

PUBLIC SAFETY DEPARTMENT[661]

Regulatory Analysis

Notice of Intended Action to be published: 661—Chapter 157
“Devices and Methods to Test Body Fluids for Alcohol or Drugs”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321J.2
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 321J and section 123.46

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

September 8, 2026
3:30 to 4 p.m.

Public Conference Room 125
Oran Pape State Office Building
Des Moines, Iowa

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis, which must be received by the Department of Public Safety no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

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Des Moines, Iowa 50319
Email: wagler@dps.state.ia.us

Purpose and Summary

Pursuant to Executive Order 10, the Department proposes rescinding Chapter 157 and adopting a new chapter in lieu thereof. The purpose of proposed Chapter 157 is to outline the approved devices and methods to take a specimen of a person’s breath or urine for the purpose of determining the alcohol or drug concentration.

Additionally, one change was made in subrule 157.7(1) to clarify that the levels used in the table are for drugs detected within the urine only, not blood.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

• Classes of persons that will bear the costs of the proposed rulemaking:

Peace officers collecting breath or urine samples for the purpose of determining alcohol or drug concentration are responsible for following collection procedures on an approved device pursuant to these rules.

• Classes of persons that will benefit from the proposed rulemaking:

Peace officers collecting breath or urine samples for the purpose of determining alcohol or drug concentration will benefit.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- **Quantitative description of impact:**

Peace officers and law enforcement agencies must utilize devices approved by the commissioner.

- **Qualitative description of impact:**

Devices must be of a type that may be calibrated on a monthly basis by officers in the field. The officer or officer's department is responsible for maintaining a record of each calibration.

3. **Costs to the State:**

- **Implementation and enforcement costs borne by the agency or any other agency:**

None.

- **Anticipated effect on State revenues:**

There is no anticipated effect on State revenues.

4. **Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:**

There are no costs associated with compliance, and law enforcement and the public benefit from clearly defined collection procedures and device approval methods.

5. **Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:**

The Department has determined this to be the least costly and least intrusive method for achieving the purpose of the proposed rulemaking.

6. **Alternative methods considered by the agency:**

- **Description of any alternative methods that were seriously considered by the agency:**

None.

- **Reasons why alternative methods were rejected in favor of the proposed rulemaking:**

Not applicable.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

This rulemaking is not anticipated to have a substantial impact on small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 661—Chapter 157 and adopt the following **new** chapter in lieu thereof:

CHAPTER 157

DEVICES AND METHODS TO TEST BODY FLUIDS FOR ALCOHOL OR DRUGS

661—157.1(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 alcohol or drug concentration.

661—157.2(321J) Evidentiary breath testing.

157.2(1) A 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.

157.2(2) A peace officer desiring to perform 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 in 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 at least once per calendar year according to procedures specified for that device. The interval between certifications shall not be more than 450 days.

157.2(3) The division of criminal investigation criminalistics laboratory shall maintain a list of devices approved by the commissioner of public safety for collection of breath samples for evidentiary purposes. The current list shall be available upon request to the Division of Criminal Investigation Criminalistics Laboratory at 2240 South Ankeny Boulevard, Ankeny, Iowa 50023, or on the website of the department of public safety.

157.2(4) The operator of an evidentiary breath testing device shall have been certified as competent in the operation of the breath testing device and shall proceed in accordance with the instructions included in an operating manual furnished by the division of criminal investigation criminalistics laboratory. An operating manual, with number and date, specific to a particular approved device and prepared by the division of criminal investigation criminalistics laboratory shall be available to operators using the device. The current version of the operating manual for each device currently approved for use in Iowa may be obtained by contacting the Division of Criminal Investigation Criminalistics Laboratory at 2240 South Ankeny Boulevard, Ankeny, Iowa 50023, or from the department's website.

157.2(5) All certifications of evidentiary breath testing devices shall be made by the division of criminal investigation criminalistics laboratory. All certifications of operators shall be made by the division of criminal investigation criminalistics laboratory or a designee. A designee shall be a person trained and certified by the division of criminal investigation criminalistics laboratory.

661—157.3(321J) Urine collection. A peace officer who collects a sample of a subject's urine for the purpose of determining alcohol or drug concentration shall proceed as follows.

157.3(1) 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.

157.3(2) As soon as practicable, the subject shall urinate into a urine alcohol kit-supplied bottle, cup or other suitable container that is clean, dry, and free from any visible contamination. Anticoagulant and antimicrobial substances in a blood or urine kit do not constitute visible contamination.

157.3(3) The peace officer shall collect a second urine void for alcohol testing in a suitable container that is clean, dry, and free from visible contamination. If a second void cannot be collected, the peace officer shall submit a sample from the first void and shall inform the Iowa division of criminal investigation criminalistics laboratory on the laboratory receipt form that the sample is from a first void. It is not necessary that the subject's bladder be completely emptied.

