of Intent To Adopt Rules and the proposed rules were sent to the chairs of the House Appropriations Committee and Senate Finance Committee.

(4) All persons were given the opportunity to submit comments on the rules for 30 days after the Notice Of Intent To Adopt Rules was published. (5) The Department received three comments and submissions on the rules in response to the Notice Of Intent To Adopt Rules. The Department received zero requests for notice of submission to the Attorney General. The Department received zero requests for a public hearing. (7)

Based on the comments and evidence in the record before the Department, I find the following:

(6)

1. The second sentence of part 7409.3720, subpart 6, of the proposed rules is amended as follows: "The BAIID must have a method to ~~prevent~~ deter an unauthorized person from operating the BAIID."

   Richard Freund of IMTGroup, Inc., in a September 16, 1992, letter, discussed the different methods used by interlock devices to prevent unauthorized users from operating a BAIID. Mr. Freund pointed out that there is no technology available that will prevent unauthorized use. The technology described by Mr. Freund will, however, make unauthorized use more difficult. Mr. Freund recommended that we delete the word "prevent" and replace it with the word "deter."

   We are persuaded by Mr. Freund's comments and agree with his recommended change. This change does not change the intent of subpart 6 which is to "discriminate authorized drivers from other individuals who would provide an alcohol free sample in order to allow a drinking driver to operate the vehicle." See the Statement of Need and Reasonableness on page 10. This is not a substantial change.

2. Part 7409.3720, subpart 8, item B, is amended to read:

Subp. 8. Driver messages. The BAIID must provide the following information to the driver:

. . . .

B. <u>either</u> the AC of each breath sample <u>or an indication for each breath sample of pass if the AC is below the alcohol setpoint or fail if the AC is at or above the alcohol setpoint</u>; and

Richard Freund, in his September 16, 1992, letter, recommended that this requirement be amended to allow for an indication of pass or fail rather than a readout of the AC. He said that his unit simply indicates a pass or fail. He stated that a readout of the AC does not provide useful information to the unsophisticated user.

The department's purpose in first proposing a driver message that gives the AC of each breath sample was to give the driver important information. The most important information that the driver can get is whether the AC is below the alcohol setpoint. The actual AC of a breath sample is not as important as whether the breath sample passed or failed. The amended rule will still provide the most important information to the driver. This is not a substantial change.

3. The above-changes are not substantial in that the changes do not affect classes of persons who could not reasonably have been expected to comment on the proposed rules as originally noticed.

4. The above-changes are not substantial in that the changes do not introduce significant new subject matter which a reasonable person, on the basis of the proposed rules as originally noticed, would not have anticipated would occur during the rulemaking proceeding.

5. The above-changes are not substantial in that the changes do not make a major substantive change that was not raised by the proposed rules as originally noticed in such a way as to invite reaction.

6. The above-captioned rules are needed and reasonable.

(9) NOW, THEREFORE, IT IS ORDERED that the rules identified as the Rules of the State Department of Public Safety Relating To Vehicle Ignition Interlock Devices, in the form set out in the State Register on September 14, 1992, with the modifications as indicated in the Revisor's draft, file number 2046, dated 11/03/92, are adopted this tenth day of November, 1992, pursuant to authority vested in me by Minnesota Statutes, section 171.305, subdivision 3, and section 299A.01, subdivision 6.

Thomas H. Frost, Commissioner
Department of Public Safety

OFFICE OF THE COMMISSIONER

211 Transportation Building

Telephone: _____

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

SAINT PAUL 55155

November 11, 1992

Ms. Patty Nolte
Legal Assistant
Public Finance Division
Office of the Attorney General
404 Capital Office Building
525 Park Street
St. Paul, Minnesota 55103

Re: In The Matter Of The Adopted Rules Of The State Department Of Public Safety Relating To Vehicle Ignition Interlock Devices

Dear Ms. Nolte:

On November 10, 1992, the Minnesota Department of Public Safety adopted the above-captioned rules relating to vehicle ignition interlock devices. Enclosed for your review are the documents required by Attorney General Rules, part 2010.0300. Note that the documents listed in paragraphs A through O of this letter are keyed to items A through O of part 2010.0300. Paragraphs P, Q, and R list documents which show compliance with certain statutory rulemaking mandates and which would be required under a discussion draft of possible Attorney General Rules changes enclosed with a memo from your office dated January 24, 1991.

A. A photocopy of the Notice Of Solicitation Of Outside Information Or Opinions as published in the State Register. Also enclosed is a photocopy of a comment received in response to the Solicitation.

B. No copy of a rulemaking petition is enclosed because no such petition was filed regarding these rules.

C. No certificate of an authorizing resolution or copy of a delegation of authority is enclosed because the Department of Public Safety is not a multi-member agency.

D. A copy of the proposed rules with a certificate of approval as to form by the Revisor of Statutes attached.

E. A copy of the Notice Of Intent To Adopt Rules Without A Public Hearing, as mailed.

F. A copy of the Statement Of Need And Reasonableness in support of the proposed rules.

G. A copy of the Affidavit Of Mailing The Notice Of Intent To Adopt Rules Without A Public Hearing. Also enclosed is a copy of the Affidavit Of Certificate Of Mailing List. Also enclosed is a copy of the Affidavit Of Mailing Discretionary Notice Of Intent To Adopt Rules.

H. A photocopy of the Notice Of Intent To Adopt Rules Without A Public Hearing, as published in the State Register.

I. Four copies of the rules as adopted. The modifications to the proposed rules are reflected on the rules as adopted and are approved as to form by the Revisor of Statutes.

J. No certificate of a resolution adopting the rules is enclosed because the Department of Public Safety is not a multi-member agency.

K. A copy of the Findings Of Fact, Conclusions, And Order Adopting Rules.

L. Copies of all written requests, withdrawals of requests for a hearing, submissions, or comments on the rules received by the Department except for requests solely for copies of the rules or of the Statement Of Need And Reasonableness.

M. A copy of the Declaration Of Counsel signed by Assistant Attorney General Nancy Bode.

N. No notice of submission of the rules to the Attorney General is enclosed because no persons requested notification of the date of submission of the rules to the Attorney General.

O. No affidavit of mailing of notice of submission of the rules to the Attorney General is enclosed because no such notices were given.

P. A copy of the Affidavit Of Mailing The Statement Of Need And Reasonableness To The Legislative Commission To Review Administrative Rules.

Q. A copy of The Affidavit Of Sending The Notice Of Intent To Adopt Rules And A Copy Of The Rules To The Chairs Of The Senate Finance And House Appropriations Committees.

R. A photocopy of the August 12, 1991, letter to the Legislative Commission To Review Administrative Rules, other appropriate Committees of the Legislature, and the Governor, pursuant to Minnesota Statutes, section 14.12.

If you have any questions about the enclosed documents or if you wish to discuss anything about the rules with me, please contact me at 296-2631. After you complete your review, please send any correspondence regarding the rules to me, Dave Orren, at 208 Transportation Building.

Yours very truly,

Dave Orren

Dave Orren
Rules Coordinator

enclosures

- Development of draft policy document — September-December 1992
- Public meeting/hearing process — January-February 1993
- Metropolitan Council adoption of revised housing policy — March 1993

Opportunities to participate in this process and provide comments will be particularly important during the issue identification phase and at the public meetings. A notice of public hearing will be published. If you have any questions on the proposed work or schedule, or wish to submit data or views on the subject, please contact Ana Moreno of the Metropolitan Council staff at 291-6601.

Metropolitan Council

Notice of Preliminary Schedule for Developing and Adopting an Aging Chapter of the *Metropolitan Development Guide*

The Metropolitan Council serves as the federally funded and state designated agency on aging for the Twin Cities Metropolitan Area. It is initiating a process to develop an aging policy document which will become a chapter in the *Metropolitan Development Guide*. The work will begin in 1992 and be completed by December 1993. A preliminary schedule for the work is listed below:

- Collection of data on service needs, resources, gaps in services, issues, strengths in the aging system—*April to October 1992*
- Development of draft description of the aging system—*October to December 1992*
- Discussion of description with individuals and groups to obtain input—*January to March 1993*
- Development of analysis of alternative models for restructuring the system—*March to May 1993*
- Discussion of models with individuals and groups to obtain input—*June to August 1993*
- Development of draft document, public hearing, and adoption of Aging Chapter of the *Metropolitan Development Guide—August to December 1993*

Opportunities for input from individuals and a wide variety of public and private organizations have been included within the proposed schedule of activities. Please call to confirm dates and meeting schedules. Notices of public hearings will be published. If you have any questions regarding the schedule or proposed work, or wish to submit data or views on the subject, please call LaRhae Knatterud of the Council's Aging Division/Area Agency on Aging at 291-6497.

Department of Public Safety

Notice of Solicitation of Outside Information or Opinions Regarding Development of Rules Relating to Breath Alcohol Ignition Interlock Devices

NOTICE IS HEREBY GIVEN that the State Department of Public Safety is seeking information or opinions from sources outside the Department in preparing to propose the adoption of rules relating to breath alcohol ignition interlock devices. The commissioner has authority to adopt standards for these devices under *Minnesota Statutes*, section 171.305, subdivision 6, which states: "The commissioner shall specify performance standards for ignition interlock devices, including standards relating to accuracy, safe operation of the vehicle, and degree of difficulty rendering the device inoperative." The commissioner also has rulemaking authority under *Minnesota Statutes*, section 299A.01, subdivision 6, as is necessary to carry out the duties of the commissioner.

The State Department of Public Safety requests information and opinions concerning the subject matter of the rules. Interested persons or groups may submit data or views in writing or orally. Written statements should be addressed to:

Ray Lewis
Department of Public Safety
208 Transportation Building
395 John Ireland Boulevard
St. Paul, Minnesota 55155

Oral statements will be received during regular business hours over the telephone at (612) 296-6555 and in person at the above address.

All statements of information and opinions will be accepted until further notice is published in the *State Register* that the Department intends to adopt or to withdraw the rules. Any written material received by the State Department of Public Safety will become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rules are adopted.

Dated: 12 May 1992

Thomas H. Frost, Commissioner
Department of Public Safety

Ignition
Interlock
Systems

Guardian Interlock Systems
110 Marietta Station Walk
Suite 320
Marietta, Georgia 30060

404-499-0499
Fax 404-499-0533

GUARDIAN INTERLOCK SYSTEMS

Tuesday, August 18, 1992

Mr. Lowell VanBerkum
Director
Forensic Science Laboratory
1246 University Avenue
St Paul, Minnesota 55104

Dear Mr. VanBerkum,

Thank you for taking the time to talk with me today. I know your time is in great demand and you were very considerate to update me on the status of Minnesota's Ignition Interlock Pilot Program. As you may know, Guardian interlock Systems is the largest manufacturer of ignition interlock devices and has active programs in sixteen states. We are confident that our product can meet your specifications and welcome and opportunity to demonstrate that fact.

Minnesota has quite properly taken steps to insure the technical qualifications of the device. This is an important precaution and should not be compromised. Another important consideration, however, is the fiduciary responsibility of the manufacturer. We are, in effect, assuming the responsibility for seeing that offenders follow the terms of their probation. Thus, the manufacturer's system of reporting and control is just as important as the technical capabilities of the device. The Guardian Responsible Driver Program is a proven system of reporting and control which has been refined over a period of five years. While others sell their devices to local representatives and exercise no control over the administration of the program, we maintain an active involvement. Our representatives are required to utilize our central computer system which gives us on-line access to their files at any time. We constantly monitor and audit each program around the country to assure ourselves that our fiduciary responsibilities are being upheld.

I have enclosed a business card for your files. I would appreciate it if you would check to be sure that we are on the mailing list for information concerning the pilot program. Thank you again for your help.

Sincerely,

Joseph R. Sheram, Jr.

(F)

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF DRIVER AND VEHICLE SERVICES
BUREAU OF CRIMINAL APPREHENSION

In The Matter Of The Proposed Adoption Of Permanent Rules Of The State Department Of Public Safety Relating To Vehicle Ignition Interlock Devices.

STATEMENT OF NEED AND REASONABLENESS

General Statement

The proposed rules establish performance standards for Breath Alcohol Ignition Interlock Devices (BAIIDs) and certification standards and fees for manufacturers of the devices.

In 1991, legislation was enacted in Minnesota that established a one-year pilot program for the use of ignition interlock devices. The program targeted a high risk population made up of persons whose driver's licenses or driving privileges had been canceled and denied for three or more alcohol or controlled substance related driving incidents. The ignition interlock legislation was amended in 1992 to extend the pilot program until August 1983. See, Minnesota Statutes, section 171.305, as enacted by Minnesota Laws 1991, chapter 270, section 6, and as amended by Minnesota Laws 1992, chapter 570, article 1, section 24.

Minnesota Statutes, section 171.305, requires the Commissioner to specify performance standards for BAIIDs and to certify BAIIDs that meet the standards. Section 171.305 also permits the Commissioner to charge a fee for the certification of a BAIID.

Under section 171.305, the Commissioner has authority to issue a limited license to a person whose driver's license has been canceled and denied due to multiple alcohol or controlled substance related driving incidents. To be eligible for the limited license, at least one-half of the person's required abstinence period must have expired, the person must have completed all rehabilitation requirements, and the person must agree to drive only a motor vehicle equipped with a functioning and certified BAIID.

The rules were developed in cooperation between the Bureau of Criminal Apprehension (BCA) and the Driver and Vehicle Services Division (DVS). BCA and DVS are both divisions within the Department of Public Safety. Testing and certification of BAIIDs will be done by the BCA laboratory. DVS will issue driver's licenses under the ignition interlock legislation and will monitor the results of the pilot program.

