

Commission Minutes  
June 12, 2018



# IOWA TRANSPORTATION COMMISSION

## Meeting Agenda / Commission Orders

June 12, 2018  
 Hilton Des Moines Downtown  
 435 Park Street, Des Moines, IA

ITEM NUMBER	TITLE	SUBMITTED BY	PAGE
D-2018-73 8:00 a.m.	* Approve Minutes of the May 8, 2018 Commission Meeting  Commission Comments  DOT Comments	Danielle Griggs	3
PPM-2018-74	* 2019-2023 Iowa Transportation Improvement Program	Stuart Anderson	5
PPM-2018-75	* Administrative Rules – 761 IAC 700, 710, 715, 716, and 717	Stuart Anderson	9
PPM-2018-76	* Administrative Rules – 761 IAC 802, 822, 800, 810, and 813	Stuart Anderson	13
PPM-2018-77	* Administrative Rules – 761 IAC 161 and 162	Stuart Anderson	31
PPM-2018-78  8:10 p.m.	* Administrative Rules – 761 IAC 174 –Reimbursable Services and Supplies  Adjourn	Mitchell Dillavou	37

\*Action Item

On Monday, June 11, the Commission and staff will meet informally at 3:30 p.m. Hilton Des Moines Downtown In Des Moines, IA. 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-2018-73  
Submitted by Danielle Griggs Phone No. 515-239-1919 Meeting Date June 12, 2018  
Title Approve Minutes of the May 8, 2018 Commission Meeting

**DISCUSSION/BACKGROUND:**

**PROPOSAL/ACTION RECOMMENDATION:**

It is recommended the Commission approve the minutes of the May 8, 2018 Commission meeting.

**COMMISSION ACTION:**

Moved by Kathleen Fehrman Seconded by David Rose

	Aye	Vote Nay	Pass
Fehrman	<u>x</u>	<u>      </u>	<u>      </u>
Huber	<u>x</u>	<u>      </u>	<u>      </u>
Maher	<u>x</u>	<u>      </u>	<u>      </u>
Putney	<u>x</u>	<u>      </u>	<u>      </u>
Rielly	<u>x</u>	<u>      </u>	<u>      </u>
Rose	<u>x</u>	<u>      </u>	<u>      </u>
Yanney	<u>x</u>	<u>      </u>	<u>      </u>

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Division Director                      Legal                      State Director

D-2018-73

Commissioner Fehrman made a motion to approve the minutes as written.  
Commissioner Rose seconded the motion. Motion passes unanimously.

### Commission Comments

Commissioner Rose gave a recap of the tour of central Iowa and the projects visited yesterday. Commissioner Rose thanked the tour staff Scott, Andy, Shawn; Commissioner Rose noted several highlights, i.e.: the overpass project Boone is working on, and the community working together with the County, City, Railroad, and Fareway to make quicker progress. The new interchange on Highway 30 and Interstate 35 and how the impressive fly-overs looked impressive. He noted Ankeny being one of the fastest growing areas in the country and the development areas and new diverging diamond project. The Commissioners then visited the Motor Vehicle building and the Traffic Operations – Traffic Management Center. They got to look through several of the vehicles used, state patrol vehicle, snow plow, highway helper, and motor vehicle enforcement vehicle. They had a great discussion about the interchange at 235 / 80 / 35. Everyone was very impressed with the tour.

Commissioner Putney recognized Dan Huber with a plaque from the Iowa Department of Transportation. Commissioner Huber said that it was an honor to serve the past four years and especially gratefully to the Department staff and Director Lowe. When you get appointed to a board like this, you wonder what this government is going to be like, you worry about the negative connotations, and what I've found in Iowa DOT is very sound and effective government. Something that the State of Iowa and the citizens can be very proud of. This is a department that utilizes technology, stays up on various tools, comprised of many dedicated people who commit their whole lives to helping the DOT to making sound and effective decisions to set the right priorities, do the right things, there is a lot of use of data – a fact based operation, and that really guides the decision making. This is a very collegial department, bright minds and good people that treat each other with civility and respect. I think the DOT has a lot to be proud of, and I hope I can amplify that this morning; because it is not something we should take for granted. So I'm thankful to the department, I've enjoyed the role of being a Commissioner. Our goal was set, the bigger vision, the long-range plan, the five-year plan, including the one we are going to approve momentarily, and the focus on how do we allocate these resources to the things that matter the most. I'm grateful to the Commissioners I've gotten to serve with. They are all leaders, you learn something from everyone's leadership style, I've learned from each of them. It's been a really great experience for me. I'm going to miss it. It's a bittersweet day for me. It's been a real pleasure to have been involved and serving the State of Iowa in this capacity and look forward to big things from the DOT as we move forward. Thank you very much.

