

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 321.4, the Department of Public Safety hereby gives Notice of Intended Action to rescind Chapter 7, "Ignition Interlock Devices," and to adopt new Chapter 158, "Ignition Interlock Devices," Iowa Administrative Code.

Iowa Code chapter 321J provides for the use of ignition interlock devices to regulate the driving behavior of certain persons who have previously been sanctioned for operating while intoxicated, or drunk driving. The provisions which trigger the use of ignition interlock devices require that the devices that are going to be used be approved by the Commissioner of Public Safety. At present, the Department's provisions are found in rule 661—7.8(321J), which delineates the requirements and procedures for approval of ignition interlock devices. However, the technology embedded in these devices has been changing. The rules proposed herein have been written to address those technological advances. Additionally, the Department believes that the placement of these requirements and procedures for approval of the devices in a separate, new chapter will facilitate easier access to these provisions by persons affected by these rules.

Any person who wishes to do so may submit comments on these proposed rules to the Agency Rules Administrator, Iowa Department of Public Safety, 215 East 7th Street, Des Moines, Iowa 50319, by mail; by fax to (515)725-6195 (Attention: Agency Rules Administrator); or by E-mail to admrule@dps.state.ia.us. Comments should be submitted by 4:30 p.m. on March 10, 2009.

A public hearing on these proposed rules will be held on March 10, 2009, at 8:30 a.m. in the First Floor Public Conference Room, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. The conference room is fully accessible.

The rules proposed herein would be subject to the general waiver provisions for administrative rules of the Department of Public Safety, which are found in 661—Chapter 10.

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

The following amendments are proposed.

ITEM 1. Rescind and reserve **661—Chapter 7**.

ITEM 2. Adopt the following **new** 661—Chapter 158:

CHAPTER 158
IGNITION INTERLOCK DEVICES

661—158.1(321J) Scope and authority.

158.1(1) The rules in this chapter establish standards and requirements that apply to ignition interlock devices installed in motor vehicles pursuant to court orders or administrative orders issued by the department of transportation pursuant to Iowa Code chapter 321J.

158.1(2) Iowa Code sections 321J.2, 321J.4, 321J.4B, 321J.9, 321J.12, 321J.17, and 321J.20 require drivers who have been convicted of violating or administratively adjudged to have violated certain provisions of Iowa Code chapter 321J to install ignition interlock devices "of a type approved by the commissioner of public safety." The rules in this chapter provide the standards for such approval.

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

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

“*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 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, disabling, disconnecting or altering an IID, 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 Iowa department of transportation, office of driver 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 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.

“*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.

“*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.

“*User*” means a person whose driving privileges are conditioned on the use of an IID.

“*Violation*” means a condition caused either by failure to provide a proper breath sample to the IID during a random retest or by the IID indicating a concentration equal to or greater than 0.025 BrAC during a random retest.

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 Federal Register, April 7, 1992, pages 11772-11787. Only a notarized statement from a laboratory capable of performing the tests specified will be accepted as proof of meeting or exceeding the standards.

158.3(1) In addition to the federal standards, the DCI criminalistics laboratory shall apply scientific tests or methods to a particular IID to determine whether it meets an acceptable standard for accuracy.

158.3(2) At the discretion of the laboratory administrator, the laboratory may accept test results from other public 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 (515)725-1500; or by accessing the list on the laboratory’s Web site.

NOTE: As of [insert the filing date of these rules], the Web site of the laboratory is http://www.dps.state.ia.us/DCI/Crime_Lab/index.shtml.

158.3(4) On or after January 1, 2010, any IID installed in a vehicle in Iowa pursuant to this chapter, including a replacement for a device previously installed, shall utilize fuel cell technology. Any device

installed prior to January 1, 2010, may continue to be used until the expiration of the order that resulted in its use or until it is replaced, whichever occurs earlier.

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. Reasons for revocation include but are not limited to the following.

