

CHAPTER 620  
OWI AND IMPLIED CONSENT  
[Prior to 6/3/87, Transportation Department[820]—(07,C)Ch 11]

**761—620.1(321J) Definitions.** Rescinded IAB 1/8/92, effective 2/12/92.

**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 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; or by facsimile at (515)237-3071.

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

**620.3(1) Eligibility and application.**

*a.* The department may issue a temporary restricted license to a person who is eligible under Iowa Code section 321J.4 (except subsection 8), 321J.9, 321J.12 or 321J.20. The department shall not issue a temporary restricted license to a person who has a current suspension or revocation for any other reason, or who is otherwise ineligible.

*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 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 services or by submitting Form 432018 to driver services with the appropriate box checked.

*c.* A temporary restricted license issued for employment may include permission for the licensee to transport dependent children to and from a location for child care when that activity is essential to continuation of the licensee's employment.

**620.3(2) Statements.** A person applying for a temporary restricted license shall submit all of the following statements that apply to the person's situation. Each statement shall explain the need for the license and shall list specific places and times for the activity which can be verified by the department.

*a.* A statement from the person's employer unless the person is self-employed including, when applicable, verification that the person's use of a child care facility is essential to the person's continued employment.

*b.* A statement from the person.

*c.* A statement from the health care provider if the person or the person's dependent requires continuing health care.

*d.* A statement from the educational institution in which the person is enrolled.

*e.* A statement from the substance abuse treatment program in which the person is participating.

*f.* A copy of the court order for community service and a statement describing the assigned community service from the responsible supervisor.

*g.* A statement from the child care provider.

**620.3(3) Additional requirements.** A person applying for a temporary restricted license shall also comply with all of the following requirements:

*a.* Provide a description of all motor vehicles to be operated under the temporary restricted license.

*b.* Submit proof of financial responsibility under Iowa Code chapter 321A for all motor vehicles to be operated under the temporary restricted license.

*c.* Provide certification of installation of an approved ignition interlock device on every motor vehicle operated.

*d.* Pay the \$200 civil penalty.

**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.

*b.* The department shall determine the restrictions to be imposed by the temporary restricted license. The licensee shall apply to the department in writing with a justification for any requested change in license restrictions.

**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 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.

[ARC 8024B, IAB 8/12/09, effective 7/14/09; ARC 8203B, IAB 10/7/09, effective 11/11/09]

## **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 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.* A request for a hearing to contest the denial of a temporary restricted license or to contest the restrictions may be submitted at any time.

*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 services or properly addressed and postmarked within this time period.

*d.* Failure to timely request a hearing on a revocation is a waiver of the right to a hearing under Iowa Code chapter 321J, and the revocation shall become effective on the date specified in the revocation notice.

*e.* After a hearing, a written decision will be issued by the presiding officer.

**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.* The appeal shall be decided on the basis of the record made before the presiding officer in the contested case hearing and no additional evidence shall be presented.

*b.* The appeal shall include a statement of the specific issues presented for review and the precise ruling or relief requested.

*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 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 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 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.* Failure to timely appeal a decision shall be considered a failure to exhaust administrative remedies.

**620.4(3) Final agency action.** The decision of the director of transportation shall be the final decision of the department and shall constitute final agency action for purposes of judicial review. No further steps are necessary to exhaust administrative remedies.

**620.4(4) Default.**

*a.* If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no continuance is granted, either enter a default decision or proceed with the hearing and render a decision in the absence of the party.

*b.* Any party may move for default against a party who has requested the contested case proceeding and who has failed to appear after proper service.

*c.* A default decision or a decision rendered on the merits after a party has failed to appear or participate in a contested case proceeding becomes final agency action unless, within ten days after receipt of the decision, either a motion to vacate is filed and served on the presiding officer and the other parties or an appeal of a decision on the merits is timely submitted in accordance with subrule 620.4(2). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate.

*d.* The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

*e.* Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate.

*f.* "Good cause" for the purpose of this rule means surprise, excusable neglect or unavoidable casualty.

*g.* A decision denying a motion to vacate is subject to further appeal in accordance with subrule 620.4(2).

*h.* A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party in accordance with subrule 620.4(2).

*i.* If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

**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 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.* A petition to reopen a hearing may be submitted at any time even if a hearing to contest the revocation was not originally requested or held.

*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 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.

**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 if the person has:

**620.5(1)** Filed proof of financial responsibility under Iowa Code chapter 321A for all motor vehicles to be operated.

**620.5(2)** Paid the \$200 civil penalty.

**620.5(3)** Provided proof of satisfactory completion of a course for drinking drivers and proof of completion of substance abuse evaluation and treatment or rehabilitation services on a form and in a manner approved by the department.

**620.5(4)** Successfully completed the required driver license examination.

**620.5(5)** Paid the specified reinstatement fee.

**620.5(6)** Paid the appropriate license or permit fee.

**620.5(7)** Provided proof of deinstallation of the ignition interlock device if one was installed for a temporary restricted license.

