APPENDIX

C

DEPARTMENT OF STATE

BUREAU OF REGULATORY SERVICES

DRIVER LICENSE GENERAL RULES

(By authority conferred on the secretary of state by sections 204 and 625k of 1949 PA 300, MCL 257.204 and 257.625k, and section 33 of 1969 PA 306, MCL 24.233)

R 257.301 Definitions.

Rule 1. (1) As used in these rules:

(a) "Abstinence" means to refrain completely from consuming any amount of any type of alcoholic beverage or controlled substance, except a controlled substance prescribed for the petitioner by a licensed health professional.

(b) "Act" means 1949 PA 300, MCL 257.1.

(c) "Administrator" means the secretary of state or an individual designated by the secretary of state to act in his or her place.

(d) "Appeal hearing" means an appeal under section 322 of the act.

(e) "Communication equipment" means a conference telephone, video conferencing equipment, or other electronic device.

(f) "Current substance abuse evaluation" means an evaluation that is dated not more than 3 months before the date it is received by the department.

(g) "Division" means the driver assessment and appeal division, or any subsequent name assigned to the unit responsible for administering these rules, of the bureau of regulatory services of the department.

(h) "Hearing" means an appeal under section 322 of the act or a proceeding under section 625f of the act or section 80190, 81140, or 82146 of the natural resources and environmental protection act.

(i) "Hearing officer" means a person who is appointed by the secretary of state to conduct hearings.

(j) "Implied consent hearing" means a proceeding under section 625f of the act or section 80190, 81140, or 82146 of the natural resources and environmental protection act.

(k) "Natural resources and environmental protection act" means 1994 PA 451, MCL 324.101.

(l) "Party" means either of the following:

(i) A petitioner.

(ii) The arresting police officer or the police officer in charge of the case.

(m) "Petitioner" means a person who qualifies for a hearing.

(n) "Structured support program" means specific activities that a substance-abusive or substance-dependent individual has incorporated into his or her lifestyle to help support his or her continued abstinence from alcohol or controlled substances, or both.

(o) "Substance abuse evaluation" means a written report regarding the petitioner on a form prescribed by the department that includes a statement of the testing instruments used and the test results, if any exist, a complete treatment and support group history, diagnoses, prognoses, and relapse histories, including those relapse histories that predate the beginning of the most recent treatment program.

(p) "Urinalysis drug screen" means a chemical analysis of an individual's urine to determine the presence of alcohol or controlled substances, or both.

(2) A word or term defined in the act has the same meaning when used in these rules.

History: 1992 AACS; 1998-2000 AACS; 2011 MR 3, Eff. Feb. 16, 2011.

R 257.301a Definitions.

Rule 1a. As used in these rules:

(a) "BAIID" means a properly functioning breath alcohol ignition interlock device that meets or exceeds the requirements of section 625k of the act.

(b) "Calibrate" means to test and adjust a BAIID so that it accurately measures breath alcohol concentration.

(c) "Circumvent" means to do, or attempt to do, any of the following to start a vehicle without taking and passing a start-up test:

(i) Use a bogus or filtered breath sample.

(ii) Use an electronic bypass or override mechanism to start a vehicle.

(iii) Push start or hot wire a vehicle.

(iv) Use any other method to bypass or override the BAIID to start a vehicle.

(d) "Major violation" means any of the following during a monitoring period if the BAIID is a requirement of a restricted license issued under section 322(6) of the act:

(i) A rolling retest violation.

(ii) The petitioner is issued a permit under section 625g of the act.

(iii) The petitioner is convicted of violating section 625l of the act.

(iv) Servicing of the BAIID indicates that the BAIID has been tampered with or circumvented or that there was an attempt to tamper with or circumvent the BAIID.

(v) Three minor violations.

(vi) A BAIID is removed from a vehicle without an order from the department authorizing removal of the BAIID. This subparagraph does not apply if a BAIID is installed within 7 days after removal in any vehicle owned or operated by a petitioner whose license is restricted.

(vii) Operating any motor vehicle without a properly installed and functioning BAIID.

(e) "Minor violation" means either of the following during a monitoring period if the BAIID is a requirement of a restricted license issued under section 322(6) of the act:

(i) After the BAIID has been installed for at least 2 months, 3 start-up test failures.

(ii) The petitioner fails to report to the BAIID manufacturer, installer, or service provider for monitoring within 7 days after his or her scheduled service date.

(f) "Monitoring period" means any period a BAIID is installed in a vehicle or is required by any of the following:

(i) The act.

(ii) A hearing officer.

(iii) Any extensions imposed by the department under the act or these rules.

(g) "Rolling retest violation" means either of the following:

(i) The BAIID has detected, while the vehicle is in operation, an alcohol content identified in section 625k(5)(a)(iii)(B)(II) of the act. This subparagraph does not apply if, within 5 minutes of that detection, the person delivers a breath sample that the BAIID analyzes as having an alcohol content of less than 0.025 grams per 210 liters of breath.

