

CHAPTER 528
LIQUID TRANSPORT CARRIERS
[Prior to 6/3/87, Transportation Department[820]—(07,F)Ch 13]

761—528.1(327A) General information.

528.1(1) Information and location. Applications, forms and information on liquid transport carriers are available by mail from the Office of Motor Carrier Services, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382; or in person at its location in Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa; telephone (515)237-3264.

528.1(2) Waiver or suspension of rules. The department may in its discretion, on its own motion or upon request for good cause shown, suspend or waive any of the rules.

528.1(3) Person defined. The word “person” includes any individual, firm, copartnership, joint venture, association, corporation, estate, trust, business trust, receiver or any other group or combination acting as a unit and the plural as well as the singular number.

528.1(4) Control construed. The word “control” includes actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation, through or by common directors, officers, or stockholders, a holding or investment company or companies, a voting trust or trusts, or in any manner whatsoever; and includes the power to exercise control.

528.1(5) Engaged directly or indirectly construed. The phrase “engaged directly or indirectly” includes accomplishing or effectuating, or participating in accomplishing or effectuating, control or management. Persons who lawfully have been engaged in the control or management of the certificate to be transferred for a period of not less than 12 months from the date of the application shall not be considered to be engaged directly or indirectly in the transportation of liquid products in bulk or freight.

528.1(6) Freight defined. The word “freight” means property other than liquid products in bulk. This rule is intended to implement Iowa Code sections 17A.3, 327A.2 and 327A.14.

761—528.2(327A) Insurance—suspension.

528.2(1) Insurance. Each carrier shall at all times maintain on file with the office of motor carrier services effective certificate(s) of insurance or surety bond on a form prescribed by the department.

- a. The required or applicable endorsements shall be attached to certificates of insurance.
- b. Thirty days’ prior written notice shall be given the department of the cancellation of insurance, surety bond, or specific insurance coverage.

528.2(2) Suspension. If a carrier fails to have the required insurance on file with the department or fails to pay the required annual fee for each motor vehicle, the department may suspend the authority of the carrier. The suspension shall remain in effect until requirements are met. The suspended carrier may request a hearing by submitting a written request to the director of the office of motor carrier services.

This rule is intended to implement Iowa Code section 327A.5.

761—528.3(327A) Marking of motor vehicles.

528.3(1) Manner of marking motor vehicles. “Motor vehicle” is defined in Iowa Code section 321.1. Before placing any motor vehicle in service there shall be painted on each side of the motor vehicle and on the headboards, if appropriate, or on some suitable material securely placed on each side of the motor vehicle, in letters and figures large enough to be easily read at a distance of 50 feet and in a color in contrast to the background the following:

- a. Name of liquid transport carrier under whose authority equipment is being operated.
- b. Address of liquid transport carrier (city and state).
- c. Ia. D.O.T. LC.
(certificate number)

528.3(2) Rescinded, effective 3/25/81.

528.3(3) Rescinded, effective 3/25/81.

This rule is intended to implement Iowa Code section 327A.8.

761—528.4(327A) Application.

528.4(1) *Application for a certificate.* Application for a certificate of convenience and necessity to operate as a liquid transport carrier shall be made to the office of motor carrier services at the address in subrule 528.1(1), upon the forms prescribed for that purpose. All applications shall be typewritten.

528.4(2) *Filing fee.* An application for a certificate of public convenience and necessity shall be accompanied by a nonrefundable filing fee of \$50 to cover administrative and clerical costs. This fee shall be paid by check made payable to the Iowa department of transportation.

528.4(3) *Hearing fee.* Rescinded IAB 6/26/91, effective 7/31/91. See 481—10.27(10A).

528.4(4) *Transfer or lease of a certificate, or a transfer of control of a carrier's certificate by stock transfer.* Application for the department's approval of a proposed transfer or lease of a liquid transport carrier's certificate, or a proposed transfer of control of a liquid transport carrier's certificate by stock transfer, must be typewritten and signed and sworn to by all persons presently controlling the certificate and by those persons seeking authority to control the certificate. Proposed transfer, lease or transfer of control shall not become effective until approved by the department. The application shall contain:

a. The name and address of the holder of the certificate, the name and address of all persons controlling the certificate, the certificate number and the authority granted thereby.

b. The name and address of the persons proposing to control the certificate whether through transfer, lease, acquisition of corporate stock, or in any manner whatsoever.

c. A statement as to whether applicants propose to transfer, lease, or control the certificate, the reasons therefor, and a request that the department approve such proposal.

