

TRANSPORTATION DEPARTMENT[761]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapters 511 and 607
“Commercial Driver’s Licenses and Commercial Learner’s Permits”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321.176B as amended by 2023 Iowa Acts, House File 335, section 2; 321.187 as amended by 2023 Iowa Acts, House File 257; 321.188 as amended by 2023 Iowa Acts, House File 258, section 2; 321.207 as amended by 2023 Iowa Acts, House File 258, section 3; and 321E.15

State or federal law(s) implemented by the rulemaking: Iowa Code section 321.176B as amended by 2023 Iowa Acts, House File 335, section 2; 321.187 as amended by 2023 Iowa Acts, House File 257; 321.188 as amended by 2023 Iowa Acts, House File 258, section 2; 321.207 as amended by 2023 Iowa Acts, House File 258, section 3; 321E.9 as amended by 2023 Iowa Acts, Senate File 153; and 321E.15; and 49 CFR 382.501(a); 49 CFR Section 383.107; 49 CFR 383.3(f); 49 CFR Section 383.5; 49 CFR Section 384.228; 49 CFR Part 383, Subpart E; and 49 CFR Part 384, Subpart B

Public Hearing

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

November 13, 2023
10 a.m.

Motor Vehicle Division, First Floor Training Room
6310 SE Convenience Boulevard
Ankeny, Iowa

Public Comment

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

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Ankeny, Iowa 50021
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Purpose and Summary

The Department proposes to update Chapter 511 to conform the rules with 2023 Iowa Acts, Senate File 153, which amends Iowa Code section 321E.9 to provide additional flexibility for the Department or local authorities to issue a single-trip permit for indivisible overweight loads in special or emergency situations.

The Department also proposes to update Chapter 607 to conform the rules with 2023 Iowa Acts, House Files 257, 258 and 335. These proposed amendments do the following:

1. Allow additional entities to be eligible as a third-party commercial driver’s license (CDL) knowledge and skills tester, eliminate testing restrictions on Iowa-based motor carriers, and set requirements for new third-party testers for the percentage of tests provided to be for Iowa residents, in accordance with House File 257.
2. Establish the procedures the Department will follow to implement mandatory federal regulations for the national Drug and Alcohol Clearinghouse (DACH) as they relate to the issuance of CDLs and commercial learner’s permits (CLPs), in accordance with House File 258.
3. Adopt the federal language for restricted commercial driver’s licenses, which expands eligibility for CDL exemptions for more individuals employed in agricultural industries than Iowa law previously allowed, in accordance with Senate File 153.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

The proposed amendments do not create additional costs for any classes of persons beyond what was anticipated as a result of the legislation. The legislation (House File 257 and Senate File 153) creates costs for two classes of persons:

(1) Colleges, universities, community colleges, government agencies, Iowa businesses, nonprofits and public or regional transit systems that choose to become third-party testers will have staffing or operational expenses associated with providing testing services. However, costs can be offset by charging a fee for testing services, determined by the third-party tester.

(2) Individuals who seek to obtain a single-trip permit to transport overweight indivisible loads in special or emergency situations will need to purchase the permit from the Department and may be subject to additional fees under Iowa Code section 321E.14 and subrule 511.5(15) for escorts, inspections, movement of buildings or obstructions, and other fair and reasonable costs for measures necessary to avoid damage to bridges and structures. The cost of the permit issued by the Department is \$35 (Iowa Code section 321E.14(1) and subrule 511.5(9)).

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

The proposed amendments that implement this legislation do not create additional benefits beyond what was anticipated as a result of legislation. The legislation created benefits for four classes of persons:

(1) Colleges, universities, government agencies, Iowa businesses, and nonprofits that were not previously eligible to become third-party testers will benefit by having the option to administer CDL knowledge and skills tests to applicants, including the public or current/prospective employees (House File 257).