(ii) The person fails to take a rolling retest when prompted to do so by the BAIID.

(h) "Service" means all of the following:

(i) Calibrate a BAIID.

(ii) Maintain a BAIID.

(iii) Download data from a BAIID.

(iv) Inspect a BAIID for evidence of tampering or circumventing.

(v) Invalidate any override for the BAIID previously provided by the manufacturer, installer, or service provider to the driver or on behalf of the driver.

(i) "Start-up test" means a breath test required to start a vehicle to ensure that the driver's breath alcohol content is below the maximum allowable level before the BAIID will allow a driver to start a vehicle.

(j) "Start-up test failure" means the BAIID has prevented the motor vehicle from being started after a start-up test. This subdivision does not apply if a passing test is provided within 15 minutes of the initial start-up test. Multiple unsuccessful attempts at 1 time to start the vehicle shall be treated as 1 start-up test failure under this subdivision. Unsuccessful attempts 1 hour or more apart shall be treated as separate start-up test failures under this subdivision.

(k) "Tamper" means to do, or attempt to do, any of the following without authorization from the manufacturer, installer, or service provider and the department so that a driver can start the vehicle without taking and passing a start-up test:

(i) Physically alter or disable a BAIID.

(ii) Disconnect a BAIID from its power source.

(iii)Remove, alter, or deface physical anti-tampering measures on the BAIID.

History: 2011 MR 3, Eff. Feb. 16, 2011.

R 257.302 Request for hearing; contents; notice of denial; appearance of attorney.

Rule 2. (1) A request for a hearing shall comply with all of the following requirements:

(a) Be in writing.

(b) Include all of the following information with respect to the petitioner:

(i) Full name.

(ii) Home and mailing addresses.

(iii) Telephone number.

(iv) Date of birth.

(v) Driver license number, if known.

(c) Be filed with the division office in Lansing.

(d) With respect to an appeal hearing that involves a review of a departmental determination which results in a denial or revocation under section 303(1)(d) or (f) or (2)(c), (d), or (f) of the act, the division shall not schedule the hearing unless the

request also includes a current substance abuse evaluation on a form prescribed by the department.

(2) If a petitioner is represented by an attorney at the time a request for a hearing is filed, then the request shall include all of the following information with respect to the attorney:

(a) Name.

(b) P number.

(c) Business address.

(d) Telephone number.

(e) Facsimile machine number, if available.

(3) A petitioner shall ensure that a request for a hearing that is filed by mail is postmarked, or that a request for a hearing that is filed by facsimile machine or hand delivery arrives at the division office in Lansing, within 1 of the following time periods, as applicable:

(a) Under section 322 of the act, within 14 days after the final determination of the secretary of state.

(b) Under section 625f of the act, within 14 days after the date of the notice issued under section 625e of the act.

(c) Under the provisions of section 80190, 81140, or 82146 of the natural resources and environmental protection act, within 14 days after the date of the notice issued under section 80189, 81139, or 82145 of the natural resources and environmental protection act.

(4) If a request for a hearing is denied, then the administrator shall notify the petitioner and his or her attorney, if any, in writing, stating the reasons for the denial.

(5) An attorney shall not represent a party unless a written appearance has been filed.

History: 1992 AACS; 1998-2000 AACS.

R 257.303 Hearing scheduling; hearing site; notice of hearing; contents; defective notice; accuracy of information on file with division.

Rule 3. (1) Except as otherwise provided in the act or these rules, after receipt of a timely and proper request for a hearing, the administrator shall schedule a hearing to be held within a reasonable time.

(2) The parties to an implied consent hearing shall appear at the division hearing site that is closest to the location of the alleged arrest or at another hearing site selected by the administrator.

(3) The petitioner in an appeal hearing shall appear at the division hearing site that is closest to the petitioner's place of residence, unless the administrator deems another site appropriate.

(4) The administrator shall furnish notice of hearing to the parties and to the attorneys of record, if any, under the act and other applicable provisions of law.

(5) For an implied consent hearing, the division shall mail notice to all of the following entities:

(a) The police officer or officers whose name or names appear on the law enforcement information network report of refusal that is filed under section 625d of the act or section 80188, 81138, or 82144 of the natural resources and environmental protection act.

(b) The law enforcement agency.

(c) Any prosecuting or city attorney who requests receipt of the notice.

(6) A notice of hearing shall include all of the following information:

(a) The date, time and place where the parties are to appear.

(b) The legal authority under which the hearing is being held.

(c) A reference to the particular section or sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted.

(e) In the case of an implied consent hearing, the issues that the hearing will cover.

(7) If proper notice is not provided, the hearing officer or administrator may adjourn the hearing and reschedule the hearing, unless rescheduling is waived in writing by the parties.

