

**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

	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>Abstinence Required</u>
1st Rehabilitation	1,287	1,590	1,650	1 year
2nd Rehabilitation	144	183	204	3 years
3rd Rehabilitation	<u>3</u>	<u>11</u>	<u>12</u>	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 BAID is a condition of relicensing, any driving without the driver providing a breath sample to the BAID 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 BAID 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 BAID, services it at recommended intervals, and reports to the Department. While the manufacturer is responsible for certifying that the BAIDs work as designed, the service provider is responsible for ensuring that participants can operate the BAIDs 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 BAID 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 BAID 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 ± 0.02 percent variation in accuracy is considered a passing test score for stressed testing as opposed to ± 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 BAID 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 BAID 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 BAID 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 BAID after drinking given the consequences of a positive reading.

D. The low end accuracy of the BAID 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 BAID locks the ignition, an alcohol concentration reading will be recorded. This method will prevent a driver from losing driving privileges if the BAID locks when no alcohol is present. The inconvenience to the driver who must wait for the BAID 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
Thomas H. Frost, Commissioner
Department of Public Safety