d. A statement identifying which portions of the liquid carrier certificate were originally granted under Iowa Code section 327A.14 and which sections were originally granted under Iowa Code section 372A.3.

e. A statement that a financial statement of the person proposing to control the certificate is attached to the application. Form of financial statement will be furnished by the department upon request.

f. A statement that two copies of the tariff proposed to be placed in effect are attached to the application.

g. The proposed consideration or amount to be paid for the certificate.

h. A description of all property, other than the certificate, proposed to be transferred, leased or controlled and the amount to be paid therefor.

i. A statement that copies of all contracts, agreements, leases, or other stipulations between the parties to the application are attached to the application.

j. A complete description of each truck, truck tractor, semitrailer, or trailers to be operated by the person proposing to control the certificate.

k. If only part of the transferor's operating authority is involved in the proposed transaction, a statement describing the operating authority being retained.

l. A statement that attached to the application is a map showing the operation sought to be transferred, the authority to be retained by a transferor, and all pertinent portions of transferee's present authority.

m. A statement that attached to the application is an abstract showing actual shipments transported under the operating authority involved in the proposed transaction during the six months preceding the date of the agreement. The abstract shall show the commodity, weight, origin and destination of each shipment and the total number and weight of shipments summarized by counties.

n. A statement by the transferor stating whether operations are being conducted by the transferor under any portion of the operating rights involved in the proposed transaction and if not, an explanation of same.

o. A statement that attached to the application is a “giving effect” balance sheet for the transferee and a “giving effect” income statement for the current calendar year to date for the transferee showing adjustments and eliminations which would have resulted from consummation of the proposed transaction.

p. A statement that the proposed transfer, lease or transfer of control is not for the purpose of hindering, delaying or defrauding creditors.

q. The date on which it is desired that the proposed transfer, lease or transfer of control shall become effective.

r. Such other facts as may be necessary to give the department complete information regarding the proposed transaction.

528.4(5) *Notice to liquid transport carriers.* The mailed notice required by Iowa Code section 327A.4 shall be mailed by first-class mail.

528.4(6) *Support statements.* No shippers’ support statements to broaden authority shall be accepted after the 30-day protest period unless a new application is submitted to the office of motor carrier services.

This rule is intended to implement Iowa Code sections 327A.3, 327A.4 and 327A.14.

761—528.5(327A) Records, reports and fees.

528.5(1) *Records and filings.* Every liquid carrier shall keep an accurate record of assets and liabilities, costs and depreciation of all equipment and other physical property owned, receipts from operation, operating and other expenses, gross amount of liquids hauled, actual miles traveled within and without the state and other required information and shall file with the department for the calendar year an annual report, duly verified, in such form as the department may prescribe on or before March 31 of the year following that for which the report is filed. The department will prescribe the character of the information to be embodied in the annual report and furnish a blank form therefor.

528.5(2) *Annual certificate fee.* Application for a certificate of convenience and necessity shall be accompanied by a remittance in the amount sufficient to pay the annual certificate fee of \$5 for each motor vehicle described on the form attached to the application, provided, however, that the fee herein provided for each tractor or truck tractor shall be in the amount of \$15. The remittance will cover the certificate fee for each motor vehicle described from the date the certificate is issued until the thirty-first day of December of the year in which the certificate is issued. The annual certificate fee shall be remitted in the form of a certified check, bank draft, cashier’s check or money order payable to the Iowa department of transportation. The annual certificate fee for each motor vehicle for each year after the year in which the certificate is issued shall be due and payable on or before the first day of January for each succeeding year and shall be remitted in the form prescribed above.

528.5(3) *Fee receipt.* The holder of an intrastate certificate shall be furnished a receipt for each certificate fee paid. The receipt shall be carried with the described motor vehicle at all times. Any motor vehicle requiring a duplicate fee receipt shall have the receipt reissued for one-half the cost of the original regulatory equipment fee. Equipment fee receipts are not transferable.

528.5(4) *Equipment changes or additions.* Before placing any additional vehicles in service, the holder of a certificate of convenience and necessity shall pay the department the annual fee and furnish a complete description of such motor vehicles operated in intrastate commerce together with information as to the time the equipment is to be placed in service. The description shall show registration of equipment and serial number.

761—528.6(327A) Bills of lading or receipts. By the end of each business day, a liquid transport carrier shall issue a bill of lading or receipt in triplicate for each shipment received that day.

The bill of lading or receipt shall contain the following information: name of liquid transport carrier, date and place received, name of consignor, name of consignee, destination, description of shipment, rate and charges, and signature of liquid transport carrier or agent.

