

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

**Proposing rule making related to ignition interlock devices
and providing an opportunity for public comment**

The Department of Public Safety hereby proposes to amend Chapter 158, “Ignition Interlock Devices,” Iowa Administrative Code.

Legal Authority for Rule Making

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

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 321J.20.

Purpose and Summary

The purposes of the proposed amendments to Chapter 158, regarding ignition interlock devices (IIDs), are to increase the efficiency of the current IIDs that are required by Iowa law for all offenders of the state’s OWI law and to provide better compliance-based monitoring. The amendments will require that camera technology be used in all instances where IIDs are installed in an offender’s vehicles. Adding a camera to an ignition interlock device will help to ensure that the system is not being circumvented. Additional amendments are intended to assist IID providers with guidance on the requirement to report noncompliance to the Department of Transportation.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The fees that are incurred are paid by the participants.

Jobs Impact

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

Waivers

Pursuant to the provisions of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on May 28, 2019. Comments should be directed to:

Chandler Collins
Department of Public Safety
Oran Pape State Office Building
215 East 7th Street
Des Moines, Iowa 50319
Phone: 515.725.6185
Email: collins@dps.state.ia.us

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

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 661—158.2(321J) as follows:

661—158.2(321J) Definitions. The following definitions apply to rules 661—158.1(321J) through 661—158.9(321J):

“Accuracy check” means the verification of the adjustment of an IID.

“Adjustment” means setting the measured alcohol result of an IID to the equivalent of the known alcohol value of the standard measured.

“Alcohol” means any member of the class of organic compounds known as alcohols and, specifically, ethyl alcohol.

“Alcohol standard” means either a certified wet bath simulator solution or a dry gas tank, at a known alcohol concentration.

“Authorized service provider” or “ASP” means a person or company meeting all qualifications outlined in this chapter and approved and trained by the manufacturer to service, install, monitor or ~~calibrate~~ check the accuracy of IIDs approved pursuant to this chapter.

“Breath alcohol concentration” or “BrAC” means the amount of alcohol determined by chemical analysis of the individual’s breath measured in grams of alcohol per 210 liters of breath.

“Bypassing” or “tampering” means the attempted or successful circumvention of the proper functioning of an IID including, but not limited to, the push start of a vehicle equipped with an IID;₂ disabling, disconnecting, or altering an IID;₂ or introduction of a breath sample into an IID other than a nonfiltered direct breath sample from the driver of the vehicle in order to defeat the intended purpose of the IID.

“DCI” means the Iowa division of criminal investigation.

“DOT” means the Iowa department of transportation, ~~office of driver and identification services.~~

“Fail level” means a BrAC equal to or greater than 0.025 grams per 210 liters of breath, at which level the IID will prevent the vehicle from starting or will indicate a violation once the vehicle is running.

“Ignition interlock device” or “IID” means an electronic device that is installed in a vehicle and that requires the completion of a breath sample test prior to starting operating the vehicle and at periodic intervals after the vehicle has been started. If the IID detects an alcohol concentration of 0.025 grams or greater per 210 liters of breath, the vehicle shall be prevented from starting.

“Laboratory” means the division of criminal investigation criminalistics laboratory.

“Lessee” means a person who has entered into an agreement with a manufacturer or an ASP to lease an IID and whose driving privileges are contingent on the use of an IID.

“Lockout condition” means a situation in which ~~a proper breath sample was not provided to an IID when required, or when a random retest results in an alcohol concentration equal to or greater than 0.025 BrAC. Once a lockout condition occurs, the IID shall be reset by the manufacturer or the ASP within five days, or the IID shall render the vehicle ignition incapable of starting the vehicle~~ the vehicle becomes inoperable.

“Manufacturer” means the person, company, or corporation that produced the IID.

“Random retest” means a breath sample that is collected in a nonscheduled, random manner after the vehicle has been started.

“Single monitoring period” means a period of time from when the vehicle is started until the vehicle comes to a complete stop and the vehicle is turned off.

“User” means a person operating a vehicle equipped with an IID.

“Violation” means a condition caused by either (1) failure to provide a proper breath sample to the IID during a random retest, or (2) the IID indicating a concentration exceeding the maximum allowable concentration of ~~0.025~~ 0.024 BrAC during a random retest, ~~or~~ (3) ~~the IID indicating that bypassing the device or tampering with the device occurred or was attempted.~~

ITEM 2. Amend rule 661—158.3(321J) as follows:

661—158.3(321J) Approval. To be approved, an IID shall meet or exceed performance standards contained in the Model Specifications for Breath Alcohol Ignition Interlock Devices, as published in the current Federal Register, April 7, 1992, pages 11772–11787. Only ~~a notarized~~ an independent statement from a laboratory capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards.

