

CHAPTER 7
DEVICES AND METHODS TO TEST BODY FLUIDS
FOR ALCOHOL OR DRUG CONTENT

[Ch 7 as appeared prior to 6/27/79 rescinded]
[Rules 7.1 to 7.5 appeared as rule 3.13 prior to 6/27/79]
[Prior to 4/20/88, see Public Safety Department[680] Ch 7]

661—7.1(321J) Approval of devices and methods to test for alcohol or drug concentration. The commissioner, by these rules, approves the following devices and methods to take a specimen of a person's breath or urine for the purpose of determining the alcoholic or drug concentration.

661—7.2(321J) Direct breath testing.

7.2(1) A peace officer desiring to perform direct testing of a subject's breath for the purpose of determining the alcohol concentration shall employ, or cause to be used, a breath testing device of a type meeting the minimum performance requirements established by Highway Safety Programs; Standard for Devices to Measure Breath Alcohol, Federal Register/Vol. 49, No. 242 (December 14, 1984), pp. 48854-48855, or by Highway Safety Programs; Model Specifications for Devices to Measure Breath Alcohol, Federal Register, Volume 58, No. 179 (September 17, 1993), pp. 48705-48708. All devices so used must be certified to be in proper working order within a period of one year immediately preceding use. The operator of the device shall proceed in accordance with the instructions furnished by the division of criminal investigation criminalistics laboratory, and shall have been certified as competent in the operation of the breath testing device. All certifications of devices and operators shall be made by the division of criminal investigation criminalistics laboratory, established by Iowa Code chapter 691.

7.2(2) A direct breath testing device is a device designed and constructed to measure a subject's breath alcohol concentration by utilizing a sample of the subject's breath.

7.2(3) Although any breath testing device that meets the minimum performance requirements established by the National Highway Traffic Safety Administration, and cited in subrule 7.2(1), is authorized by the commissioner to be employed or to be caused to be used to determine the alcohol concentration, the following devices are being used in Iowa and meet those standards:

- a. Intoxilyzer Model 4011A-CMI, Inc.;
- b. Datamaster cdm, National Patents Analytical Systems, Inc.

661—7.3(321J) Urine collection. A peace officer desiring to collect a sample of a subject's urine for the purpose of determining the alcohol or drug concentration shall proceed as follows:

7.3(1) As soon as practicable after arrest, the subject should provide the sample by being required to urinate into a bottle, cup, or other suitable container which is clean, dry, and free from any visible contamination.

7.3(2) It is not necessary that the bladder be completely emptied. Later samples may be taken if desired, but are not necessary.

7.3(3) Rescinded IAB 8/7/91, effective 9/15/91.

7.3(4) The collection shall be made in the presence of a peace officer or other reliable person under the supervision of a peace officer. The peace officer or other person in the presence of the subject shall be of the same gender as the subject.

7.3(5) Upon collection, a peace officer shall cause the sample to be sealed within a clean, dry container. The container shall be free of visible contamination. If the blood alcohol kit of any manufacturer is utilized for the preservation of a urine sample, the anticoagulant and antibacterial substances in that kit do not constitute visible contamination. The peace officer shall cause a tag or other device to be attached to the container showing the date and time the sample was collected and identifying the arresting officer, the subject, the collecting officer and the person present during the collection of the sample, if other than the collecting officer.

7.3(6) Rescinded IAB 8/7/91, effective 9/15/91.

7.3(7) Rescinded IAB 8/7/91, effective 9/15/91.

661—7.4(321J) Submission of samples for alcohol and drug testing to the department's criminalistics laboratory. Any sample of urine or blood may be submitted to the department's criminalistics laboratory or other appropriate laboratory via ordinary mail or hand delivery.

661—7.5(321J) Preliminary breath screening test.

7.5(1) A peace officer desiring to perform preliminary screening tests of a person's breath shall use an Iowa department of public safety division of criminal investigation criminalistics laboratory-approved device. Such devices are approved for accuracy and precision using a dry gas standard or breath simulating device. The division of criminal investigation criminalistics laboratory shall employ scientifically established tests or methods appropriate to a particular device in determining whether it meets an acceptable standard for accuracy, or it may accept test results from another laboratory at its discretion. The standards shall include the requirement that in all cases where the level is over 0.12 alcohol concentration, the device shall so indicate and in all cases where the level is under 0.08 alcohol concentration, the device shall so indicate. Devices must be of a type that can be calibrated on a monthly basis by officers in the field.

The division of criminal investigation criminalistics laboratory shall maintain a list of devices approved by the commissioner for use as preliminary breath screening devices. The list is available without cost by writing or contacting the Iowa Department of Public Safety, Division of Criminal Investigation Criminalistics Laboratory, Wallace State Office Building, Des Moines, Iowa 50319, or calling (515)281-3666.

7.5(2) Any peace officer using an approved device shall follow the instructions furnished by the manufacturer for use of such a device. Each unit shall be calibrated at least once per month using either a wet alcohol standard or a dry gas standard. The officer or officer's department shall keep a record of each calibration. This record shall include:

- a. The officer performing the calibration.
- b. Date.
- c. The value and type of standard used.
- d. Unit type and identification number.