A BAIID is a breath alcohol sensing instrument mounted in a vehicle which connects to the ignition system in a way that prevents the vehicle from starting if the driver's alcohol concentration exceeds the calibrated setting on the BAIID.

To start a vehicle equipped with a BAIID, the driver must blow a sample of breath into a flexible tube for analysis by the BAIID. The BAIID then measures the alcohol level in the breath sample. If the breath sample contains an amount of alcohol that is at or above the calibrated setting, the BAIID will prevent the vehicle from starting. If the alcohol level is lower than the calibrated setting, the BAIID will allow the vehicle to start. The BAIID also records data related to the breath sample.

According to the most recent national report, BAIIDs are currently used in twelve states, while four states plan to start programs, and six states have passed legislation but do not have operational programs. *See* AAA Foundation for Traffic Safety, Ignition Interlock Devices: An Assessment of Their Application to Reduce DUI, page 43 (July 1991).

Minnesota Laws 1991, chapter 270, section 6, is the first attempt to develop ignition interlock device standards and program standards in Minnesota. The proposed rules have been developed by consulting the enabling legislation, federal model specifications for BAIIDs, and program standards and operational procedures for BAIIDs from published rules and guidelines of other states.

For the most part, the proposed rules contain device standards that are consistent with the "Model Specifications for Breath Alcohol Ignition Interlock Devices (BAIIDs)" developed by the National Highway Traffic Safety Administration (NHTSA) of the United States Department of Transportation. The federal model specifications were first proposed in the **Federal Register** on April 24, 1991 (56 FR 18857-18873). The federal model specifications were adopted in the **Federal Register** on April 7, 1992 (57 FR 11772-11787).

NHTSA's work on ignition interlock devices to prevent alcohol impaired drivers from operating a motor vehicle dates back to the early 1970s. This work and others are summarized in the report Potential for Application of Ignition Interlock Devices to Prohibit Operation of Motor Vehicles by Intoxicated Individuals: A Report to Congress. (May, 1988). Interlocks have advanced technically since this report was published and most of the research on interlock use has been done since this report was published. Model performance guidelines and procedures for BAIIDs have been developed under contract with the National Public Services Research Institute. *See* AAA Foundation for Traffic Safety, Ignition Interlock Devices: An Assessment of Their Application to Reduce DUI, pages 14-15 (July 1991).

NHTSA has developed and issued the federal model specifications "to encourage a degree of consistency among the States while at the same time provide sufficient flexibility for states to address their individual needs or legislative requirements." 57 FR 11772 The federal model specifications were also developed to diminish the economic hardship placed on BAIID manufacturers faced with having to meet numerous state standards and test requirements. NHTSA has previously issued federal model standards and test procedures for evidential breath test devices and calibration units for breath alcohol testers.

When a standard in the proposed rules is the same as a federal model specification, this Statement of Need and Reasonableness will contain only a citation to the federal model specification as a justification for the standard in the proposed rules. Standards in the proposed rules that differ from federal model specifications are justified in more detail. For further information about the federal model specifications, contact Dr. James F. Frank, Office of Program Development & Evaluation (NTS-30) National Highway Traffic Safety Administration, 400 Seventh St. S.W., Washington D.C. 20590, telephone (202) 366-5593.

The purpose of the pilot ignition interlock program required under Minnesota Statutes, section 171.305, is to test the effectiveness of this relatively new technological DWI countermeasure. The program will provide an additional method and incentive for certain high risk DWI offenders to become relicensed following license cancellation for repeated alcohol and substance abuse related driving incidents. The law allows repeat DWI offenders to be relicensed following a reduced rehabilitation period of required abstinence on the condition they agree to drive only a motor vehicle equipped with a functioning and certified ignition interlock device.

According to Minnesota Rules, part 7503.1700, subpart 1, rehabilitation is required following license cancellation for an administrative license revocation based on a third alcohol- or controlled-substance incident within five years, three alcohol-related driving incidents and a special review conducted within ten years of the third incident, or four or more of these incidents on record.

The rehabilitation requirements listed in Minnesota Rules, part 7503.1700, subpart 2, include: successful completion of treatment for chemical dependency following the last documented date of use of alcohol or a controlled substance, and provision of evidence of the treatment; regular participation and evidence of participation in a generally recognized abstinence-based support group for a minimum of three months; abstinence and documentation of abstinence from alcohol and controlled substances for prescribed time periods; and a rehabilitation interview with a driver improvement specialist at one of the Department's driver evaluation offices.

Drivers who have completed rehabilitation following cancellation must continue to maintain abstinence from alcohol to retain their driving privileges, under Minnesota Rules, parts 7503.1300, subpart 3, and 7503.1700, subpart 6. Additional rehabilitation and longer documented abstinence periods are required following consumption of alcohol or controlled substances after completing rehabilitation. The period of documented abstinence required by Minnesota Rules, part 7503.1700, subpart 5, before relicensing is one year for the first rehabilitation, three years for the second rehabilitation, six years for the third rehabilitation, and double the latest rehabilitation period for subsequent rehabilitations. Participation in the ignition interlock program would reduce the required abstinence time before becoming eligible for regaining driving privileges by one half, under Minnesota Statutes, section 171.305, subdivision 5. Lifelong abstinence is still required to retain driving privileges.

The following table shows the number of DWI offenders in Minnesota who were relicensed following completion of rehabilitation during the last three years. However, not all of the DWI offenders eligible for relicensing following completion of the requirements of Minnesota Statutes, section 171.305, subdivision 5, would choose to enroll in the ignition interlock program.

NUMBER OF DWI OFFENDERS RELICENSED FOLLOWING REHABILITATION

	1989	1990	1991	Abstinence Required
1st Rehabilitation	1,287	1,590	1,650	1 year
2nd Rehabilitation	144	183	204	3 years
3rd Rehabilitation	3	11	12	6 years
TOTAL	1,434	1,784	1,866	

Statutory Authority

The Commissioner is setting standards for BAIIDs under Minnesota Statutes, section 171.305, which requires the Commissioner to establish and administer a pilot program for the use of BAIIDs. The Commissioner has general rulemaking authority under Minnesota Statutes, section 299A.01, subdivision 6, "to promulgate such rules pursuant to chapter 14, as are necessary to carry out the [duties of the Commissioner]."

Small Business Considerations

Minnesota Statutes, section 14.115, requires the Department of Public Safety to consider the effect on small businesses when it adopts rules. These proposed rules will have a direct affect on small businesses engaged in building, distributing, installing, calibrating, and removing BAIIDs. Other small businesses affected by the proposed rules are the employers of potential participants in the program.

The Department has considered the methods for reducing the impact of the rules on small businesses, as required by section 14.115. The Department's primary concern in proposing and adopting these rules is the safety of all citizens who use the highway system. In general, the Department has developed the proposed rules to impose as small a burden as possible, consistent with public safety. This applies to all businesses, not just small businesses. After considering the methods for reducing the impact of the rules on small businesses, the Department has concluded that it is inconsistent with public safety to make specific exceptions to the rules for small businesses.

In several areas, the Department has included requirements that are more stringent than those suggested in the federal model specifications. These areas include: temperature, AC setpoint, and reporting requirements. The Department chose to adopt more stringent requirements in these areas because of the environment, the user population, and the time available for the pilot project. It does get cold in Minnesota in the winter, the target population must remain abstinent, and the pilot project lasts for only a very short time.

Fees Imposed By The Rules

In accordance with Minnesota Statutes, section 16A.128, subdivision 1a, pertaining to fees, the Department has received approval from the Commissioner of Finance for the fees set by these rules. A copy of the approval is attached to this Statement as Appendix B.

In accordance with Minnesota Statutes, section 16A.128, subdivision 2a, the Department has sent a copy of the Notice Of Intent To Adopt Rules and a copy of the proposed rules to the Chairs of the House Appropriations Committee and the Senate Finance Committee prior to submitting the notice to the State Register.

Other Statutory Requirements

Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption of the rules. Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land. Minnesota Statutes, sections 115.43, subdivision 1, 116.07, subdivision 6, and 144A.29, subdivision 4, do not apply to these rules.

Witnesses

If these rules go to a public hearing, it is anticipated that the Department will call witnesses. If there will be a hearing, a supplemental Statement of Need and Reasonableness containing a list of witnesses will be issued. The supplemental Statement

of Need and Reasonableness will be sent to all persons who requested a copy of the original Statement of Need and Reasonableness.

Rule-By-Rule Analysis

7409.3700 DEFINITIONS.

Subpart 1. **Scope.** This section defines words and phrases that have a specific meaning, that may have several possible interpretations, or that need exact definitions to be consistent with statute. Terms that are used in a manner consistent with common use in the driver's license revocation and reinstatement process are not defined.

Subpart 2. **AC.** Alcohol Concentration (AC) is defined as a measure of alcohol in the breath and has the same meaning that is used for this term in Minnesota Statutes, section 169.01, subdivision 61, paragraph (b). This definition is consistent with the definition for breath alcohol concentration in the federal model specifications (57 FR 11774).

Subpart 3. **Alcohol.** Alcohol is defined as ethanol or ethyl alcohol which is the intoxicating ingredient in alcoholic beverages. This definition is consistent with the definition for alcohol in the federal model specifications (57 FR 11774).

Subpart 4. **Alcohol setpoint.** Alcohol setpoint is defined as the amount of alcohol that can be measured by the BAIID from a breath sample which will prevent the ignition from starting. This definition is consistent with the definition for alcohol setpoint in the federal model specifications (57 FR 11774).

Subpart 5. **Authorized person.** A participant is clearly an authorized person. The term "authorized person" also includes a licensed driver other than the participant who must occasionally drive a vehicle equipped with a BAIID. Allowing authorized drivers, other than the participant, to operate a vehicle equipped with a BAIID will permit family members or other licensed drivers in the household to use the vehicle. It is reasonable that these persons complete the orientation so that they are familiar with the operation of the BAIID since any alcohol test result over the setpoint, no matter who provided the breath sample, will result in the cancellation of the participant's driving privilege.

Subpart 6. **BAIID.** BAIID is an abbreviation for breath alcohol ignition interlock device. This definition is consistent with the definition for BAIID in the federal model specifications (57 FR 11774).

Subpart 7. **Breath sample.** Breath sample is defined to specify a human breath sample rather than a mechanical or stored sample. The deep lung requirement is included to ensure obtaining the portion of the breath that correlates most accurately with alcohol levels in the driver's bloodstream. This definition is consistent with the definition for breath sample in the federal model specifications (57 FR 11774).

Subpart 8. **Circumvention or bypass.** Circumvention or bypass is defined as consciously and overtly providing an air sample to the BAIID which is not the driver's breath sample. This would include mechanically produced samples, samples produced by persons other than the driver, and samples that have been altered to remove or reduce the AC. The limited license is granted to the participant on the condition that the participant take and pass a breath test before every driving occasion. A violation of the relicensing agreement due to circumvention or bypass is reason for license cancellation. (Note that circumvention

or bypass also constitutes a misdemeanor.) It is necessary that participants know the reasons for possible license cancellation to avoid behavior which would lead to cancellation. Since use of the BAIID is a condition of relicensing, any driving without the driver providing a breath sample to the BAIID would be a violation of the relicensing agreement.

This definition of circumvention and bypass is consistent with the definition for circumvention in the federal model specifications (57 FR 11774). The term "bypass" is defined in the rules because the term is used in Minnesota Statutes, section 171.305, subdivision 9. Bypass is treated as having the same definition as circumvention.

Subpart 9. **Commissioner.** The Commissioner of Public Safety is authorized to adopt rules and to administer the Ignition Interlock Pilot Program. This definition acknowledges that the Commissioner is not able to carry out all duties alone, but instead relies on employees of the Department of Public Safety who are authorized by the Commissioner to carry out these duties.

Subpart 10. **Department.** The Ignition Interlock Pilot Program will be administered by the Department of Public Safety. This definition acknowledges that the Department acts through its officers and employees who are authorized to carry out the duties of the Department.

Subpart 11. **Fail-safe.** Fail-safe is defined as a situation where the ignition will not start the vehicle if the environmental circumstances (e.g. improper voltage, temperature outside of operating range, inoperable alcohol sensor, etc.) prevent the BAIID from operating properly. If the device cannot operate properly to measure the alcohol concentration in the driver's breath, the vehicle should not operate. This definition is consistent with the definition for fail-safe in the federal model specifications (57 FR 11774).

Subpart 12. **Participant.** Participant is the driver issued a limited license pursuant to the enabling legislation, Minnesota Statutes, section 171.305, subdivision 5. The driver is issued a conditional limited license after half the required abstinence time has expired, the person has completed all rehabilitation requirements, and the person agrees to drive only a motor vehicle equipped with a functioning and certified ignition interlock device.

Subpart 13. **Service provider.** The service provider is the designated representative of the manufacturer who installs the BAIID, services it at recommended intervals, and reports to the Department. While the manufacturer is responsible for certifying that the BAIIDs work as designed, the service provider is responsible for ensuring that participants can operate the BAIIDs as intended, and to report to the Department. Reporting is required on a regular service schedule, when violations of the limited license occur, and when devices malfunction. The reports are needed for the Department to monitor the driving behavior of the participant and to evaluate the performance of the devices.

Subpart 14. **Sufficient cause to believe.** This subpart adopts the definition of "sufficient cause to believe." This is necessary so that there is an objective standard for the grounds upon which the Department will revoke a BAIID certification or service provider approval under part 7409.3770. This standard is reasonable because it is similar to the definition of this term used in parts 7503.0100 and 7510.5520 and other Public Safety rule parts.

