

Commission Minutes
November 8, 2022



IOWA TRANSPORTATION COMMISSION
Meeting Agenda / Commission Orders

November 8, 2022
 Materials Conference Room
 Ames DOT Complex

ITEM NUMBER	TITLE	SUBMITTED BY	PAGE
D-2023-30 1:00 p.m.	* Approve Minutes of the October 11, 2022 Commission Meeting Commission Comments DOT Comments	Danielle Madden	3
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AS-2023-32	* Administrative Rules - 761 IAC 180, Public Improvement Quotation Process for Governmental Entities for Vertical Infrastructure	Lee Wilkinson	11
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TD-2023-35	* Administrative Rules - 761 IAC 800, 810, and 821	Stuart Anderson	23
TD-2023-36 1:10 p.m.	* Administrative Rules - 761 IAC 811, 812, and 820 Adjourn	Stuart Anderson	29

*Action Item

On Tuesday, November 8, the Commission and staff will meet informally at 9:30 a.m. in the Materials Conference Room at the DOT complex in Ames. Transportation-related matters will be discussed but no action will be taken.

DEPARTMENT OF TRANSPORTATION
COMMISSION ORDER

Division/Bureau/Office Director's Office Order No. D-2023-30
Submitted by Danielle Madden Phone No. 515-239-1919 Meeting Date November 8, 2022
Title Approve Minutes of the October 11, 2022 Commission Meeting

DISCUSSION/BACKGROUND:

PROPOSAL/ACTION RECOMMENDATION:

It is recommended the Commission approve the minutes of the October 11, 2022 Commission meeting.

COMMISSION ACTION:

Moved by Kathy Fehrman Seconded by Sally Stutsman

Division Director Legal State Director

	Aye	Vote Nay	Pass
Arnold	<u>x</u>	_____	_____
Fehrman	<u>x</u>	_____	_____
Gaesser	<u>x</u>	_____	_____
Juckette	<u>x</u>	_____	_____
Rielly	<u>x</u>	_____	_____
Stutsman	<u>x</u>	_____	_____
Yanney	<u>x</u>	_____	_____

D-2023-30

Commissioner Fehrman made a motion to approve the minutes as written. Commissioner Stutsman seconded the motion. Motion passed unanimously.

Commission Comments

DOT Comments

**DEPARTMENT OF TRANSPORTATION
COMMISSION ORDER**

Division/Bureau/Office Motor Vehicle Division Order No. MV-2023-31
 Submitted by Melissa Gillett Phone No. 515-237-3010 Meeting Date November 8, 2022
 Title Administrative Rules – 761 IAC Chapter 607, Commercial Driver Licensing

DISCUSSION/BACKGROUND:

This proposed rule making updates Chapter 607 to conform the rules with 2022 Iowa Acts, Senate File 2337. This legislation amends Iowa Code section 321.187 to authorize public transit systems and regional public transit systems to be third-party commercial driver’s license (CDL) testers, and to allow all third-party testers to administer the CDL knowledge test in addition to the CDL skills test. Under this legislation, any CDL knowledge or skills test offered by a third party must be the same as the test administered by the department.

The proposed amendments provide that public and regional transit systems may be certified by the department to be third-party CDL testers and allow all third-party testers to be certified by the department to administer CDL knowledge tests in addition to CDL skills tests.

This proposed rule making adds a new paragraph concerning the revocation of a certificate of authority issued by the department to a third-party knowledge test examiner if the examiner does not meet certain minimum federal requirements relating to examiner qualifications, training and protocols for suspected fraudulent activity. The proposed amendments also require the department to revoke the certificate of authority for a third-party test examiner to administer knowledge or skills tests if the examiner fraudulently administers either type of test.

The public comment period ended on October 11, 2022. The department did not receive any public comments or requests for oral presentations.

A complete summary explaining the proposed amendments is included in the attached Notice of Intended Action.

PROPOSAL/ACTION RECOMMENDATION:

It is recommended that the Commission approve the rule amendments included in the attached Notice of Intended Action.

COMMISSION ACTION:

Moved by Linda Juckette Seconded by Raymond Gaesser

	Aye	Vote Nay	Pass
Arnold	<u>x</u>	<u> </u>	<u> </u>
Fehrman	<u>x</u>	<u> </u>	<u> </u>
Gaesser	<u>x</u>	<u> </u>	<u> </u>
Juckette	<u>x</u>	<u> </u>	<u> </u>
Rielly	<u>x</u>	<u> </u>	<u> </u>
Stutsman	<u>x</u>	<u> </u>	<u> </u>
Yanney	<u>x</u>	<u> </u>	<u> </u>

 Division Director Legal State Director

MV-2023-31

Melissa Gillett, Motor Vehicle Division Director; Thank you Chairman Arnold, the amendments to chapter 607 conform legislative changes that were made in 2022, which authorize public and regional transit systems to become third party commercial drivers license testers. Additionally, the rules update references to align with federal regulations, clarify that a bond requirement only applies to non-government third party testers, and updates language regarding when the Department is required to revoke a third party tester's ability to provide testing services.

It is recommended that commission approve the proposed rule changes to chapter 607.

Commissioner Juckette made a motion to approve the rule amendment to Chapter 607. Commissioner Gaesser seconded the motion. Motion passes unanimously.

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

**Proposing rule making related to third-party commercial driver’s license testers
and providing an opportunity for public comment**

The Transportation Department hereby proposes to amend Chapter 607, “Commercial Driver Licensing,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 321.187.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 321.187 as amended by 2022 Iowa Acts, Senate File 2337.

Purpose and Summary

This proposed rule making updates Chapter 607 to conform the rules with 2022 Iowa Acts, Senate File 2337. This legislation amends Iowa Code section 321.187 to authorize public transit systems and regional public transit systems to be third-party commercial driver’s license (CDL) testers, and to allow all third-party testers to administer the CDL knowledge test in addition to the CDL skills test. Under this legislation, any CDL knowledge or skills test offered by a third party must be the same as the test administered by the Department.