(8) Each petitioner, police officer, and attorney shall ensure that his or her address and daytime telephone number that are on file with the division are correct and shall immediately notify the division of a change of address or telephone number that occurs during the course of the proceeding.

(9) After an appeal hearing has been held and the hearing officer has issued a final order, the division shall not hold another hearing on the same matter until at least 1 year from the date of the hearing, unless the administrator or hearing officer provides otherwise.

History: 1992 AACS; 1998-2000 AACS.

R 257.304 Hearing conducted with communication equipment.

Rule 4. (1) Notwithstanding any other provision of these rules, the administrator or the hearing officer may direct that a hearing or a portion of a hearing be conducted by means of communication equipment and the hearing may be scheduled accordingly.

(2) For an appeal hearing conducted using communication equipment, before the division schedules a hearing, the petitioner shall submit all documentary evidence to be considered by the hearing officer to the division office in Lansing. The petitioner shall verify, in writing, that all documentary evidence has been submitted to the division before the hearing is scheduled. For good cause shown, the hearing officer may permit additional evidence to be submitted, but may decline to receive any additional evidence at or following the hearing.

History: 1992 AACS; 1998-2000 AACS.

R 257.305 Withdrawal of request for hearing; withdrawal of arresting officer's report.

Rule 5. (1) A petitioner may withdraw his or her request for a hearing. A petitioner shall make the withdrawal on the record or in writing and shall file the withdrawal either with the division office in Lansing or with the hearing officer.

(2) If a petitioner withdraws from an appeal hearing, then the hearing officer shall promptly affirm the determination of the secretary of state that was appealed without further proceedings. In addition, the division shall not hold a hearing on the same matter until at least 1 year after the hearing date set before the withdrawal, unless the administrator or hearing officer orders otherwise.

(3) If a petitioner withdraws from an implied consent hearing, then the department shall impose a suspension or revocation against the petitioner or order the petitioner not to operate a vessel or

snowmobile under section 625f of the act or section 80190, 81140, or 82146 of the natural resources and environmental protection act.

(4) A police officer party or a prosecuting attorney may withdraw a report filed under section 625d of the act or section 80188, 81138, or 82144 of the natural resources and environmental protection act. If a police officer party or a prosecuting attorney withdraws a report under this subrule, then the department shall not take action under section 625f of the act or section 80190, 81140, or 82146 of the natural resources and environmental protection act. A police officer party or a prosecuting attorney shall make a withdrawal in writing and shall file the withdrawal with the division office in Lansing or with the hearing officer.

History: 1992 AACS; 1998-2000 AACS.

R 257.306 Circuit court appeals; effect.

Rule 6. (1) If a petitioner appeals to circuit court regarding a matter that has been appealed to the division pursuant to the provisions of section 322 of the act, the petitioner's appeal before the division shall be deemed withdrawn and the division shall not hold a hearing on the matter.

(2) If the circuit court renders a decision on a matter, the division shall not hold a hearing on the same matter until at least 1 year after the date of the circuit court's final order, unless the circuit court, administrator, or hearing officer orders otherwise.

History: 1992 AACS.

R 257.307 Adjournments.

Rule 7. (1) After a hearing has been scheduled, it shall only be adjourned by order of the administrator or the hearing officer.

(2) An adjournment shall be granted for any of the following reasons:

(a) The hearing conflicts with a previously scheduled court appearance of an attorney, petitioner, or law enforcement officer.

(b) An attorney, petitioner, or law enforcement officer will be out of town or out of the state because of a previously scheduled vacation or business trip that cannot be canceled or rescheduled without economic loss.

(c) The death or serious illness of a family member of an attorney, petitioner, or law enforcement officer.

(d) The petitioner is incarcerated.

(e) An attorney, petitioner, or law enforcement officer is hospitalized.

(f) Other good cause to be determined by the administrator or hearing officer.

(3) A request for an adjournment shall be in writing and shall state the reason for the request.

(4) The administrator or hearing officer may require the party who requests an adjournment to submit documentary evidence that substantiates the reason for the request.

(5) The party who requests an adjournment shall file the request with the division office in Lansing, unless otherwise indicated in the notice of hearing.

(6) A request for adjournment shall be received not less than 2 business days before a hearing. If a request is received within 2

business days before a hearing, the request may be summarily denied. The hearing officer or administrator may grant an adjournment at any time, including the day of the hearing.

(7) A party shall not consider a hearing adjourned until the administrator or the hearing officer notifies the party that the hearing is adjourned.

History: 1992 AACS.

R 257.308 Subpoenas; issuance; service; witness fees; enforcement.

Rule 8. (1) Upon the written request of a party, the hearing officer or administrator may sign and issue a subpoena on a form prescribed by the department.