Subpart 15. **Tampering.** Tampering is an overt, conscious attempt to disconnect or disable the BAIID in order to start the vehicle without first taking and passing a test. Attempts to

disconnect or disable the BAIID are recorded and reported to the Department. Other acts of tampering include roll-starting, push starting, and hot-wiring the vehicle to start the engine. It is necessary that participants know the reasons for possible license cancellation to avoid behavior which would lead to license actions. Since use of the BAIID is a condition of relicensing, any driving taking place where a breath test with the BAIID was not taken would be a violation of the relicensing agreement. (Note that tampering also constitutes a misdemeanor.) This definition is consistent with the definition for tampering in the federal model specifications (57 FR 11774).

7409.3710 PURPOSE AND SCOPE.

Part 7409.3710 states that the purpose of parts 7409.3700 to 7409.3770 is to establish performance standards for BAIIDs and certification standards and fees for manufacturers of BAIIDs, to be used pursuant to Minnesota Statutes, section 171.305.

7409.3720 STANDARDS AND SPECIFICATIONS.

Subpart 1. **Alcohol setpoint.** Subpart 1 sets the alcohol setpoint at 0.020 AC.

According to the federal model specifications, all measuring devices have a certain amount of dispersion of scores around a mean (average) true value. Because of this fluctuation, the setpoint of the interlock device needs to be specified in a way that accommodates this natural variability. The federal model specifications recommend that 0.025 AC be chosen as the alcohol setpoint. The recommendation in the federal model specifications is based in part on the statement that "there is little evidence that drivers with a BrAC under .01% increase the risk of highway accidents . . . ." 57 FR 11782.

In Minnesota, BAIIDs will be used by a high risk group of drivers whose licenses have been cancelled due to multiple alcohol or controlled substance related driving violations. Reinstatement of driving privileges for these drivers under Minnesota Rules, part 7503.1600, is conditioned on continued abstinence from alcohol and controlled substance use.

The 0.020 AC setpoint was chosen for Minnesota as a compromise between Minnesota abstinence requirements and technological limitations of the devices. See 57 FR 11781, 4.0- Commentary on Safety Specifications and 4.1 - Accuracy.

Subpart 2. **Breath samples.** This subpart describes the standards for BAIID devices and vehicle operation. Contrary to the federal model specifications, the Minnesota precision and accuracy requirements must be met under both stressed and unstressed testing conditions.

In response to comments about the federal model specifications as proposed in 1991, the federal model specifications adopted in 1992 created a two-tiered requirement which distinguishes between stressed and unstressed conditions for testing. Stressed tests include any test which imposes an environmental or use-related challenge to the BAIID such as extreme temperatures, voltages, vibrations, or frequent usage. A $\pm$ 0.02 percent variation in accuracy is considered a passing test score for stressed testing as opposed to $\pm$ 0.01 percent accuracy for unstressed conditions. The reasoning behind two-tiered testing can be found at 57 FR 11772-11773, Supplementary Information.

Minnesota rules require the higher level of accuracy under stressed test conditions since these conditions are likely to exist during the pilot project. The driver's abstinence

requirement must be monitored even through the coldest winter temperatures, rough road conditions, and vehicle battery conditions.

A. The purpose of the BAIID is to determine the alcohol concentration of a breath sample. The device should be able to accurately achieve what it is supposed to do.

B. A minimum pressure of 12 inches of water is required to ensure that the breath sample is not filtered through materials which would reduce the actual AC to a level which would allow the BAIID to start the vehicle. See 57 FR 11780, 3.2.2.S - Minimal Pressure of Sample. This is an optional feature specification that Minnesota has chosen to adopt.

C. The high end accuracy of the BAIID is established based on the federal model specifications. See 57 FR 11775, 1.1.1.S - Baseline Accuracy, and 57 FR 11781, 4.1 - Accuracy Commentary. While no mechanical device is expected to be perfect, the federal model specifications state that the device shall not permit the engine to start 90% of the attempts at 0.03 AC or more and 99.5% of the attempts at 0.04 AC or more. One out of two hundred attempts to start the vehicle while over .04 (false negatives) is an acceptable risk since the majority of drivers will not attempt to start a vehicle equipped with a BAIID after drinking given the consequences of a positive reading.

D. The low end accuracy of the BAIID is established using the federal model specifications. See 57 FR 11779, 2.1.S - Accuracy and Precision Limits. The false positive rate is symmetrical to the high end accuracy specification in that only one out of two hundred attempted starts at 0.00 AC will result in a lock out while 10% of the attempts at 0.01 will result in a lock out. Whenever a driver attempts to start the vehicle and the BAIID locks the ignition, an alcohol concentration reading will be recorded. This method will prevent a driver from losing driving privileges if the BAIID locks when no alcohol is present. The inconvenience to the driver who must wait for the BAIID to purge and retest is expected to be minimal.

E. The random retest specification is established using the federal model specifications. See 57 FR 11778, 1.8.2.3.S - Rolling retest, 57 FR 11783, 4.8.2 - Circumvention Commentary, and 57 FR 11786, 6.5 Alert Conditions. The purpose of this specification is to prevent a pedestrian or other non-driver from providing the initial breath sample to start the vehicle to allow a drinking driver to drive, and to prevent the driver from consuming alcohol while driving after the vehicle has been started. This method also would deter a participant from starting a vehicle and letting it idle while the participant consumed alcohol. The test would be required at random time intervals after the vehicle has been started. The federal model specifications allow the retest setpoint to be 0.02 percent higher than the start-up setpoint to preclude false positive test results. Minnesota standards differ in this aspect again based on the abstinence requirement of the pilot project target population.

F. The clearance rate specification is established using the federal model specifications. See 57 FR 11780, 2.2.S - Clearance Rates, and 57 FR 11785, 5.2 - Clearance Rates Commentary. This standard ensures the device will be ready to accept another test soon after a low test result. This specification was added because a very high AC requires a longer time for the device to purge. A positive reading resulting from mouthwash or other non-ethanol sources such as tobacco smoke should be cleared and retested quickly.

G. The sample free restart is established using the federal model specifications. See 57 FR 11779, 1.9.S - Sample-free restart, and 57 FR 11784, 4.9 - Free Restart

Commentary. The re-test time limit is necessary to provide a restart, particularly in traffic, where faulty mechanical or electrical systems cause the vehicle engine to kill. A driver should not be penalized for having a malfunctioning vehicle. Two minutes is an adequate time for a restart.

Subpart 3. **Power source.** The power source requirements are established using the federal model specifications. See 57 FR 11776, 1.4.S - Power, and 57 FR 11782, 4.4 - Power Commentary. The power standards ensure that BAIIDs are capable of operating within the range of a standard 12 volt DC battery. The range is based on the definition of the normal range of supply voltages in the automotive environment from the Society of Automotive Engineers Recommended Practice, Report of the Electronics Systems Committee. The device must either meet the performance standards outside the range or prevent the engine from starting.

Subpart 4. **Temperature.** The temperature and warm up standards are established using the federal model specifications. See 57 FR 11776, 1.5.S - Temperature, and 57 FR 11782, 4.5 - Temperature Commentary, and 57 FR 11780, 2.3.S - Warm Up, and 57 FR 11785, 5.3 - Warm Up Commentary. The temperature ranges where the BAIID should perform within the accuracy standards need to reflect the extreme ranges of Minnesota weather in addition to temperatures in other states where the driver may travel. For conditions outside the extreme temperature ranges, the manufacturers can provide a method of ensuring accurate operation by methods such as providing removable sampling heads or pre-warming devices, or to ensure that the BAIID will not allow the vehicle to start. The warm up requirement ensures a constant environment for the sampling head to stabilize in order to provide an accurate reading.

Subpart 5. **Electromagnetic interference.** The electromagnetic interference specifications are established using the federal model specifications. See 57 FR 11777, 1.7.S - Radio Frequency (Electromagnetic) Interference (RFI), and 57 FR 11783, 4.7 - Commentary. Electronic equipment within a vehicle creates potentially disruptive electrical fields which could alter the BAIID's breath sample evaluation. This standard requires shielding the BAIID from such fields or requiring the BAIID to prevent ignition.

Subpart 6. **Tampering, circumvention, or bypass.** Tampering, circumvention, or bypass specifications are established using the federal model specifications. See 57 FR 11778, 1.8.S - Tampering and Circumvention, and 57 FR 11783, 4.8 - Commentary. The term "bypass" is not defined in the federal model specifications, but it is used to define the term "circumvention." The term "bypass" is included with the terms "tamper" and "circumvent" in Minnesota Statutes, section 171.305, subdivision 9, as actions that constitute a misdemeanor violation. The labelling requirement is a reasonable means to warn people of the consequences for violating section 171.305, subdivision 9.

Tampering includes: 1) interrupting the power source of the BAIID causing it to fail, or to fail to record ignition activity, and 2) engine starts, except for free re-starts, not preceded by a passed test. Circumvention includes illegitimate air samples from the following sources: 1) non-human delivery samples such as compressed air or air from balloons, 2) human sources of samples that are altered through filtration after leaving the mouth, and 3) human sources provided by anyone other than the driver of the vehicle.

The proposed rules state that the BAIID shall have a method to prevent an unauthorized person from operating the BAIID to prevent samples provided by sources other than the driver of the vehicle. This requirement is not included in the federal model specifications. The testimony given to the legislative committees prior to the adoption of the original 1991 enabling legislation, Minnesota Statutes, section 171.305, was that a Coordinated Breath

Pulse Access (CBPA) option was available for this purpose. The CBPA requires a trained driver to blow a series of timed breaths into the device to discriminate authorized drivers from other individuals who would provide an alcohol free sample in order to allow a drinking driver to operate the vehicle. This requirement is included since it is the Department's position that this safeguard was a major factor relied upon by the legislature in adopting this legislation. Other manufacturers may also have other methods of ensuring that only authorized persons can take a breath test prior to starting the vehicles. One such method is a four digit code entered on a keypad before the BAIID accepts a breath sample for testing. This requirement is reasonable because it uses a performance standard rather than specifying a specific method for preventing unauthorized operation of a BAIID.

Subpart 7. **Data recording.** Data recording specifications are established using the federal model specifications. See 57 FR 11779, 1.10.S - Data Recording, and 57 FR 11784, 4.10 - Data Recorder Commentary. Data recording is included under the proposed rules because "a record of vehicle use and interlock test result are believed to be critical to accurate monitoring programs." 57 FR 11784.

All subsequent license revocations for violations of the limited license conditions are based on the data recorded by the BAIID and supplied to the Department by the service provider. The data is recorded on a microchip memory powered by a sealed battery within the BAIID to preserve the data if power is lost due to a dead or disconnected battery.

The specific data to be recorded and monitored under this program include:

A. The date and time of efforts to tamper with, circumvent or bypass. See 57 FR 11779, 1.10.S Data Recording, and 57 FR 11784, 4.10.1 - Recording Efforts to Disable Unit. The federal model specifications do not require the date and time of attempts to tamper with the device. It is important to record the date and time of attempts to tamper with the vehicle to determine circumstances where non-BAIID mechanical work was performed. Recording circumvention is discussed in 57 FR 11784, 4.10.2.2 - Time of day, as an interpretation of high AC test failures followed by a pass within a few minutes. Minnesota Statutes, section 171.305, subdivision 10, requires license cancellation if the device registers a positive reading for alcohol or violations of any conditions of the limited license. Tampering, circumvention, or bypass would be violations of the limited license agreement as well as a crime.

B. The date and time of any attempt to use the vehicle or any use of the vehicle, including engine starting and stopping times. See 57 FR 11779, 1.10.S. - Data Recording, and 57 FR 11784, 4.10.2.1 - Date, 4.10.2.2 - Time of day, and 4.10.2.5 - Start and stop. This data is used to determine that a breath test was taken prior to each time the engine was started or was attempted to be started. The starting and stopping time is used to determine if a random interval retest was required. The date is necessary to show that the participant is using the vehicle equipped with the BAIID, rather than another vehicle not so equipped. The requirements for data recording are reasonable in that they allow the Commissioner to confirm that a BAIID is operating in compliance with the standards set forth in this part. This is also true of the requirements for items C and D.

C. The date, time and AC of each breath sample. See 57 FR 11779, 1.10.S - Data Recording, and 57 FR 11784, 4.10.2.1 - Date, 4.10.2.2 - Time of day, and 4.10.2.4 - BrAC level. This data is used to determine that a breath test was taken prior to each time the engine was started or was attempted to be started and that the AC measured was below the setpoint. Minnesota Statutes, section 171.305, subdivision 10, requires license cancellation if the device registers a positive reading for alcohol or violations of any conditions of the limited license.

D. The date and time of any malfunction. See 57 FR 11779, 1.10.S - Data Recording, and 57 FR 11784, 4.10.2.1 - Date, and 4.10.2.2 - Time of day. The recording of device malfunction is not required in the federal model specifications, but was included in the proposed federal model specifications that were published in 1991. See 56 FR 18867, 4.10.2.6 - Malfunction. It is important to have this data so the Commissioner can determine if a device was functioning properly when other data was recorded.

E. The date and time of when any rolling retest is required, but not taken. See 57 FR 11778, 1.8.2.3.T - Rolling retest. This data is used to determine that a required retest was taken.

F. The date a service required message was issued. See 57 FR 11779, 1.10.S - Data Recording, and 57 FR 11784, 4.10.2.6 - Service reminder. This data is used to prove the driver was aware of required service and had sufficient time to schedule servicing.

G. The date service is performed. See 57 FR 11779, 1.10.S - Data Recording. This data will provide evidence that the BAIID was serviced at a regularly scheduled interval and was operating properly.