Commissioner Fehrman shared a short story about a gentleman that checks in with her regularly who is very insightful about transportation and what he knows about the state of Iowa. At the end of their first call, he asked about Dan Huber and we agreed about what a thoughtful person you are with respect to what you have to say in front of the

Commission, and this person said, I listen to every one of your Commission Meetings. When Dan Huber speaks, I turn the volume up because I know it is going to be something very thought provoking and insightful. I couldn't agree more. I hope that we all as a Commission give citizens reasons to turn up the volume. Thank you.

Commissioner Putney had all of the Commissioners introduce themselves.

#### DOT Comments

Mark Lowe thanked the Commissioners and DOT staff for their work and time. Thanked Dan for his service to the Commission for the last four years.

DEPARTMENT OF TRANSPORTATION  
COMMISSION ORDER

Division/Bureau/Office Planning, Programming and Modal Division  
Office of Program Management Order No. PPM-2018-74  
 Submitted by Stuart Anderson Phone No. 515-239-1661 Meeting Date June 12, 2018  
 Title 2019-2023 Iowa Transportation Improvement Program

**DISCUSSION/BACKGROUND:**

The 2019-2023 Iowa Transportation Improvement Program will be presented for final review and action.

In addition to approving the use of condemnation authority, if necessary, to acquire property for the projects in the highway section, approval of this Commission Order also authorizes the temporary transfer of funds from the RISE fund to the Primary Road Fund if necessary to meet anticipated road construction costs. Pursuant to Iowa Code Section 315.3(3)(b), attached is the letter from Iowa DOT Director Mark Lowe certifying the cash flow funding of the department may be inadequate to meet anticipated road construction costs. Any funds transferred shall be repaid to the RISE fund within six months of transfer.

**PROPOSAL/ACTION RECOMMENDATION:**

It is recommended the Commission approve and authorize distribution of the 2019-2023 Iowa Transportation Improvement Program. It is also recommended the Commission approve the use of condemnation, if necessary, to acquire property for the projects in the highway section. Finally, it is recommended the Commission authorize the temporary transfer of funds from the RISE fund to the Primary Road Fund, if necessary.

<b>COMMISSION ACTION:</b>			Aye	Vote	
		Fehrman	<u>x</u>	Nay	Pass
		Huber	<u>x</u>	_____	_____
		Maher	<u>x</u>	_____	_____
Moved by <u>Dan Huber</u>	Seconded by <u>Charese Yanney</u>	Putney	<u>x</u>	_____	_____
		Rielly	<u>x</u>	_____	_____
		Rose	<u>x</u>	_____	_____
		Yanney	<u>x</u>	_____	_____
_____	_____	_____			
Division Director	Legal	State Director			

May 23, 2018

Iowa Transportation Commission

John Putney, Chair	Kathy Fehrman, Vice-Chair	Nancy Maher	Charese Yanney
Dan Huber	Tom Rielly	David Rose	

*Delivered electronically*

Re: Request for Authorization to Borrow Funds from the RISE Fund

Dear Commissioners,

As we discussed at your workshop earlier this month, we are requesting your authorization to temporarily transfer funds from the RISE fund to the Primary Road Fund (PRF) during state fiscal year 2019. This request is made pursuant to section 315.3(3)(b) of the Iowa Code, which states:

*If the state transportation commission receives and files a letter from the director of transportation certifying that the cash flow funding of the department may be inadequate to meet anticipated road construction costs, the commission may authorize the temporary transfer of funds from the RISE fund to the primary road fund. Funds transferred under this paragraph shall be repaid to the RISE fund within six months of transfer.*

By this letter I am certifying that the cash flow funding of the department may be inadequate to meet anticipated road construction costs during fiscal year 2019. As we discussed at May the workshop, it is not a certainty that we will need to borrow RISE funds to meet cash flow needs in the highway program, but there is enough uncertainty to PRF expenditures in fiscal year 2019 to suggest that it is possible borrowing RISE funds may be necessary, and we therefore believe it's prudent to request your authorization to do so. As we discussed, the uncertainty of PRF expenditures is primarily due to the large I-74 project in the Quad Cities and the increased drawdown of federal funds by local jurisdictions during this coming construction season.