158.3(1) No change.

158.3(2) At the discretion of the laboratory administrator, the laboratory may accept test results from other ~~public~~ independent laboratories or authorities.

158.3(3) The laboratory shall maintain a list of IIDs approved by the commissioner of public safety. The list is available without cost by writing to the Iowa Department of Public Safety, Division of Criminal Investigation, Criminalistics Laboratory, 2240 South Ankeny Blvd., Ankeny, Iowa 50023; by ~~telephoning calling~~ (515)725-1500; or by accessing the list on the laboratory's ~~Web site~~ website.

NOTE: As of ~~October 1, 2009~~ November 2016, the ~~Web site~~ website of the breath alcohol section of the laboratory is ~~http://www.dps.state.ia.us/DCI/Crime_Lab/index.shtml~~ breathalcohol.iowa.gov.

158.3(4) No change.

ITEM 3. Amend rule 661—158.4(321J) as follows:

661—158.4(321J) Revocation of approval. The approval of an IID shall remain valid until either voluntarily surrendered by the manufacturer or until the approval of the IID has been revoked by the commissioner of public safety for cause.

158.4(1) Reasons for revocation include but are not limited to the following.

158.4(1) a. Evidence of repeated IID failures due to defects in design, materials, or workmanship during manufacture, installation, or monitoring, ~~or calibration~~ of the IID such that the accuracy of ~~the IID~~ or the reliability of the IID as approved is not being met as determined by the laboratory.

158.4(2) b. A pattern of evidence that the mandatory operational features of the IID as described in rule 661—158.6(321J) are not functioning properly.

158.4(3) c. A pattern of evidence indicating that the IID may be easily circumvented, tampered with, or bypassed.

158.4(4) d. Any violation illegality on the part of the manufacturer of the IID of any laws or regulations related to the installation, servicing, monitoring, and calibration accuracy checks of IIDs, ~~or failure of a manufacturer to address repeated violations by an ASP.~~

- e.* Failure of a manufacturer to address repeated infractions by an ASP.
- ~~158.4(5)~~ *f.* Cancellation of the manufacturer's required liability insurance coverage.
- ~~158.4(6)~~ *g.* Cessation of business operations by the manufacturer.
- ~~158.4(7)~~ *h.* Failure to notify the laboratory in writing of any material modifications or alterations to the components or the design of the approved IID.
- ~~158.4(8)~~ *i.* Failure of the manufacturer or an ASP to notify the DOT and the county attorney of the county of residence of the lessee within 30 days of the discovery of evidence of circumvention of or tampering with ~~or attempting to bypass~~ an IID.
- ~~158.4(9)~~ *j.* Evidence that the manufacturer or ASP(s), or its owners, employees, or agents, has committed any act of theft or fraud, deception or material omission of fact related to the distribution, installation, or operation of any IID subject to this chapter.
- ~~158.4(10)~~ *k.* Revocation of approval in another state for any of the reasons for revocation listed in ~~subrules 158.4(1) through 158.4(9).~~ paragraphs 158.4(1) "a" to "k."
- ~~158.4(11)~~ ~~158.4(2)~~ A revocation shall be effective 30 days from the date of the letter sent to the manufacturer via certified mail, return receipt requested, unless otherwise specified by the commissioner ~~an appeal is filed.~~ A copy of each notice of revocation shall be provided to the director of the Iowa department of transportation.
- ~~158.4(12)~~ ~~158.4(3)~~ Upon voluntary surrender or revocation, all IIDs subject to the surrender or revocation shall be removed and replaced by an approved IID within 60 days of the effective date of such surrender or revocation. The manufacturer or the ASP must notify all affected lessees of the surrender or revocation and the requirement that a new IID must be installed by an existing ASP within the time frame specified in this subrule. The cost associated with the removal of the IID and installation of a replacement IID will be the responsibility of the manufacturer of the revoked or voluntarily surrendered IID.
- ~~158.4(13)~~ ~~158.4(4)~~ A revocation of a previously approved IID may be appealed to the department of public safety by ~~the~~ filing of an appeal in accordance with the procedures specified in rule 661—10.101(17A) within ten days of the issuance of the notice of revocation.