Subpart 8. **Driver messages.** Driver messages are an expansion of the federal model specifications. See 57 FR 11780, 2.4.S - User's Display and 3.1.S Optional BrAC Display, and 57 FR 11784, 4.10.2.6 - Service Reminder Commentary, and 57 FR 11785, 5.4 - User Display and 6.1 - BrAC Display Commentary. Driver messages are needed to ensure that authorized drivers know when to blow a breath sample into the BAIID, when to wait, when to start the vehicle, when to seek service, and what results are being recorded and reported. These basic functions should be clearly evident to a minimally-trained user.

A. BAIID readiness for sample, including rolling retest sample. See 57 FR 11780, 2.4.S - User's Display, and 57 FR 11785, 5.4 - User Display Commentary.

B. Measured AC of breath sample. See 57 FR 11780, 2.4.S - User's Display, and 57 FR 11780, 3.1.S - BrAC Display, and 57 FR 11785, 5.4 - User Display Commentary.

C. Notice to obtain service within seven days. See 57 FR 11780, 2.4.S - User's Display, and 57 FR 11784, 4.10.2.6 - Service Reminder Commentary, and 57 FR 11785, 5.4 - User Display Commentary.

Subpart 9. **Need for service.** The need for service is established using the federal model specifications. See 57 FR 11776, 1.3.S - Calibration Stability, and 57 FR 11782, 4.3 - Calibration Stability Commentary. Part 7409.3750, subpart 5, requires service every 30 days. The federal model specifications recommend that all BAIIDs meet the accuracy requirements for seven days longer than the period of time required between servicing. Therefore, the device should meet the standards and specifications of part 7409.3720 for a minimum of 37 days.

Subpart 10. **Ignition lockout.** The ignition lockout requirement is established using the federal model specifications. See 57 FR 11776, 1.3.1.S. - Lockout After 7 Days Beyond Service Interval. This requirement will prevent the vehicle from starting seven days after the following events: a positive alcohol reading above the alcohol setpoint; for tampering, circumvention, or bypass; for failure to take a required rolling retest, or for failing to perform regular service for the BAIID.

7409.3730 CERTIFICATION REQUIREMENTS.

Subpart 1. **Application for certification.** The application for certification must be on a form prescribed by the Department in order to provide uniformity to determine completion. Requiring a separate application form for each model will allow the Department to specify which model is being certified and ease comparison between different models of BAIIDs.

The minimum information needed for the certification application is described below. The language, "in addition to other information which the department may require" leaves open the possibility of adding information that may become relevant. For example, it may be helpful to know the number of previous attempts for certification in other states or in Minnesota.

For similar requirements in another state, see Michigan Department of State, Specifications for Certification of Ignition Interlock Devices, (August 1988).

A. The name and address of the manufacturer will allow direct communication about the BAIID standards, results of the certification tests, and billing information for the costs of certification.

B. The name and model number of the BAIID will allow specific references to the product line that is being tested and certified.

C. The detailed description of the BAIID is necessary in the application process to determine the claimed operational specifications for the certification tests. The information will allow the Department's employees to become familiar with what the device can do, how it does it, and under what conditions it will and will not operate. The instructions for installation and operation will be reviewed to determine completeness and clarity for the reader in addition to serving as a basis for future compliance monitoring. The accuracy, security, data collection and recording, tamper detection and environmental features will be compared with subpart 2, Testing data, and subpart 3, Equipment.

D. The certification that all BAIIDs sold, offered for sale, leased, or installed will meet the certification requirements is needed to prevent a manufacturer from having a special model or prototype certified, but having other models installed.

E. The certification that the manufacturer will provide insurance coverage for liability and will indemnify and hold the Department harmless from any claims, demands, actions and costs related to the BAIID program ensures that the insurance required by part 7409.3760 will be provided.

F. Under Minnesota Statutes, section 171.305, subdivision 4, the Commissioner is authorized to charge the manufacturer of a BAIID a fee for certifying that the BAIID meets the standards of part 7409.3720. Item F requires that the manufacturer pay a fee of $5,000 at the time of applying for certification of a BAIID. This amount is estimated to approximately cover the Department's costs for developing the BAIID standards for the pilot program, testing the device, reviewing documentation, issuing the certification, and administering and evaluating the program. Appendix A to this Statement of Need and Reasonableness describes in detail the costs and the calculations to justify setting the amount of the fee.

Subpart 2. **Testing data.** The Department will accept data from an independent laboratory demonstrating the BAIID meets the requirements of part 7409.3720 in order to reduce the testing costs to the manufacturer. The requirement that the laboratory must be approved by the Department is necessary to ensure that the laboratory is indeed independent from the manufacturer. The requirement that the model tested be a production line model ensures that the test results are truly representative of the performance of BAIIDs used by participants.

A. The requirement for human testing of the BAIID ensures that the BAIID can accommodate individual differences in ability to provide samples. Five subjects are enough to ensure that the BAIID accommodates individual differences, while at the same time not imposing an undue testing burden on the manufacturer. To meet the accuracy requirement of part 7409.3720, subpart 2, item C, no more than three (3) attempts of the 30 required should be able start the vehicle while the test subject is at the .030-.039 AC level.

B. The requirement for human testing of the BAIID ensures that the BAIID can accommodate individual differences in ability to provide samples. Five subjects are enough to ensure that the BAIID accommodates individual differences, while at the same time not imposing an undue testing burden on the manufacturer. To meet the accuracy requirement of part 7409.3720, subpart 2, item C, no more than one (1) attempt of the 30 required should be able start the vehicle while the test subject is at the .040-.049 AC level.

Subpart 3. **Equipment.** In addition to reviewing the laboratory testing data, the Department will be testing each device to ensure it meets the performance standards of part 7409.3720. The materials required to be submitted will allow the Department to perform the tests in vehicles provided by the manufacturer. Minnesota Statutes, section 171.305, subdivision 4, allows the Commissioner to charge a certification fee for certifying a device. The calculations used to determine this fee do not take into account the costs of providing vehicles to be used to conduct the tests of the devices. Instead of charging a higher certification fee, the Commissioner chose to require the manufacturer to provide the vehicles on which the BAIIDs will be tested.

Subpart 4. **Design changes.** This part ensures that a certified BAIID model will not undergo design changes which may compromise the accuracy requirements. The supportive documentation required will consist of descriptions of the specific changes and independent laboratory testing of the new design.

Subpart 5. **Length of certification.** The ignition interlock program is a pilot program with a specified end date. It is reasonable that a certification issued under the program would not extend beyond the expiration of the program. Under subpart 5, the certification ends when the program expires, unless the certification is revoked prior to the end of the pilot program.

7409.3740 MANUFACTURER'S RESPONSIBILITIES.

Subpart 1. **Designated service provider.** Manufacturers are required to designate who will install, monitor, calibrate, and report results in order for the Department to know with whom it will be dealing. Minnesota Statutes, section 171.305, subdivision 6, requires that each BAIID "be monitored for proper use and accuracy by an entity approved by the Commissioner." Manufacturers have the option of providing the service or contracting with a third party. This allows the manufacturer flexibility in deciding how to provide the service.

A. The manufacturer must submit certification from each service provider that the service provider's responsibilities under the rules will be met. If the manufacturer also provides service, the manufacturer must complete a certification. It is important that the service provider carry out the service provider's responsibilities for the reasons stated in parts 7409.3750 and 7409.3760 of this document. The certification required by this subpart will serve the purpose of putting the service provider on notice of these responsibilities and their importance. This requirement also ensures that the manufacturer will work in close cooperation with its service providers and share the responsibility of providing the BAIID service.

B. The manufacturer is required to submit a certificate of insurance as required in part 7409.3760 that covers the manufacturer and each service provider. The insurance will provide a source of compensation for victims should the BAIID not operate as specified. The insurance will also provide the manufacturer with an incentive to maintain the manufacturing standards after certification. Requiring the manufacturer to submit a certificate of insurance guarantees that the manufacturer meets the requirements of part 7409.3760.

Subpart 2. **Installation instructions.** The manufacturer is required to develop written instructions for installation in order to document the proper installation methods and to provide a training tool for the service providers.

Documented inspection procedures and minimum electrical and mechanical vehicle conditions prior to installation gives the service provider the information necessary to install a BAIID that will serve its intended purpose. License actions will be taken against participants on the basis of records generated by the BAIIDs. It is essential that BAIIDs be properly installed so that the BAIIDs can be relied on in the administration of the ignition interlock pilot program.

7409.3750 SERVICE PROVIDER'S RESPONSIBILITIES.

Subpart 1. **Service locations and hours.**

A. Permanent Service Center. The service center is required to maintain at least one permanent installation and service center in the state. This requirement is needed to maintain a stable location where participants can obtain service. Service providers are required to maintain reasonable business hours for a minimum of five days a week to facilitate participant scheduling for service. The hours of business will be used by the Department to make referrals for information and occasional inspections.

B. Service Locations. The ignition interlock program is a statewide program, so it is necessary that service be accessible to all participants, no matter where in the state they reside. The service provider is required to either provide service locations or mobile service so that the residence or employment site of every participant is within 100 straight-line miles of a service center. The 100 mile requirement is a compromise between requiring a service site wherever a participant lives or works, and requiring a participant to drive excessive distances for service. Straight-line miles were used because they are more easily and certainly determined than road miles by merely using a map and a compass.

The 100 straight-line mile requirement was determined by measuring a 100 mile radius on a state map from 6 major population centers. The following locations in Minnesota were used: Virginia, Thief River Falls, Alexandria, St. Paul, Marshall, and Rochester. Using these locations, three small areas of the state would exceed the 100 mile requirement. A manufacturer could establish service providers in these areas or could provide mobile service. The areas include: 1) a triangle, approximately 18 miles by 20 miles, in northern

Koochiching County adjoining the Canadian border; 2) a small triangle, approximately 6 by 4 miles, in southern Martin County adjoining the Iowa border, and 3) a large triangle, approximately 48 miles by 28 miles, in northeastern Cook County. The Koochiching County portion contains the town of Birchdale. The Martin County portion contains no towns. The Cook County portion includes the city of Grand Marais, the towns of Croftville, Hovland, Grand Portage, the Grand Portage Indian Reservation, and the Gunflint and Arrowhead Trails.

Subpart 2. **Security.**

A. Prohibiting participants and other non-authorized individuals from having access to installation procedures and materials will minimize the potential for tampering with the BAIID after installation. Reasonable security measures may include a separate waiting room for participants during the installation, calibration, and monitoring of the BAIID.

B. A service provider cannot facilitate tampering, circumvention, or bypass of the BAIID and must notify the Department if it becomes aware of a participant operating a vehicle not equipped with a BAIID. This requirement ensures that the participant is driving within the conditions of the limited license issued for this program. Notifying the Department creates an obligation for the service provider to report known violations of the limited license. The service provider is responsible for providing the information that becomes the basis for a participant's license cancellation whether the violation involves a positive reading, circumvention or tampering, or driving a vehicle not equipped with a BAIID.

C. The prohibition of a manufacturer or service provider from employing a participant in a position that has access to installation instruction or materials will help prevent instances where the participant would tamper with a BAIID installed on the participant's own or others' vehicles.

Subpart 3. **Installation.**

A. The service provider must follow the written installation instructions to ensure the BAIID will meet the performance specifications of section 7409.3720. The accepted trade standards of the automotive repair industry are used as a basis of installation compliance.

B. The inspection prior to BAIID installation ensures that the BAIID will operate accurately in the participant's vehicle. Proper mechanical and electrical conditions will reduce the number of potential problems with the operation of the BAIID. Requiring the vehicle to be repaired to a condition where the BAIID will operate, at the participant's expense, is reasonable since the limited license is conditional on the BAIID installation.

C. A certification of installation provided by the service provider is necessary proof in order for the Department to issue a limited license under the interlock program. This requirement is mandated by Minnesota Statutes, section 171.305, subdivision 8. The following information is required on the installation certificate:

(1) The participant's full name, address, date of birth, and telephone number are necessary for the Department to identify the participant, monitor compliance with the interlock requirements, and communicate with the participant.

(2) The full names and dates of birth of all authorized persons other than the participant are necessary to determine who else might be operating the vehicle.

(3) The vehicle's make, model, vehicle identification number, model year, license plate number, and state of registration are necessary to identify the vehicle in which the BAIID has been installed.

(4) The vehicle owner's full name and date of birth are necessary to determine if the participant is the owner of the vehicle.

(5) The serial number of the installed BAIID is necessary to evaluate the reliability of the BAIID and to determine that the BAIID has not been removed or tampered with.

(6) The date of installation is necessary to monitor the length of time the BAIID has been installed.

(7) The frequency of required service and monitoring is necessary for the participant to be aware of the servicing requirements.

(8) Any additional information necessary to the administration of the pilot program as requested by the Department allows the Department the flexibility to request other information, if it is needed.

Subpart 4. **Orientation.** This part requires the service provider to provide an orientation or training session to the participant or other authorized driver who may operate the vehicle. This is important because the participant's driving privileges depend on the correct operation of the device. The participant should have information on service locations and service procedures for regular and emergency service so that the participant knows how, where, and when to resolve problems that may develop with the BAIID.

Subpart 5. **Service requirements.**

A. Report and Monitor. Minnesota Statutes, section 171.305, subdivision 6, requires monitoring for proper use and accuracy but does not designate a specific time period. Under this subpart, the service provider is required to monitor and calibrate the BAIID a minimum of every thirty days after installation to ensure the devices have not been tampered with and are working properly. Although other state ignition interlock programs have longer time periods between servicing requirements, Minnesota's intended user population of multiple DWI offenders requires more frequent service during the pilot program. The 30-day service requirement is reasonable since a BAIID must meet the requirements of part 7409.3720, subpart 9, for a minimum period of only 37 days without requiring intervening service.