We will regularly update you throughout the year on the status of PRF expenditures and will of course advise you if it proves necessary to borrow RISE funds. If we do borrow RISE funds, we do not expect that would impact your ability to continue to award RISE funding to all eligible projects. In addition, as required by Iowa Code, any funds borrowed and transferred will be repaid to the RISE fund within six months of transfer.

Our request for your authorization will be part of our recommendation for Commission approval of the 2019-2023 Iowa Transportation Improvement Program, and your authorization would be memorialized in the order approving the program. A copy of the proposed order is included with this letter. The authorization to borrow will apply through the end of fiscal year 2019, to June 30, 2019.

Please let me know if you have any questions or would like additional information. I look forward to seeing you all in June.

Best regards,

A handwritten signature in black ink, appearing to read "Mark Lowe". The signature is written in a cursive style with a large, looping "L" at the end.

Mark Lowe, Director

PPM-2018-74

Stuart Anderson, Planning, Programming and Modal Division; Last month you released the draft 2019-2023 Iowa Transportation Improvement Program. The program identifies approximately 3.4 billion in state and federal investment and how you've planned to invest those dollars into highway and bridge projects on the primary road system over the next five years. In addition, the program documents your investments decision in Iowa's multi-modal transportation system; including investments in Public Transit, Aviation, Rail, and our Bicycle and Pedestrian system.

Since you released the draft program last month, we have not received any comments on the program. Therefore, it is recommended the Commission approve and authorize distribution of the 2019-2023 Iowa Transportation Improvement Program. It is also recommended you approve the use of condemnation, if necessary to acquire property for the Highway section of the program. Finally, it is recommended the Commission authorize the temporary transfer of funds from the RISE Fund to the Primary Road Fund, if necessary over the next fiscal year.

Commissioner Huber made a motion to approve the Transportation Improvement Program, as recommended on the Commission Order. Commissioner Yanney seconded the motion. The motion passed unanimously.

DEPARTMENT OF TRANSPORTATION  
COMMISSION ORDER

Division/Bureau/Office Planning, Programming and Modal Division  
Office of Aviation Order No. PPM-2018-75

Submitted by Stuart Anderson Phone No. 515-239-1661 Meeting Date June 12, 2018

Title Administrative Rules — 761 IAC 700, Aeronautics Administration; 710, Airport Improvement Program; 715, Air Service Development Program, 716, Commercial Service Vertical Infrastructure Program and 717 General Aviation Vertical Infrastructure Program

**DISCUSSION/BACKGROUND:**

The proposed amendments to Chapters 700, 710, 715, 716 and 717 correct the spelling of “website” and the link to the department’s website address. In addition, proposed amendments within Chapters 716 and 717 correct citations to Iowa Code section 8.57(5) since this is the correct citation for the definition of “vertical infrastructure.”

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

The public comment period ended May 15. The department did not receive any 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 Nancy Maher Seconded by Kathleen Fehrman

	Aye	Vote Nay	Pass
Fehrman	<u>x</u>	<u>          </u>	<u>          </u>
Huber	<u>x</u>	<u>          </u>	<u>          </u>
Maher	<u>x</u>	<u>          </u>	<u>          </u>
Putney	<u>x</u>	<u>          </u>	<u>          </u>
Rielly	<u>x</u>	<u>          </u>	<u>          </u>
Rose	<u>x</u>	<u>          </u>	<u>          </u>
Yanney	<u>x</u>	<u>          </u>	<u>          </u>

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Division Director                      Legal                      State Director

**TRANSPORTATION DEPARTMENT[761]**

**Notice of Intended Action**

**Proposing rule making related to aviation vertical infrastructure and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 700, “Aeronautics Administration,” Chapter 710, “Airport Improvement Program,” Chapter 715, “Air Service Development Program,” Chapter 716, “Commercial Service Vertical Infrastructure Program,” and Chapter 717, “General Aviation Vertical Infrastructure Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 328.12.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 8.57(5), 17A.3 and 328.12.