The proposed amendments provide that public and regional transit systems may be certified by the Department to be third-party CDL testers and allow all third-party testers to be certified by the Department to administer CDL knowledge tests in addition to CDL skills tests. The proposed amendments adopt definitions for “knowledge test,” “public transit system” and “regional transit system” and amend a few existing definitions to align with the definitions amended within Iowa Code section 321.187. To implement and align the existing rules with the expanded third-party testing functions, the proposed amendments update references to skills testing to include knowledge testing and update references to the Federal Motor Carrier Safety Regulations in 49 CFR Parts 383 and 384.

This proposed rule making clarifies that the existing requirement to maintain a \$50,000 bond is applicable only to a third-party tester that is not a government agency in accordance with federal regulations.

The proposed amendments add a new paragraph concerning the revocation of a certificate of authority issued by the Department to a third-party knowledge test examiner if the examiner does not meet certain minimum federal requirements relating to examiner qualifications, training and protocols for suspected fraudulent activity. The proposed amendments also require the Department to revoke the certificate of authority for a third-party test examiner to administer knowledge or skills tests if the examiner fraudulently administers either type of test.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa beyond any impact anticipated by the legislation.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making 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 rule making 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 rule making must be received by the Department no later than 4:30 p.m. on October 11, 2022. 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 oral presentations will be held on October 13, 2022, via conference call at 10 a.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on October 11, 2022, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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 rule making.

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 rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making 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 rule-making actions are proposed:

ITEM 1. 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 ~~skills~~ test examiners approved and certified by the department. For the purpose of administering third-party ~~skills~~ testing and this rule, the following definitions shall apply:

“*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.

“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.

“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 skills test examiner” means the same as defined in ~~49 CFR Section 383.5~~ Iowa Code section 321.187 as amended by 2022 Iowa Acts, Senate File 2337.

“Third-party tester” means the same as defined in ~~49 CFR Section 383.5~~ 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, ~~or~~ Iowa nonprofit corporation, public transit system or regional transit system to administer knowledge tests and skills tests. A community college, Iowa-based motor carrier, ~~or~~ Iowa nonprofit corporation, public transit system or regional transit system 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 skills test examiners, and any other information necessary to demonstrate compliance with ~~49 CFR Section 383.75~~ Parts 383 and 384 applicable to knowledge and skills testing.

b. No community college, Iowa-based motor carrier, ~~or~~ Iowa nonprofit corporation, public transit system or regional transit system shall be certified to conduct third-party testing unless and until the community college, Iowa-based motor carrier, ~~or~~ Iowa nonprofit corporation, public transit system or regional transit system 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 Section 383.75~~ Parts 383 and 384 applicable to knowledge and skills testing.

c. 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,” 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 Section 383.75~~ Parts 383 and 384 applicable to knowledge and skills testing.

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

a. A certified third-party tester shall not employ or otherwise use as a third-party skills 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 skills test examiners to the department. The department shall not approve as a third-party skills test examiner a person who does not meet the requirements, qualifications, and standards of ~~49 CFR Sections 383.75 and 384.228~~ Parts 383 and 384 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. The department shall issue a certificate of authority for each person certified as a third-party skills test examiner that identifies the certified third-party tester for which the person will administer knowledge or skills tests and the classes and types of vehicles for which the person may administer knowledge or skills tests. The certificate shall be valid for a period of four years from the date of issuance of the certificate.

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 Sections 383.75 and 384.228 Parts 383 and 384 applicable to 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 383 and 384 applicable to knowledge testing.

d. e. A third-party skills test examiner certified by the department to administer skills tests who is also a skills instructor shall not administer a skills test to an applicant who received skills training from that third-party skills test examiner.

e. f. A third-party skills test examiner may only administer CDL skills tests for the examiner's primary employer, unless authorized by the department to administer CDL skills tests for another county or third-party tester.

607.30(4) Bond. As a condition of certification in accordance with 49 CFR Section 383.75, ~~an Iowa-based motor carrier or Iowa nonprofit corporation~~ a third-party tester that is not a government agency as defined in Iowa Code section 553.3 must maintain a bond in the amount of \$50,000 to pay for the retesting of drivers in the event that the third-party tester or one or more of its third-party skills test examiners are involved in fraudulent activities related to conducting skills tests of CDL applicants for a commercial driver's license.

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) Training and refresher training for third-party skills 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.

ITEM 2. Amend rule 761—607.31(321) as follows:

761—607.31(321) Test results.

607.31(1) to 607.31(3) No change.

607.31(4) Skills Knowledge and skills test results from certified third-party testers. A third-party skills tester certified under rule 761—607.30(321) shall transmit the skills test results of tests administered by the third-party tester through secure electronic means determined by the department. The department may retest any person who has passed a knowledge or skills test administered by a

certified third-party tester if it appears to the department that the knowledge or skills test administered by the third-party tester was administered fraudulently or improperly, and as needed to meet the third-party skills test examiner oversight requirements of 49 CFR ~~Section 383.75(a)(5)~~ Parts 383 and 384 applicable to knowledge and skills testing.

607.31(5) No change.

This rule is intended to implement Iowa Code sections 321.180, 321.186, 321.187 as amended by 2022 Iowa Acts, Senate File 2337, section 1, 321.188 and 321.201.

DEPARTMENT OF TRANSPORTATION
COMMISSION ORDER

Administrative Services Division/
Division/Bureau/Office Support Services Bureau Order No. AS-2023-32
Submitted by Lee A. Wilkinson Phone No. 515-239-1340 Meeting Date November 8, 2022
Title Administrative Rules – 761 IAC Chapter 180, Public Improvement Quotation Process for
Governmental Entities for Vertical Infrastructure

DISCUSSION/BACKGROUND:

The proposed amendments within Chapter 180 add a new definition of “public improvement for vertical infrastructure” and remove unneeded definitions for “public improvement” and “repair or maintenance work.” Other changes within the chapter are due to these definition changes.

A complete summary explaining the proposed amendments is included in the attached Notice of Intended Action.