Copies of the bill of lading or receipt shall be distributed as follows: one to the consignor, one to the consignee, and one to be retained by the liquid transport carrier.

761—528.7(327C,327D) Complaints. Complaints against liquid transport carriers submitted under Iowa Code section 327C.25 or 327D.89 shall be submitted to the office of motor carrier services at the address in subrule 528.1(1).

This rule is intended to implement Iowa Code sections 327C.25 and 327D.89.

761—528.8 Rescinded, effective 7/19/85.

761—528.9 and **528.10** Reserved.

761—528.11(327A) Tariffs.

528.11(1) Requirements. All liquid transport carriers shall maintain on file with the office of motor carrier services a tariff stating the rates and charges that apply for the services performed under the certificates. When class rates are to be assessed naming a classification, the rating(s) must apply in connection with the rates named in each carrier's tariff. All tariffs and classifications must conform to the following rules, except as otherwise authorized by the office of motor carrier services.

528.11(2) Printing. All tariffs and amendments or supplements thereto must be in book, pamphlet or looseleaf form of size 8 × 11 inches. They must be plainly printed, or reproduced by a durable process on good quality paper. No alteration in writing or erasure shall be made in any tariff or supplement thereto. A margin of not less than five-eighths inch, without any printing thereon, must be allowed at the binding edge of each tariff and supplement.

528.11(3) Filing date. All changes to tariffs and supplements must be filed in the office of motor carrier services and posted in a conspicuous place at the operator's principal place of business at least seven days prior to the effective date thereof, unless otherwise authorized by the office of motor carrier services. Tariffs, supplements, or adoption notices issued in connection with applications for liquid transport carriers, or the transfer of certificates from one liquid transport carrier to another, may become effective on a date not earlier than the date on which certificates are issued or transferred. Any new tariff shall be effective on the date specified on the certificate issued by the office of motor carrier services.

528.11(4) Copy for department. Issuing liquid transport carriers or their agents shall transmit to the department one copy of each tariff, supplement, or revised page. Each copy shall be included in one package accompanied by a letter of transmittal listing all tariffs enclosed and addressed to the office of motor carrier services at the address in subrule 528.1(1). All postage or express must be prepaid.

528.11(5) Title page. The title page of every tariff and supplement shall show in the order named:

- a. Each tariff shall be numbered in upper right-hand corner, beginning with number 1. Such number shall be shown as follows: Ia. D.O.T. No. . . .

When tariffs are issued canceling a tariff or tariffs previously filed, the Ia. D.O.T. number or numbers that have been canceled must be shown in the upper right-hand corner under the Ia. D.O.T. number of the new tariff.

- b. Supplements to a tariff in addition to showing the Ia. D.O.T. number of the tariff amended thereby shall be numbered beginning with number 1, and such information shall be shown in the upper right-hand corner. Supplements shall also show in the upper right-hand corner the number of any previous supplements canceled thereby and also the numbers of the supplements containing all changes made in the tariff.

- c. The name of each liquid transport carrier must be the same as that appearing in its certificate (or application if no certificate has been issued). If the liquid transport carrier is not a corporation and a trade name is used, the name of the individual or partners must precede the trade name.
- d. A brief description of the territory in which, or points from and to which, the tariff applies.
- e. Date of issue and date effective.
- f. Name, title and street address of the liquid transport carrier or agent by whom the tariff is issued.

528.11(6) *Contents of tariffs.* Tariffs shall contain in the order named:

a. A table of contents arranged alphabetically showing the number of the page on which each subject may be found. If a tariff contains so small a volume of matter that its title page or interior arrangement plainly indicates its contents, the table of contents may be omitted.

b. A complete index of all commodities on which specific rates are named therein, together with reference to the page and items in which they are shown. No index need be shown in tariffs of less than five pages or if the rates are alphabetically arranged by commodities.

c. An explanation of all abbreviations, symbols and reference marks used in the tariff.

d. When a tariff names rates by classes, a classification of articles must be published in the tariff or in a separate tariff. When a classification is published in a separate tariff, reference must be made thereto on the title page of the rate tariff as follows:

“Governed, except as otherwise provided herein, by the (here name) classification (showing issue agent) la. D.O.T. No supplements to or successive issues thereof.”

All liquid transport carriers shown as participating carriers in a rate tariff which is governed by a separate classification must be named as participating carriers in such separate classification.

e. Table of rates. All rates must be explicitly stated in cents or in dollars and cents, per gallon, per mile, per hour, per ton of 2,000 pounds, per truck load (of stated amount), or other definable measure.

f. Liquid transport carriers or their agents must not publish class or commodity rates which duplicate or conflict with rates published by or for account of such liquid transport carriers.