*Purpose and Summary*

The Department is proposing to correct the spelling of “website” and the link to the Department’s website address in Chapters 700, 710, 715, 716, and 717. The Department is also proposing to amend Chapters 716 and 717 to correct citations to Iowa Code section 8.57(5) since this section was amended and renumbered. These corrections are included within the definition of “vertical infrastructure” in rules 761—716.2(328) and 761—717.2(328) and within both chapters’ implementation sentences.

*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 person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 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 May 15, 2018. Comments should be directed to:

Tracy George  
Department of Transportation  
DOT Rules Administrator, Strategic Communications and Policy  
800 Lincoln Way  
Ames, Iowa 50010  
Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

*Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

May 17, 2018  
1 p.m.

Department of Transportation  
Administration Building  
First Floor, South Conference Room  
800 Lincoln Way  
Ames, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed 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, the Department's rules administrator, 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—700.2(17A) as follows:

**761—700.2(17A) Information and forms.** Program information, forms and application instructions are available on the department's ~~Web site~~ [website at www.iowadot.gov/aviation](http://www.iowadot.gov/aviation) [www.iowadot.gov](http://www.iowadot.gov). Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1048. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

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

ITEM 2. Amend rule 761—710.3(17A) as follows:

**761—710.3(17A) Information and forms.** Program information, forms and application instructions are available on the department's ~~Web site~~ [website at www.iowadot.gov/aviation](http://www.iowadot.gov/aviation) [www.iowadot.gov](http://www.iowadot.gov). Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1048. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, 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 715.3(3) as follows:

**715.3(3)** Program information, instructions and application forms may be obtained from the department's ~~Web site~~ [website at www.iowadot.gov/aviation](http://www.iowadot.gov/aviation) [www.iowadot.gov](http://www.iowadot.gov). Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1689. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 4. Amend rule **761—716.2(328)**, definition of “Vertical infrastructure,” as follows:  
“*Vertical infrastructure*” means the same as defined in Iowa Code section ~~8.57B~~ 8.57(5).

ITEM 5. Amend rule 761—716.3(328) as follows:

**761—716.3(328) Information and forms.** Program information, instructions, and forms are available on the department’s ~~Web site~~ website at ~~www.iowadot.gov/aviation~~ www.iowadot.gov. Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1048. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 6. Amend **761—Chapter 716**, implementation sentence, as follows:  
These rules are intended to implement Iowa Code sections ~~8.57B~~ 8.57(5) and 328.12.

ITEM 7. Amend rule **761—717.2(328)**, definition of “Vertical infrastructure,” as follows:  
“*Vertical infrastructure*” means the same as defined in Iowa Code section ~~8.57B~~ 8.57(5).

ITEM 8. Amend rule 761—717.3(328) as follows:

**761—717.3(328) Information and forms.** Program information, instructions, and application forms may be obtained from the department’s ~~Web site~~ website at ~~www.iowadot.gov/aviation~~ www.iowadot.gov. Requests for such materials or assistance may also be made by calling the office of aviation at (515)239-1048. Submission of application materials shall be made according to the annual application instructions included in the application materials. The office of aviation mailing address is: Office of Aviation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 9. Amend **761—Chapter 717**, implementation sentence, as follows:  
These rules are intended to implement Iowa Code sections ~~8.57B~~ 8.57(5) and 328.12.

PPM-2018-75

Stuart Anderson, Planning, Programming and Modal Division; we have several Commission actions for administrative rules this morning. This first one covers five chapters that are all aviation chapters. The proposed amendments update links, correct code citations and other very minor changes.

The public comment period ended May 15 and we did not receive any comments or requests for oral presentations.

Therefore, it is recommended that the Commission approve the rule amendments included in the Notice of Intended Action attached to the Commission Order.

Commissioner Maher made a motion to approve the rule amendments, as recommended on the Commission Order. Commissioner Fehrman seconded the motion. The motion passed unanimously.

DEPARTMENT OF TRANSPORTATION  
COMMISSION ORDER

Division/Bureau/Office Planning, Programming and Modal Division  
Office of Rail Transportation Order No. PPM-2018-76

Submitted by Stuart Anderson Phone No. 515-239-1661 Meeting Date June 12, 2018

Title Administrative Rules — 761 IAC 802, Reporting of Railroad Accidents/Incidents; 822, Railroad Revolving Loan and Grant Fund Program; 800, Items of General Application for Railroads, 810, Railroad Safety Standards and 813, Close-Clearance Warning Signs Along Railroad Tracks

**DISCUSSION/BACKGROUND:**

The proposed amendments to Chapter 802 clarify and expand the notification to the department for certain railroad accidents and incidents.

