

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

**Proposing rulemaking related to special permits and commercial driver licensing
and providing an opportunity for public comment**

The Transportation Department hereby proposes to amend Chapter 511, “Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight,” and Chapter 607, “Commercial Driver Licensing,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 307.12, 321.176B, 321.187, 321.188, 321.207 and 321E.15; 2023 Iowa Acts, House File 335, section 2; 2023 Iowa Acts, House File 257; and 2023 Iowa Acts, House File 258, sections 2 and 3.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 321.176B, 321.187, 321.188, 321.207, 321E.9 and 321E.15; 2023 Iowa Acts, House File 335, section 2; 2023 Iowa Acts, House File 257; 2023 Iowa Acts, House File 258, sections 2 and 3; 2023 Iowa Acts, Senate File 153; 49 CFR 382.107; 49 CFR 382.501(a); 49 CFR 383.3(f); 49 CFR 383.5; 49 CFR 384.228; 49 CFR Part 383, Subpart E; 49 CFR Part 384, Subpart B.

Purpose and Summary

This proposed rulemaking makes the necessary changes within Chapters 511 and 607 to comply with 2023 Iowa Acts, House Files 257, 258, and 335, and Senate File 153, and adds a date certain to applicable citations to Title 49 of the Code of Federal Regulations to comply with 2023 Iowa Acts, House File 688, section 8. The Department will be reviewing whether other Code of Federal Regulations citations within these two chapters need to include a date certain in future rulemakings.

Senate File 153 amended Iowa Code section 321E.9 to create a new option for the Department to issue a single-trip permit for overweight loads in special or emergency situations.

The proposed amendments to Chapter 511 include the following:

- Incorporate the amended law into existing rules related to validity periods, issuance procedures, insurance requirements, and maximum dimensions for single-trip permits for indivisible loads.
- Provide an exemption from the existing gross axle weight limit for single-trip permits, if authorized under the newly amended Iowa Code section 321E.9(2).

House File 257 amended Iowa Code section 321.187 to allow the Department to establish rules regarding the entities eligible to become a third-party tester. Under prior law, the only entities eligible to be a third-party tester included the following: a community college, an Iowa-based motor carrier with permanent training facilities in the state, a public or regional transit system, and an Iowa nonprofit that serves as a trade association for Iowa motor carriers. The following proposed amendments pertain to rule 761—607.30(321) related to third-party testers:

- Allow the following entities to be eligible as a third-party tester: a college or university, a community college, a government agency, an Iowa business, a nonprofit, or a public or regional transit system.
- Add definitions for each entity.
- Eliminate the restriction that Iowa-based motor carriers may only administer tests to individuals enrolled in their training programs.
- Provide that any new third-party tester would be required to administer at least 50 percent of all knowledge and skills tests to Iowa applicants to maintain certification. However, third-party testers

would only be required to administer 10 percent of all knowledge and skills tests to Iowa applicants if the remainder of the tests are administered to current or prospective employees of the tester.

House File 258 amended Iowa Code sections 321.188 and 321.207 requiring the Department to implement federal Drug and Alcohol Clearinghouse (DACH) requirements for commercial driver's license (CDL) applicants and holders. Under federal regulations, states are required to comply with these requirements by November 18, 2024. The following proposed amendments pertain to rule 761—607.3(321) or new proposed rule 761—607.51(321):

- Establish the procedures that the Department will follow when issuing, renewing, upgrading or transferring any type of CDL or commercial learner's permit (CLP) and when downgrading a CDL or CLP holder due to a notification from the DACH that a driver is in a "prohibited" status.
- Clarify which individuals are subject to DACH requirements and clarify the scope of hearings and appeals concerning DACH-initiated denials or downgrades. Definitions concerning CDL downgrades and the DACH are included to conform with federal regulations.

House File 335 amended Iowa Code section 321.176B to expand eligibility for the restricted CDL to include drivers in all federally eligible farm-related service industries. Prior law only allowed suppliers of agricultural inputs or their employees to obtain a restricted CDL. The proposed amendments to rule 761—607.49(321) remove references to "agricultural inputs" and instead adopts the federal language for restricted CDL eligibility, which includes "employees of...agri-chemical businesses, custom harvesters, farm retail outlets and suppliers, and livestock feeders."