ITEM 4. Amend rule 661—158.5(321J) as follows:

661—158.5(321J) Modifications to an approved IID. The manufacturer shall inform the laboratory in writing of any modifications that will affect the accuracy, reliability, ease of use, or general function of the approved IID. The notification shall include, but not be limited to, a listing of those modifications that were made, those components that were redesigned or replaced, and any additional alterations. Each of these changes should also include a narrative explaining how the modifications or alterations will affect the accuracy, reliability, ease of use, or general function of the IID. The laboratory reserves the right to test the IID to determine if the IID meets or exceeds ~~the requirements established in this chapter~~ performance standards contained in the Model Specifications for Breath Alcohol Ignition Interlock Devices, as published in the current Federal Register.

ITEM 5. Amend rule 661—158.6(321J) as follows:

661—158.6(321J) Mandatory operational features. In addition to any requirements established elsewhere in this chapter, an approved IID shall comply with the following.

158.6(1) No change.

158.6(2) The IID shall be designed and constructed so that ~~the ignition system~~ of the vehicle in which it is installed will not be ~~activated~~ operable if the breath alcohol concentration of the person using the IID exceeds ~~0.025~~ 0.024 BrAC.

158.6(3) The IID shall ~~prevent engine ignition if the IID has not been calibrated within 67 days subsequent to the last calibration.~~ Calibration may be required more frequently at the discretion of the manufacturer or the ASP utilize an alcohol-specific fuel cell technology.

EXCEPTION: The laboratory administrator may approve a device using fuel cell technology to be recalibrated within 187 days of the previous calibration provided that the device passes specific precision

and functionality testing approved by the laboratory administrator and carried out by the laboratory or an independent laboratory acceptable to the laboratory administrator.

158.6(4) The IID shall record every instance when the vehicle is started, the results of the breath sample test, how long the vehicle was operated, and any indications that the IID may have been tampered with or bypassed require the use of camera technology for positive identification.

a. At installation, a reference picture of the lessee shall be taken and kept on file with the ASP or the manufacturer.

b. A photo shall be taken by the IID for each test event, including initial operation, all random retests and whenever a violation is recorded.

c. Camera technology should be maximized to provide the most benefit to the reviewer, including the use of available anticircumvention technology. In the event that anticircumvention technology is not available, a full cabin view may be required.

NOTE: On July 1, 2019, and thereafter, any IID installed in a vehicle in Iowa pursuant to this chapter, including a replacement for a device previously installed, shall utilize camera technology.

158.6(5) The IID shall require the operator to submit to a random retest within 10 minutes of starting the vehicle. A minimum of two additional random retests shall occur within 60 minutes of starting the vehicle, and a minimum of two random retests shall occur within every 60 minutes thereafter. Random retests may be achieved during operation of the vehicle. The IID shall enter a lockout condition within five days if two or more violations are recorded in a single monitoring period. An IID may, at the discretion of the manufacturer or the ASP, enter a lockout condition on the basis of a single violation a minimum of 1.5 liters of continuously delivered breath prior to the acceptance of the sample.

EXCEPTION: The breath volume can be lowered at the discretion of the laboratory in situations where a physician licensed under Iowa Code chapter 148 has certified in writing that the lessee suffers from a physical or medical condition that prevents the lessee from providing the required breath volume and if the lowering of the breath volume is requested in advance by the ASP or manufacturer.

158.6(6) The IID shall permit a sample-free restart for a maximum period of two minutes unless the IID has initiated a random retest, in which case the operator must successfully perform a breath sample test before the vehicle may be restarted prevent engine ignition if the IID has not been checked for accuracy within 67 days subsequent to the last accuracy check. Accuracy checks may be required more frequently at the discretion of the manufacturer or the ASP.

EXCEPTION: The laboratory administrator may approve an IID that uses alcohol-specific fuel cell technology to be checked for accuracy within 187 days of the last accuracy check. In order to be approved, the IID must pass specific precision and functionality testing approved by the laboratory administrator and carried out by the laboratory or an independent laboratory.

158.6(7) The IID shall automatically and completely purge residual alcohol before allowing subsequent tests record every instance when the vehicle is operated, the results of the breath sample test, how long the vehicle was operated, and any indications that the IID may have been tampered with, bypassed, or circumvented.

