

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to the statewide sobriety and drug monitoring program and operating while intoxicated revocations and providing an opportunity for public comment

The Department of Transportation hereby proposes to amend Chapter 620, “OWI and Implied Consent,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 321J.20.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 901D and sections 321.201 and 321J.20.

Purpose and Summary

The Department is proposing to update Chapter 620 to incorporate requirements for a new statewide sobriety and drug monitoring program (24/7 program) established by 2017 Iowa Acts, chapter 76. Because of this legislation, the Department is amending its rules to align with the legislation in anticipation of the implementation of the program in 2018.

The Department of Public Safety (DPS) is charged with creating the 24/7 program in Iowa under Iowa Code chapter 901D as enacted by 2017 Iowa Acts, chapter 76. The program requires participants to complete daily alcohol or drug testing in participating jurisdictions according to rules governed by DPS. The Department is also required to adhere to the program requirements as they relate to the issuance of temporary restricted licenses (TRLs) and regular licenses to an OWI offender who committed an eligible OWI offense in a participating jurisdiction. Eligible OWI offenses are defined in Iowa Code section 901D.2(4) and include a first offense OWI in which the person’s blood alcohol content exceeds .15, a first offense OWI in connection with an accident, a first offense OWI test refusal or any second or subsequent OWI offense. Participating jurisdictions must be approved by DPS and may be counties or other governmental entities that choose to participate in the program. There are not currently any participating jurisdictions as DPS is still finalizing an agreement for the development of web-based software to support this program; however, Woodbury County has indicated an interest in participating in a pilot of the 24/7 program in 2018.

As specifically related to the Department, the legislation amended Iowa Code section 321J.20 to allow a TRL to be issued for the purpose of traveling to and from a person’s home to a 24/7 testing location. Also, Iowa Code section 321J.20(10) was newly created and requires a person to be a participant in and in compliance with the 24/7 program if the person committed an eligible offense in a participating jurisdiction, unless participation has been excused by court order, whenever the Department requires the installation of an ignition interlock device (IID) as a condition of the person’s driver’s license or driving privilege. The person must remain in compliance with the program for as long as the person is required to have the IID, unless otherwise provided by Iowa Code chapter 901D or section 321J.20.

The proposed amendments:

- Amend the rule related to issuance of a TRL as follows:
 - Provide that a TRL issued for any purpose may include permission for the licensee to participate in the 24/7 program if required under the law and provide that the licensee must notify the Department which jurisdiction the licensee is reporting to in compliance with the program.

- Eliminate an outdated requirement for a person to appear before a driver's license examiner to be issued a TRL. This change aligns with Department practice of allowing any properly trained driver's license issuance employee, rather than a specific classification of employee, to assist the person.

- Strike subrule 620.3(6), which encompasses requirements for TRLs issued to repeat offenders, because the subrule is no longer necessary. The subrule was initially adopted in 2009 to comply with federal law related to consequences for repeat OWI offenders who previously were not allowed to obtain a TRL except strictly for work purposes in the first year of the revocation period. In the intervening years, the federal requirements regarding repeat OWI offenders and TRL restrictions were changed, and this subrule no longer reflects the requirements in federal law nor the Department's current practice. Therefore, the subrule is being removed to avoid the implication that a repeat offender cannot use a TRL to participate in a 24/7 program, which is clearly anticipated as a permissible use of a TRL under 23 U.S.C. §164(5)(A)(iii).

- Amend the rule related to reinstatement of a person's driver's license after a revocation has ended as follows:

- Eliminate an outdated requirement for a person to appear before a driver's license examiner to reinstate the person's driver's license. This change aligns with Department practice of allowing any properly trained driver's license issuance employee, rather than a specific classification of employee, to assist the person.

- Strike an outdated requirement for a person to provide proof of deinstallation of an IID to reinstate the person's driver's license, unless the IID is still required under Iowa Code section 321J.17(3). The Department's existing practice does not require the person to provide proof of deinstallation of the IID as that requirement was previously removed from Iowa Code section 321J.20. There is no valid safety reason to require proof of deinstallation of an IID, and a person may choose to continue to drive with an IID installed.

- Provide that a person's participation in and compliance with the 24/7 program may be a condition of license reinstatement in accordance with Iowa Code section 321J.20(10), which requires the Department to ensure a person who is required to install an IID as a condition of the person's license or driving privilege to also be a participant in and in compliance with the 24/7 program if the person committed an eligible offense in a participating jurisdiction, unless participation has been excused by court order.