(2) CDL applicants will benefit by having access to additional options for testing due to the increased availability of new third-party testers and reduced wait times for Department services for CLP and CDL issuance (House File 257).

(3) Businesses and employees of agrichemical businesses, custom harvesters, farm retail outlets and suppliers, and livestock feeders will benefit by being exempt from full CDL requirements and eligible for the restricted CDL. The industry will subsequently benefit from having an expanded pool of qualified drivers who can assist farmers during certain peak agricultural seasonal periods such as planting or harvesting (House File 335).

(4) Individuals or businesses seeking to move indivisible overweight loads in a single trip for special or emergency situations who would otherwise be unable to legally transport the load will benefit from being able to purchase a permit to transport these loads (Senate File 153).

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

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

House File 257 provides positive quantitative impacts to colleges, universities, community colleges, government agencies, Iowa businesses, nonprofits, and public or regional transit systems, which will benefit by being able to assess a fee of their choosing to administer CDL knowledge and skills testing.

House File 258 will have a positive quantitative impact to all Iowans and the traveling public by ensuring Iowa is compliant with federal regulations to avert the loss of federal highway funds under 49 U.S.C. 31314 and 49 CFR 384.401 (National Highway Performance Program and the Surface Transportation Block Grant Program). These federal funds have a positive quantitative impact to the Road Use Tax Fund and the Primary Road Fund and ensure the Department maintains adequate funding for highway projects.

Senate File 153 will have a quantitative impact to permit applicants as described in the “costs” section above.

- Qualitative description of impact:

There are no additional qualitative impacts that were not already anticipated as a result of the legislation.

House File 257 provides qualitative impacts to Iowans by enabling additional third-party CDL testing, which will expand CDL testing availability and reduce customer wait times for appointments, document review, phone calls and other CDL-related services provided by the Department.

House File 335 provides qualitative impacts to farmers and employers within the agricultural industry and their employees by enabling them to obtain a restricted CDL, which is exempt from full CDL knowledge and skills testing.

Senate File 153 provides qualitative impacts to individuals and businesses who will now have an option to transport indivisible overweight loads that were previously ineligible for a trip permit.

3. Costs to the State:

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

There are no additional implementation or enforcement costs in the amendments that were not already anticipated as a result of the legislation.

House File 257 requires that the Department conduct initial training and certification of all CDL skills test examiners employed by new third-party testers, refresher training every four years, approval of testing sites, and mandatory skills test auditing of each examiner every one to two years. The Department estimates that 20 new entities would desire to become third-party CDL testers with a total of approximately 40 CDL skills test examiners employed by the new testers. The costs associated with training and setting up any new third-party testers will be absorbed by existing staff who are responsible for CDL auditing and training, but the operational impact will come from the Motor Vehicle Division Operations appropriation.

House File 258 will require software programming efforts. The Motor Vehicle Division will absorb these efforts within its existing resources, spread throughout the next two years.

House File 335 does not require any implementation or enforcement costs to be borne by the Department.

Senate File 153 will not require any implementation and enforcement costs to be borne by the Department or other agencies since the issuance of these single-trip permits will be very infrequent, and the permit-issuing authority will assess the permittee for fair and reasonable costs associated with the load.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues in the amendments that were not already anticipated as a result of the legislation.

House Files 257 and 335 have no anticipated impact on state revenue.

House File 258 will have a positive annual fiscal impact on state revenues due to retained federal aid-highway funds in the amounts of \$22.2 million in fiscal year 2024 and \$44.4 million in fiscal year 2025 and each year thereafter.

Senate File 153 will not have an impact on state revenue since the issuance of these single-trip permits will be very infrequent and the permit costs \$35. Assuming the Department issues two permits a year, the revenue will total \$70 annually.

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

Implementing House File 257 in the proposed rulemaking will provide benefits in the form of time savings and reduced customer wait times for appointments, document review, phone calls and other services provided by the Department and in the form of increased access to CDL testing by the general public. There would be no monetary cost for inaction, and the Department and existing third-party testers would continue operating in their current manner. However, the cost of failing to implement House File 257 would be that the Department would be unable to authorize additional third-party testers and expand access to testing for CDL applicants.