157.3(4) When collection of the sample for alcohol testing has been completed, the peace officer shall cause a portion of the collected sample to be transferred to a test tube containing 100 milligrams of sodium fluoride and anticoagulant.

157.3(5) A listing of test kits known to meet the requirements of subrules 157.3(2), 157.3(3) and 157.3(4) may be found on the division of criminal investigation criminalistics laboratory website.

Any peace officer wishing to use a test kit that is not listed should inquire of the division of criminal investigation criminalistics laboratory as to whether the other test kit meets the requirements. Any provider of test kits may request the addition of a kit to the list by sending a sample kit to the administrator of the division of criminal investigation criminalistics laboratory with a cover letter requesting that the kit be added to the list of kits known to meet the requirements of this subrule.

NOTE: The current location of information about test kits on the laboratory website is: dps.iowa.gov/divisions-iowa-department-public-safety/iowa-division-criminal-investigation/iowa-dci-criminalistics-laboratory/toxicology-section.

157.3(6) If the peace officer requests additional toxicological testing, the remainder of the sample may be retained in a container and sent for analysis to the division of criminal investigation criminalistics laboratory.

157.3(7) The peace officer shall label the container showing the date and time the sample was collected and identifying the peace officer, the subject, and the person present during the collection of the sample if other than the peace officer.

661—157.4(321J) Submission of samples for alcohol and drug testing to the criminalistics laboratory. Any sample of urine or blood may be submitted to the division of criminal investigation criminalistics laboratory or other appropriate laboratory via ordinary mail, private courier, or personal delivery.

661—157.5(321J) Preliminary breath screening test.

157.5(1) A peace officer desiring to perform a preliminary screening test of a person's breath shall use a device approved by the division of criminal investigation criminalistics laboratory. 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 the device meets an acceptable standard for operation including accuracy, or the laboratory may, at its discretion, accept test results from another laboratory. The standards shall include the requirement that in all cases the device shall indicate the alcohol concentration on a numerical display. Devices shall be of a type that may 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 of currently approved devices is available on the website of the department.

157.5(2) Any peace officer using an approved device shall follow the instructions furnished by the manufacturer for use of such a device. The calibration of each unit shall be checked at least once per month, and the device shall be calibrated, if necessary, using a dry gas standard. The officer or officer's department shall maintain a record of each calibration. This record shall include:

- a. The identity of the person performing the calibration.
- b. The date.
- c. The value of standard used.
- d. The unit type and identification number.
- e. The expiration date of the standard used.

661—157.6(123) 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—157.7(321J) Detection of drugs other than alcohol.

157.7(1) *Adoption of federal standards.* Initial test requirements based upon standards adopted by the federal Substance Abuse and Health Services Administration in “Mandatory Guidelines for Federal Workplace Drug Testing Programs,” 88 FR 70768, Section 3.4, and displayed in the following table are hereby adopted as standards for determining detectable levels of controlled substances in a person’s urine in the division of criminal investigation criminalistics laboratory initial testing or analysis for controlled substances detected by the presence of the following: marijuana metabolites, cocaine metabolites, codeine/morphine, hydrocodone/hydromorphone, oxycodone/oxymorphone, 6-acetylmorphine, phencyclidine, amphetamine/methamphetamine, and MDMA/MDA. The following table shows the minimum levels of these substances that will result in a finding that a controlled substance is present at a detectable level:

Initial test analyte	Initial test cutoff ¹
Marijuana metabolites (THCA) ²	50 ng/mL ³
Cocaine metabolites (Benzoylecgonine)	150 ng/mL ³
Codeine/Morphine	2000 ng/mL
Hydrocodone/Hydromorphone	300 ng/mL
Oxycodone/Oxymorphone	100 ng/mL
6-Acetylmorphine	10 ng/mL
Phencyclidine	25 ng/mL
Amphetamine/Methamphetamine	500 ng/mL
MDMA ⁴ /MDA ⁵	500 ng/mL

1 For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):

Immunoassay: The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

Alternate technology: Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory’s validated limit of quantification) must be equal to or greater than the initial test cutoff.

2 An immunoassay must be calibrated with the target analyte, D-9-tetrahydrocannabinol-9-carboxylic acid (THCA).

3 *Alternate technology* (THCA and benzoylecgonine): The confirmatory test cutoff must be used for an alternate technology initial test that is specific for the target analyte (i.e., 15 ng/mL for THCA, 100 ng/mL for benzoylecgonine).

4 Methylenedioxymethamphetamine (MDMA).

5 Methylenedioxyamphetamine (MDA).

157.7(2) Reserved.

These rules are intended to implement Iowa Code section 123.46 and chapter 321J.