- Amend the rules related to substance abuse evaluation and treatment and the drinking drivers course to reflect the current practice of providers reporting completion to the Department electronically rather than with a paper form. The amendments also clarify that providers of the drinking drivers course are those listed under Iowa Code section 321J.22(2)"a," since community colleges are not the only permitted providers of the drinking drivers course.

- Add a new rule to incorporate the Department's responsibilities relating to the 24/7 program as follows:

- Outline when participation in the 24/7 program will be a condition of a person's license. The person must have committed an eligible offense as defined in Iowa Code section 901D.2(4) in a participating jurisdiction. An eligible first offense means the person has no previous revocation under Iowa Code chapter 321J, and an eligible second or subsequent offense means the person has had a previous revocation under Iowa Code chapter 321J. Participation will not be required if the person obtains a court order excusing the person's participation in the program. In conformance with Iowa Code chapter 901D, the person must also otherwise be eligible for a TRL or a license in order to be required to participate in the 24/7 program, meaning the person must comply with the prerequisites for obtaining a TRL or a license, such as paying outstanding civil penalties, filing SR-22 insurance, passing any required examination and otherwise being physically and mentally capable of operating a motor vehicle safely. The person must also not be under another sanction that would prevent the person from being able to obtain a TRL or license.

- Explain that the duration of participation in the 24/7 program, unless otherwise provided in Iowa Code chapter 901D or Iowa Code section 321J.20, will last as long as the person with an eligible

offense in a participating jurisdiction is required to install and maintain an IID in the person's vehicle. This requirement is consistent with the requirement in Iowa Code section 321J.20(10).

- Clarify that if the Department receives a court order excusing the person's participation in the 24/7 program, the Department will not require participation as a condition of the TRL or license.

- Provide that if the Department receives notification that a participant in the 24/7 program never completed enrollment in the program with the participating jurisdiction, the Department will cancel the license because the person is not entitled to the license if the person does not comply with a condition of the license. Iowa Code section 321.201 authorizes the Department to cancel the license when the Department determines the person was not entitled to issuance of the license.

- Outline what will happen if the Department receives notification of the person's noncompliance with the 24/7 program. Upon receipt of notification of noncompliance pursuant to Iowa Code section 901D.9, the Department will revoke the person's license following existing notice and hearing provisions associated with revoking a person's license. This aligns with the following Iowa Code requirements:

- ◇ Iowa Code section 321.193 authorizes the Department to impose restrictions on the license and revoke the license upon receiving satisfactory proof that any of the restrictions on the license were violated.

- ◇ Iowa Code section 901D.9 states that the court may notify the Department of the participant's noncompliance and direct the Department to withdraw the TRL issued to the participant.

- ◇ Iowa Code section 321J.20(3) requires the Department to revoke the participant's TRL if the person operates a motor vehicle while not in compliance with the 24/7 program.

- ◇ Iowa Code section 321J.20(10) requires compliance with the 24/7 program as a condition of the person's license or driving privilege.

- Amend the chapter's implementation sentence to add references to Iowa Code section 321.193, which authorizes the Department to revoke a license when the licensee violates a restriction of the license; Iowa Code section 321.201, which authorizes the Department to cancel a license when the Department determines the person is not entitled to the license; and Iowa Code chapter 901D, which relates to the sobriety and drug monitoring program.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on August 7, 2018. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Strategic Communications and Policy
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

A public hearing to hear requested oral presentations will be held as follows:

August 9, 2018
11 a.m.

Department of Transportation
Motor Vehicle Division
6310 SE Convenience Boulevard
Ankeny, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

The public hearing will be canceled without further notice if no oral presentation is requested.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 761—620.2(321J) as follows:

761—620.2(321J) Information and location. Applications, forms, information, assistance, and answers to questions relating to this chapter are available by mail from ~~the Office of Driver and Identification~~ Services, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at ~~(800)532-1121~~ (515)244-8725; or by facsimile at ~~(515)237-3074~~ (515)239-1837.

ITEM 2. Amend rule 761—620.3(321J) as follows:

761—620.3(321J) Issuance of temporary restricted license.

620.3(1) Eligibility and application.

a. No change.

b. To apply for a temporary restricted license, an applicant shall, at any time before or during the revocation period, submit application Form 430100 to ~~the office of driver and identification~~ services at the address in 761—620.2(321J). The application form should be furnished by the arresting officer. It may also be obtained upon oral or written request to ~~the office of driver and identification~~ services or by submitting Form 432018 to driver and identification services with the appropriate box checked.

c. No change.

d. A temporary restricted license issued for any purpose may include permission for the licensee to participate in the sobriety and drug monitoring program established pursuant to Iowa Code chapter 901D. For purposes of this chapter, a sobriety and drug monitoring program means the sobriety and drug monitoring program established pursuant to Iowa Code chapter 901D. If the licensee is required to participate in and comply with the sobriety and drug monitoring program as a condition of the license, the licensee shall notify the department of the jurisdiction to which the licensee is reporting in compliance with the program.