(2) The responsibility for serving the subpoena, determining expert witness fees, paying witness fees, and enforcing the subpoena shall be solely that of the party who requests the subpoena.

(3) To enforce a subpoena, a party on whose behalf it was issued may file a petition for an order requiring compliance in the circuit court for the county in which the hearing is scheduled to be held.

History: 1992 AACS.

R 257.309 Time; effect of failure to appear.

Rule 9. (1) A hearing shall commence not more than 20 minutes after the scheduled hearing time, except for reasonable cause to be determined by the hearing officer or administrator. If a hearing does not commence within 20 minutes after the scheduled hearing time, then subrules (2) to (4) of this rule apply.

(2) With respect to an appeal hearing, except for reasonable cause to be determined by the administrator or hearing officer, the failure of the petitioner to appear has the following effect:

(a) The petitioner's hearing request is deemed to be withdrawn.

(b) The division shall not hold another hearing on the same matter until at least 1 year from the hearing date, unless the administrator or hearing officer orders otherwise.

(3) With respect to an implied consent hearing, except for reasonable cause to be determined by the administrator or hearing officer, the failure of a party to appear has the following effect:

(a) The petitioner's failure to appear is treated as a default and a suspension or revocation shall be imposed or an order not to operate a vessel or snowmobile shall be issued under section 625f of the act or section 80190, 81140, or 82146 of the natural resources and environmental protection act.

(b) If the police officer party fails to appear, then the hearing officer shall dismiss the matter and the department shall not take an action under section 625f of the act or section 80190, 81140, or 82146 of the natural resources and environmental protection act, whether or not the petitioner appears.

(c) The division shall not hold another hearing on the same matter unless the administrator or hearing officer orders otherwise.

(4) If a matter is resolved under subrule (2) or (3) of this rule, then the hearing officer or the administrator may elect not to go on the record.

History: 1998-2000 AACS.

R 257.310 Conduct of hearings; witnesses; rules of evidence; official notice; burden of proof.

Rule 10. (1) A hearing is open to the public unless the hearing officer orders otherwise.

(2) The hearing officer may call or recall witnesses and question witnesses regarding any matter pertinent to the case.

(3) The hearing officer has an affirmative duty to assist a party appearing at a hearing who is not represented by an attorney in presenting a case to properly develop a complete record. To fulfill the duty, the hearing officer may question witnesses or assist with the introduction of documents into evidence, or both.

(4) A hearing officer shall follow the rules of evidence as applied in circuit court so far as practicable, but the hearing officer may admit, and give probative value to, evidence of a type that is commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(5) A hearing officer may exclude irrelevant, immaterial, or unduly repetitious evidence.

(6) The hearing officer may require or allow a party to present additional evidence on an issue within a specified period of time.

(7) A hearing officer may take official notice of facts and may take notice of general, technical, or scientific facts within the department's specialized knowledge.

(8) The petitioner shall have the burden of proof at an appeal hearing and on an affirmative defense at an implied consent hearing.

(9) The police officer party shall have the burden of proof at an implied consent hearing, except as provided in subrule (8) of this rule.

(10) Unless otherwise provided in the act or these rules, the standard of proof at a hearing is a preponderance of the evidence.

(11) At the written request of a petitioner, and with the approval of the administrator, the division may conduct an appeal hearing through a review of written proofs submitted by the petitioner. The petitioner need not be present for a review of written proofs.

(12) Except for implied consent hearings and appeal hearings involving a review of a determination of the department that results in a denial or revocation under section 303(1)(d),(e), or (f) or (2)(c), (d), (e), or (f) of the act, a hearing officer shall limit a hearing to a review of the record.

History: 1998-2000 AACS.

R 257.311 Decorum.

Rule 11. (1) A person who appears at a hearing shall conform to the standard of conduct that is required of a person who appears before a court of this state.

(2) A person who does not conform to the standard of conduct prescribed in subrule (1) of this rule may be excluded from the hearing by the hearing officer or the hearing officer may adjourn the hearing if necessary to avoid undue disruption of the proceedings.

History: 1992 AACS.

R 257.312 Briefs, legal authority, and other writings; filing.

Rule 12. (1) A hearing officer may require or allow the filing, and place a reasonable limitation on the length, of briefs, legal authority, or other writings.

(2) The proponent of an issue shall file the initial brief or other writing with the hearing officer and the opposing party, if any.

(3) A hearing officer shall give the opposing party a reasonable opportunity to file a responsive brief or other writing.

(4) A person shall file a brief or other writing within the time limits indicated by the hearing officer, except when the hearing officer determines that there is good cause to grant an extension.

History: 1992 AACS; 1998-2000 AACS.

R 257.313 Standards for issuance of license.