**761—620.6(321J) Issuance of temporary restricted license after revocation period has expired.** The department may issue a temporary restricted license to a person whose period of revocation under Iowa Code chapter 321J has expired but who has not met all the requirements for license reinstatement. The period of issuance shall be determined by the department, but it shall not exceed six months from the end of the original revocation period.

**620.6(1)** An applicant for a temporary restricted license under this rule must meet one of the following two conditions:

*a.* The applicant must demonstrate to the satisfaction of the department that a course for drinking drivers was not readily available to the person during the revocation period and that the applicant has enrolled in a course for drinking drivers. The applicant must furnish the dates the class will begin and end.

*b.* The applicant must demonstrate to the satisfaction of the department that substance abuse evaluation and treatment or rehabilitation services have not been completed because of an inability to schedule them or because they are ongoing.

**620.6(2)** An applicant for a temporary restricted license under this rule must meet all other conditions for issuance of a temporary restricted license under rule 761—620.3(321J) and Iowa Code section 321J.20, including installation of an ignition interlock device.

**761—620.7 to 620.9** Reserved.

**761—620.10(321J) Revocation for deferred judgment.** The revocation period under Iowa Code subsection 321J.4(3) shall be 90 days.

**761—620.11 to 620.14** Reserved.

**761—620.15(321J) Substance abuse evaluation and treatment or rehabilitation services.** When the department revokes a person's license under Iowa Code chapter 321J, the department shall also order the person to submit to substance abuse evaluation and, if recommended, treatment or rehabilitation services.

A provider of substance abuse evaluation and treatment or rehabilitation programs shall be licensed by the Iowa department of public health, division of substance abuse.

**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 a person who has been ordered to attend the program has satisfactorily completed the program.

*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.

**620.15(2) Payment.** Payment of substance abuse evaluation and treatment or rehabilitation costs shall be in accordance with Iowa department of public health rules.

**761—620.16(321J) Drinking drivers course.** When the department revokes a person’s license under Iowa Code chapter 321J, the department shall order the person to enroll, attend and satisfactorily complete a course for drinking drivers, as provided in Iowa Code section 321J.22.

**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 a person who has been ordered to attend the course has successfully completed it.

*b.* Reserved.

**620.16(2) Payment.** A person ordered to complete a drinking drivers course is responsible for payment of course fees and expenses in accordance with Iowa Code section 321J.22.

These rules are intended to implement Iowa Code chapters 17A and 321J and sections 321.376 and 707.6A.

[Filed emergency 5/27/82—published 6/23/82, effective 7/1/82]

[Filed 12/1/82, Notice 6/23/82—published 12/22/82, effective 1/26/83]

[Filed emergency 6/20/84—published 7/18/84, effective 7/1/84]

[Filed 11/27/85, Notice 10/9/85—published 12/18/85, effective 1/22/86]

[Filed emergency 6/20/86—published 7/16/86, effective 7/1/86]

[Filed 5/11/87, Notice 3/11/87—published 6/3/87, effective 7/8/87]

[Filed 1/20/88, Notice 12/2/87—published 2/10/88, effective 3/16/88]

[Filed emergency 5/16/88—published 6/15/88, effective 5/16/88]

[Filed 11/3/88, Notice 9/21/88—published 11/30/88, effective 1/4/89]

[Filed 3/23/89, Notice 2/8/89—published 4/19/89, effective 5/24/89]

[Filed emergency 11/30/89—published 12/27/89, effective 12/1/89]

[Filed 12/18/91, Notice 11/13/91—published 1/8/92, effective 2/12/92]

[Filed 11/4/93, Notice 9/29/93—published 11/24/93, effective 12/29/93]

[Filed 11/1/95, Notice 9/27/95—published 11/22/95, effective 12/27/95]

[Filed 12/24/97, Notice 11/19/97—published 1/14/98, effective 2/18/98]

[Filed 1/21/98, Notice 12/17/97—published 2/11/98, effective 3/18/98]

[Filed 10/28/98, Notice 9/23/98—published 11/18/98, effective 12/23/98]

[Filed 2/17/99, Notice 1/13/99—published 3/10/99, effective 4/14/99]

[Filed 4/8/99, Notice 2/10/99—published 5/5/99, effective 7/1/99]

[Filed 6/19/02, Notice 4/17/02—published 7/10/02, effective 8/14/02]

[Filed 10/11/06, Notice 8/30/06—published 11/8/06, effective 12/13/06]

[Filed 12/12/07, Notice 11/7/07—published 1/2/08, effective 2/6/08]

[Filed Emergency ARC 8024B, IAB 8/12/09, effective 7/14/09]

[Filed ARC 8203B (Notice ARC 8025B, IAB 8/12/09), IAB 10/7/09, effective 11/11/09]