The proposed amendments to Chapter 822 makes changes to the Railroad Revolving Loan and Grant Fund Program to improve the process to provide fiscally sound financial assistance for rail projects, speed project completion and increase accountability.

The proposed amendments to Chapter 800 correct a due date for annual reports, update the adoption date of a federal regulation, and provide a source for federal citations. The proposed amendments to Chapter 810 update the adoption date of a federal regulation, provide a source for the federal citation, add a new rule concerning worker transportation rest periods and make changes for clarity and consistency. The proposed amendments to Chapter 813 update the department’s website reference.

Complete summaries explaining the proposed amendments are included in the three, attached Notices of Intended Action.

The public comment period ended May 15 for all three of these rule makings. The department did not receive any comments or requests for oral presentations.

**PROPOSAL/ACTION RECOMMENDATION:**

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

**COMMISSION ACTION:**

Moved by Charese Yanney Seconded by Nancy Maher

	Aye	Vote Nay	Pass
Fehrman	x	_____	_____
Huber	x	_____	_____
Maher	x	_____	_____
Putney	x	_____	_____
Rielly	x	_____	_____
Rose	x	_____	_____
Yanney	x	_____	_____

\_\_\_\_\_  
Division Director                      Legal                      State Director

**TRANSPORTATION DEPARTMENT[761]**

**Notice of Intended Action**

**Proposing rule making related to notification of railroad accidents and incidents and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 802, “Reporting of Railroad Accidents/Incidents,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 307.12.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 327C.37 and 327C.41.

*Purpose and Summary*

This rule making clarifies and expands the notification to the Department for certain railroad accidents and incidents. Timely notification of certain railroad accidents and incidents allows the Department’s Office of Rail Transportation to respond to immediate public safety risks as well as to identify emerging safety issues or trends that may need attention.

The following list further explains the proposed amendments:

- The title of Chapter 802, “Reporting of Railroad Accidents/Incidents” is changed to “Notification of Railroad Accidents/Incidents.” The word “reporting” is replaced with “notification” and the word “report” is replaced with “notice” within rule 761—802.2(327C). These changes were made within this chapter to be more consistent with language in Iowa Code section 327C.37 and to clarify that the Department needs to be notified of an accident or incident.

- Iowa Code section 327C.37 requires corporations operating railroads to immediately notify the Department of an injury or death. For clarity on what is meant by “immediately,” rule 761—802.2(327C) is amended to state that a railroad accident or incident must be reported to the Department within four hours of the accident or incident. Iowa Code section 327C.41 requires all common carriers subject to Iowa Code chapter 327D to notify the Department when the Department determines the notification is necessary and reasonable. The following are the notification changes that the Department determined are necessary and reasonable:

- Written reports no longer need to be submitted for railroad employee injuries because employee safety is outside the realm of the Department’s responsibility. A Federal Railroad Administration form (FRA F 6180.55 — Railroad Injury and Illness Summary) that was used for this notification is stricken from subrule 802.1(2).

- The criteria for notification of railroad accidents and incidents to the Department are expanded to include information beyond just injuries and fatalities. The added criteria include:

- ◇ Information on derailments of ten or more cars or a derailment in which any number of cars or locomotives are not upright. This information may prompt the Department’s track inspectors to take a closer look at the safety of the track structure where these incidents occur, often before cleanup is completed.

- ◇ Notification of derailment or other incident involving railroad passenger trains. This information may also trigger an investigation and is included due to the added risk to passengers in the event of an accident or incident and the associated media attention.

- ◇ Any release or potential release of hazardous materials will trigger a railroad or local response to the hazard, and the Department should be made aware of this incident and response as a part of the Department’s safety oversight.

◇ Damage to any public or private transportation infrastructure not owned by the railroad. This criterion was added as the result of a past rail incident that damaged a highway bridge. The railroad had difficulty knowing who and how to notify the appropriate highway officials about the damage after normal business hours. Notifications are now made to the Department's Traffic Management Center which is staffed year-round, 24 hours a day, including legal holidays. The Traffic Management Center has extensive contacts with highway officials and can facilitate any notifications of nonrailroad infrastructure damage as a result of a rail accident or incident.