The public comment period ended on October 25, 2022. The department did not receive any public comments or requests for oral presentations.

PROPOSAL/ACTION RECOMMENDATION:

It is recommended that the Commission approve the rule amendments included in the attached Notice of Intended Action.

COMMISSION ACTION:

Moved by Kathy Fehrman Seconded by Sally Stutsman

	Aye	Vote Nay	Pass
Arnold	<u>x</u>	<u> </u>	<u> </u>
Fehrman	<u>x</u>	<u> </u>	<u> </u>
Gaesser	<u>x</u>	<u> </u>	<u> </u>
Juckette	<u>x</u>	<u> </u>	<u> </u>
Rielly	<u>x</u>	<u> </u>	<u> </u>
Stutsman	<u>x</u>	<u> </u>	<u> </u>
Yanney	<u>x</u>	<u> </u>	<u> </u>

Division Director Legal State Director

AS-2023-32

Lee Wilkinson, Administrative Services Division Director; The proposed amendment within chapter 180 of the Iowa Administrative Code adds a new definition of public improvement for vertical infrastructure, which conforms with Iowa Code chapter 26 and removes unneeded definitions of public improvement and repair maintenance work from the administrative code.

The public comment period ended October 25th. There were no comments received and no request for oral presentation.

It has recommended the Commission approve of the rule amendments included the attached notice of intended action.

Commissioner Fehrman made a motion to approve the amendments to Chapter 26. Commissioner Stutsman seconded the motion. Motion passes unanimously.

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to the quotation process for governmental entities for public improvement for vertical infrastructure and providing an opportunity for public comment

The Transportation Department hereby proposes to amend Chapter 180, “Public Improvement Quotation Process for Governmental Entities for Vertical Infrastructure,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 314.1A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 26.2 and 314.1A.

Purpose and Summary

The proposed amendments add a new definition of “public improvement for vertical infrastructure” and remove unneeded definitions for “public improvement” and “repair or maintenance work” because the terms are no longer used within Chapter 180. The title of the chapter and wording within the chapter are proposed to be amended to coordinate with the changes made to the definitions. Also, rule 761—180.4(314) is proposed to be rescinded; this rule is no longer needed because of the other changes being made.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making 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 rule making 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 rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. 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 oral presentations will be held on October 28, 2022, via conference call at 9 a.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on October 25, 2022, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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 rule making.

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 rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making 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 rule-making actions are proposed:

ITEM 1. Amend **761—Chapter 180**, title, as follows:

**PUBLIC IMPROVEMENT QUOTATION PROCESS FOR GOVERNMENTAL ENTITIES FOR
PUBLIC IMPROVEMENT FOR VERTICAL INFRASTRUCTURE**

ITEM 2. Amend rule 761—180.1(314) as follows:

761—180.1(314) Purpose. The purpose of these rules is to prescribe the manner by which governmental entities shall administer competitive quotations for contracts pertaining to a public improvement ~~contracts~~ for vertical infrastructure, in accordance with Iowa Code section 26.14.

ITEM 3. Amend rule 761—180.3(26,314) as follows:

761—180.3(26,314) Definitions.

~~“Estimated total cost of a public improvement”~~ means the same as defined in Iowa Code section 26.2.

~~“Governmental entity”~~ means the same as defined in Iowa Code section 26.2.

~~“Public improvement”~~ means as defined in Iowa Code section 26.2.

~~“Repair or maintenance work”~~ means as defined in Iowa Code section 26.2.

~~“Responsible quotation”~~ means a quotation submitted by a contractor who is capable of performing the work. To be considered responsible, the contractor must possess the necessary financial and technical capability to perform the work, as well as the ability to complete the work as demonstrated by past performance or other appropriate considerations.

~~“Responsive quotation”~~ means a quotation in which the contractor agrees to do everything required by the governmental entity's solicitation of quotations and by the plans and specifications and other related documents, without any conditions, qualifications or exclusions.

~~“Vertical Public improvement for vertical infrastructure”~~ means ~~buildings, all appurtenant structures, utilities, incidental street improvements including sidewalks, site development features, recreational trails, and parking facilities.~~ Vertical infrastructure does not include any work constructed in conjunction with those matters excluded from the definition of is a “public improvement” as defined in Iowa Code section 26.2(3) “a” and “b” but excludes those improvements in Iowa Code section 26.2(3) “b”(1) to (6).

ITEM 4. Rescind and reserve rule **761—180.4(314)**.

ITEM 5. Amend subrule 180.5(1) as follows:

180.5(1) A governmental entity shall solicit competitive quotations for a public improvement for vertical infrastructure when the estimated total cost of the public improvement for vertical infrastructure exceeds the competitive quotation threshold established in Iowa Code section 26.14, as adjusted pursuant to Iowa Code section 314.1B, but is less than the competitive bid threshold established in Iowa Code section 26.3, as adjusted pursuant to Iowa Code section 314.1B. The adjusted thresholds are published on the department's website at www.iowadot.gov.

DEPARTMENT OF TRANSPORTATION
COMMISSION ORDER

Transportation Development Division/Modal
 Division/Bureau/Office Transportation Bureau Order No. TD-2023-33
 Submitted by Stuart Anderson Phone No. 515-239-1661 Meeting Date November 8, 2022
Administrative Rules – 761 IAC Chapter 911, School Transportation Services
 Title Provided by Regional Transit Systems

DISCUSSION/BACKGROUND:

This proposed rulemaking adds a new paragraph to explain the need to submit a current medical examiner’s certificate upon a commercial driver’s license issuance or renewal to comply with Federal Motor Carrier Safety Administration’s regulations and adopts certain federal regulations as of October 1, 2021. Other changes correct the name of the Modal Transportation Bureau and update the Iowa Code citation within a definition.

A complete summary explaining the proposed amendments is included in the attached Notice of Intended Action.

The public comment period ended on October 25, 2022. The department did not receive any public comments or requests for oral presentations.

