

Michigan Office of Administrative Hearings and Rules
MOAHR-Rules@michigan.gov

**AGENCY REPORT TO THE
JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR)**

1. Agency Information

Agency name:

State Police

Division/Bureau/Office:

Forensic Science Division

Name of person completing this form:

Steven Beatty

Phone number of person completing this form:

517-282-8858

E-mail of person completing this form:

BeattyS@michigan.gov

Name of Department Regulatory Affairs Officer reviewing this form:

Steven Beatty

2. Rule Set Information

MOAHR assigned rule set number:

2022-34 SP

Title of proposed rule set:

Tests for Breath Alcohol

3. Purpose for the proposed rules and background:

The existing rules have accompanied the current evidential breath alcohol test instruments since the purchase and adoption of those instruments into the program. The State of Michigan is purchasing new instruments with additional technological features and expanded capabilities and will need to change the existing rules to accommodate both the technological features and the new capabilities. The rules will also need to be updated to apply to the new instrument for training instrument users and technicians.

4. Summary of proposed rules:

The proposed rules are changes to existing rules that have accompanied the current evidential breath alcohol test instrument since the adoption, purchase, and installation of those instruments. The State of Michigan is purchasing new instruments with additional technology, features, and expanded capabilities and will need to amend the existing rules to accommodate both the technology and new features. The amendments to the rules also apply to training users and technicians on the operation of the new instrument.

5. List names of newspapers in which the notice of public hearing was published and publication dates:

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The Flint Journal (Published February 21, 2023)
The Grand Rapids Press (Published February 21, 2023)
The Mining Journal (Published February 22, 2023)

6. Date of publication of rules and notice of public hearing in Michigan Register:

3/1/2023

7. Date, time, and location of public hearing:

3/14/2023 01:00 PM at Centennial Room , Michigan State Police Headquarters, 7150 Harris Drive, Dimondale, MI 48221

8. Provide the link the agency used to post the regulatory impact statement and cost-benefit analysis on its website:

<https://ARS.apps.lara.state.mi.us/Transaction/RFRTransaction?TransactionID=1393>

9. List of the name and title of agency representative(s) who attended the public hearing:

Mr. Steven Beatty, Regulatory Affairs Officer (RAO)
Mr. Jeff Nye, Director Forensic Science Division
Insp. John Bowen, Forensic Science Division
Mr. Mark Fondren, Forensic Science Division
Sgt. Scott Tuttle, Breath Alcohol Unit

10. Persons submitting comments of support:

None

11. Persons submitting comments of opposition:

None

12. Persons submitting other comments:

Attorney Aaron Martinez, Attorney Michael J. Nichols

13. Identify any changes made to the proposed rules based on comments received during the public comment period:

	Name & Organization	Comments made at public hearing	Written Comments	Agency Rationale for Rule Change and Description of Change(s) Made	Rule number & citation changed
1	Attorney Michael Nichols		“325.2654: This sub-rule appears to be rescinded. It should not be rescinded because it requires that if an instrument is repaired, it must	Although R 325.2654 was rescinded, the referenced subrule was moved in the draft rules to new R 325.2659(3). Nevertheless,	R 325.2658 (5)

			<p>undergo a certification inspection and be verified for accuracy in accordance with a 120 day calibration inspection process.”</p>	<p>when considering the comments in light of the training requirements and proficiency standards required for operator certification under the rules, and the shared desire to ensure that defendants and members of the bar have a common understanding as to how certified operators can demonstrate their required training and certification under the rules, the two references to “certification card” in R325.2658(5) were simply changed to “certificate.” The MSP no longer issues small wallet sized cards upon successful completion of the required training but does issue equivalent certificates. The rationale for this minor revision is to avoid future semantics over whether a “certificate” issued by the MSP under</p>	
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				the rules is the equivalent of a “card” issued by the MSP under the rules.	
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14.Date report completed:

3/27/2023