Rule 13. (1) With respect to an appeal hearing that involves a review of a determination of the department which results in a denial or revocation under section 303(1)(d), (e), or (f) or (2)(c), (d), (e), or (f) of the act, all of the following provisions apply:

(a) The hearing officer shall not order that a license be issued to the petitioner unless the petitioner proves, by clear and convincing evidence, all of the following:

(i) That the petitioner's alcohol or substance abuse problems, if any, are under control and likely to remain under control.

(ii) That the risk of the petitioner repeating his or her past abusive behavior is a low or minimal risk.

(iii) That the risk of the petitioner repeating the act of operating a motor vehicle while impaired by, or under the influence of, alcohol or controlled substances or a combination of alcohol and a controlled substance or repeating any other offense listed in section 303(1) (d), (e), or (f) or (2) (c), (d), (e), or (f) of the act is a low or minimal risk.

(iv) That the petitioner has the ability and motivation to drive safely and within the law.

(v) Other showings that are relevant to the issues identified in paragraphs (i) to (iv) of this subdivision.

(b) Before ordering that a license be issued to the petitioner, the hearing officer shall require that the petitioner prove, by clear and convincing evidence, that he or she has completely abstained from the use of alcohol and controlled substances, except for controlled substances prescribed by a licensed health care professional, for a period of not less than 6 consecutive months or has abstained for a period of not less than 12 consecutive months if the evidence considered at the hearing establishes that a longer period of abstinence is necessary. The evidence may include any of the following:

(i) That the petitioner has ever submitted to a chemical test which revealed a bodily alcohol content that is not less than 2 times the level indicated in section 625a(9)(c) of the act.

(ii) That the petitioner has 3 or more convictions for alcohol or controlled substance-related offenses.

(iii) That the petitioner has attempted to bring his or her alcohol or controlled substance abuse problems, if any, under control, but suffered a relapse by using, on at least 1 occasion, alcohol or a controlled substance, or both, except for a controlled substance prescribed for the petitioner by a licensed health professional.

(iv) That a substance abuse evaluation of the petitioner reveals a diagnosis of past or present alcohol or controlled substance dependency.

(v) That the petitioner's license was previously revoked or denied under section 303 of the act because of alcohol or controlled substance convictions.

(vi) Other showings that are relevant to the issues identified in paragraphs (i) to (v) of this subdivision.

(c) If the hearing officer determines, under subdivision (b) of this subrule, that the petitioner must prove complete abstinence for a period of more than 6 months, and then the hearing officer shall explain the reasons for the determination in the written order issued by the hearing officer.

(d) The hearing officer may require that the petitioner present evidence from not less than 3 independent sources to corroborate the petitioner’s behavior with respect to alcohol and controlled substances.

(e) The hearing officer may require the petitioner to present a current urinalysis drug screen to corroborate the presence or absence of controlled substances or alcohol, or both, in the petitioner's body.

(f) The hearing officer may require that the petitioner submit a current substance abuse evaluation on a form prescribed by the department.

(g) The petitioner may submit any or all of the following:

(i) Letters from other persons that document his or her behavior regarding alcohol and controlled substances.

(ii) Proof of his or her past and current involvement with a treatment program or programs.

(iii) Proof of his or her past and current structured support program.

(iv) Other relevant evidence.

(h) If the hearing officer concludes that the petitioner has met the requirements of this subrule, then the hearing officer may order a restricted license for a period of time to be determined by the hearing officer before consideration for an unrestricted license. This subdivision does not apply if the petitioner is a nonresident seeking relief so that he or she may apply for a license in his or her home state.

(2) If a petitioner's application for a license has been denied, or if his or her license has been revoked, under section 303(1)(e), (g), (h), (i), (j),or (k) or (2)(a), (b), or (e) or 320(2) of the act, then the hearing officer shall not order that a license be issued to the petitioner unless the petitioner proves both of the following by clear and convincing evidence:

(a) That the petitioner has the ability and motivation to drive safely and within the law.

(b) Other showings that are relevant to the issue identified in subdivision(a) of this subrule.

(3) If a person's license has been revoked under section 320(2) of the act, then the department shall not issue a license to the person unless the person establishes both of the following:

(a) That the person has the ability and motivation to drive safely and within the law.

(b) Other showings that are relevant to the issue identified in subdivision(a) of this subrule.

History: 1992 AACS; 1998-2000 AACS.

R 257.313a Breath alcohol ignition interlock devices (BAIID).

Rule 13a. (1) If a person whose license was denied or revoked under section 303(2)(c)or(g) of the act, or denied or revoked under section 303(2)(d) of the act for 1 conviction for a violation or attempted violation of section 625(4) or 625(5), or any prior or subsequent enactment of those provisions, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state, was granted a restricted license on or before October 1, 1999, and the hearing officer continues the restricted license following a hearing held after October 1, 1999, then the hearing officer may do both of the following:

(a) Require the installation of a BAIID on each motor vehicle the person owns or intends to operate, the costs of which shall be borne by the person whose license is restricted.