A Regulatory Analysis, including the proposed amendments, was published in the October 18, 2023, Iowa Administrative Bulletin. A public hearing was held on November 13, 2023. No public comments on the Regulatory Analysis were received at the hearing or in writing. The Administrative Rules Coordinator provided preclearance for publication in the Notice of Intended Action on November 21, 2023.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa beyond that of the legislation it is intended to implement.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found beyond that of the legislation it is intended to implement.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on January 30, 2024. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

If requested, a public hearing to hear requested oral presentations will be held as follows:

February 2, 2024
10 a.m.

First Floor Training Room
Iowa Department of Transportation
Motor Vehicle Division
6320 SE Convenience Boulevard
Ankeny, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George and advise of specific needs. The public hearing will be canceled without further notice if no oral presentation is requested.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Amend rule **761—511.4(321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321E.2, 321E.3, 321E.8, 321E.9 as amended by 2023 Iowa Acts, Senate File 153, and 321E.29B.

ITEM 2. Amend rule **761—511.5(321,321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.12, 321.122, 321E.8, 321E.9 as amended by 2023 Iowa Acts, Senate File 153, 321E.14, 321E.29, 321E.29A and 321E.30.

ITEM 3. Amend rule **761—511.6(321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321E.8, 321E.9 as amended by 2023 Iowa Acts, Senate File 153, 321E.13 and 321E.29B.

ITEM 4. Amend rule **761—511.13(321,321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.2, and 321E.3 and section 321E.9 as amended by 2023 Iowa Acts, Senate File 153.

ITEM 5. Amend paragraph **511.17(4)“a”** as follows:

a. For movement under a single-trip permit, the gross weight on any axle shall not exceed 20,000 pounds unless authorized under Iowa Code section 321E.9(2) as amended by 2023 Iowa Acts, Senate File 153.

ITEM 6. Amend rule **761—511.17(321,321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.463, 321E.7, 321E.8, 321E.9 as amended by 2023 Iowa Acts, Senate File 153, 321E.9A, 321E.26, 321E.29B and 321E.32.

ITEM 7. Amend rule **761—607.3(321)**, definition of “Commercial driver’s license downgrade,” as follows:

“Commercial driver’s license downgrade” or “CDL downgrade” means ~~either:~~ the same as defined in 49 CFR Section 383.5 (October 1, 2023).

~~1. The driver changes the driver’s self-certification of type of driving from non-excepted interstate to excepted interstate, non-excepted intrastate, or excepted intrastate driving, or~~

~~2. The department removed the CDL privilege from the driver’s license.~~

ITEM 8. Adopt the following new definition of “National drug and alcohol clearinghouse” in rule ~~761—607.3(321)~~:

“*National drug and alcohol clearinghouse*” means the database maintained by the Federal Motor Carrier Safety Administration as defined in 49 CFR Section 382.107 (October 1, 2023).

ITEM 9. Amend rule ~~761—607.3(321)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.1, 321.174, 321.188 as amended by 2023 Iowa Acts, House File 258, section 2, 321.191, 321.193, 321.207 as amended by 2023 Iowa Acts, House File 258, section 3, and 321.208.

ITEM 10. Adopt the following new paragraph ~~607.10(1)“e”~~:

e. 49 CFR Part 384, Subpart B (October 1, 2023).

ITEM 11. Amend rule ~~761—607.30(321)~~ as follows:

~~761—607.30(321)~~ Third-party testing.

~~607.30(1)~~ Purpose and definitions. The knowledge tests required by rule ~~761—607.27(321)~~ and the skills test required by rule ~~761—607.28(321)~~ may be administered by third-party testers and third-party test examiners approved and certified by the department. For the purpose of administering third-party testing and this rule, the following definitions shall apply:

“College or university” means an Iowa postsecondary school established under Iowa Code chapter ~~261B~~.

“Community college” means an Iowa community college established under Iowa Code chapter ~~260C~~.

“Iowa-based motor carrier” means a motor carrier or its subsidiary that has its principal place of business in the state of Iowa and operates a permanent commercial driver training facility in the state of Iowa.

“Iowa nonprofit corporation” means a nonprofit corporation that serves as a trade association for Iowa-based motor carriers.

“Government agency” means the same as defined in Iowa Code section 553.3.

“Iowa business” means a corporation, association, partnership, company, firm, or other aggregation of individuals that has an established place of business in this state and that is authorized to conduct business in this state.