PROPOSAL/ACTION RECOMMENDATION:

It is recommended that the Commission approve the rule amendments included in the attached Notice of Intended Action.

COMMISSION ACTION:

Moved by Linda Juckette Seconded by Tom Rielly

	Aye	Vote Nay	Pass
Arnold	<u>x</u>	_____	_____
Fehrman	<u>x</u>	_____	_____
Gaesser	<u>x</u>	_____	_____
Juckette	<u>x</u>	_____	_____
Rielly	<u>x</u>	_____	_____
Stutsman	<u>x</u>	_____	_____
Yanney	<u>x</u>	_____	_____

Division Director _____ Legal _____ State Director

TD-2023-33

Stuart Anderson, Transportation Development Division Director; Chapter 911 of Administrative Rules are for school transportation services provided by Regional Transit Systems. For this chapter, we are proposing adding a new paragraph to explain the need to submit a current medical examiner certificate upon a commercial driver's license issuance or renewal. This complies with federal regulations and references to the current code of federal regulations dated October 1st, 2021. The changes also reflect updated contact information in Iowa code citations.

We did not receive any public comments. Therefore, it is recommended the Commission approve the rule amendments as shown on the notice of intended action Attached to the commission order.

Commissioner Juckette made a motion to approve as requested. Commissioner Rielly seconded the motion. Motion passes unanimously.

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to school transportation services provided by regional transit systems under contract with local schools and providing an opportunity for public comment

The Transportation Department hereby proposes to amend Chapter 911, “School Transportation Services Provided by Regional Transit Systems,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 321.377.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 321.1 and 321.377.

Purpose and Summary

This proposed rule making corrects the name of the Modal Transportation Bureau and updates the definition of “automobile” to include the specific subsection within Iowa Code section 321.1 so the definition can be found easily.

The proposed amendments add new paragraph 911.6(7)“b” to explain the need to submit a current medical examiner’s certificate upon a commercial driver’s license issuance or renewal in order to comply with the Federal Motor Carrier Safety Administration’s regulations concerning license type and the need for a medical examiner certificate.

The proposed amendments also adopt the Code of Federal Regulations (CFR) dated October 1, 2021, for 49 CFR Part 38, Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles; 49 CFR Part 571, Federal Motor Vehicle Safety Standards; and 49 CFR Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations. While the CFR date in subrule 911.5(1) has not been updated since 2017, no final rule changes to 49 CFR Part 38 have occurred during that time. However, the following list provides a specific description of the amendments to 49 CFR Part 571 and 49 CFR Part 655 that have become final and effective from October 2, 2017, through October 1, 2021, that affect Chapter 911:

Part 571 (FR Vol. 83, No. 75, Pages 17091-17093)

This is a correction to a figure concerning standard No.217, bus emergency exits and window retention and release, that was revised on October 1, 2017.

Part 655 (FR Vol. 84, No. 78, Pages 16770-16775, 4-23-19)

This final rule made minor technical corrections to the Office of the Secretary of Transportation, Federal Aviation Administration, Federal Transit Administration and Pipeline and Hazardous Materials Safety Administration’s regulations governing drug testing for safety-sensitive employees. This final rule ensures consistency with the amendments to the U.S. Department of Transportation’s regulation “Procedures for Transportation Workplace Drug and Alcohol Testing Programs,” which added requirements to test for oxycodone, oxymorphone, hydrocodone, and hydromorphone to the U.S. Department of Transportation-regulated drug testing programs. The changes to the U.S. Department of Transportation’s regulation make it necessary to refer to these substances, as well as the previously covered drugs morphine, 6-acetylmorphine, and codeine, by the more inclusive term “opioids,” rather than “opiates.”

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making 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 rule making 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 rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. 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 oral presentations will be held on October 27, 2022, via conference call at 1 p.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on October 25, 2022, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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 rule making.

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 rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making 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 rule-making actions are proposed:

ITEM 1. Amend subrule 911.1(2) as follows:

911.1(2) Information. Information and forms may be obtained from the ~~Office of Public Transit~~ Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)233-7870; or the department's website at www.iowadot.gov.

ITEM 2. Amend rule ~~761—911.2(321,324A)~~, definition of "Automobile," as follows:

"Automobile" means the same as defined in Iowa Code section ~~321.1. 321.1(42)~~ "d."

ITEM 3. Amend subrule 911.5(1) as follows:

911.5(1) *Code of Federal Regulations*. The department of transportation adopts the following portions of the ~~October 1, 2017~~ October 1, 2021, Code of Federal Regulations, which are referenced throughout this chapter:

a. 49 CFR Part 38, Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles.

b. 49 CFR Part 571, Federal Motor Vehicle Safety Standards.

c. 49 CFR Part 655, Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations.

ITEM 4. Amend subrule 911.6(7) as follows:

911.6(7) *Physical fitness*.

a. Each driver who transports students must undergo a physical examination by a certified medical examiner who is listed on the National Registry of Certified Medical Examiners in accordance with Iowa Code section 321.375(1)“*d*” and with department of education rule 281—43.15(285) or 281—43.17(285). Annually, the driver must submit the signed medical examiner’s certificate to the driver’s employer.

b. Upon a commercial driver’s license issuance or renewal, the driver shall self-certify as to the type of driving the driver does and, if required, provide a current medical examiner’s certificate to the department unless the driver’s medical examiner’s certification is provided to the department electronically by the Federal Motor Carrier Safety Administration pursuant to 761—paragraph 607.37(1)“*a*” and 761—subrule 607.50(2).

DEPARTMENT OF TRANSPORTATION
COMMISSION ORDER

Transportation Development Division/Modal
 Division/Bureau/Office Transportation Bureau Order No. TD-2023-34
 Submitted by Stuart Anderson Phone No. 515-239-1661 Meeting Date November 8, 2022
 Title Administrative Rules – 761 IAC Chapter 922, Federal Transit Systems

DISCUSSION/BACKGROUND:

The proposed amendments update the date of the state management plan and correct the name of a department bureau.

A complete summary explaining the proposed amendments is included in the attached Notice of Intended Action.