528.11(7) *Commodity rates.* Commodity rates on articles in stated truck-load or in less-than-truck-load quantities may be published, and where they differ from a published class rate basis, the lower rate shall take preference.

528.11(8) *Tariff changes.* All rates, charges and classifications which have been filed with the department must be allowed to become effective and remain in effect for a period of at least seven days before being changed, canceled or withdrawn, unless otherwise authorized by the office of motor carrier services.

All tariffs, supplements and revised pages (including classifications) shall indicate changes from the preceding issue by use of the following symbols:

or (R) to denote reductions

or (A) to denote increases

or (C) to denote changes, the result of which is neither an increase nor a reduction.

The proper symbol must be shown directly in connection with each change.

528.11(9) *Posting regulations.* Each liquid transport carrier must post and file at its principal place of business all of its tariffs, classifications and governing rules and regulations. All tariffs must be kept available for public inspection or examination at all reasonable times.

528.11(10) *Application for special permission.* Liquid transport carriers and agents when making application for permission to establish rates, charges, classification ratings or tariff rules on less than statutory seven days' notice shall use the form prescribed by the office of motor carrier services.

528.11(11) *Powers of attorney and participation notices.*

a. Whenever a liquid transport carrier desires to give authority to any attorney and agent to issue and file tariffs and supplements thereto in its stead, a power of attorney in the form prescribed by the department must be used.

b. Whenever a liquid transport carrier desires to participate in tariffs issued and filed by another liquid transport carrier or its agent, a power of attorney using the form prescribed by the department shall be issued in favor of such other liquid transport carrier.

c. The original of all powers of attorney shall be filed with the office of motor carrier services and a duplicate of the original sent to the agent or liquid transport carrier in whose favor the document is issued.

d. Whenever a liquid transport carrier desires to cancel the authority granted an agent or another liquid transport carrier by power of attorney, this may be done by a letter addressed to the department revoking the authority on 60 days' notice. For good cause the department may authorize a lesser notice. Copies of the notice must also be mailed to all interested parties by the carrier.

This rule is intended to implement Iowa Code section 327A.21.

761—528.12(327A) Lease of equipment.

528.12(1) *Lease defined.* Lease, for the purpose of these rules, means a written document providing for the exclusive possession, control and responsibility over the operation of the vehicle or vehicles by the lessee for a specific period of time as if the lessee were the owner. A copy of the lease must be carried in the leased equipment at all times.

528.12(2) *Number.* No liquid carrier may have more than one lease covering a specific piece of equipment in effect at a given time.

528.12(3) *Lease of vehicles to shippers or receivers.* No liquid carrier shall lease vehicles with or without drivers to shippers or receivers.

528.12(4) *Identification of equipment.* Each lessee shall properly identify each piece of equipment during the period of the lease as specified in rule 528.3(327A).

528.12(5) *Conditions.* Any lease of equipment by any liquid carrier except under the following conditions is prohibited:

a. Every lease must be in writing and signed by the parties thereto or their regular employees or agents duly authorized to act for them.

b. Every lease shall specify the time the lease begins and the time or circumstances on which it ends.

c. Every lease shall set out the specific consideration or method of determining compensation.

d. Every lease shall provide for the exclusive possession, control, and use of the equipment and for the complete assumption of responsibility in respect thereto by the lessee for the duration of the lease.

761—528.13(327A) Requirements for a certificate of public convenience and necessity.

528.13(1) *Basic entry requirements.* In order to obtain a certificate of public convenience and necessity authorizing transportation service under Iowa Code chapter 327A, the applicant must prove the following:

a. There is a present and future public need for the proposed service.

b. The applicant has and will continue to have the financial ability to conduct the proposed operations.

c. The applicant is otherwise fit to conduct the proposed operations.

528.13(2) *Need for the proposed service.* In order to prove that a public need exists for the proposed service, the applicant must submit verified statements from representative shippers who expect to use the proposed service. These supporting statements must include the following information:

a. For what purpose or occasion they expect to use the proposed service.

b. To and from what points they expect to use the proposed service.

c. How often they expect to use the proposed service.

d. The volumes of product they expect to ship using the proposed service.

Supporting shippers may also supply additional information explaining how the proposed service will meet needs that are not currently being met by existing service.

528.13(3) *Verification of support statements.* Statements filed by supporting shippers must be signed and verified by the supporting shipper, or an authorized employee thereof who is knowledgeable about the supporting shipper's business and operations. All statements must be notarized. The office of motor carrier services may require the supporting shipper to supply additional information, and may reject statements that, in the judgment of the office of motor carrier services, lack authenticity.