158.6(8) The IID shall be installed in such a manner that it will not interfere with the normal operation of the vehicle after the vehicle has been started require the operator to submit to a random retest between 5 and 10 minutes of starting the vehicle. A minimum of two additional random retests shall occur within 60 minutes of starting the vehicle, and a minimum of one random retest shall occur every 60 minutes thereafter.

158.6(9) The IID shall be equipped with a method of immediately notifying peace officers if the retest required by subrule 158.6(5) is not performed or if the result of a random retest exceeds the alcohol concentration of 0.025 BrAC. Examples of acceptable forms of notification are repeated honking of the vehicle's horn and repeated flashing of the vehicle's headlights. Such notification may be disabled only by switching the engine off or by achievement of a retest at a level below 0.025 BrAC permit a sample-free restart for a maximum period of 2 minutes unless the IID has initiated a random retest, in which case the operator must successfully perform a breath sample test before the vehicle can be restarted.

158.6(10) Each IID shall be uniquely identified by a serial number. Along with any other information required by the DOT or by an originating court, all reports to the DOT or to an originating court concerning a particular IID shall include the name, address, and driver's license number of the lessee and the unique serial number of the IID. The name, address, telephone number, and contact person of the manufacturer or the ASP furnishing the report shall also be included as part of the report. The IID shall enter a lockout condition after five days if any of the following occurs.

a. Two or more violations within a single monitoring period.

EXCEPTION: A lockout condition may be entered on the basis of a single violation at the discretion of the manufacturer or ASP.

b. Four or more violations within any 60-day period.

c. Evidence of circumvention of or tampering with the IID.

d. Nonpayment of lessee's account by 30 days or more.

e. Failure to have the IID accuracy checked or serviced when required.

EXCEPTION: Lockout condition will occur seven days after a missed accuracy check.

158.6(11) The IID shall automatically and completely purge residual alcohol before allowing subsequent tests.

158.6(12) The IID shall be installed in such a manner that it will not interfere with the normal operation of the vehicle.

158.6(13) The IID shall be equipped with a method to immediately notify peace officers if the retest required by subrule 158.6(8) is not performed or if the result of a random retest exceeds the alcohol concentration of 0.024 BrAC. Examples of acceptable forms of notification are repeated honking of the vehicle's horn, repeated flashing of the vehicle's headlights, or both. Such notification may be disabled only by switching the engine off or by achievement of a retest at a level below 0.024 BrAC.

158.6(14) Each IID shall be uniquely identified by a model name and serial number.

158.6(15) All reports to the DOT or to an originating court concerning a particular IID shall include the name, address, and driver's license number of the lessee; the year, make, model and vehicle identification number of the lessee's vehicle; the unique serial number of the handset of the IID; and any other information required or requested by the DOT. The name, address, telephone number, and contact person of the manufacturer or the ASP furnishing the report shall also be included as part of the report.

ITEM 6. Amend rule 661—158.7(321J), introductory paragraph, as follows:

661—158.7(321J) IID security. The manufacturer and its ASPs shall take all reasonable steps necessary to prevent ~~tampering with or physical~~ the circumvention of or tampering with the IID. These steps shall include the following.

ITEM 7. Amend rule 661—158.8(321J) as follows:

661—158.8(321J) IID maintenance and reports.

158.8(1) An IID utilized in accordance with the provisions of this chapter shall ~~have the calibration checked and shall be recalibrated~~ be checked for accuracy at least once every 60 days using either a certified wet bath simulator solution or dry gas standard found on the federal Conforming Products List of Calibrating Units for Breath Alcohol Testers. Accuracy checks shall be completed by the manufacturer or the ASP. Accuracy checks found to be within 0.005 grams per 210 liters or 5 percent, whichever is greater, of the reference standard will be considered accurate and no adjustment to the IID is required. ~~Calibration shall be completed by the manufacturer or the ASP.~~ In lieu of ~~calibration~~ an accuracy check of an installed IID, an the installed IID may be exchanged for another calibrated properly adjusted IID. The laboratory administrator may approve a device that employs fuel cell technology to be used for up to 180 days from the date of the previous ~~calibration~~, provided that the device passes specific precision and functionality testing approved by the laboratory administrator and carried out by the laboratory or an independent laboratory acceptable to the laboratory administrator accuracy check (see exception in subrule 158.6(6)). An IID shall automatically enter a lockout condition if the IID has not been ~~calibrated~~ checked for accuracy within 7 seven days after the deadlines established in this subrule.

