

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 620
“OWI and Implied Consent”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 307.12(1)“j,” 321.193 and 321J.3

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 17A and 321J and sections 125.84, 125.86, 321.193, 321.201, 321.215, 321.376 and 707.6A

Public Hearing

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

October 10, 2024
3 to 3:30 p.m.

[Microsoft Teams link](#)
Or dial: 515.817.6093
Conference ID: 527 660 638

Public Comment

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

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Ankeny, Iowa 50021
Email: kasey.lee@iowadot.us

Purpose and Summary

The purpose of the proposed chapter is to implement Iowa Code chapter 321J and outline the requirements for a person who has violated Iowa’s operating while intoxicated (OWI) laws. The chapter also explains the issuance requirements for a temporary restricted license, the hearings and appeals procedures, and the reinstatement requirements.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

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

There are no costs or fees associated with this chapter; rather, it provides guidance and explanation for individuals following an OWI conviction. The chapter does not require any fees or costs beyond what is required by the underlying statute.

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

Persons who are seeking a temporary restricted license or to reinstate their driver’s license following an OWI offense; persons who are seeking to appeal an OWI revocation; and persons who are substance use disorder providers, drinking driving class providers, and law enforcement officials who provide information to individuals following an OWI conviction 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:

There are no additional quantitative impacts that were not already anticipated as a result of the underlying statute.

- Qualitative description of impact:

The result of reorganizing, streamlining, and reducing redundancy in the proposed chapter will create a positive impact by producing a more user-friendly version of information the public relies on for understanding the requirements for a driver following an OWI conviction.

3. Costs to the State:

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

There are no additional implementation or enforcement costs in the proposed rules that were not already required as a result of the underlying statutes. The statute requires the Department to adopt rules for standards for requirements for a temporary restricted license and reinstatement following an OWI conviction.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues beyond the underlying statute.

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

The benefit of the proposed chapter is consistency and transparency for standards for driver education courses provided in Iowa. The cost of the proposed rules is the same as the costs required by the underlying statute.

The cost of inaction is the inability for the public to quickly and efficiently understand the standards required for drivers following an OWI conviction. There is no benefit of inaction.

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

There are no less costly or less intrusive methods to achieve the purpose of the proposed rules, which is to quickly and efficiently provide information to the public regarding the required standards for drivers following an OWI offense in Iowa.

6. Alternative methods considered by the agency:

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

The Department did not consider alternatives to the proposed rules. Requirements for individuals following an OWI offense are set forth in the Iowa Code.

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

No alternatives to the proposed rules were considered.

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?

There is no impact on small business since the rules apply to individuals, not businesses or entities. The proposed rules apply equally to all individuals following an OWI offense.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 620 and adopt the following **new** chapter in lieu thereof:

CHAPTER 620
OWI AND IMPLIED CONSENT

761—620.1(307,321J) Information and location. Information relating to this chapter is available by mail from the Motor Vehicle Division, 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 515.244.9124; by email at driver.services@iowadot.us; or by facsimile at 515.239.1837.

761—620.2(307,321,321J) Issuance of temporary restricted license.

620.2(1) Application.

a. An application for a temporary restricted license may be submitted, at any time before or during the revocation period, by completing Form 430400. The application form should be furnished by the arresting officer. It may also be obtained upon oral or written request to the motor vehicle division in person or by mail at the address in rule 761—620.1(307,321J) or online at www.iowadot.gov/mvd/driverslicense/suspensions-and-revocations.

620.2(2) Additional requirements. A person applying for a temporary restricted license will comply with all of the following requirements:

- a.* Submit proof of financial responsibility under Iowa Code chapter 321A for all motor vehicles owned or operated under the temporary restricted license.
- b.* Provide certification of installation of an approved ignition interlock device on each vehicle required pursuant to Iowa Code section 321J.20(2).
- c.* Pay the \$200 civil penalty.
- d.* Pay the applicable reinstatement and license fees.
- e.* Pass the appropriate examination for the type of vehicle to be operated under the temporary restricted license.

620.2(3) Restrictions. Upon receipt and approval of an application, the department will determine the restrictions to be imposed by the temporary restricted license. The licensee is to apply to the department in writing with a justification for any requested change in license restrictions.