The ignition interlock pilot program is of short duration. No limited license can be issued under the pilot program after August 1, 1993. See Minnesota Statutes, section 171.305, subdivision 2. Given the short pilot program and the relatively small number of offenders who will be eligible for the program, the more frequent service requirement will provide more data for the required evaluation and provide a shorter time to detect drivers who fail the program.

If the service provider determines the BAIID to be defective, it must be replaced or repaired within 24 hours of that determination. This time requirement is necessary to ensure the driver will comply with the BAIID requirement under Minnesota Statutes, section 171.305, subdivision 5, yet is reasonable to expect that the service provider will have a stock of functioning BAIIDs on hand to provide replacements or new installations. The 24-hour repair requirement is reasonable so that a driver operating a vehicle with a BAIID is not unduly deprived of the use of the vehicle when the BAIID is defective.

For similar requirements, see State of North Carolina, Division of Motor Vehicles, Driver's License Section, Study and Proposal: The Establishment of a Breath Analyzed Ignition Interlock Pilot Program, Appendix G, Program and Service Requirements (November 1989).

B. Data Review. The data recording information required under part 7409.3720, subpart 7, must be compiled and mailed to the Department by the service provider within five business days of the service date. Five business days is a reasonable length of time to compile several routine reports in order to reduce the total number of reports. The service provider is required to immediately notify the Department by telephone or facsimile for evidence of violations of the limited license conditions. This information is necessary for the Commissioner to cancel the limited license as required in Minnesota Statutes, section 171.305, subdivision 10. The provider is required to follow immediate notification with written notice to the Department within three days to provide documentation for a violation that led to license cancellation.

C. Toll-free telephone number. The service provider is required to have a 24 hour toll-free telephone number for authorized users in the event of questions or emergencies. This is needed because the hours of use for a vehicle having a BAIID installed are likely greater than the service provider's regular business hours. For similar requirements in another state, see State of North Carolina, Division of Motor Vehicles, Driver's License Section, Study and Proposal: The Establishment of a Breath Analyzed Ignition Interlock Pilot Program, Appendix E2, Ignition Interlock Device Specifications, Service Delivery Standards, Servicing (November 1989).

D. Emergency Service. The service provider is required to respond to an emergency report related to the BAIID within one business day, and to repair or replace a defective BAIID within 48 hours of the determination that the BAIID was defective. This standard balances the needs of authorized users to use their vehicles when needed and to expect prompt repair of a defective BAIID against the needs of service providers to have sufficient time to plan the next day's business and to respond to the report and make the repair.

Similar standards are in operation in other states. *For example, see* State of North Carolina, Division of Motor Vehicles, Driver's License Section, Study and Proposal: The Establishment of a Breath Analyzed Ignition Interlock Pilot Program, Appendix E2, Ignition Interlock Device Specifications, Service Delivery Standards (November 1989).

Subpart 6. **BAIID removal.**

A. This item requires that after BAIID removal, the vehicle is restored to its original condition. It would be a disincentive to participation in the program if the use of the BAIID damaged the participant's vehicle. This standard is used by the State of California. *See* California Bureau of Automotive Repair, Device Installation Standards For Certified Alcohol Interlock Devices (June 3, 1987).

B. The provider is required to notify the Department when a BAIID is removed and replaced by a different BAIID. This will help the Department keep track of which BAIID is installed in the vehicle and will allow the Department to verify that the replacement BAIID is a model certified by the Department as meeting the standards of these rules. If a BAIID is removed from a vehicle and reinstalled in a different vehicle, the new certificate of installation shows that the driver is continuing to abide by the conditions of the limited license.

C. In the event a BAIID is removed for reasons such as non-payment of leasing fees, damage resulting in an inoperable vehicle, or removal at the owner or driver's request, the service provider is required to notify the Department because license actions may be required.

Subpart 7. **Program evaluation.** The service provider is required to submit a report every six months to enable the Department to monitor the level of problems with the BAIIDs and how the problems are resolved. Two reports will be required under the one-year pilot program.

Similar standards are in operation in other states. *For example, see* State of North Carolina, Division of Motor Vehicles, Driver's License Section, Study and Proposal: The Establishment of a Breath Analyzed Ignition Interlock Pilot Program, Appendix E2, Ignition Interlock Device Specifications, Service Delivery Standards (November 1989).

The North Carolina standard requires the report upon request, while the Minnesota standard sets a specific time period for the report. Michigan standards require similar reports every 90 days.

The reports must include written complaints received from authorized persons, incidents of customer error in operating the BAIID, mechanical or electrical conditions of the vehicle that may have affected the ability of the BAIID to meet requirements, BAIID failures and the reasons for the failures, and attempts to tamper, circumvent, or bypass the BAIID and the result of the attempts. The information required in the reports will be used by the Commissioner in evaluating the pilot program and in giving a report to the legislature on the pilot program.

Subpart 8. **Cost determination.** The equal cost for the use of the BAIID ensures that the cost is similar in all parts of the state. This ensures geographical fairness in the ability to use the device.

Subpart 9. **Inspection.** Requiring that the service provider make service locations available for inspection ensures high standards of operation and security and compliance with these rules. The availability of the BAIIDs on the premises for inspection will ensure that only models certified by the Department will be installed. It is reasonable to limit the inspections to the normal reported business hours of the service provider.

7409.3760 LIABILITY.

Subpart 1. **Insurance coverage.** The insurance coverage requirement of one million dollars per person and three million dollars per incident is based on a recommendation contained in Guidelines for State Alcohol Safety Interlock Program, Volume 1, Certification Procedures and Standards, page 9 (December 21, 1989) by the National Public Services Research Institute. This level of insurance was chosen even though it is higher than what has been commonly adopted by other states because it provides more protection to persons who might be injured by the failure of a BAIID. For example, among other states:

North Carolina requires:
a. $300,000 for property damage to any one person;
b. $1,000,000 for property damage in any one accident;
c. $1,000,000 for personal bodily injury to any one person; and
d. $2,000,000 aggregate per single accident or occurrence.

Texas and California require an initial policy limit of $1,000,000.

Washington State requires:
a. $1,000,000 per occurrence; and
b. $3,000,000 aggregate total.

The requirement that all insurance policies provide the Department 45 days written notice prior to cancellation, material change, or lapse gives the Department time to act on this information before the insurance actually changes or terminates.

Subpart 2. **Indemnification.** This subpart requires the manufacturer to indemnify and hold harmless the Department from any liability related to the BAIID program. This part is necessary to reduce the state's exposure from any claims, demands, actions, or costs related to the BAIID program.

7409.3770 REVOCATION OF CERTIFICATION OR APPROVAL.

Part 7409.3770 sets the standards that the Department will use for revocation and informs manufacturers and service providers of the basis of potential Department actions.

Subpart 1. **BAIID certification.** BAIID certification will be revoked if the Department has reason to believe any of the following conditions. The "reason to believe" standard is reasonable in this situation. It is important to revoke the certification of a BAIID if it does not meet requirements since relicensing drivers on the condition of BAIID use puts the general driving public at risk if the BAIID or the manufacturer fails to meet the standards and specifications required for certification.

A. The BAIID certification will be revoked if the device does not meet the requirements of part 7409.3720. Randomly selected BAIID models available during an inspection may be tested to determine if they meet the requirements. The decision to retest a number of BAIIDs will likely be in response to a large number of complaints recorded under part 7409.3750, subpart 7, item A, or device failure resulting in claims under part 7409.3760. Another basis for a determination that a BAIID does not meet the requirements of part 7409.3720 may also be provided by the data recorded by the BAIID under part 7409.3720 and submitted to the Department under part 7409.3750. Revocation is reasonable since certification was conditioned on meeting the standards of part 7409.3720.

B. BAIID certification will be revoked if the components, design, or installation and operation instructions change so that the requirements of part 7409.3720 are not met. Revocation is reasonable since certification was conditioned on meeting the standards of part 7409.3720.

C. BAIID certification will be revoked if the manufacturer or service provider fails to maintain the liability insurance required under part 7409.3760. Revocation is reasonable since maintaining the liability insurance is a condition for certification.

D. BAIID certification will be revoked if the manufacturer fails to maintain service providers as required. This ensures that the service provider will continue to meet the applicable standards after being approved because the manufacturer will monitor the service providers business practices closely when certification may be at risk.

Subpart 2. **Service provider.** Revocation of service provider approval is needed to ensure that the standards of parts 7409.3750 and 7409.3760 will be met. Revocation of approval is reasonable since the service provider's approval was based on the manufacturer's certification that the standards of parts 7409.3750 and 7409.3760 will be met.

Subpart 3. **Review of denial or revocation of certification.** Subpart 3 provides for a review by the Commissioner of a denial or revocation of a BAIID certification or a service provider approval. To obtain a review, a written request for review must be made within 20 days of the notification of denial or revocation. The Commissioner must then issue a decision within 20 days of receiving the request. This decision is a final agency action. It is reasonable to provide a level of review within the Department so that obvious mistakes or misunderstandings can be corrected without resort to the more formal, time-consuming, and costly procedures of a judicial review. The time frames are short so that the issue is resolved quickly. This is to the benefit of both the Department and the manufacturer or service provider who requested the review.

Conclusion

Based on the foregoing, the Department's proposed rules are both necessary and reasonable.

August 26, 1992
Date

Thomas H. Frost, Commissioner
Department of Public Safety

APPENDIX A

Calculation of Certification Fee

Minnesota Statutes, section 171.305, subdivision 4, states, "The commissioner shall certify ignition interlock devices that meet the performance standards and may charge the manufacturer of the ignition interlock device a certification fee."

The costs of certifying a BAIID, approving the service providers, inspecting the service providers, and evaluating the program are described below. The $5,000 certification fee is estimated to offset only part of the Department's costs incurred in writing, publishing, adopting, and enforcing these rules. The fee is justified by the costs described below and in more detail later in this section.

BAIID CERTIFICATION COSTS

I.	One-third of rulemaking costs.	$296
II.	BCA laboratory evaluation.	$2,000
III.	Service provider inspection.	$1,500
IV.	DVS administration.	$1,000
		$4,796

The certification fee will be charged for each device submitted for certification. One-time costs of rulemaking and BAIID testing are included in establishing this fee as well as ongoing administrative costs for licensing, inspecting, monitoring, and evaluating the ignition interlock pilot program.

The Department will incur costs for rulemaking regardless of whether any devices are ultimately certified. Setting a single certification fee that will not necessarily recover all the costs was done to avoid setting a fee level which would deter manufacturers from submitting devices for certification. The rulemaking costs attributed to a single certification fee is based on the total cost of rulemaking, divided by the number of devices that will likely be submitted for certification. The Department estimates there will be a maximum of three manufacturers that submit a device for certification. More likely, the number will be less than three, but three was used for purposes of estimating the appropriate certification fee. There are five known manufacturers of BAIIDs, of which only three are currently following the rulemaking process for the pilot program. Because of the short duration of the pilot program, and the costs of establishing service providers in Minnesota, it is possible that not all interested manufacturers will be involved in the program.

Laboratory testing costs for the BCA will be incurred for each device. It is reasonable to assume that manufacturers will not submit devices that will not pass. Publishing the minimum accuracy specifications will inhibit manufacturers from submitting devices that clearly do not meet the BAIID standards and specifications described in part 7409.3720.

ESTIMATED BAIID CERTIFICATION FEE COSTS
Estimated costs for:

I. Rulemaking costs:		
A. Publishing costs in state register:		
Notice of Solicitation	$35.00	
Notice of Intent to Adopt Rules	$80.50	
Proposed Rules 4.8 pages at $80.50	$386.40	
Notice of Adoption	$80.50	
B. Printing and distribution:		
Notice of Intent to Adopt Rules		
Printing - 130 @ .035 x 2	$9.10	
Mailing - 115 x .29	$33.35	
Printing of Proposed Rules		
12 pages @ .035 x 15	$6.30	
Printing of SONAR		
20 pages @ .035 x 15	$10.50	
Mailing Proposed Rules & SONAR		
15 x $1.15	$11.25	
C. Legal costs:		
Attorney General- rules review		
1 hour attorney @ $49 per hour		
1 hour para-legal @ $39.50	$89	
Attorney General- DPS policy review		
3 hours @ $49 per hour	$147	
Subtotal - Rulemaking costs	$889	
One-third of rulemaking costs		$296
II. BCA: Lab time for testing @ $50 per hour:		
10 hours to review lab test data	$500	
30 hours to test for accuracy & calibration stability	$1,500	
Subtotal		$2,000
III. BCA: Service provider inspection:		
30 hours @ $50 per hour		$1,500
IV. DVS: Certification, administration, evaluation:		
25 hours certifying @ $20 per hour	$500	
25 hours administration @ $20 per hour	$500	
Subtotal		$1,000
TOTAL CERTIFICATION COSTS		$4,796

The specific costs for items I to IV above include either the actual costs or an estimated cost based on previous experience.

I.A. Publishing costs are based on previous experience with publishing rules in the State Register. The cost includes the actual cost incurred for the Notice of Solicitation, as well as an estimated cost for the Notice of Intent to Adopt Rules and Notice of Adoption.

The actual Notice of Adoption for the rules could vary from $10 to several hundred dollars depending on the number of changes from the proposed rules. This item is estimated at $80.50 dollars for the purpose of setting the certification fee.

I.B. The estimated cost of printing and mailing of the proposed rules and Statement of Need and Reasonableness (SONAR) is based on 15 requests for copies of the documents. These 15 represent a mailing list of manufacturers, service providers, researchers, and others currently following the Minnesota BAIID rulemaking process.