661—7.6 Rescinded IAB 7/26/89, effective 7/1/89.

661—7.7(321J) Chemical test—alcohol concentration—public intoxication. All devices and methods approved in this chapter for the purpose of determining a person's alcohol concentration for evidential purposes under Iowa Code chapter 321J, and the devices otherwise approved in this chapter only for use in performing preliminary breath screening tests are equally approved for testing to determine alcohol concentration in connection with arrests for public intoxication under Iowa Code section 123.46. The chemical test results shall be expressed in terms of alcohol concentration as defined in Iowa Code section 321J.1.

661—7.8(321J) Breath alcohol ignition interlock device.

7.8(1) An ignition interlock device, installed pursuant to court order or other provisions of law, shall meet the following criteria:

a. The ignition interlock device shall be designed and constructed to measure a person's breath alcohol concentration by utilizing a sample of the person's breath delivered directly into the device.

b. The ignition interlock device shall be designed and constructed so that the ignition system of the vehicle in which it is installed will not be activated if the alcohol concentration of the person using the device exceeds the level permitted by subrule 7.8(4).

c. The ignition interlock device shall meet the standard for accuracy in measuring alcohol concentration set for preliminary breath screening tests in subrule 7.5(1). The state criminalistics laboratory in the division of criminal investigation shall apply scientific tests or methods to a particular device in determining whether it meets the acceptable standard for accuracy. The criminalistics laboratory may accept test results from other laboratories or authorities at its discretion.

d. The ignition interlock device shall meet or exceed performance standards contained in the Model Specifications for Breath Alcohol Ignition Interlock Devices, as published in the Federal Register, April 7, 1992, pages 11772 through 11787.

7.8(2) The division of criminal investigation state criminalistics laboratory shall maintain a list of ignition interlock devices approved by the commissioner of public safety in a manner consistent with the provisions of subrule 7.5(1).

7.8(3) An ignition interlock device utilized under these rules shall be installed and removed by the manufacturer or by a private sector installer in conformance with the prescribed procedures of the manufacturer. The ignition interlock device shall be used in conformance with the manufacturer's instructions which shall include instructions recommending a minimum 15-minute waiting period between the last drink of an alcoholic beverage and the time of breath sample delivery into the ignition interlock device. The ignition interlock device shall be installed in such a way that the ignition system of the vehicle will not be activated if the person fails the test by exceeding the alcohol concentration prescribed in subrule 7.8(4).

7.8(4) A person shall fail an ignition interlock device test when the person's alcohol concentration, as defined in Iowa Code section 321J.1, is greater than 0.025.

7.8(5) An ignition interlock device utilized under these rules shall be calibrated at least once every 60 days using either a wet bath simulator or a dry gas standard (minimum 5 cubic foot volume). Calibration shall be completed by the distributor of the ignition interlock device. In lieu of calibration of an installed ignition interlock device, an installed device may be exchanged for another calibrated device.

The calibration record for the ignition interlock device currently installed in a vehicle pursuant to Iowa Code section 321J.4 and this rule and for any other ignition interlock device previously installed in the same vehicle pursuant to the same court order shall be maintained by the distributor and the record shall include:

- a. Name of the person performing the calibration;
- b. Date;
- c. Value and type of standard used;
- d. Unit type and identification number of the ignition interlock device checked;
- e. Description of the vehicle in which the ignition interlock device is installed, including the registration plate number and state, make, model, vehicle identification number (VIN), year, and color.

Documentation of calibration shall be kept with the vehicle at all times for inspection by a peace officer, the court which ordered installation of the device, or the Iowa department of transportation.

7.8(6) An ignition interlock device shall prevent engine ignition if the ignition interlock device has not been calibrated within a period of 67 days subsequent to the last calibration under subrule 7.8(5).

7.8(7) An ignition interlock device shall record each time the vehicle is started, the results of the test, how long the vehicle was operated, and any indications of bypassing or tampering with the ignition interlock device.

7.8(8) An ignition interlock device shall require the operator of the vehicle to submit to a retest within 10 minutes of starting the vehicle. Retesting shall continue at intervals not to exceed 60 minutes after the first retest. Retests may be achieved during operation of the vehicle. The ignition interlock device shall enter a lockout condition in 5 days if a retest is not performed, or the result of a retest exceeds the maximum allowable alcohol concentration as prescribed in subrule 7.8(4). An ignition interlock device which enters a lockout condition shall be returned to the site of installation for service.

7.8(9) An ignition interlock device shall permit a sample-free restart, for a period of 2 minutes or less, after a stall.

7.8(10) The ignition interlock device shall be equipped with a method of immediately notifying peace officers if the retest under subrule 7.8(8) is not performed, or if the result of the retest exceeds the alcohol concentration as prescribed in subrule 7.8(4).

7.8(11) The installer shall inform the division of criminal investigation state criminalistics laboratory, the Iowa department of transportation, the county attorney, and the court which ordered the installation of an ignition interlock device of any violation of these rules.