The public comment period ended on October 25, 2022. The department did not receive any public comments or requests for oral presentations.

PROPOSAL/ACTION RECOMMENDATION:

It is recommended that the Commission approve the rule amendments included in the attached Notice of Intended Action.

COMMISSION ACTION:

Moved by Charese Yanney Seconded by Tom Rielly

	Aye	Vote Nay	Pass
Arnold	<u>x</u>	_____	_____
Fehrman	<u>x</u>	_____	_____
Gaesser	<u>x</u>	_____	_____
Juckette	<u>x</u>	_____	_____
Rielly	<u>x</u>	_____	_____
Stutsman	<u>x</u>	_____	_____
Yanney	<u>x</u>	_____	_____

 Division Director Legal State Director

TD-2023-34

Stuart Anderson, Transportation Development Division Director; chapter 922 of Administrative Rules are for Federal Transit assistance. For this chapter, we are proposing updating the date of the state management plan that is referred to in the rules and also updating the Bureau references.

We did not receive any public comments, therefore it's recommended the Commission approve the rule amendments as shown on the notice of intended action attached to the commission order.

Commissioner Yanney made a motion to approve as requested. Commissioner Rielly seconded the motion. Motion passes unanimously.

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Proposing rule making related to the state management plan for administering federal transit funds and providing an opportunity for public comment

The Transportation Department hereby proposes to amend Chapter 922, “Federal Transit Assistance,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 324A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 324A.

Purpose and Summary

The proposed amendments to Chapter 922 update the date of the state management plan and correct the name of the Modal Transportation Bureau.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making 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 rule making 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 rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. 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 oral presentations will be held on October 27, 2022, via conference call at 2:30 p.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on October 25, 2022, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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 rule making.

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 rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making 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 rule-making action is proposed:

Amend subrule 922.1(2) as follows:

922.1(2) State management plan.

a. Sections 5310, 5311 and 5339 of Title 49 United States Code federal transit assistance programs within Iowa shall be administered according to the "Iowa State Management Plan for Administration of Funding and Grants Under the Federal Transit Administration, Sections 5310, 5311, 5316, 5317 and 5339 Programs," dated ~~March 2017~~ May 2020, which has been prepared by the department and approved by the Federal Transit Administration in conformance with FTA Circulars 5100.1, 9040.1G and 9070.1G.

b. Copies of the state management plan are available from the ~~Office of Public Transit~~ Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)233-7870; or the department's website at www.iowadot.gov.

DEPARTMENT OF TRANSPORTATION
COMMISSION ORDER

Transportation Development Division/Modal
Division/Bureau/Office Transportation Bureau Order No. TD-2023-35
Submitted by Stuart Anderson Phone No. 515-239-1661 Meeting Date November 8, 2022
Administrative Rules – 761 IAC Chapter 800, Items of General Application for Railroads; 761 IAC
810, Railroad Safety Standards; and 761 IAC 821, Highway-Railroad Grade Crossing Surface Repair
Title Fund

DISCUSSION/BACKGROUND:

The proposed amendments to Chapter 800 concern general railroad applications and enable electronic filing of annual reports and adopt certain federal regulations of the Surface Transportation Board as of October 1, 2021. The name of the Modal Transportation Bureau is also corrected.

The proposed amendments to Chapter 810 concern railroad safety standards and set safety standards consistent with federal regulations of the Federal Railroad Administration as of October 1, 2021. The responsible bureau is also corrected.

The proposed amendments to Chapter 821 concern the Highway-Railroad Grade Crossing Repair Fund and reduce triplicate copies of agreements to one single copy. Also, the changes define cost estimates of intended work for each responsible party when processing agreements and update the bureau name.

A complete summary explaining the proposed amendments is included in the attached Notice of Intended Action.

The public comment period ended on October 25, 2022. The department did not receive any public comments or requests for oral presentations.

PROPOSAL/ACTION RECOMMENDATION:

It is recommended that the Commission approve the rule amendments included in the attached Notice of Intended Action.

COMMISSION ACTION:

Moved by Raymond Gaesser Seconded by Sally Stutsman

	Aye	Vote Nay	Pass
Arnold	<u>x</u>	_____	_____
Fehrman	<u>x</u>	_____	_____
Gaesser	<u>x</u>	_____	_____
Juckette	<u>x</u>	_____	_____
Rielly	<u>x</u>	_____	_____
Stutsman	<u>x</u>	_____	_____
Yanney	<u>x</u>	_____	_____

Division Director Legal State Director

TD-2023-35

Stuart Anderson, Transportation Development Division Director; Next we have a batch of three rule chapters. As part of this recommended action we have chapter 800, Items of General Application for Railroads; chapter 810 Railroad Safety Standards; and chapter 821 Highway-Railroad Grade Crossing Surface Repair Fund in the proposed rule amendments, we are updating references to the current code of federal regulations dated October 1st, 2021. We are also updating bureau references for Chapter 821. We are reducing the number of applications required to be submitted and we're also adding a requirement to include a cost estimate that defines which party's responsible for each of the costs.

We did not receive any public comments, therefore, we are recommending the Commission approve the rule amendments as shown in the notice of intended action, which is attached to the commission order.

Commissioner Gaesser made a motion to approve as requested. Commissioner Stutsman seconded the motion. Motion passes unanimously.

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

**Proposing rule making related to railroads
and providing an opportunity for public comment**

The Transportation Department hereby proposes to amend Chapter 800, “Items of General Application for Railroads,” Chapter 810, “Railroad Safety Standards,” and Chapter 821, “Highway-Railroad Grade Crossing Surface Repair Fund,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 327G.24.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 312.2, 327C.4, 327C.38, 327C.41, 327G.24 and 327G.30.

Purpose and Summary

This proposed rule making corrects the name of the Modal Transportation Bureau throughout Chapters 800, 810 and 821.