158.8(2) The ~~calibration~~ service record for the IID currently installed in a vehicle pursuant to Iowa Code section 321J.4 and this chapter and for any other IID installed in the same vehicle shall be maintained by the manufacturer or the ASP. The record shall include, but not be limited to, the following:

- a. Name of the person performing the ~~calibration~~ accuracy check;
- b. Date;
- c. Value and type of standard used;
- d. Batch or lot number of standard;
- e. ~~Unit type and identification number of the IID;~~ and Expiration date of the standard;
- f. Model and serial number of the IID;
- f. g. Description of the vehicle in which the IID is installed, including:
 - (1) Registration plate number and state;
 - (2) Make;
 - (3) Model;
 - (4) Vehicle identification number;
 - (5) Year; and
 - (6) Color.

158.8(3) The IID must be ~~calibrated~~ checked for accuracy according to the manufacturer's procedures. All data contained in the IID's memory must be downloaded, and the manufacturer or the ASP shall make a hard copy or the electronic equivalent of a hard copy of client data and results of each examination available to the DOT upon request.

158.8(4) All information obtained as a result of each inspection shall be retained by the manufacturer or the ASP for ~~five~~ three years from the date the IID is removed from the vehicle.

158.8(5) Any manufacturer or ASP who discovers evidence of ~~tampering with or attempting to bypass an~~ circumventing an IID, a lockout event, tampering with an IID, attempting to bypass an IID, or photographic evidence of someone other than the driver providing a required sample into the IID shall, within 30 days of the discovery, prepare a report documenting the finding and notify the DOT and the county attorney of the county of residence of the lessee of that evidence.;

- a. The DOT, and
- b. The county attorney of the county of residence of the lessee (Iowa residents only).

158.8(6) ~~The manufacturer or the ASP must provide, upon request, additional reports in a format acceptable to, and at no cost to, the DOT and the DCI~~ When required or requested, the manufacturer or ASP must provide report forms, in a format that is acceptable to, and at no cost to, the DOT dealing with the installation; de-installation (removal); violations, including specifically violations due to the IID indicating a concentration exceeding the maximum allowable concentration of 0.024 BrAC; lockout events; evidence of circumvention of or tampering with an IID and any other additional information that is required by the DOT.

158.8(7) The manufacturer or the ASP shall notify the DOT within ~~40~~ ten days if an IID is not ~~calibrated~~ checked for accuracy within the time period specified in subrule 158.6(3).

ITEM 8. Amend rule 661—158.9(321J) as follows:

661—158.9(321J) Other provisions. In addition to any other applicable provisions of this chapter, each manufacturer of an approved IID, either on its own or through its ASPs, shall comply with the following provisions.

158.9(1) Each manufacturer and ASP of IIDs approved for use in Iowa pursuant to this chapter shall maintain general liability insurance coverage that is effective in Iowa and that has been issued by an insurance carrier authorized to operate in Iowa ~~by the Iowa division of~~. Each manufacturer must maintain general liability insurance in an amount of not less than \$1 million per occurrence and \$3 million in the aggregate. Each ASP must maintain general liability insurance in an amount of not less than \$100,000 per occurrence and \$300,000 in the aggregate. Each manufacturer and ASP shall ~~furnish~~ provide the DCI laboratory 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 ~~DCI~~ 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.

158.9(2) Each manufacturer and ASP of IIDs approved for use in Iowa shall maintain an ~~E-mail~~ email address and a telephone number that are available 24 hours a day, 365 days a year, for lessees or users to contact the manufacturer or the ASP if lessees or users have problems with the IID leased from the manufacturer or the ASP.

158.9(3) Each manufacturer and ASP of IIDs approved for use in Iowa shall provide the lessee with instructions on how to properly use the IID. The instructions shall include recommending a 15-minute waiting period between the last ~~drink~~ use of an alcoholic beverage that contains alcohol and the ~~time~~ of initial breath sample delivery into the IID.

158.9(4) No change.

158.9(5) The department of public safety, ~~or the DOT,~~ reserves the right to inspect any IID, manufacturer, or ASP at any time at the department's discretion. All records of IIDs installed, IIDs removed, results of calibrations accuracy checks, violations, evidence of attempted or successful circumvention of or tampering with an IID, and data logs, and results of known alcohol standards shall be made available for inspection upon request to any representatives of the department of public safety, the department of transportation, or any peace officer. Records shall be maintained for a minimum of three years after removal from the vehicle.