“Knowledge test” means the knowledge tests required by rule ~~761—607.27(321)~~.

“Motor carrier” means the same as defined in 49 CFR Section 390.5.

“Nonprofit” means a corporation or association that satisfies the requirements under Iowa Code chapter ~~498 or 504~~.

“Permanent commercial driver training facility” means a facility dedicated to a program of commercial driving instruction that is offered to employees or potential employees of the motor carrier as incident to the motor carrier’s commercial operations, that requires at least 40 hours of instruction, and that includes fixed and permanent structures and facilities for the off-road portions of commercial driving instruction, including classroom, pretrip inspection, and basic vehicle control skills. A permanent commercial driver training facility must include a fixed and paved or otherwise hard-surfaced area for basic vehicle control skills testing that is permanently marked and capable of inspection and measurement by the department.

“Public transit system” means the same as defined in Iowa Code section 324A.1.

“Regional transit system” means the same as defined in Iowa Code section 324A.1.

“Skills test” means the skills test required by rule ~~761—607.28(321)~~.

“Subsidiary” means a company that is partly or wholly owned by a motor carrier that holds a controlling interest in the subsidiary company.

“Third-party test examiner” means the same as defined in Iowa Code section 321.187 as amended by ~~2022 Iowa Acts, Senate File 2337~~.

“Third-party tester” means the same as defined in Iowa Code section 321.187 as amended by ~~2022 Iowa Acts, Senate File 2337~~.

607.30(2) Certification of third-party testers.

a. The department may certify as a third-party tester ~~a community college, Iowa-based motor carrier, Iowa nonprofit corporation, public transit system or regional transit system~~ testers to administer knowledge tests and skills tests. ~~A community college, Iowa-based motor carrier, Iowa nonprofit corporation, public transit system or regional transit system~~ third-party tester must be one of the following entities:

- (1) A college or university.
- (2) A community college.
- (3) A government agency.
- (4) An Iowa business.
- (5) A nonprofit.
- (6) A public transit system or regional transit system.

b. An entity listed in paragraph 607.30(2)“*a*” that seeks certification as a third-party tester shall contact the motor vehicle division and schedule a review of the proposed testing program, which shall include the proposed testing courses and facilities, information sufficient to identify all proposed third-party test examiners, and any other information necessary to demonstrate compliance with 49 CFR Parts 383 and 384 as amended to October 1, 2023, applicable to knowledge and skills testing.

b. c. ~~No community college, Iowa-based motor carrier, Iowa nonprofit corporation, public transit system or regional transit system~~ entity shall be certified to conduct third-party testing unless and until the ~~community college, Iowa-based motor carrier, Iowa nonprofit corporation, public transit system or regional transit system~~ entity enters an agreement with the department that meets the requirements of 49 CFR Section 383.75 and demonstrates sufficient ability to conduct knowledge and skills tests in a manner that consistently meets the requirements of 49 CFR ~~Parts~~ Part 383, Subpart E, and 49 CFR Part 384, Subpart B, applicable to knowledge and skills testing.

e. d. The department shall issue a certified third-party tester a certificate of authority that identifies the classes and types of vehicles for which knowledge and skills tests may be administered. The certificate shall be valid for the duration of the agreement executed pursuant to paragraph 607.30(2)“*b*,” 607.30(2)“c,” unless revoked by the department for engaging in fraudulent activities related to conducting knowledge and skills tests or failing to comply with the requirements, qualifications, and standards of this chapter, the agreement, or 49 CFR ~~Parts~~ Part 383, Subpart E, and 49 CFR Part 384, Subpart B, applicable to knowledge and skills testing.

e. The department shall revoke a certificate of authority issued after July 1, 2023, to a third-party tester if the third-party tester fails to administer a minimum of 50 percent of all knowledge and skills tests given in a calendar year to Iowa applicants. However, the department shall not revoke a certificate of authority of a third-party tester who administers a minimum of 10 percent of all knowledge and skills tests given in a calendar year to Iowa applicants if the remainder of the tests are given to current or prospective employees of the third-party tester. For the purpose of this paragraph, an “Iowa applicant” is defined as an individual who holds a valid commercial learner’s permit, commercial driver’s license, noncommercial driver’s license, or nonoperator identification card issued by the department or who otherwise qualifies as a resident of this state under Iowa Code section 321.1A(1).