620.3(2) and **620.3(3)** No change.

620.3(4) *Issuance and restrictions.*

a. ~~When the application is approved and all requirements are met, the applicant shall be notified by the department to appear before a driver's license examiner. The applicant shall pass the appropriate examination for the type of vehicle to be operated under the temporary restricted license. An Iowa resident shall also pay the reinstatement and license fees. The department shall not issue the temporary restricted license until the application is approved, all requirements are met, the applicable reinstatement and license fees have been paid, and the applicant has passed the appropriate examination for the type of vehicle to be operated under the temporary restricted license.~~

b. No change.

620.3(5) *Denial.* A person who has been denied a temporary restricted license or who contests the restrictions imposed by the department may request an informal settlement conference by submitting a written request to the director of the office of driver and identification services at the address given in 761—620.2(321J). Following an unsuccessful informal settlement or instead of that procedure, the person may request a contested case hearing in accordance with rule 761—620.4(321J).

620.3(6) ~~*Issuance of temporary restricted license to repeat offender whose driving privilege is revoked under Iowa Code section 321J.4(2).*~~

a. ~~It is the opinion of the department that the amendment to Iowa Code section 321J.4(2) by 2009 Iowa Acts, Senate File 419, section 13, was undertaken in response to changes to 23 U.S.C. § 164, "Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence," effected by the SAFETEA-LU Technical Corrections Act of 2008, Public Law No. 110-244, § 115, 122 Stat. 1572 (June 6, 2008), and that Iowa Code section 321J.4(2) as amended by 2009 Iowa Acts, Senate File 419, section 13, is intended to remain and be interpreted in conformance with the requirements of 23 U.S.C. § 164, including the requirements for restricted driving privileges after 45 days.~~

b. ~~Accordingly, any provision in subrules 620.3(1) to 620.3(5) notwithstanding, any temporary restricted license issued to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) shall be limited during the first year of the two-year revocation period to driving to and from work when necessary to maintain the person's present employment, and shall not be allowed for any other purpose, including but not limited to transporting dependent children to and from a location for child care. After the first year of the two-year revocation period, a temporary restricted license issued to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) may permit the person to drive to and from work as well as for any other work purpose when necessary to maintain the person's present employment and may permit the person to transport dependent children to and from a location for child care when that activity is essential to continuation of the person's employment.~~

c. ~~All pleadings and orders submitted by the department under Iowa Code section 321J.4(9) in regard to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) will be in accord with the requirements of this subrule, and the department shall enforce any order authorizing the department to issue a temporary restricted license to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) according to the requirements of this subrule.~~

~~d. The department interprets 2009 Iowa Acts, Senate File 419, section 13, as applying to convictions entered on or after July 1, 2009, and accordingly this subrule shall apply to revocations arising from convictions entered on or after July 1, 2009.~~

ITEM 3. Amend rule 761—620.4(321J) as follows:

761—620.4(321J) Hearings and appeals.

620.4(1) Contested case hearing.

a. A person may request a contested case hearing by checking the appropriate box on Form 432018 and submitting it to the department or by submitting a written request to the director of ~~the office of driver and identification~~ services at the address given in 761—620.2(321J). The request shall include the person's name, date of birth, driver license number, complete address and telephone number.

b. No change.

c. A request for a hearing to contest a revocation shall be submitted within ten days after receipt of the revocation notice. The request shall be deemed timely submitted if it is delivered to the director of ~~the office of driver and identification~~ services or properly addressed and postmarked within this time period.

d. and e. No change.

620.4(2) Appeal. A decision by a presiding officer shall become the final decision of the department and shall be binding on the department and the person who requested the hearing unless either appeals the decision in accordance with this subrule.

a. and b. No change.

c. An appeal of the presiding officer's decision shall be submitted in writing by sending the original and one copy of the appeal to the director of ~~the office of driver and identification~~ services at the address given in 761—620.2(321J).

d. An appeal shall be deemed timely submitted if it is delivered to the director of ~~the office of driver and identification~~ services or properly addressed and postmarked within ten days after receipt of the presiding officer's decision.

e. The director of ~~the office of driver and identification~~ services shall forward the appeal to the director of transportation. The director of transportation may affirm, modify or reverse the decision of the presiding officer, or may remand the case to the presiding officer.

f. No change.

620.4(3) and 620.4(4) No change.