The proposed amendments to Chapter 800 correct the formatting within the definitions, require that affected railroads submit their annual reports to the Department electronically, and adopt 49 Code of Federal Regulations (CFR) Part 1152 as of October 1, 2021. Iowa Code section 327G.24 requires the Department to adopt rules consistent with the Surface Transportation Board (STB) regulation titled Abandonment and Discontinuance of Rail Lines and Rail Transportation Under 49 United States Code 10903, which is found in 49 CFR Part 1152.

The Track Safety Standards of the Federal Railroad Administration (FRA) set out safety standards that are applicable to all railroads nationwide and are found in 49 CFR Part 213. A proposed amendment to Chapter 810 adopts 49 CFR Part 213 as of October 1, 2021. Iowa Code section 327C.4 requires the Department to inspect railroad tracks for safe operation. To accomplish this, the Department is a member of the FRA’s State Rail Safety Participation Program, which provides benefits to states in training and technical proficiency in understanding and applying federal standards.

The proposed amendments to Chapter 821 make changes as to how the Department processes agreements to request that the jurisdiction and railroad provide cost estimates for work responsibilities. The proposed amendments also remove the requirement for signing three copies of the agreement and update the description of how the Department provides payment to the railroad to include actual project cost.

Proposed federal regulations are published in the Federal Register (FR) to allow a period for public comment, and after adoption the final regulations are published in the FR. To ensure the consistency required by statute, the Department adopts the specified parts of 49 CFR as adopted by the STB and the FRA.

The following list provides a specific description of the amendments to the FR that have become final and effective from October 2, 2017, through October 1, 2021, and affect Chapters 800 and 810.

Part 213 (FR Vol. 84, No. 100, Pages 23730-23737, 5-23-19)

This final rule eliminates unnecessary costs and improves public access. The FRA has removed its civil penalties schedule and guidelines from the CFR and instead publishes them on the FRA website. Effective date: May 23, 2019.

Part 213 (FR Vol. 85, No. 195, Pages 63362-63392, 10-7-20)

This final rule revises FRA regulations governing the minimum safety requirements for railroad track. The changes include allowing inspection of rail using continuous rail testing, allowing the use of flange-bearing frogs in crossing diamonds, relaxing the guard check gage limits on heavy-point frogs used in Class 5 track, removing an inspection-method exception for high-density commuter lines, and other miscellaneous revisions. The revisions benefit track owners, railroads, and the public by reducing unnecessary costs and incentivizing innovation while improving rail safety. Effective date: October 7, 2020.

Part 213 (FR Vol. 86, No. 83, Pages 23241-23260, 5-3-21)

This final rule provides the 2021 inflation adjustment amounts to civil penalties that may be imposed for certain U.S. Department of Transportation regulations in accordance with the Federal Civil Penalties Inflation Adjustment Act of 2015. Effective date: May 3, 2021.

Part 1152 (FR Vol. 83, No. 68, Pages 15075-15081, 4-9-18)

This final rule updates STB regulations to reflect certain statutory changes enacted in the Surface Transportation Board Reauthorization Act of 2015 and to replace certain obsolete or incorrect references in the regulations. Effective date: May 2, 2018.

Part 1152 (FR Vol. 83, No. 74, Page 16786, 4-17-18)

This is a citation correction to a rule document published on April 9, 2018.

Part 1152 (FR Vol. 84, No. 64, Pages 12940-12946, 4-3-19)

This final rule adopts modifications to STB regulations pertaining to certain payment, filing and service procedures. The adopted rule also updates and clarifies fees for copying, printing, and related services and removes outdated language from the STB regulations. Effective date: May 10, 2019.

Part 1152 (FR Vol. 84, No. 233, Pages 66320-66326, 12-4-19)

This final rule amends the STB regulations related to the National Trails System Act to: (1) provide that the initial term for certificates or notices of interim trail use or abandonment will be one year (instead of 180 days), (2) permit up to three one-year extensions of the initial period if the trail sponsor and the railroad agree, and (3) permit additional one-year extensions if the trail sponsor and the railroad agree and extraordinary circumstances are shown. Effective date: February 2, 2020.

Fiscal Impact

The fiscal impact cannot be determined. The federal regulations proposed to be adopted by this rule making were subject to fiscal impact review by either the FRA or the STB when enacted and were determined not to be cost prohibitive.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making 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 rule making 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 rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. 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 oral presentations will be held on October 27, 2022, via conference call at 9 a.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on October 25, 2022, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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 rule making.

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 rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making 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 rule-making actions are proposed:

ITEM 1. Amend rule 761—800.1(307) as follows:

761—800.1(307) Definitions. The following terms when used in this division of rules shall have the following meanings:

Crossing. The “Crossing” means the point where the railroad tracks and highway meet at the same location.

Department. The “Department” means the state department of transportation.

Railroad. ~~Persons~~ “Railroad” means persons who own rail facilities or who are responsible for their operation and maintenance.

This rule is intended to implement Iowa Code sections 307.1 and 307.26.

ITEM 2. Amend rule 761—800.2(17A) as follows:

761—800.2(17A) Location and submission of documents. All documents concerning railroad matters which, according to statute or rule, must be submitted to the department shall be submitted to the following address: ~~Office of Rail~~ Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

This rule is intended to implement Iowa Code section 17A.3.

ITEM 3. Amend subrule 800.4(2) as follows:

800.4(2) A railroad company not required to submit an annual report to the Surface Transportation Board under 49 CFR Part 1241 shall submit an annual report to the department ~~on Form 010030 electronically~~ on or before April 1 following the close of the calendar year.

ITEM 4. Amend rule ~~761—800.15(327F)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 327F.31 and ~~2002 Iowa Op. Att’y Gen. _____ (#01-5-2)~~ 2001 Iowa Op. Att’y Gen. #01-5-2.

ITEM 5. Amend subrule 800.20(1) as follows:

800.20(1) 49 CFR Part 1152 contains the regulations governing the abandonment and discontinuance of railroad lines and rail transportation under 49 U.S.C. 10903 et seq. This part also contains the regulations and procedures for the acquisition or use of railroad rights-of-way proposed for abandonment for interim trail use and rail banking pursuant to 16 U.S.C. 1247(d).