The Notice of Intent to Adopt Rules is required to be sent to a 115 member mailing list. An additional 15 people not on the mailing list will also be mailed the Notice, the proposed rules, and the SONAR.

I.C. Legal costs include both the cost of legal representation for the Department and the cost for the rules review. Although both functions are provided by the Attorney General's Office, they are counted separately. The first legal cost is for a policy and law review to ensure that the proposed BAIID rules mesh with other statutes and rules. The second legal cost is a review is to ensure the BAIID rules were adopted in accordance with the legal requirements of the Minnesota Administrative Procedure Act, Minnesota Statutes, chapter 14.

A third legal cost which could increase the certification fee significantly is not included in this analysis. The BAIID certification cost is based on the assumption that no hearing will be held on the proposed rules. The cost of holding a hearing would increase the Department's cost by an estimated $2,000. (Approximately 20 hours of time for the administrative law judge at $86 per hour and an additional 8 hours of Attorney General time at $49 per hour.) It is not reasonable to increase the certification fee to cover a cost that is not anticipated to occur. If hearings are requested and held, however, the Department will bear the legal costs without passing the costs onto the manufacturer through the certification fee.

II. BCA laboratory evaluation. The laboratory would need 10 hours to evaluate the testing data from an independent testing laboratory to determine if the testing data meets the standards and specifications in part 7409.3720, subpart 2. The cost per hour is estimated at $50 to reflect a portion of the salary, fringe benefits, indirect costs, supplies, support staff, and other direct costs.

The laboratory would need 30 hours to conduct 100 tests on BAIIDs that are installed in vehicles. These tests would be under varying conditions and would determine if the BAIIDs meet the standards and specifications in part 7409.3720, subpart 3. The cost per hour is again estimated at $50.

III. BCA Service provider inspection. The laboratory would need 30 hours to travel to service center sites throughout the state and to inspect the service provider centers to ensure compliance with part 7409.3750, subpart 9. The cost per hour is again estimated at $50.

IV. DVS certification, administration, and evaluation. The cost per hour is estimated at $20 to reflect a portion of the salary, fringe benefits, indirect costs, supplies, support staff, and other direct costs. Most of the work on the program would be performed by employees from the Driver Evaluation Section of DVS. The mid-range total for salary and fringe benefits for a driver evaluator is $16.22. The total for salary and fringe benefits for the chief driver evaluator is $23.45. The cost per hour was estimated at $20 because work on the program will be performed both by mid-range driver evaluators and by the chief driver evaluator. DVS would need 5 hours to develop a certification application form required by part 7409.3730, subpart 1. DVS would need 10 hours to process certification application forms required by part 7409.3730, subpart 1.

DVS would need 10 hours to approve service providers as required by part 7409.3740, subpart 1.

DVS would need 25 hours to process administrative licensing information required by part 7409.3750. This information will serve as the basis of the evaluation mandated in Minnesota Statutes, section 171.305, subdivision 2.

DVS is not anticipating spending any time on reviewing the denial or revocation of certification under part 7409.3770, subpart 3.

STATE OF MINNESOTA

Department: of Finance

Office Memorandum

Date: August 6, 1992

To: Frank Ahrens, Fiscal and Admin. Services Director
Department of Public Safety

From: Bruce J. Reddemann, Director BJR
Budget Operations

Phone: 296-5188

Subject: Approval of Vehicle Ignition Interlock Device Fees

I have reviewed the fee review forms submitted with the Executive Budget Officer's recommendation and the proposed rules related to Vehicle ignition interlock devices.

I hereby approve the fee as submitted in the proposed rules dated July 20, 1992, as follows:

- Vehicle Ignition Interlock Devices Fee $5,000.00

cc: Dwight Pederson
Glenn Olson

IMTGroup, Inc.

1055 St. Paul Place
Suite 150
Cincinnati, OH 45202

Telephone: (513) 651-9560
FAX: (513) 651-9563

(L)

September 16, 1992

Mr. Lowell Van Berkom
Bureau of Criminal Apprehension
1246 University Avenue
St. Paul, MN. 55104

Dear Mr. Berkom:

Thank you for sending the proposed rules regarding Breath Alcohol Ignition Interlock Devices.

I have three comments about the proposed regulations and several questions regarding service and implementation.

1. Subp 6. States "The BAIID must have a method to prevent an unauthorized person from operating the BAIID." The SNR further discusses the CBPA breath code and the 4 digit key pad as methods to prevent unauthorized users from utilizing the device. I personally have been involved in this industry from its inception in 1985 and am very familiar with all the technology available today. Neither method prevents circumvention. The keypad method 4 digit code can be taught to others. The CPBA has to be simple enough so that the average Participant can learn the code. The Participants can teach the code to another unauthorized person. The LifeSafer unit utilizes a Hum-tone primarily to thwart the use of Bogus breath samples. Secondarily, it operates like the other methods to "Deter" not "Prevent" an unauthorized person from delivering a test.

There is no technology available less than positive identification which is a long-way off to prevent an unauthorized individual from taking a test. Therefore, our recommendation is the word "Prevent" should be deleted and the word "Deter" inserted in this paragraph.

2. Sub 8. section "B"

Of the technology currently available on the market today, one unit displays a three-digit readout, another displays a bargraph that indicates the relative AC range and the LifeSafer unit simply indicates a Pass, Warn or Fail. The Pass represents a AC below the setpoint and a Fail an AC above the setpoint.

Strictly interpeted a message delivered that indicates the AC of each test to the driver could preclude the LifeSafer unit and the leading manufacturer's unit from being certified in the state.

First of all from a driver feedback standpoint a Fail message with an ignition lock-out delivers the strongest message of all to the driver. A three-digit display of the

AC recorded, (although high-tech looking) provides very little useful information to the unsophisticated user. In fact, because a subsequent reading can vary significantly, the information may be more confusing to the individual than beneficial.

Therefore, we recommend that this language read " An indication that the AC of each breath sample resulted in a Pass or Failed condition."

Thirdly, please clarify whether or not an LED indication that indicates PASS AC < .02 or FAIL AC > .02 is acceptable.

3. Subp 5 Service requirements.

60 day monitoring has become the accepted norm that has produced positive results in other programs. With all the enhancements in identification of the circumvention and the LifeSafer "Violations Reset" capability, the thirty (30) day monitoring requirement will have minimal positive effect on the program. With all of the other economic constraints placed upon the Manufacturer and the Service Provider, the 30 day monitoring requirement will effectively kill the program because it will put the cost to the Participant out of economic reach.

Recommend changing the 30 day requirement to 60 days.

4. Service and implementation questions.

A. Of the 1866 eligible candidates for early license reinstatement in 1991, what percentage does the Department estimate will participate in the program? Do you have an estimate on a monthly basis?

B. A point of clarification, for the individuals whose one year abstinence is reduced from one year to six months, how long will they be required to have interlock for?

C. What plans does the Department have to inform the eligible candidates that this earlier reinstatement is available?

D. After August 1993, do all of the BAIID's get de-installed or do the participants remain on the program?

E. When would the Department make a report to the Legislature on the success or failure of the pilot program?

F. Realistically, we estimate the maximum participation in the program from January 1, to August 1, 1993 to be no more than 200 participants? can you provide any indication that this number is realistic or unrealistic?

G. There is confusion in the Service delivery section about whether or not defective units must be replaced in 24 hours or 48 hours. 48 hours is feasible and is standard in other states. 24 hours is probably unrealistic to provide a guarantee for. Would you please clarify what the requirement will be?

Your written response would be greatly appreciated.

Sincerely,

R Freund

Richard Freund
President

CST

Combined Systems Technology, Inc.

2165 N.W. 108th Street, Suite D • Des Moines, Iowa 50325 • (515) 270-5300

September 22, 1992

Mr. Lowell Van Berkom
Bureau of Criminal Apprehension
1246 University Avenue
St. Paul, MN 55104

Dear Mr. Van Berkom:

After recent conversations with Eldon Ykestad and a comprehensive review of the administrative rules governing the Alcohol Ignition Interlock Device legislation, we have determined that our product, the Intoxalock, meets your current requirements. Eldon suggested that I drop you a letter indicating our interest in pursuing negotiations for CST, Inc. to become an active vendor in the pilot program.

There are a number of questions and areas of concern we have at this time and would like to suggest that we schedule an information gathering meeting at which time we could better clarify the stated administrative rules. We would be willing to meet you at your Minnesota facility at your convenience to discuss our product and pilot program for Minnesota.

As a point of information, the Intoxalock currently has been approved by the Iowa Department of Criminal Investigation and has been in research and development for the past 36 months. We can comfortably guarantee that our product meets your logistic and environmental requirements and would be interested in business opportunities in the State of Minnesota.

We look forward to hearing from you soon!

Sincerely,

Kevin J. Doyle
Vice President

KD/jak

cc: Eldon Ykestad
Kathy Burke Moore

Value Added Installer for Dickens Data Systems
IBM Business Partner

Ignition
Interlock
Systems

Guardian Interlock Systems
110 Marietta Station Walk
Suite 320
Marietta, Georgia 30060

404-499-0499
Fax 404-499-0533

GUARDIAN INTERLOCK SYSTEMS

Friday, September 25, 1992

Lowell Van Berkom
Bureau of Criminal Apprehension
1246 University Avenue
St. Paul, Minnesota 55104

Dear Dr. Van Berkom,

I am writing in response to Minnesota's notice of intent to adopt rules regarding the certification and use of Breath Alcohol Ignition Interlock Devices. We appreciate the opportunity to review the proposed rules. We have read them carefully and, while there are a few areas that appear to place unreasonable costs on the manufacturers, they appear to reasonable. Our specific comments are as follows:

- Requirements for certification are quite reasonable. We assume that expenditures for independent certification will be allowed to totally offset the $5000 fee since the cost of testing is several times that amount. It would be onerous to the manufacturers to ask us to pay this on top of the independent tests.
- The testing of units by the state seems redundant. If you are going to require independent testing you should be willing to accept the results. These tests are very time consuming and it is not practical for manufacturers to repeat the process for each state. Most states accept independent certification and will certify based on prior certification by other states.
- Asking the manufacturers to provide vehicles for testing is unreasonable. The state has vehicles at its disposal. We would have to either bring vehicles into the state or rent them locally. The issue is less one of cost than logistics and inconvenience.
- The requirement for notification of design changes is reasonable.
- Approval of service providers is reasonable.
- Insurance requirements are reasonable.
- Rules governing service centers are reasonable.

- Location of service centers should be modified to allow exceptions to the 100 mile rule based on the number of units in operation. It is not economically viable to have service locations that support less than 100 units.
- Security requirements are reasonable. They should be expanded to state that manufacturer can employ an officer or other key executive who is a participant in any interlock program without regard to whether the program is located within the state of Minnesota.
- Rules for installation and record keeping are reasonable. They should be expanded to require manufacturers to stay actively involved with the service provider. Manufacturers should not be allowed to simply sell the devices and move on. This is a relationship of trust. The manufacturers should be required to demonstrate the existence of a computer resident data base capable of being accessed by state authorities to ensure accuracy and compliance.

The above covers our major concerns. Unfortunately, even the changes we suggested will not allow us to do business in the State of Minnesota during the pilot program. The adoption of rules and certification process will undoubtedly take until the end of 1992 to complete. This will allow only eight months to install devices before the deadline. That is simple not enough time for Guardian or any other manufacturer to build a profitable business. This is very unfortunate. We are more than willing to make an investment in the Minnesota. But we have to be able to forecast a reasonable return on that investment to ensure that we will be around when the full program is implemented. I would submit to you that all manufacturers have to be in the same position. **Of even greater importance, to be effective, the pilot program must have a statistically significant number of participants. I seriously question whether this can be accomplished in the time allowed.**

Sincerely,

Joseph R. Sheram, Jr.

President

(E)

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
BUREAU OF CRIMINAL APPREHENSION
DRIVER AND VEHICLE SERVICES DIVISION

Proposed Permanent Rules Of The Department Of Public Safety Relating To Vehicle Ignition Interlock Devices

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

(1) **NOTICE IS HEREBY GIVEN** that the State Department of Public Safety intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the proposed rules is Minnesota Statutes, section 171.305, subdivision 3. The Commissioner also has general rulemaking authority under Minnesota Statutes, section 299A.01, subdivision 6.

(2) All persons have 30 days, until 4:30 p.m., October 14, 1992, in which to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. (13) Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the 30-day comment period. Any requests or comments must be received by the Department of Public Safety no later than 4:30 p.m. on October 14, 1992. (4) If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) Any person requesting a public hearing must include his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. (7) If a public hearing is required, the Department will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

(5) Comments or written requests for a public hearing must be submitted to: Lowell Van Berkom, Bureau of Criminal Apprehension, 1246 University Avenue, St. Paul, Minnesota 55104, (612) 642-0700.

(8) The proposed rules may be modified if the modifications are supported by data and views submitted to the Department and do not result in a substantial change in the proposed rules as noticed.

(11) A free copy of the rules is available upon request from Lowell Van Berkom at the address and telephone number listed above.

The rules establish performance standards for Breath Alcohol Ignition Interlock Devices (BAIIDs). The rules also set out certification standards and fees for manufacturers of the devices. A BAIID is a breath alcohol sensing instrument that prevents a vehicle from starting if the driver's alcohol concentration exceeds a certain amount. For the most part, the rules contain device standards consistent with federal model standards for BAIIDs. BAIIDs will be used in a pilot program that targets a high risk population of drivers who have lost their licenses or driving privileges for three or more DWIs. To be eligible for a limited license under the program, a person must serve at least one-half of the required abstinence period, must complete all rehabilitation requirements, and must agree to drive a vehicle equipped with a BAIID. The purpose of the pilot program is to test the effectiveness of this relatively new technological DWI countermeasure.