607.30(3) Certification of third-party test examiners.

a. A certified third-party tester shall not employ or otherwise use as a third-party test examiner a person who has not been approved and certified by the department to administer knowledge or skills tests. Each certified third-party tester shall submit for approval the names of all proposed third-party test examiners to the department. The department shall not approve as a third-party test examiner a person who does not meet the requirements, qualifications, and standards of 49 CFR ~~Parts~~ Part 383, Subpart E, and 49 CFR Part 384, Subpart B, applicable to knowledge and skills testing, including but not limited to all required training and examination and a nationwide criminal background check. The criteria for passing the nationwide criminal background check shall include no felony convictions within the last ten years and no convictions involving fraudulent activities.

b. No change.

c. The department shall revoke the certificate of authority for a third-party test examiner to administer skills tests if the person holding the certificate does not administer skills tests to at least ten different applicants per calendar year; does not successfully complete the refresher training required by 49 CFR Section 384.228 every four years; is involved in fraudulent activities related to conducting knowledge or skills tests; or otherwise fails to comply with and meet the requirements, qualifications and standards of this chapter or 49 CFR ~~Parts~~ Part 383, Subpart E, and 49 CFR Part 384, Subpart B, applicable to knowledge and skills testing. Notwithstanding anything in this paragraph to the contrary, as provided in 49 CFR Section 383.75, if the person does not administer skills tests to at least ten different applicants per calendar year, the certificate will not be revoked for that reason if the person provides proof of completion of the examiner refresher training in 49 CFR Section 384.228 to the department or successfully completes one skills test under the observation of a department examiner.

d. The department shall revoke the certificate of authority for a third-party test examiner to administer knowledge tests if the person holding the certificate does not successfully complete the refresher training required by 49 CFR Section 384.228 every four years, is involved in fraudulent activities related to conducting knowledge or skills tests or otherwise fails to comply with and meet the requirements, qualifications and standards of this chapter or 49 CFR ~~Parts~~ Part 383, Subpart E, and 49 CFR Part 384, Subpart B, applicable to knowledge testing.

e. and f. No change.

607.30(4) No change.

~~**607.30(5)** *Limitation applicable to Iowa-based motor carriers.* An Iowa-based motor carrier certified as a third-party tester may only administer the knowledge or skills test to persons who are enrolled in the Iowa-based motor carrier's commercial driving instruction program and shall not administer knowledge or skills tests to persons who are not enrolled in that program.~~

~~**607.30(6)** **607.30(5)** *Training and refresher training for third-party test examiners.* All training and refresher training required under this rule shall be provided by the department, in form and content that meet the recommendations of the American Association of Motor Vehicle Administrators' International Third-Party Examiner/Tester Certification Program.~~

This rule is intended to implement Iowa Code section 321.187 as amended by ~~2022 Iowa Acts, Senate File 2337, section 1~~ 2023 Iowa Acts, House File 257.

ITEM 12. Amend rule 761—607.49(321) as follows:

761—607.49(321) Restricted commercial driver's license.

~~**607.49(1)** *Scope.* This rule pertains to the issuance of restricted commercial driver's licenses to suppliers or employees of suppliers of agricultural inputs. Issuance is the following designated farm-related service industries: agrichemical businesses, custom harvesters, farm retail outlets and suppliers and livestock feeders as permitted by 49 CFR 383.3(f). A restricted commercial driver's license shall meet all requirements of a regular commercial driver's license, as set out in Iowa Code chapter 321 and this chapter of rules, except as specified in this rule.~~

~~**607.49(2)** *Agricultural inputs.* The term "agricultural inputs" means suppliers or applicators of agricultural chemicals, fertilizer, seed or animal feeds.~~

~~**607.49(3)** **607.49(2)** *Validity.*~~

a. A restricted commercial driver's license allows the licensee to drive a commercial motor vehicle for agricultural input purposes. The license is valid to:

(1) Operate Group B and Group C commercial motor vehicles including tank vehicles and vehicles equipped with air brakes, except passenger vehicles.

(2) Transport the hazardous materials listed in paragraph ~~607.49(3)"b."~~ 607.49(2)"b."

(3) Operate only during the current, validated seasonal period.