(b) Condition the issuance of the continued restricted license upon verification by the department that a BAIID has been installed.

(2) A restricted license permitted under section 319(8) (g) of the act shall not be issued until proof of the installation of the BAIID required under section 319(8)(h) of the act is provided to the department.

(3) The minimum period required by section 322(9) of the act begins when both of the following have occurred:

(a) The petitioner provides verification to the department that a BAIID has been installed.

(b) The department issues a valid restricted license to the petitioner.

(4) If a restricted license issued under section 322(6) of the act requiring a BAIID is interrupted, the hearing officer may aggregate the periods of time that a restricted license which included a BAIID requirement was actually operative to determine whether the minimum period required by section 322(9) of the act has been met.

(5) The manufacturer, installer, or service provider shall service an installed BAIID not less than once every 60 days.

(6) The manufacturer, installer, or service provider of a BAIID shall submit a report to the department if any of the following occur:

(a) Servicing of the BAIID indicates that the person has committed a major or minor violation as defined in Rule 1a.

(b) Servicing of the BAIID indicates that the person whose license is restricted under section 319(8)(g) of the act operated or attempted to operate the vehicle with a blood alcohol level of 0.025 grams per 210 liters of breath or higher. For the purposes of this subdivision, a person is presumed to have operated with a blood alcohol level of 0.025 grams per 210 liters of breath or higher if the person fails to take any retest prompted by the BAIID. This subdivision does not apply if either of the following occurs:

(i) For a start-up test, a start-up test failure occurs within the first 2 months after installation of the BAIID, or if within 15 minutes of that detection the person delivers a breath sample that the BAIID analyzes as having an alcohol content of less than 0.025 grams per 210 liters of breath.

(ii) For any retest prompted by the BAIID, within 5 minutes of that detection the person delivers a breath sample that the BAIID analyzes as having an alcohol content of less than 0.025 grams per 210 liters of breath.

(c) A driver causes a manufacturer, installer, or service provider to remove a BAIID without a written order from the department authorizing the removal. This subdivision does not apply if a BAIID is installed within 7 days after removal in any vehicle owned or operated by a driver whose license is restricted.

(7) A report shall be submitted to the department not later than 5 business days after an event listed under subrule (6) of this rule occurs or becomes known to the manufacturer, installer, or service provider. The manufacturer, installer, or service provider may also submit a written report to the department of any other activity that may violate these rules or a restricted license requiring use of a BAIID issued by the department under section 322 or 319 of the act.

(8) A manufacturer, installer, or service provider shall submit a report required by subrule (6) of this rule on a form and in a manner prescribed by the department and at the same time shall provide a copy of the report to the person for whom a report is required by subrule (6) of this rule.

(9) A report required under subrule (6) of this rule shall include the following information:

(a) All major and minor violations revealed by the servicing of the BAIID since the BAIID was installed or since the last servicing, whichever is later.

(b) Unless subrule (6)(b)(i) or (ii) of this rule applies, all instances where the BAIID has recorded a blood alcohol level of 0.025 grams per 210 liters of breath or higher.

(c) All dates of BAIID installation and removal.

(d) Any relevant documentation and BAIID logs that support the event(s) indicated in the report, including BAIID logs from the day before and the day after the indicated event(s).

(e) Any other information required by the department.

(10) A report required under subrule (6) of this rule shall not be rescinded by a manufacturer, installer, or service provider.

(11) If a major violation is reported to the department, then all of the following provisions apply:

(a) The department shall reinstate the original revocation or denial, or both, under section 303 of the act and shall give not less than 5 days' written notice to the petitioner.

(b) If a written request for a hearing is filed within 14 days after the reinstatement under subdivision (a) of this subrule, then the department shall schedule a hearing.

(c) At a hearing scheduled under this subrule, the petitioner has the burden of establishing that the reinstated section 303 revocation or denial, or both, should be set aside or modified.

(12) If a minor violation is reported to the department, then the department shall extend the period of time before another hearing may be held by 3 months and shall extend the minimum period of time for the BAIID requirement by 3 months.

(13) After the minimum monitoring period defined in Rule 1a, all of the following provisions apply:

(a) If a restricted license was issued under subrule (2) of this rule, the department may order the removal of the BAIID only after receipt of verification from the manufacturer, installer, or service provider that the person subject to using a BAIID has operated the vehicle with no instances of reaching a blood alcohol level of 0.025 grams per 210 liters of breath or higher. The person does not have an instance of reaching a blood alcohol level of 0.025 grams per 210 liters of breath or higher if either of the following occurs:

(i) Within 15 minutes of that detection on a start-up test the person delivers a breath sample that the BAIID analyzes as having an alcohol level of less than 0.025 grams per 210 liters of breath.