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 upon request from Lowell Van Berkom at the address and telephone number listed above.

In preparing these rules, the Department has considered the requirements of Minnesota Statutes, section 14.115, in regard to the impact of the proposed rules on small businesses. The adoption of the rules will affect small businesses which are engaged in building, distributing, installing, calibrating, and removing BAIIDs. Other small businesses affected by the proposed rules are employers of potential participants in the program. The Department has considered the methods for reducing the impact of the rules on small businesses, as required by section 14.115. The Department's primary concern in proposing and adopting these rules is the safety of all citizens who use the highway system. In general, the Department has developed the proposed rules to impose as small a burden as possible, consistent with public safety. This applies to all businesses, not just small businesses. After considering the methods for reducing the impact of the rules on small businesses, the Department has concluded that it is inconsistent with public safety to make specific exceptions to the rules for small businesses. The Department's evaluation of the applicability of the methods contained in Minnesota Statutes, section 14.115, subdivision 2, for reducing the impact of the proposed rules is addressed further in the Statement Of Need And Reasonableness.

(13) Minnesota Statutes, section 14.11, subdivision 1, does not apply because adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption of the rules.

(14) Minnesota Statutes, section 14.11, subdivision 2, does not apply because adoption of these rules will not have an impact on agricultural land.

In accordance with Minnesota Statutes, section 16A.128, subdivision 1a, pertaining to fees, the Department has notified the Commissioner of Finance of the Department's intent to adopt rules in the above-entitled matter. A copy of the Department's notice and the Commissioner of Finance's approval are attached to the Statement Of Need And Reasonableness.

In accordance with Minnesota Statutes, section 16A.128, subdivision 2a, the Department has sent a copy of this notice and a copy of the proposed rules to the Chairs of the House Appropriations Committee and the Senate Finance Committee prior to submitting this notice to the State Register.

(9) If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rules, must submit the written request to Lowell Van Berkom at the address and telephone number listed above.

8-25-92
Date

Thomas H. Frost, Commissioner
Department of Public Safety

(M)

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF DRIVER AND VEHICLE SERVICES
BUREAU OF CRIMINAL APPREHENSION

In The Matter Of The Adoption Of Rules Of The State Department Of Public Safety Relating To Vehicle Ignition Interlock Devices

DECLARATION OF COUNSEL

I, Nancy Bode, Assistant Attorney General, do hereby declare that I have examined the above-captioned rules, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010, have been followed. Any exceptions are listed below. For Attorney General Billing purposes, the four-digit docket client code is

0710.

Nancy Bode
Assistant Attorney General

Dated: 11-11-92

(P)

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF DRIVER AND VEHICLE SERVICES
BUREAU OF CRIMINAL APPREHENSION

In The Matter Of The Proposed Adoption Of Permanent Rules Of State Department of Public Safety Relating To Vehicle Ignition Interlock Devices.	**AFFIDAVIT OF MAILING THE STATEMENT OF NEED AND REASONABLENESS TO THE LEGISLATIVE COMMISSION TO REVIEW ADMINISTRATIVE RULES**

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Dave Orren, being sworn says:

That on the 31st day of August, 1992, I mailed the Statement Of Need And Reasonableness for the above-captioned Rules to the Legislative Commission To Review Administrative Rules in compliance with Minnesota Statutes, sections 14.131 and 14.23. The mailing was done through the interoffice mail of the State of Minnesota.

Dave Orren
Dave Orren

Subscribed and sworn to before me this 8 day of September, 19 92.

Laura Nehl-Trueman
Notary Public

Laura Nehl-Trueman
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My commission expires 4-4-96

OFFICE OF THE COMMISSIONER
211 Transportation Building
395 John Ireland Boulevard
Telephone: _____

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
SAINT PAUL 55155-1889

August 31, 1992

Ms. Maryanne V. Hruby, Executive Director
Legislative Commission to Review Administrative Rules
55 State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In the Matter of Proposed Rules of the State Department of Public Safety Relating To Vehicle Ignition Interlock Devices

Dear Ms. Hruby:

The Minnesota Department of Public Safety intends to adopt rules relating to vehicle ignition interlock devices. We plan to publish a Notice Of Intent To Adopt Rules in the September 14, 1992 State Register.

As required by Minnesota Statutes, sections 14.131 and 14.23, the Department has prepared a Statement of Need and Reasonableness which is now available to the public. Also as required, a copy of this Statement is enclosed with this letter.

For your information, we are also enclosing a copy of the Notice Of Intent To Adopt Rules and a copy of the proposed Rules in this matter.

If you have any questions about these rules, please contact me at 296-2631.

Yours very truly,

David Orren

Dave Orren
Rules Coordinator

enclosures: Statement of Need and Reasonableness
Notice Of Intent To Adopt Rules
Rules

AN EQUAL OPPORTUNITY EMPLOYER

(9)

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF DRIVER AND VEHICLE SERVICES
BUREAU OF CRIMINAL APPREHENSION

In The Matter Of The Proposed Adoption of Permanent Rules Of The State Department Of Public Safety Relating to Vehicle Ignition Interlock Devices	**AFFIDAVIT OF SENDING THE NOTICE OF INTENT TO ADOPT RULES AND A COPY OF THE RULES TO THE CHAIRS OF THE SENATE FINANCE AND HOUSE APPROPRIATIONS COMMITTEES**

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Dave Orren, being sworn says:

That on the 31st day of August, 1992, I mailed the Notice Of Intent To Adopt Rules and a copy of the Rules for the above-captioned Rules to the Chairs of the Senate Finance Committee and the House Appropriations Committee in compliance with Minnesota Statutes, section 16A.128, subdivision 2a. The mailing was done through the interoffice mail of the State of Minnesota.

Dave Orren
Dave Orren

Subscribed and sworn to before me this 8 day of September, 1992.

Laura Nehl-Trueman
Notary Public

Laura Nehl-Trueman
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My commission expires 4-4-96

OFFICE OF THE COMMISSIONER
211 Transportation Building
395 John Ireland Boulevard
Telephone: _____

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY
SAINT PAUL 55155-1889

August 31, 1992

Senator Gene Merriam, Chair
Senate Finance Committee
122 State Capitol
St. Paul, Minnesota 55155

Representative Wayne Simoneau, Chair
House Appropriations Committee
365 State Office Building
St. Paul, Minnesota 55155

Re: In the Matter of Proposed Rules of the State Department of Public Safety Relating To Vehicle Ignition Interlock Devices

Dear Senator Merriam and Representative Simoneau:

The Minnesota Department of Public Safety intends to adopt rules relating to vehicle ignition interlock devices. These rules set fees. We plan to submit our Notice Of Intent To Adopt Rules to the State Register on August 31, 1992.

As required by Minnesota Statutes, section 16A.128, subdivision 2a, the Department is sending a copy of the Notice and the proposed rules to you.

If you have any questions, please contact me at 296-2631.

Yours very truly,

Dave Orren

Dave Orren
Rules Coordinator

cc Senator Lyle Mehrkens, 127 State Office Building
Representative Art Seaberg, 393 State Office Building

enclosures: Notice Of Intent To Adopt Rules
Rules

OFFICE OF THE COMMISSIONER
211 Transportation Building
Telephone: _____

(R)

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

SAINT PAUL 55155

August 12, 1991

Ms. Maryanne V. Hruby, Executive Director
Legislative Commission to Review Administrative Rules
Room 55, State Office Building
100 Constitution Avenue
St. Paul, Minnesota 55155

Re: In the Matter of Minnesota Laws 1991, chapter 270, section 6, Regarding Ignition Interlock Devices.

Dear Ms. Hruby:

Minnesota Laws 1991, chapter 270, section 6, requires the Commissioner of Public Safety to establish a one-year pilot program for the use of an ignition interlock device by persons who have lost their driver's license for a DWI. As part of this program, the Commissioner is required to specify performance standards for the ignition interlock devices. The Revisor's "Review of 1991 Legislation Affecting Rulemaking By Agencies" identified this legislation as a rulemaking mandate.

The Department of Public Safety does not feel it is appropriate to go through rulemaking to adopt standards for the one-year pilot program involving ignition interlock devices. Therefore, performance standards are being compiled in compliance with the requirements of Minnesota Laws 1991, chapter 270, section 6, but the Department will not use Minnesota Statutes, chapter 14, to adopt the standards.

The Department decision was made due to the short time period that this pilot program will be used. The one-year pilot program will sunset August 1, 1992. As you are aware, the rulemaking process is lengthy. All or most of the one year period would elapse before any rules could be completed. Further, the short duration of the pilot program indicates that rulemaking is not appropriate. The pilot program was created to gain experience with ignition interlock devices so the legislature would have the information needed to decide whether or not to implement a permanent program. If the legislature decides to create a permanent program, rulemaking may then be appropriate.

If you have any questions, please contact me at 296-2631.

Yours very truly,

Dave Orren

Dave Orren
Rules Coordinator

AN EQUAL OPPORTUNITY EMPLOYER

cc: Governor Arne Carlson
Room 130 State Capitol
St. Paul, Minnesota 55155

Senator Allan H. Spear, Chair
Senate Judiciary Committee
Room G-27 State Capitol
St. Paul, Minnesota 55155

Senator Gary M. DeCramer, Chair
Senate Transportation Committee
Room 309 State Capitol
St. Paul, Minnesota 55155

Representative Kathleen Vellenga, Chair
House Judiciary Committee
Room 509 State Office Building
St. Paul, Minnesota 55155

Representative Henry J. Kalis, Chair
House Transportation Committee
Room 10 State Office Building
St. Paul, Minnesota 55155

Katherine Burke Moore, Director
Driver and Vehicle Services Division
161 Transportation Building
395 John Ireland Boulevard
St. Paul, Minnesota 55155

Department of Public Safety

Proposed Permanent Rules Relating to Vehicle Ignition Interlock Devices

Rules as Proposed (all new material)

IGNITION INTERLOCK DEVICES

7409.3700 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 7409.3700 to 7409.3770 have the meanings given them in this part and part 7409.0100.

Subp. 2. **AC.** "AC" is the abbreviation for alcohol concentration and means the number of grams of alcohol per 210 liters of breath.

Subp. 3. **Alcohol.** "Alcohol" means ethanol or ethyl alcohol.

Subp. 4. **Alcohol setpoint.** "Alcohol setpoint" means the minimum AC at which a BAIID is set to lock a motor vehicle's ignition.

Subp. 5. **Authorized person.** "Authorized person" means a participant or any other licensed driver who has completed the orientation provided for in part 7409.3750, subpart 4.

Subp. 6. **BAIID.** "BAIID" is the abbreviation for breath alcohol ignition interlock device and means a device designed to allow a vehicle ignition to start the vehicle engine when the AC test result is below the alcohol setpoint and to lock the vehicle ignition to prevent the vehicle engine from starting when the AC test result is at or above the alcohol setpoint.

Subp. 7. **Breath sample.** "Breath sample" means expired human breath containing primarily air from the deep lung.

Subp. 8. **Circumvention or bypass.** "Circumvention" or "bypass" means an overt, conscious attempt to provide an air sample to the BAIID other than a breath sample from an authorized person and thus to permit a person with an AC at or above the alcohol setpoint to start the vehicle engine.

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Circumvention or bypass includes the use of a human breath sample that has intentionally been altered so as to remove or reduce the amount of alcohol contained in the breath sample.

Subp. 9. **Commissioner.** "Commissioner" means the commissioner of the Department of Public Safety or an authorized agent.

Subp. 10. **Department.** "Department" means the Department of Public Safety or an authorized officer or agent.

Subp. 11. **Fail-safe.** "Fail-safe" means the BAIID must lock a motor vehicle's ignition.

Subp. 12. **Participant.** "Participant" means a person who has been issued a limited license under Minnesota Statutes, section 171.305, subdivision 5.

Subp. 13. **Service provider.** "Service provider" means a dealer, distributor, supplier, or service center of a BAIID used in Minnesota, designated by the manufacturer and approved by the department.

Subp. 14. **Sufficient cause to believe.** "Sufficient cause to believe" means grounds put forth in good faith that are not arbitrary, irrational, unreasonable, or irrelevant and that make the proposition asserted more likely than not, provided the grounds are based on at least one of the following sources:

A. written information from an identified person;

B. facts or statements supplied by a manufacturer of a BAIID;

C. facts or statements supplied by a designated service provider;

D. court documents and police records; and

E. facts of which the commissioner or the commissioner's employees have personal knowledge.

Subp. 15. **Tampering.** "Tampering" means an overt, conscious attempt to disable or disconnect the BAIID from its power source, or any other act intended to start the vehicle engine without providing a breath sample to the BAIID for analysis.

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7409.3710 PURPOSE AND SCOPE.

The purpose of parts 7409.3700 to 7409.3770 is to establish performance standards for BAIIDs and certification standards and fees for manufacturers of BAIIDs, to be used pursuant to Minnesota Statutes, section 171.305.

7409.3720 STANDARDS AND SPECIFICATIONS.

Subpart 1. **Alcohol setpoint.** The alcohol setpoint is 0.020 AC.

Subp. 2. **Breath samples.** A BAIID must meet all of the following specifications concerning breath samples and vehicle operation:

A. A BAIID must determine the AC of a breath sample.

B. A minimum pressure requirement of 12 inches of water is required for the BAIID to accept a breath sample for analysis of AC.

C. The BAIID must lock the vehicle ignition at least 90 percent of the time when the AC of the breath sample is 0.03 or more. The BAIID must lock the vehicle ignition at least 99.5 percent of the time when the AC of the breath sample is 0.04 or more.