158.4(1) Evidence of repeated IID failures due to defects in design, materials, or workmanship during manufacture, installation, 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) 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) A pattern of evidence indicating that the IID may be easily tampered with or bypassed.

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

158.4(5) Cancellation of the manufacturer's required liability insurance coverage.

158.4(6) Cessation of business operations by the manufacturer.

158.4(7) 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) Evidence that any of the following is being or has been performed by the manufacturer or ASP(s) or its owners, employees, or agents:

a. 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 IID subject to this chapter.

b. Any violation of Iowa Code chapter 321J that relates directly to the operation of the business of the manufacturer or the ASP or the integrity thereof.

c. Any violation of this chapter or 661—Chapter 157.

d. Any act of 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.

158.4(9) 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. A copy of each notice of revocation shall be provided to the director of the Iowa department of transportation.

158.4(10) 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.

158.4(11) 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.

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.

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) The IID 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 IID.

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 if the breath alcohol concentration of the person using the IID exceeds 0.025 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, unless the IID utilizes fuel cell technology, in which case the IID shall prevent engine ignition if the IID has not been calibrated within 97 days subsequent to the last calibration. Calibration may be required more frequently at the discretion of the manufacturer or the ASP.

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.

158.6(5) The IID shall require the operator to submit to a random retest within 10 minutes of starting the vehicle. Two additional random retests shall occur within 60 minutes of starting the vehicle, and one random retest shall occur 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 a random retest is not performed or if the result of a random retest exceeds the maximum allowable alcohol concentration of 0.025 BrAC.

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.

158.6(7) The IID shall automatically and completely purge residual alcohol before allowing subsequent tests.

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.

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.

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.

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

158.7(1) ASP shall use special locks, seals, installation procedures, or design characteristics that prevent or record evidence of tampering or circumvention attempts.

158.7(2) The manufacturer or the ASP shall affix a label to the IID indicating that attempts to tamper with or circumvent the IID may subject a person to criminal prosecution or administrative sanctions.

158.7(3) No owner or employee of a manufacturer or an ASP may authorize or assist with the disconnection of an IID or enable the use of any emergency bypass mechanism or any other bypass procedure that allows a person restricted to the use of a vehicle equipped with a functioning IID to start or operate a vehicle without providing all required breath samples. Authorizing or assisting with the disconnection of an IID may subject the owner or employee of a manufacturer or an ASP to criminal prosecution or administrative sanctions.

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 at least once every 60 days using either a wet bath simulator or dry gas standard. Calibration shall be completed by the manufacturer or the ASP. In lieu of calibration of an installed IID, an installed IID may be exchanged for another calibrated IID. However, an IID that employs fuel cell technology installed pursuant to this chapter may be used for up to 90 days from the date of the previous calibration. 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. An IID shall automatically enter a lockout condition if the IID has not been calibrated within 7 days after the deadlines established in this subrule.

158.8(2) The calibration 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 the following:

- a. Name of the person performing the calibration;
- 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
- f. 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 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.

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

158.8(5) The manufacturer or the ASP shall inform the DOT and the county attorney of the county of residence of the lessee of either of the following:

- a. Evidence of tampering with or attempting to bypass an IID; or
- b. A random retest resulting in a lockout condition.

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.

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 insurance in an amount of not less than \$1 million per occurrence and \$3 million in the aggregate. Each manufacturer and ASP shall furnish the DCI 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 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 address and a telephone number that are available 24 hours a day, 365 days a year, for lessees to contact

the manufacturer or the ASP if lessees 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 of an alcoholic beverage and the time of breath sample delivery into the IID.

158.9(4) An IID utilized under these rules shall be installed and removed by the manufacturer or the ASP in conformance with the prescribed procedures of the manufacturer.

158.9(5) The department of public safety reserves the right to inspect any IID, manufacturer, or ASP at any time at the department's discretion. All records of IIDs installed, results of calibrations, violations, 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.

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