(ii) Within 5 minutes of that detection on any retest prompted by the BAIID the person delivers a breath sample that the BAIID analyzes as having an alcohol level of less than 0.025 grams per 210 liters of breath.

(b) The department may order the removal of the BAIID if the only instances of reaching a blood alcohol level of 0.025 grams per 210 liters of breath or higher occurred within the first 2 months after the BAIID was installed.

(c) The person subject to using a BAIID shall obtain a BAIID report from every manufacturer, installer, or service provider with which that person has had a BAIID installed.

(d) Upon the request of a person subject to using a BAIID, the manufacturer, installer, or service provider shall prepare and submit a BAIID report to the department within 5 business days of the request on a form and in a manner prescribed by the department.

(e) As directed by the department, the person subject to using a BAIID shall submit the report required under this subrule to the department.

(f) A person subject to using a BAIID may be required to prove that he or she had the BAIID for the minimum time period required by the act.

(14) Notwithstanding subrule (13) of this rule, at the conclusion of each 12-month period that a person has a BAIID installed in a vehicle, and anytime a person subject to using a BAIID causes a BAIID to be removed, the manufacturer, installer, or service provider shall prepare and submit to the department a report on a form and in a manner prescribed by the department, and shall provide a copy of the report to the person subject to using a BAIID.

(15) At the request of the department, a manufacturer, installer, or service provider shall provide any information and documentation relevant to the department's monitoring of a person using a BAIID.

(16) A manufacturer, installer, or service provider shall not provide overrides or override instructions to a person using a BAIID, or to someone on behalf of the person using a BAIID, unless such override is permitted by the national highway traffic safety administration's model specifications for BAIID, 57 Fed Reg 11772 (April 7, 1992), or authorized by the department.

(a) If an override or override instruction is provided to a person using a BAIID or to someone on behalf of the person using a BAIID, the manufacturer, installer, or service provider shall service the BAIID within 24 hours and submit a report to the department on a form and in a manner prescribed by the department within 1 business day of the service.

(b) If the BAIID is installed in a vehicle that becomes inoperable or otherwise unable to be serviced beyond 24 hours, the manufacturer, installer, or service provider shall service the BAIID within 24 hours of the vehicle’s return to operation.

(17) The department shall inform a BAIID manufacturer, installer, or service provider when an order authorizing removal of a BAIID is issued. This subrule does not apply unless the manufacturer, installer, or service provider requests, in a manner prescribed by the department, to be informed when a BAIID removal authorization order is issued.

(18) Unless otherwise provided in the act or these rules, this rule

applies to any BAIID the department is required to monitor under the act.

History: 1998-2000 AACS; 2011 MR 3, Eff. Feb. 16, 2011.

R 257.314 Recording hearings; transcript or electronic recording medium request; fee; erasing or reprocessing electronic recording medium.

Rule 14. (1) The hearing officer shall electronically, stenographically, or otherwise record a hearing, as determined by the hearing officer or the administrator.

(2) Any person may make a request for a transcript, a partial transcript, or a copy of a recording medium. A person shall make a request in writing and file it with the division office in Lansing within 63 days after the date of the hearing officer's decision or within 182 days after the date of the hearing officer's decision if the court extends the period for filing a petition for review of the determination under section 323(1) of the act.

(3) A request filed under subrule (2) of this rule shall include all of thefollowing information:

(a) The hearing date and location.

(b) The petitioner's full name, birth date, and, if known, driver license number.

(c) The case number assigned to the matter by the division.

(4) The department shall charge a fee to a person who files a request under subrule (2) of this rule. The administrator shall determine the fee.

(5) The administrator or hearing officer may erase or otherwise reprocess the electronic recording medium if a transcript request is not received by the division office in Lansing within the period prescribed in subrule (2) of this rule.

(6) If the division is unable to provide a transcript due to a defective recording or loss or destruction of the recording medium, then the parties and the hearing officer may stipulate to facts, issues, or conclusions of law or a party may request another hearing on the same matter.

History: 1992 AACS; 1998-2000 AACS.

R 257.315 Reconsideration; rehearing.

Rule 15. (1) On written motion of a party, reconsideration of a matter or a rehearing may be granted by the administrator or the hearing officer for any of the following reasons:

(a) Newly discovered, material evidence that could not, with reasonable diligence, have been discovered before the hearing and produced at that time.

(b) An error of law that occurs at the hearing.

(c) A material mistake of fact by the hearing officer.

(2) A motion for reconsideration or rehearing shall be filed with the division office in Lansing and served on the opposing party, if any, within 21 days after the date of the hearing officer's decision.

History: 1992 AACS.

R 257.316 Rescission.

Rule 16. R 257.31 to R 257.39 of the Michigan Administrative Code, appearing on pages 729 to 731 of the 1979 Michigan Administrative Code, are rescinded.

History: 1992 AACS.