D. The BAIID must lock the vehicle ignition no more than ten percent of the time when the AC of the breath sample is 0.01 or less. The BAIID must lock the vehicle ignition no more than 0.5 percent of the time when the AC of the breath sample is 0.00.

E. When the BAIID allows the vehicle engine to start, the BAIID must require a breath sample to determine AC at variable time intervals ranging from five to 30 minutes while the engine is running.

F. The BAIID must be prepared to accept a breath sample for analysis within three minutes of an AC result of 0.05 or less.

G. If the vehicle stalls after the BAIID has allowed the vehicle engine to start, the BAIID must permit the vehicle engine to start without requiring a breath sample for the next

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two minutes after the stall.

Subp. 3. **Power source.** The BAIID must be designed to be operated from a 12-volt DC vehicle battery. The BAIID must meet the requirements of this part when operated with automotive voltages of 11 to 16 volts DC. When operated with voltages of less than 11 volts or more than 16 volts, the BAIID must meet the requirements of this part or fail-safe.

Subp. 4. **Temperature.** The BAIID must meet the requirements of this part when operated within a temperature range of +85 degrees Celsius to -40 degrees Celsius (+185 degrees Fahrenheit to -40 degrees Fahrenheit). If the BAIID is exposed to temperatures above +85 degrees Celsius or below -40 degrees Celsius, then the BAIID must meet the requirements of this part or fail-safe. The BAIID must be ready for operation within five minutes of being turned on at -20 degrees Celsius (-4 degrees Fahrenheit).

Subp. 5. **Electromagnetic interference.** The BAIID must either fail-safe or meet the requirements of this part when exposed to radio frequency interference or electromagnetic interference sources normally found in an operating motor vehicle.

Subp. 6. **Tampering, circumvention, or bypass.** The BAIID must provide a method to detect tampering, circumvention, or bypass. The BAIID must have a method to prevent an unauthorized person from operating the BAIID. A warning label visible to front seat occupants must be attached to the BAIID stating: "It is a misdemeanor to circumvent, bypass, or tamper with this device."

Subp. 7. **Data recording.** A BAIID must record the following information:

A. the date and time of any attempt to tamper with, circumvent, or bypass the BAIID;

B. the date and time of any use of the vehicle or any attempt to use the vehicle, including all times that the vehicle engine was started or stopped;

C. the date, time, and AC of each breath sample

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provided to the BAIID;

D. the date and time of any malfunction of the BAIID;

E. the date and time that a breath sample was required under subpart 2, item E, and a breath sample was not provided;

F. the date a "service required" message was issued; and

G. the date service is performed.

Subp. 8. **Driver messages.** The BAIID must provide the following information to the driver:

A. BAIID readiness for acceptance of a breath sample, including samples required under subpart 2, item E;

B. the AC of each breath sample; and

C. a notice to obtain service within seven days if a breath sample has an AC at or above the alcohol setpoint, if the BAIID detects tampering, circumvention, or bypass, or if a breath sample is not provided as required by subpart 2, item E.

Subp. 9. **Need for service.** The BAIID must meet the requirements of this part for a minimum period of 37 days without requiring intervening service.

Subp. 10. **Ignition lockout.** The BAIID must permanently lock the ignition if service under subpart 8, item C, or part 7409.3750, subpart 5, item A, is not obtained within seven days.

7409.3730 CERTIFICATION REQUIREMENTS.

Subpart 1. **Application for certification.** A manufacturer may submit a BAIID model to the commissioner for certification. Application for certification must be on a form prescribed by the department. Each application must be for only one model or type of BAIID. A manufacturer must make separate applications for models or types of BAIIDs that differ in any operational aspect. An application for certification must include, in addition to other information necessary to the administration of the pilot program that the department may require:

A. the name and address of the manufacturer;

B. the name and model number of the BAIID;

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C. a detailed description of the BAIID, including instructions for installation and operation, and technical specifications describing the BAIID's accuracy, security, data collection and recording, tamper detection, and environmental features;

D. a certification by the manufacturer that all BAIIDs sold, offered for sale, leased, or installed in Minnesota will meet the requirements for certification set forth in these specifications;

E. a certification by the manufacturer that the requirements of part 7409.3760 have been met; and

F. a certification fee of $5,000.

Subp. 2. **Testing data.** For any BAIID model submitted for certification, the manufacturer must provide data from an independent laboratory approved by the department, demonstrating that the BAIID model meets each of the requirements of part 7409.3720. The data must be obtained from a production line unit or from production line units of the BAIID model. The data must include the following information:

A. The data must show the AC for a minimum of five human subjects with an AC ranging from 0.030 to 0.039. A minimum of three breath samples must be provided to the BAIID by each human subject for a total of 30 breath samples. The requirements of part 7409.3720, subpart 2, item C, must be met.

B. The data must show the AC for a minimum of five human subjects with an AC ranging from 0.040 to 0.049. A minimum of three breath samples must be provided to the BAIID by each human subject for a total of 30 breath samples. The requirements of part 7409.3720, subpart 2, item C, must be met.

Subp. 3. **Equipment.** For any BAIID model submitted for certification, two BAIIDs and the materials necessary to conduct 100 breath tests must be submitted by the manufacturer to the department. The BAIIDs must be installed in vehicles provided by the manufacturer for independent testing by the department, at no expense to the department.

Subp. 4. **Design changes.** The manufacturer shall notify

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the department in writing of any changes in the components, design, or installation and operation instructions of any BAIID model certified by the commissioner. The manufacturer shall supply supportive documentation to the department establishing that the changes do not affect the ability of the BAIID to comply with the requirements of part 7409.3720.

Subp. 5. **Length of certification.** Certification is effective until revocation under part 7409.3770, subpart 1, or expiration of the program established under Minnesota Statutes, section 171.305, whichever is earlier.

7409.3740 MANUFACTURER'S RESPONSIBILITIES.

Subpart 1. **Designated service provider.** Upon certification of the BAIID by the commissioner, the manufacturer shall submit to the department for approval its designated service providers. The manufacturer may designate itself as a service provider. To receive department approval, the manufacturer shall submit to the department:

A. certification from each service provider that the service provider's responsibilities as listed in parts 7409.3750 and 7409.3760 will be met; and

B. a certificate of insurance as required in part 7409.3760.

Subp. 2. **Installation instructions.** The manufacturer shall develop written instructions for installing the BAIID. The instructions must include inspection procedures to ensure the vehicle in which the BAIID will be installed is in a mechanical and electrical condition that will allow the BAIID to meet the specifications in part 7409.3720. The instructions must be provided to all service providers that will install the BAIID.

7409.3750 SERVICE PROVIDER'S RESPONSIBILITIES.

Subpart 1. **Service locations and hours.** A service provider shall provide for service locations as follows:

A. The service provider shall make available a minimum of one permanent installation and service location

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within the state. The permanent service center must establish and maintain reasonable business hours for a minimum of five days a week. A schedule stating those hours must be submitted to the department.

B. The service provider shall provide service locations so that there is a service location within 100 straight-line miles of the residence or employment site of any participant for service. Service locations may be provided through installation and service centers or through mobile service. A plan describing the service locations must be submitted to the department.

Subp. 2. **Security.** A service provider shall comply with all of the following security requirements:

A. Only authorized employees of the service provider, manufacturer, or department are permitted to observe the installation of the BAIID. Reasonable security measures must be taken to prevent other individuals from observing installation or obtaining access to installation materials.

B. The service provider shall not facilitate tampering, circumvention, or bypass of a BAIID. If the service provider is aware of a participant operating a vehicle that is not equipped with a BAIID, the service provider shall immediately notify the department.

C. A participant may not be employed by a manufacturer or service provider in a position that has access to installation instructions or materials.

Subp. 3. **Installation.** A service provider shall comply with the following installation service requirements:

A. Installation must be done in compliance with the installation instructions provided by the manufacturer and in accordance with accepted trade standards of the automotive repair industry.

B. The service provider shall inspect each vehicle before installing the BAIID. The inspection must include screening procedures to ensure the vehicle in which the BAIID is to be installed is in a mechanical and electrical condition that

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will allow the BAIID to meet the specifications in part 7409.3720. Conditions that the manufacturer has determined would prevent the BAIID from meeting the specifications of part 7409.3720, must be repaired before the BAIID is installed. The participant shall bear the costs of any repairs to the vehicle.

C. The service provider shall provide a certificate of installation to the participant and the department upon completing installation of the BAIID. The certificate must include the following information:

(1) the participant's full name, address, date of birth, and telephone number;

(2) the full names and dates of birth of all authorized persons other than the participant;

(3) the vehicle's make, model, vehicle identification number, model year, license plate number, and state of registration;

(4) the vehicle owner's full name and date of birth;

(5) the serial number of the installed BAIID;

(6) the date of installation;

(7) the frequency of required service and monitoring; and

(8) any additional information necessary to the administration of the pilot program requested by the department.

Subp. 4. **Orientation.** The service provider shall provide an orientation to the participant and any other licensed driver authorized to operate the vehicle. The orientation must include information on the proper use of the BAIID, service locations, and procedures for regular service and emergency situations.

Subp. 5. **Service requirements.** A service provider shall comply with the following ongoing service requirements:

A. The service provider shall service and monitor the installed BAIID a minimum of every 30 days after initial installation. If during the regular service appointment the service provider determines the BAIID to be defective, it must be repaired or replaced within 24 hours of that determination.

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If the participant fails to obtain regular service, the service provider shall immediately notify the department.

B. Each time the BAIID is serviced, the service provider shall review the data recorded under part 7409.3720, subpart 7, and provide a copy to the department within five business days of the service date. The service provider shall immediately notify the department by telephone or facsimile if any of the following is indicated:

(1) tampering, circumvention, or bypass;

(2) failure to provide a breath sample as required under part 7409.3720, subpart 2, item E; or

(3) AC at or above the setpoint.

Immediate notification must be followed by written notice to the department within three days of the service.

C. The service provider must have and make known to all authorized persons a 24-hour toll-free telephone number for use in the event of questions or emergencies related to the BAIID.

D. The service provider shall respond to an emergency report related to the BAIID within one business day of the report. If the service provider determines the emergency to be the result of a defective BAIID, the service provider shall repair or replace the BAIID within 48 hours of that determination.

Subp. 6. **BAIID removal.** A service provider shall comply with the following requirements for BAIID removal:

A. Upon removal of the BAIID, the service provider shall restore the vehicle to its original operating condition. All wires that were connected to the BAIID must be reconnected and insulated.

B. If the service provider removes the BAIID and installs a different BAIID, the service provider shall notify the department by mail of the serial number of the newly installed BAIID. If the BAIID is installed in a replacement vehicle, the service provider shall submit a new certificate of installation to the department.

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C. If the service provider removes the BAIID for reasons other than service, the service provider shall immediately notify the department by telephone or facsimile. If removal occurs after the department's normal business hours, notification must be made at the earliest time possible. Telephone notification must be followed by written notification within three days of removal of the BAIID.

Subp. 7. **Program evaluation.** The service provider shall submit a report to the department every six months containing the following information:

A. all written complaints received from authorized persons;

B. all incidents of customer error in operating the BAIID;

C. all incidents of mechanical or electrical conditions of the motor vehicle that may have affected the ability of the BAIID to meet the requirements of part 7409.3720;

D. all incidents of failure of a BAIID to meet the requirements of part 7409.3720 and the cause for the failure; and

E. all incidents of attempts to tamper with, circumvent, or bypass the BAIID and whether the participant was able to operate the vehicle.

Subp. 8. **Cost determination.** The cost of installation, monthly service, and monitoring must not vary according to the location of the residence or employment site of the participant.

Subp. 9. **Inspection.** To ensure compliance with the specifications in this part, the service provider shall make available any service location and any BAIID at the service location for inspection by a representative of the department during the service provider's reported business hours.

7409.3760 LIABILITY.

Subpart 1. **Insurance coverage.** The manufacturer and each service provider shall maintain comprehensive general liability insurance in the amount of $1,000,000 per person and $3,000,000

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per incident. All insurance policies must be endorsed to provide the department with 45 days prior written notice of cancellation, material change, or intent to lapse.

Subp. 2. **Indemnification.** The manufacturer and each service provider shall indemnify and hold harmless the department from any and all claims, demands, actions, and costs related to the BAIID program.

7409.3770 REVOCATION OF CERTIFICATION OR APPROVAL.

Subpart 1. **BAIID certification.** The department shall revoke the certification of the BAIID when it has sufficient cause to believe any of the following:

A. the BAIID model does not meet the requirements of part 7409.3720;

B. the manufacturer has changed the components, design, or installation and operation instructions in such a way that the requirements of part 7409.3720 are no longer met;

C. the manufacturer fails to maintain the liability insurance as required in part 7409.3760; or

D. the manufacturer fails to maintain a service provider as required in part 7409.3740, subpart 1.

Subp. 2. **Service provider.** The department shall revoke the approval of a designated service provider when it has sufficient cause to believe that the service provider is not meeting the requirements of part 7409.3750 or 7409.3760.

Subp. 3. **Review of denial or revocation of certification.** If a BAIID certification or a service provider approval is denied or revoked, the manufacturer or service provider may request review of the denial or revocation by the commissioner. The request must be in writing and made within 20 days of the notification of the denial or revocation. The commissioner shall issue a decision within 20 days of receiving a request for review. The commissioner's decision is a final agency action.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Vehicle Ignition Interlock Devices

AGENCY: Department of Public Safety

MINNESOTA RULES: Chapter 7409

The attached rules are approved for publication in the State Register

Ron Ray

Ron Ray
Senior Assistant Revisor