(4) Operate between the employer's place of business and the farm currently being served, not to exceed 150 miles.

b. and c. No change.

~~**607.49(4)** **607.49(3)** *Requirements.*~~

a. No change.

b. The applicant must have a good driving record for the most recent two-year period, as defined in subrule ~~607.49(5)~~ 607.49(4).

c. No change.

~~607.49(5)~~ 607.49(4) *Good driving record.* A “good driving record” means a driving record showing:

a. to d. No change.

~~607.49(6)~~ 607.49(5) *Issuance.*

a. to h. No change.

This rule is intended to implement Iowa Code section 321.176B as amended by 2023 Iowa Acts, House File 335, section 2.

ITEM 13. Renumber rule ~~761—607.51(321)~~ as ~~761—607.52(321)~~.

ITEM 14. Adopt the following new rule 761—607.51(321):

761—607.51(321) National drug and alcohol clearinghouse.

607.51(1) *Applicability.* This rule applies to:

- a. An applicant for or holder of a commercial learner’s permit,
- b. An applicant for or holder of a commercial driver’s license,
- c. An applicant seeking to transfer a commercial driver’s license from a prior state of domicile to the state of Iowa,
- d. An applicant seeking renewal of a commercial driver’s license,
- e. An applicant seeking to upgrade a commercial driver’s license or add an endorsement authorizing the operation of a commercial motor vehicle not covered by the current commercial driver’s license, or
- f. An applicant for or holder of a restricted commercial driver’s license.

607.51(2) *Issuance procedures.* Prior to issuing the license or permit, the department shall request information from the national drug and alcohol clearinghouse to determine if the person is prohibited from operating a commercial motor vehicle pursuant to 49 CFR 382.501(a). The department shall not issue, renew, transfer, or upgrade the license or permit if the person is prohibited from operating a commercial motor vehicle pursuant to 49 CFR 382.501(a). However, this subrule shall not take effect prior to the date established by the Federal Motor Carrier Safety Administration in 49 CFR Section 383.73 for state driver’s license agency compliance with national drug and alcohol clearinghouse requirements.

607.51(3) *CDL downgrade.* Upon receiving notification that pursuant to 49 CFR 382.501(a) the person is prohibited from operating a commercial motor vehicle, the department shall downgrade the license or permit and record the downgrade on the CDLIS driver record within 60 days of the department’s receipt of such notification. However, this subrule shall not take effect prior to the date established by the Federal Motor Carrier Safety Administration in 49 CFR Section 383.73 for state driver’s license agency compliance with national drug and alcohol clearinghouse requirements. The downgrade will be initiated and completed as follows:

a. The department shall give the person written notice that the person is prohibited from operating a commercial motor vehicle due to notification the department received from the national drug and alcohol clearinghouse that the person has engaged in conduct prohibited by 49 CFR 382.501(a) and that upon receipt of the notification, the department initiated a downgrade of the person’s CLP or CDL.

b. If the department receives notification that the person is no longer prohibited from operating a commercial motor vehicle before the downgrade is completed, the department shall terminate the downgrade process without removing the CLP or CDL privilege from the driver’s license, transmit the information to the person’s CDLIS driver record, and send written notice to the person.

c. If, after the downgrade is completed, the department receives notification from the national drug and alcohol clearinghouse that a driver is no longer prohibited from operating a commercial motor vehicle, the department shall record the end of the downgrade on the person’s CDLIS driver record, reinstate the CLP or CDL privilege to the driver’s license, and send written notice to the person.

d. If, after the downgrade is completed, the department receives notification from the national drug and alcohol clearinghouse that the person was erroneously identified as prohibited from operating a commercial motor vehicle, the department shall reinstate the CLP or CDL privilege to the driver's license as expeditiously as possible and remove from the CDLIS driver record and driving record any reference related to the person's erroneous prohibited status.

607.51(4) *Limitation on hearing and appeal.* An informal settlement, hearing, or appeal to contest the downgrade is limited to a determination of whether the facts required by Iowa Code sections 321.188 and 321.207 and this rule are true. The merits of the information conveyed by the national drug and alcohol clearinghouse to the department shall not be considered.

This rule is intended to implement Iowa Code section 321.188 as amended by 2023 Iowa Acts, House File 258, section 2, and section 321.207 as amended by 2023 Iowa Acts, House File 258, section 3.