528.13(4) *Financial fitness.* To determine financial capability, the office of motor carrier services shall assess the applicant's overall liquidity, capital structure and profitability, based on the most recent income statement and balance sheet available. The office of motor carrier services shall consider the following ratios in assessing the applicant's overall financial capability:

a. Liquidity.

- (1) Current ratio: $\frac{\text{Current assets}}{\text{Current liabilities}}$
- (2) Quick ratio: $\frac{\text{Current assets less merchandise inventory}}{\text{Current liabilities}}$
- (3) Working capital ratio: $\frac{\text{Current assets less current liabilities}}{\text{Average daily operating expenses}}$

b. Capital structure.

- (1) Capitalization ratio: $\frac{\text{Net capitalizable assets}}{\text{Total capitalization including long-term debt}}$
- (2) Debt to equity ratio: $\frac{\text{Long-term debt}}{\text{Long-term debt plus equity}}$

c. Profitability.

- (1) Operating ratio: $\frac{\text{Operating Expenses}}{\text{Operating revenues}} \times 100$
- (2) Return on stockholder's equity: $\frac{\text{Net income after interest and taxes}}{\text{Stockholder's equity less intangibles}}$
- (3) Return on net transportation investment: $\frac{\text{Net operating income}}{\text{Average net investment plus working capital}}$

528.13(5) *Applicant's performance.* The office of motor carrier services shall evaluate each applicant's financial capability individually on the basis of overall performance in the three major categories analyzed. The applicant need not prove sufficiency under each ratio to be considered financially capable.

The applicant shall have the opportunity to submit additional relevant information addressing deficiencies in any of the areas identified by the office of motor carrier services. The staff of the office of motor carrier services shall advise applicants requesting assistance in providing the necessary financial information.

528.13(6) *General fitness.* The applicant must indicate a general knowledge of, and good faith intent to comply with, applicable state statutes and regulations. Proof of past failure to comply with those laws may constitute sufficient grounds upon which to restrict a grant of authority or deny an application.

528.13(7) *Burden of proof.* The applicant must make an initial showing that the entry requirements set forth in subrule 528.13(1) above have been met. If the application is protested, the burden shifts to protestants to present evidence tending to disprove a material element of the applicant's initial showing. Protestants challenging the application based on lack of need for the proposed service must make an affirmative showing that existing service is sufficient to meet the public convenience and necessity.

If the application is not protested, the office of motor carrier services may presume that existing service is not adequate for the points requested and that the proposed service is needed.

This rule is intended to implement Iowa Code sections 327A.2 and 327A.14.

[Filed 7/1/75]

[Filed 2/6/78, Notice 10/5/77—published 2/22/78, effective 3/29/78]

[Filed 10/17/80, Notices 8/20/80, 9/17/80—published 11/12/80, effective 12/17/80*]

[Filed 1/23/81, Notices 11/12/80, 12/24/80—published 2/18/81, effective 3/25/81]

[Filed 1/18/82, Notice 12/9/81—published 2/3/82, effective 3/15/82]

[Filed emergency 4/30/82—published 5/26/82, effective 4/30/82]

[Filed emergency after Notice 8/13/82, Notice 7/7/82—published 9/1/82, effective 8/16/82]

[Filed 7/15/83, Notice 4/27/83—published 8/3/83, effective 9/7/83]

[Filed 3/2/84, Notice 1/4/84—published 3/28/84, effective 5/2/84]

[Filed emergency 7/18/85—published 8/14/85, effective 7/19/85]

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

[Filed 6/7/91, Notice 4/17/91—published 6/26/91, effective 7/31/91]

[Filed emergency 3/26/92—published 4/15/92, effective 4/29/92]

[Filed 4/8/93, Notice 3/3/93—published 4/28/93, effective 6/2/93**]

[Filed 11/2/94, Notice 9/14/94—published 11/23/94, effective 12/28/94]

*Effective date of IAB 11/12/80 amendment [07,F] 13.8 delayed 70 days by the Administrative Rules Review Committee.

**Effective date of 528.1(1), 528.2(1), introductory paragraph, 528.3(1), introductory paragraph, 528.4(1), 528.4(6), 528.7, 528.11(3), 528.11(4), 528.11(11)"c" and "d," 528.13(2), 528.13(3), June 2, 1993, delayed 70 days by the Administrative Rules Review Committee at its meeting held May 12, 1993; delay lifted by this Committee June 8, 1993, effective June 9, 1993.