For the purpose of this rule, ~~this part~~ 49 CFR Part 1152 is adopted as of ~~October 1, 2017~~ October 1, 2021.

ITEM 6. Amend subrule 810.1(1) as follows:

810.1(1) Standards. The department adopts the railroad track safety standards contained in 49 CFR Part 213 (~~October 1, 2017~~ October 1, 2021).

ITEM 7. Amend subrule 810.5(2) as follows:

810.5(2) Report procedure.

a. No change.

b. If within 30 days the railroad company does not respond or if the response is unsatisfactory, the person may report the alleged violation to the department at the following address: ~~Office of Rail Modal Transportation Bureau~~, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

c. No change.

d. The director of the ~~office of rail modal transportation bureau~~ or the director's designee may request additional information from the person submitting the report, the railroad worker transportation company or the railroad.

e. The director of the ~~office of rail modal transportation bureau~~ or the director's designee, which may include peace officers ~~in the office of~~ within motor vehicle enforcement, may investigate the alleged violation.

f. The director of the ~~office of rail modal transportation bureau~~ or the director's designee shall issue a decision within 20 days of receipt of the report or 20 days after receipt of the requested additional information. The decision may include any order as necessary to enforce the requirements of Iowa Code section 327F.39, as set forth in Iowa Code section 327F.39(6).

g. and h. No change.

ITEM 8. Amend subrule 810.6(2) as follows:

810.6(2) Report procedure.

a. A person shall report an alleged violation in writing to the department at the following address: ~~Office of Rail Modal Transportation Bureau~~, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

b. No change.

c. The director of the ~~office of rail modal transportation bureau~~ or the director's designee may request additional information from the driver, railroad worker transportation company or railroad.

d. The director of the ~~office of rail modal transportation bureau~~ or the director's designee, which may include peace officers ~~in the office of~~ within motor vehicle enforcement, may investigate the alleged violation.

e. The director of the ~~office of rail modal transportation bureau~~ or the director's designee shall issue a decision within 60 days of receipt of the report or 60 days after receipt of the requested additional information. The decision may include any order as necessary to enforce the requirements of Iowa Code section 327F.39, as set forth in Iowa Code section 327F.39(6).

f. and g. No change.

ITEM 9. Amend subrule 821.2(2) as follows:

821.2(2) Program information, applications and application instructions are available on the department's ~~Web site~~ website at www.iowadot.gov. The program is administered by the ~~Office of Rail Modal Transportation Bureau~~, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1108.

ITEM 10. Amend subrule 821.3(3) as follows:

821.3(3) Processing an agreement.

- a. No change.
- b. If the work constitutes grade crossing surface repair and when funds are available in the repair fund, the department shall ~~furnish the railroad and~~ request that the jurisdiction with three copies of an agreement for grade crossing surface repair and railroad provide cost estimates for the work for which each party is responsible. Upon receipt of the estimates, the department will furnish an agreement for grade crossing surface repair to the railroad and jurisdiction.
- c. The railroad and the jurisdiction shall sign ~~all three copies of the agreement and return them~~ it to the department.
- d. The department shall:
 - (1) No change.
 - (2) Sign ~~all three copies of the agreement~~, retain one copy of the fully executed agreement, transmit one copy to the jurisdiction, and transmit one copy to the railroad, authorizing work to proceed.

ITEM 11. Amend paragraph **821.3(6)“c”** as follows:

- c. Once the department approves the billing, the department shall pay to the railroad from the repair fund an amount equal to 60 percent of the actual project cost of the agreed-upon work.

DEPARTMENT OF TRANSPORTATION
COMMISSION ORDER

Transportation Development Division/Modal
 Division/Bureau/Office Transportation Bureau Order No. TD-2023-36
 Submitted by Stuart Anderson Phone No. 515-239-1661 Meeting Date November 8, 2022
 Title Administrative Rules – 761 IAC Chapter 811, Highway-Railroad Grade Crossing Warning Devices; 761 IAC 812, Classifications and Standards for Highway-Railroad Grade Crossings; and 761 IAC 820, Highway Grade Crossings Safety Fund

DISCUSSION/BACKGROUND:

The proposed amendments to Chapter 811 concern Highway-Railroad Grade Crossing Warning Devices and correct the title of Chapter 8 of the Manual on Uniform Traffic Devices to cite Railroad and Light Rail Transit Grade Crossings, correct an Iowa Code citation and add contact information for the chapter.

The proposed amendments to Chapter 812 concern Classifications and Standards for Highway-Railroad Grade Crossings and state that the highway authority shall consider the safety impacts that a project may have when planning a highway improvement project on certain crossings, add contact information to the chapter and correct an Iowa Code citation.

The proposed amendments to Chapter 820 concern Highway Grade Crossing Safety Funds and enable electronic filing of submissions to this program and clarify terminology consistent with the American Railway Engineering and Maintenance of Way Association. Also, contact information within the chapter is updated.

A complete summary explaining the proposed amendments is included in the attached Notice of Intended Action.

The public comment period ended on October 25, 2022. The department did not receive any public comments or requests for oral presentations.

PROPOSAL/ACTION RECOMMENDATION:

It is recommended that the Commission approve the rule amendments included in the attached Notice of Intended Action.

COMMISSION ACTION:

			Vote	
			Aye	Nay
			Pass	
Moved by	<u>Charese Yanney</u>	Seconded by	<u>Tom Rielly</u>	
			Arnold	x
			Fehrman	x
			Gaesser	x
			Juckette	x
			Rielly	x
			Stutsman	x
			Yanney	x

Division Director

Legal

State Director

TD-2023-36

Stuart Anderson, Transportation Development Division Director; Our last item is we have another batch of three rule chapters that are part of this recommended action. We have Chapter 811 for Highway-Railroad Grade Crossing Warning Devices; Chapter 812 Classifications and Standards for Highway-Railroad Grade Crossings; and Chapter 820 Highway Grade Crossing Safety Fund. In the proposed rule amendments, we are updating contact information and correcting Iowa code citations. In addition for chapter 811, we are updated a reference to the manual on uniform traffic control devices. Chapter 812 we're adding a requirement that highway authorities also consider the safety impacts a highway project may have on railroad crossings within that term of the project. For Chapter 820, we are also allowing the submission of electronic applications and we're clarifying terminology to be consistent with National Railroad standards.