620.2(4) Denial. A person who has been denied a temporary restricted license or who contests the restrictions imposed by the department may contest the decision at any time in accordance with rule 761—620.3(17A,307,321J).

761—620.3(17A,307,321J) Hearings and appeals.

620.3(1) Contested case hearing.

a. A person may request a contested case hearing by submitting Form 432034 to the department or by submitting a written request to the motor vehicle division. The request is to include the person's name, date of birth, driver's license number, complete address and telephone number.

b. A request for a hearing to contest a revocation is to be submitted within ten days following receipt of the revocation notice. The request will be deemed timely submitted if it is delivered to the motor vehicle division or properly addressed and postmarked within this time period.

c. 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.

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

620.3(2) Appeal. A decision by a presiding officer shall become the final decision of the department unless either party appeals the decision in accordance with this subrule.

a. An appeal is to 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. An appeal is to 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 to the motor vehicle division.

d. An appeal is deemed timely submitted if it is received by the motor vehicle division or properly addressed and postmarked within ten days after receipt of the presiding officer's decision.

e. The motor vehicle division will forward the appeal to the director of transportation or director's designee (director). The director 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.

620.3(3) Final agency action. The decision of the director is the final decision of the department and constitutes final agency action for purposes of judicial review. No further steps are necessary to exhaust administrative remedies.

620.3(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 620.3(2). A motion to vacate is to 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 are to be granted only for good cause shown. The burden of proof is on the moving party. Adverse parties are to respond to a motion to vacate within ten days.

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 620.3(2).

h. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party in accordance with subrule 620.3(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 is to proceed accordingly.

620.3(5) Petition to reopen a hearing.

a. A petition to reopen a hearing pursuant to Iowa Code section 17A.16 is to be submitted in writing to the motor vehicle division. 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. A timely appeal is delivered to the motor vehicle division or properly addressed and postmarked within 20 days after issuance of the decision denying the petition to reopen.

761—620.4(321J) Reinstatement. The department may reinstate the driver's license when the revocation has ended if the person has satisfied the requirements under paragraphs 620.2(2) "a" and "c" through "e" and Iowa Code section 321J.17.

761—620.5(307,321,321J) Issuance of temporary restricted license after revocation period has expired. The department may issue a temporary restricted license under Iowa Code section 321J.20(6) for six months from the end of the original revocation, unless a longer period of time is necessary to complete the requirements for driver's license reinstatement.

620.5(1) An applicant for a temporary restricted license under this rule must demonstrate to the satisfaction of the department one of the following:

a. 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. That substance use disorder evaluation and treatment have not been completed because of an inability to schedule them or because they are ongoing.

c. That due to surprise, excusable neglect, or unavoidable casualty, the applicant has been unable to meet the requirements under rule 761—620.2(307,321,321J) and needs additional time for completion.

620.5(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—620.2(307,321,321J) and Iowa Code section 321J.20.

761—620.6(307,321J) Revocation for deferred judgment. The revocation period under Iowa Code section 321J.4(3) shall be 90 days.

761—620.7(125,321J) Substance use disorder evaluation and treatment. When the department revokes a person's driver's license under Iowa Code chapter 321J, the department shall also order the person to submit to substance use disorder evaluation and, if recommended, substance use disorder treatment. A provider of substance use disorder evaluation and treatment shall be licensed by the Iowa department of health and human services pursuant to Iowa Code chapter 125.

620.7(1) Reporting.

a. When a person has satisfactorily completed substance use disorder evaluation and treatment, 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 125.84 and 125.86 and 42 CFR §2.13 effective February 16, 2024.

620.7(2) Payment. Payment of substance use disorder evaluation and treatment shall be in accordance with Iowa department of health and human services rules.

761—620.8(321J) Drinking drivers course. When a person who has been ordered to enroll, attend, and satisfactorily complete a course for drinking drivers under Iowa Code chapter 321J has successfully completed 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.

These rules are intended to implement Iowa Code chapters 17A and 321J and sections 125.84, 125.86, 307.12(1) "j," 321.193, 321.201, 321.215, 321.376 and 707.6A.