620.4(5) Petition to reopen a hearing.

a. A petition to reopen a hearing pursuant to Iowa Code section 17A.16 shall be submitted in writing to the director of ~~the office of driver and identification~~ services at the address in 761—620.2(321J). If a petition is based on a court order, a copy of the court order shall be submitted with the petition. If a petition is based on new evidence, the petitioner shall submit a concise statement of the new evidence and the reason(s) for the unavailability of the evidence at the original hearing.

b. No change.

c. A person may appeal a denial of the petition to reopen. The appeal shall be deemed timely if it is delivered to the director of ~~the office of driver and identification~~ services at the address in 761—620.2(321J) or properly addressed and postmarked within 20 days after issuance of the decision denying the petition to reopen.

ITEM 4. Amend rule 761—620.5(321J) as follows:

761—620.5(321J) Reinstatement. ~~When the revocation period has ended, a person shall be notified by the department to appear before a driver's license examiner to obtain a motor vehicle license. The license may be issued~~ The department may reinstate the license when the revocation has ended if the person has:

620.5(1) to 620.5(6) No change.

620.5(7) ~~Provided proof of deinstallation of the ignition interlock device if one was installed for a temporary restricted license.~~ Provided, if required by Iowa Code section 321J.17(3), proof of installation

of an approved ignition interlock device or proof the person remains in compliance with the ignition interlock device requirement if the device was installed for a temporary restricted license.

620.5(8) Provided, if required in accordance with Iowa Code section 321J.20, proof of participation in and compliance with the sobriety and drug monitoring program.

ITEM 5. Amend subrule 620.15(1) as follows:

620.15(1) Reporting.

~~a. A provider of a substance abuse program shall report to the department on a form and in a manner approved by the department when~~ When a person who has been ordered to attend the a substance abuse program has satisfactorily completed the program, the program provider shall electronically report completion to the department in a manner approved by the department.

b. Reporting to the department shall be in accordance with Iowa Code sections 125.37, 125.84 and 125.86 and the federal confidentiality regulations, “Confidentiality of Alcohol and Drug Abuse Patient Records,” 42 CFR Part 2, ~~effective June 9, 1987.~~

ITEM 6. Amend subrule 620.16(1) as follows:

620.16(1) Reporting.

~~a. A community college conducting a drinking drivers course shall report to the department on a form and in a manner approved by the department when~~ When a person who has been ordered to attend the a drinking drivers course has successfully completed it the course, the program provider under Iowa Code section 321J.22(2) “a” shall electronically report completion to the department in a manner approved by the department.

b. Reserved.

ITEM 7. Adopt the following **new** rule 761—620.17(321J):

761—620.17(321J) Sobriety and drug monitoring program. When the department revokes a person’s driver’s license under Iowa Code chapter 321J, and the person seeks a temporary restricted license, or the person seeks reinstatement of the person’s driver’s license under Iowa Code section 321J.17, the department shall, if applicable, require the person to participate in and comply with the sobriety and drug monitoring program.

620.17(1) Condition of license. Participation in and compliance with the sobriety and drug monitoring program shall be a condition of the license if all of the following apply:

a. The person committed an eligible offense as defined in Iowa Code section 901D.2(4). A first offense means the person has no previous revocation under Iowa Code chapter 321J, and a second or subsequent offense means the person has had a previous revocation under Iowa Code chapter 321J.

b. The eligible offense was committed in a participating jurisdiction.

620.17(2) Duration. Unless otherwise provided in Iowa Code chapter 901D or Iowa Code section 321J.20, the person shall be required to participate in the sobriety and drug monitoring program for the length of time that an ignition interlock device is required as provided in Iowa Code section 321J.20.

620.17(3) Excuse from participation and compliance. Participation in and compliance with the sobriety and drug monitoring program shall not be required as a condition of the person’s driver’s license if the court enters an order finding the person is not required to participate in and comply with the program.

620.17(4) Cancellation. If the department is notified that a person required to participate in the sobriety and drug monitoring program has not completed enrollment in the program, the department shall cancel the person’s driver’s license in accordance with the department’s existing provisions for cancellation of a license.

620.17(5) Noncompliance. If the department is notified pursuant to Iowa Code section 901D.9 that a person required to participate in the sobriety and drug monitoring program is no longer in compliance with the program, the department shall revoke the person’s driver’s license in accordance with the department’s existing provisions for revocation of a license.

ITEM 8. Amend **761—Chapter 620**, implementation sentence, as follows:
These rules are intended to implement Iowa Code chapters 17A, ~~and~~ 321J and 901D and sections 321.193, 321.201, 321.376 and 707.6A.