We did not receive any public comments, therefore, we are recommending the Commission approve the rule amendments as shown on the Notice of Intended Action that's attached to the Commission order.

Commissioner Yanney made a motion to approve as recommended. Commissioner Rielly seconded the motion. Motion passes unanimously.

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

**Proposing rule making related to highway-railroad grade crossings
and providing an opportunity for public comment**

The Transportation Department hereby proposes to amend Chapter 811, “Highway-Railroad Grade Crossing Warning Devices,” Chapter 812, “Classifications and Standards for Highway-Railroad Grade Crossings,” and Chapter 820, “Highway Grade Crossing Safety Fund,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code sections 307.12, 307.26(7) and 327G.15.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 307.26 and 327G.15.

Purpose and Summary

This proposed rule making updates Iowa Code citations and adds or updates contact information within Chapters 811, 812 and 820.

The following sentences explain the additional proposed amendments to these three chapters:

- Correct the title of Part 8 of the “Manual on Uniform Traffic Control Devices,” published by the U.S. Department of Transportation, Federal Highway Administration, for conformance of standards concerning the installation of all highway-railroad grade crossing warning devices.
- Make clarifying changes to state that the highway authority shall consider the safety impacts that a project may have on a crossing when planning a highway improvement project encompassing or adjacent to that crossing.
- Update the definition of “AAR signal unit” to reference an updated document that provides units and interpretations for an active warning device, correct the style used within the definitions, and add the option to send any submissions electronically to the Department.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making 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 rule making 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 rule making must be received by the Department no later than 4:30 p.m. on October 25, 2022. 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 oral presentations will be held on October 27, 2022, via conference call at 10:30 a.m. Persons who wish to participate in the conference call should contact Tracy George before 4:30 p.m. on October 25, 2022, to facilitate an orderly hearing. A conference call number will be provided to participants prior to the hearing.

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 rule making.

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 rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making 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 rule-making actions are proposed:

ITEM 1. Amend rule 761—811.1(307) as follows:

761—811.1(307) Standards. All highway-railroad grade crossing warning devices installed shall conform to Part 8, "Traffic Controls for ~~Highway-Rail~~ Railroad and Light Rail Transit Grade Crossings," of the "Manual on Uniform Traffic Control Devices" as adopted in 761—Chapter 130.

This rule is intended to implement Iowa Code ~~paragraph 307.26(5) "b"~~ and sections 307.26(7) "b," 321.252 and 327G.2.

ITEM 2. Adopt the following **new** rule 761—811.2(307):

761—811.2(307) Contact information. Information about this chapter may be obtained by contacting the department at the following address: Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1108.

This rule is intended to implement Iowa Code section 307.26.

ITEM 3. Amend rule 761—812.1(307) as follows:

761—812.1(307) Purpose and contact information.

812.1(1) This chapter implements Iowa Code ~~paragraph 307.26(5) "c."~~ section 307.26(7) "b." This statute requires the department to classify highway-railroad grade crossings based upon their characteristics, conditions and hazards and to adopt standards for warning devices for each classification.

812.1(2) Information about this chapter may be obtained by contacting the department at the following address: Modal Transportation Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1108.

ITEM 4. Amend subrule 812.3(4) as follows:

812.3(4) When planning a highway improvement project encompassing or adjacent to a crossing, the highway authority shall consider the ~~effects of~~ safety impacts that the project may have on the crossing.

ITEM 5. Amend subrule 812.4(1) as follows:

812.4(1) In accordance with Iowa Code ~~paragraph 307.26(5)“e,”~~ section 307.26(7)“b,” the department of transportation is not liable for the development or adoption of the classifications or standards. A government agency, department, or political subdivision is not liable for failure to implement the standards.

ITEM 6. Amend **761—Chapter 812**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~paragraph 307.26(5)“e.”~~ section 307.26(7)“b.”

ITEM 7. Amend rule 761—820.1(327G) as follows:

761—820.1(327G) Definitions. The following terms when used in this chapter of rules shall have the following meanings:

~~*AAR signal unit.*~~ The *“AAR signal unit”* means the relative maintenance difficulty value assigned to component parts of an active warning device. Units and interpretations are designated by the 2021 Revision of the American Railway Engineering and Maintenance-of-Way Association of American Railroads Signal Manual, Part 203 (1984) (AREMA) Communications and Signals Manual, Volume 1, Section 1 (1.3.2) [Recommend Table of Signal and Interlocking Units and Interpretations].

~~*Active warning devices.*~~ Traffic *“Active warning devices”* means traffic control devices activated by the approach or presence of a train, such as flashing light signals, flashing light signals with cantilever assemblies, and flashing light signals with automatic gate arms, all of which actively warn motorists of a train.

~~*Maintenance costs of active warning devices.*~~ Costs *“Maintenance costs of active warning devices”* means costs incurred by a railroad associated with the repair or replacement of obsolete, worn out, damaged, or missing component parts of an approved active warning device. Maintenance costs shall include repair or replacement of damaged, vandalized, or stolen component parts only for that amount which exceeds the amount recovered from the liable party or the liable party’s insurer.

~~*Safety fund.*~~ The *“Safety fund”* means the highway grade crossing safety fund established in Iowa Code section 327G.19, and administered by the department.

ITEM 8. Amend rule 761—820.3(327G) as follows:

761—820.3(327G) Information and submissions. Information about this chapter may be obtained by contacting the department at the following address: ~~Office of Rail Modal Transportation Bureau,~~ Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone ~~(515)239-1140~~ (515)239-1108. Submissions to the department under this chapter ~~shall~~ may be sent or delivered to this address or may be electronically filed with the program manager.