Failure to implement House File 258 in the proposed rulemaking would create a significant negative financial impact to the Department and local governments through the loss of federal-aid highway funds to the Department, and a significant operational impact to the 187,000 licensed CDL/CLP holders through the loss of ability to issue federally recognized commercial driving privileges.

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

Since the proposed amendments do not impose any requirements beyond those contained in authorizing legislation, no less costly or less intrusive methods exist to achieve this purpose.

6. Alternative methods considered by the agency:

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

The Department did not consider alternative methods for the proposed amendments that implement House File 258 and House File 335. The Department is required by federal law to implement these regulations as they are written.

For House File 257, the Department considered decreasing or increasing the amount of the bond a third-party tester is required to maintain. The amount of bond required prior to the enactment of House File 257 was \$50,000. The requirement that third-party testers maintain a bond (in the amount the State determines) is established in 49 CFR 383.75.

For House File 257, the Department considered different percentage thresholds for the number of knowledge and skills tests that should be administered specifically to Iowa applicants by third-party testers in a calendar year in order to maintain certification as a third-party tester. The Department also considered not specifying a minimum percentage of Iowa applicants that must be tested by the tester in order to maintain certification, which is consistent with what the current administrative rules in Chapter 607 provide.

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

For the bond amount (House File 257), the Department surveyed the bond amounts other state driver's license agencies require third-party testers to maintain in order to research how Iowa's requirement compared. From the research, the Department found that Iowa's requirement of a \$50,000 bond was an amount similar to what is required in many other states. Because the \$50,000 amount is in line with what many other states require, the Department rejected the alternative of changing the amount.

For the third-party testing percentage threshold (House File 257), the Department reviewed data from current third-party testers (community colleges, Iowa-based motor carriers, Iowa Motor Truck Association (IMTA), and public/regional transit agencies). The data showed the following out-of-state testing percentages:

- (1) Community colleges: 0-29 percent of tests administered to out-of-state students.
- (2) Public/regional transit: 0 percent of tests administered to out-of-state students.
- (3) IMTA: 0 percent of tests administered to out-of-state students.
- (4) Iowa-based motor carriers: 93-96 percent of tests administered to out-of-state students.

As a result, the Department determined that a minimum of 50 percent was an equitable figure for the number of knowledge and skills tests that should be administered to Iowa applicants in a calendar year for most third-party testers. The Department also determined that a minimum of 10 percent for third-party testers that seek to test out-of-state employees or prospective employees would ensure that employers are able to maintain their operations in Iowa, which often necessitates recruiting, training, and hiring out-of-state drivers. Further, the proposed amendments ensure that the Iowa-based motor carriers that are currently certified as third-party testers may continue their operations and do not need to meet the 10 percent threshold at this time as they are "grandfathered" in.

The Department believes that these thresholds balance the goal of House File 257 to expand access for CDL testing for Iowans with the economic interests of third-party testers that may wish to provide a large volume of tests in order to maximize their earning potential as a third-party tester and to train and recruit employees from other states. The Department also considered the significant amount of time and resources required to train and certify third-party examiners and determined it was within the goal of the legislation to ensure those resources were utilized for the benefit of Iowans to the greatest extent possible.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed amendments have no impact on small business beyond what was anticipated as a result of legislation.

House File 257 will provide a positive impact to Iowa small businesses that are interested in becoming third-party testers. However, the Department is unable to exempt or establish less stringent training or certification requirements for small businesses since they are federally mandated requirements that the Department does not have the authority to alter.

Text of Proposed Rulemaking

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~~ ~~† 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 Part 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 sections 321.188 as amended by 2023 Iowa Acts, House File 258, section 2, and 321.207 as amended by 2023 Iowa Acts, House File 258, section 3.