DEPARTMENT OF STATE

BREATH ALCOHOL IGNITION INTERLOCK DEVICE

GENERAL RULES

(By authority conferred on the secretary of state by section 625k of Act No. 300 of the Public Acts of 1949, as amended, and section 33 of Act No. 306 of the Public Acts of 1969, as amended, being section 257.625k and 24.233 of the Michigan Compiled Laws)

R 257.1001 Definitions.

Rule 1. (1) As used in these rules:

(a) "Act" means Act No. 300 of the Public Acts of 1949, as amended, being section 257.1 et seq. of the Michigan Compiled Laws.

(b) "Administrator" means the secretary of state or an individual designated by the secretary of state to act in his or her place.

(c) "BAIID" means a breath alcohol ignition interlock device.

(d) "Certified BAIID" means a BAIID that has been certified by a department-approved laboratory as meeting or exceeding the requirements of section 625k of the act.

R 257.1002 Address of administrator.

Rule 2. The official address of the administrator is:

Michigan Department of State
Lansing, Michigan 48918

R 257.1003 Approval of laboratory; termination of approval.

Rule 3. (1) The administrator may approve a laboratory under section 625k(1) of the act if the laboratory certifies, in writing, that it is capable of properly testing a BAIID to determine if it meets or exceeds the requirements of section 625k of the act and is capable of certifying that the BAIID meets or exceeds the requirements of section 625k of the act.

(2) A previously approved laboratory that is no longer capable of properly testing or certifying a BAIID shall immediately notify the administrator in writing. Upon receipt of notification, the administrator shall immediately terminate the approval of the laboratory.

R 257.1004 Approval and disapproval of BAIIDs; list of manufacturers.

Rule 4. (1) A manufacturer of a BAIID that wishes to be placed on the list of manufacturers of approved certified BAIIDs shall submit a written request, together with all of the information and materials required by the act and rules promulgated to implement the act, to the administrator.

(2) A written request that fails to include all of the information and materials required by the act and these rules is incomplete. The administrator shall return the request to the manufacturer and explain, in writing, why the request is incomplete.

(3) The administrator shall approve or disapprove a BAIID not later than 60 days after receipt of a complete written request.

(4) The administrator shall notify a manufacturer whose BAIID is not approved, in writing, of the determination and the reason or reasons for the determination.

(5) The administrator shall notify a manufacturer whose BAIID is approved, in writing, of the date of approval.

(6) The administrator shall publish a list of all manufacturers of certified BAIIDs that are approved under section 625k of the act. The administrator shall widely disseminate the list and shall republish the list as appropriate.

R 257.1005 Removal from list of manufacturers.

Rule 5. (1) The administrator may remove a manufacturer from the list of manufacturers of approved certified BAIIDs for either of the following reasons:

(a) The manufacturer, the manufacturer's BAIID, or the manufacturer's installers or service providers no longer comply with the requirements of sections 625k or 625l of the act and rules promulgated to implement the act.

(b) The manufacturer or the installers and service providers authorized to install and service the manufacturer's BAIID fail to submit reports required by the act or rules promulgated to implement the act in the form prescribed by the department in a timely manner.

(2) Before removing a manufacturer from the list of manufacturers of approved certified BAIIDs, the administrator shall give the manufacturer written notice of the reason or reasons for the proposed removal.

(3) The notice issued under subrule (2) of this rule shall also indicate that the proposed removal will occur 30 days after the date of the notice unless the manufacturer establishes, to the satisfaction of the administrator, either of the following:

(a) The conditions identified in subrule (1)(a) and (b) of this rule do not exist.

(b) The manufacturer, the manufacturer's BAIID, or the manufacturer's installers or service providers will comply with the requirements of section 625k of 625l of the act and rules promulgated to implement the act.

R 257.1006 Inspections; noncompliance; removal from lists.

Rule 6. (1) The administrator may conduct inspections of a laboratory, BAIID manufacturer, or BAIID installer or service provider to determine if the laboratory, manufacturer, installer, or provider is in compliance with the act or rules promulgated to implement the act.

(2) If an inspection indicates noncompliance, then the administrator shall give the laboratory, BAIID manufacturer, or BAIID installer or service provider written notice of the noncompliance. In the case of an installer or service provider, the administrator also shall give written notice to the manufacturer of the BAIID that the person installs or services.

(3) Within 30 days of the date of the notice issued under subrule (2) of this rule, the laboratory or manufacturer shall notify the administrator, in writing, of any corrective actions taken.

(4) The administrator may remove a manufacturer or laboratory from the list of manufacturers of approved certified BAIIDs or the list of approved laboratories for either of the following reasons:

(a) The manufacturer or laboratory failes to take corrective action or to come into full compliance with the provisions of the act or a rule promulgated under the act.

(b) The manufacturer or laboratory fails to file a written response within 30 days after the date of the notice of noncompliance.