7.8(12) The installer of an ignition interlock device shall use known alcohol standards. Either a dry gas standard or a wet bath simulator shall be used to calibrate the ignition interlock device. The installer shall have a method of verifying the accuracy of the wet alcohol standard. The recommended method is the use of an evidential breath tester approved by the commissioner of public safety in accordance with rule 661—7.2(321J). Alcohol standard verification records shall be kept.

7.8(13) The department of public safety reserves the right to inspect any ignition interlock device or installer at any time at the department's discretion. All records of devices installed, results of calibrations, and results of known alcohol standards shall be made available for inspection upon request to representatives of the department of public safety. The results of the inspection shall be made available to the installer and to the department of transportation.

EXCEPTION: Ignition interlock devices installed pursuant to court orders issued prior to November 1, 1992, may continue to operate in conformance with standards applicable at the times those orders were issued.

7.8(14) Each installer or distributor of ignition interlock devices approved for use in Iowa pursuant to this rule shall maintain general liability insurance coverage effective in Iowa, and issued by an insurance carrier authorized to operate in Iowa by the Iowa division of insurance, in an amount of not less than \$1 million. Each installer or distributor shall furnish the division of criminal investigation with proof of this insurance coverage in the form of a certificate of insurance from the insurance company issuing the policy. All insurance policies required by this subrule shall carry an endorsement requiring that the division of criminal investigation criminalistics laboratory be provided with written notice of cancellation of insurance coverage required by this subrule at least ten days prior to the effective date of cancellation.

7.8(15) Any distributor or installer of ignition interlock devices in Iowa shall cease installing or distributing these devices immediately if any of the following occur:

a. The insurance coverage required under subrule 7.8(14) lapses.

b. Approval by the commissioner of public safety pursuant to Iowa Code sections 321J.4 and 321J.20 of an ignition interlock device which they distribute or install ceases to be valid. If approval by the commissioner of public safety for distribution or installation of an ignition interlock device in Iowa ceases to be valid, a distributor or installer of such a device may continue to distribute or install another ignition interlock device currently approved for use in Iowa, unless the distributor or installer has been ordered by the commissioner of public safety to cease operation as a distributor or installer of ignition interlock devices in Iowa, pursuant to 7.8(15)“c.”

c. The commissioner of public safety orders the distributor or installer to cease operation as a distributor or installer of ignition interlock devices, and the order has become effective. An order to cease operation may be issued for cause including, but not limited to, any one or more of the following:

(1) Any act of theft or fraud including, but not limited to, violation of Iowa Code chapter 714, or any act of deception or material omission of fact related to the distribution, installation, or operation of any device subject to this chapter.

(2) Any violation of Iowa Code chapter 321J.

(3) Any violation of this chapter.

(4) Any act involving moral turpitude. For purposes of this rule, “moral turpitude” is an act of baseness, vileness, or depravity or conduct which is contrary to justice, honesty, or good morals.

An order to cease operation shall be delivered to the distributor or installer to whom the order is issued at the distributor or installer’s place of business or, if this is not practical, at the residence or last-known mailing address of the owner of the business or an officer of the corporation which owns the business, if applicable. Notice shall be given in writing either by personal service or by restricted certified mail.

An order to cease operation as an installer or distributor of ignition interlock devices shall be effective 30 days after its transmittal by the department, unless the order is appealed. An order shall not become effective if it has been appealed until agency action on the appeal process is completed.

EXCEPTION: Upon a finding by the commissioner of public safety that the continued operation of an installer or distributor of ignition interlock devices presents an imminent threat to public safety, an order to cease operation shall become effective immediately upon receipt by the installer or distributor. Notice in these cases shall be by personal service.

An order to cease operation in Iowa as a distributor or installer of ignition interlock devices may be appealed to the department of public safety by filing a protest in accordance with the procedures specified in rule 661—10.101(17A), within ten days of the issuance of the order to cease operation.

661—7.9(321J) Detection of drugs other than alcohol.

7.9(1) Adoption of federal standards. Initial test requirements adopted by the federal Substance Abuse and Health Services Administration in “Mandatory Guidelines for Federal Workplace Drug Testing Programs,” 59 FR 29908, as amended in “Revisions to the Mandatory Guidelines,” 62 FR 51118, are hereby adopted as standards for determining detectable levels of controlled substances in the division of criminal investigation criminalistics laboratory initial screening for controlled substances detected by the presence of the following: marijuana metabolites, cocaine metabolites, opiate metabolites, phencyclidine, and amphetamines. The following table shows the minimum levels of these substances which will result in a finding that a controlled substance is present at a detectable level:

| Substance | Minimum Level (ng/ml) |
|-----------------------|--------------------------|
| Marijuana metabolites | 50 |
| Cocaine metabolites | 300 |
| Opiate metabolites | 2000 |
| Phencyclidine | 25 |
| Amphetamines | 1000 |

NOTE: “ng/ml” means “nanograms per milliliter.”

7.9(2) Reserved.

This rule is intended to implement Iowa Code section 321J.2.

These rules are intended to implement Iowa Code chapter 321J.

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