The specific information included in the notification has also been clarified to provide a clearer picture of the accident or incident to Department personnel. This rule making will provide the Department with more complete and useful information to meet the Department's objective of protecting public safety and ensuring a safe rail infrastructure. The Office of Rail Transportation will have timely information on the nature and severity of an accident or incident and be able to act or prepare accordingly. Reporting rail accidents and incidents to the Department's Traffic Management Center allows personnel to determine whether there are primary highway impacts that should be included on [www.511ia.org](http://www.511ia.org), the Department's notification to the public of highway incidents or delays, or if local highway officials should be notified. The notification also allows Department personnel to prepare for possible media inquiries that may occur as a result of an accident or incident. Depending upon the type or severity of an accident or incident, the notification will also allow Department personnel to notify other agencies or officials that may need to be aware of or respond to the accident or incident.

#### *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 person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 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 May 15, 2018. Comments should be directed to:

Tracy George  
Department of Transportation  
DOT Rules Administrator, Strategic Communications and Policy  
800 Lincoln Way  
Ames, Iowa 50010  
Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

#### *Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

May 17, 2018  
11 a.m.

Department of Transportation  
Administration Building  
First Floor, South Conference Room  
800 Lincoln Way  
Ames, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed 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, the Department's rules administrator, 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 802**, title, as follows:

**REPORTING NOTIFICATION OF RAILROAD ACCIDENTS/INCIDENTS**

ITEM 2. Amend subrule 802.1(2) as follows:

**802.1(2) Forms.** This rule applies to the following Federal Railroad Administration forms:

FRA F 6180.54 — Rail Equipment Accident/Incident Report

~~FRA F 6180.55 — Railroad Injury and Illness Summary~~

FRA F 6180.57 — Rail-Highway Grade Crossing Accident/Incident Report

ITEM 3. Amend rule 761—802.2(327C) as follows:

**~~761—802.2(327C) Immediate reporting~~ Notification of personal injury or death railroad accidents/incidents.**

**802.2(1) Accidents or incidents requiring notification.** Any accident/incident involving train movement which results in ~~personal injury requiring hospitalization or in death~~ any of the following shall be reported ~~immediately~~ within four hours of the accident/incident to the department:

- a. Fatality.
- b. Personal injury requiring hospitalization.
- c. Derailment of ten or more rail cars and locomotives.
- d. Derailment of any number of cars or locomotives when one or more are not upright.
- e. Derailment or other incident involving a railroad passenger train.
- f. Release or potential release of hazardous materials that presents a risk or potential risk to public safety including injury, fatality, evacuation or shelter-in-place of persons.
- g. Damage to public or private transportation infrastructure not owned by the involved railroad.

**802.2(1) 802.2(2) Content of immediate report notice.** The ~~immediate report~~ notice of an accident/incident shall provide ~~the date and time it occurred, the nearest city, the location as accurately as possible, the number of fatalities or injuries, the train(s) involved, the nature and cause insofar as known, the name of the individual filing the report, and the name of the railroad involved.,~~ at a minimum, the following information:

- a. Name of the railroad involved.
- b. Name and contact information of the individual calling to file the notice.

- c. Date and time the accident/incident occurred.
- d. Location of the accident/incident, described as accurately as possible, including the nearest city and the U.S. DOT crossing identification number or railroad milepost.
- e. Description of the accident/incident.
- f. Impact on motor vehicle travel, if known.
- g. Number of injuries and fatalities.
- h. Hazardous materials involved in the incident and actions taken in the event of a release.
- i. Number of rail cars derailed.

~~**802.2(2) 802.2(3) Method of immediate reporting notification.**~~ During normal business hours the immediate report The notice shall be filed with the office of rail transportation made to the department's traffic management center by telephone at (515)239-1140 (515)237-3300 (open year-round, 24 hours a day, including legal holidays). At other times, the report shall be filed with the office of motor carrier services of the motor vehicle division of the department by telephone at (515)243-2478.

This rule is intended to implement Iowa Code ~~section~~ sections 327C.37 and 327C.41.

**TRANSPORTATION DEPARTMENT[761]**

**Notice of Intended Action**

**Proposing rule making related to railroad revolving loan and grant fund program and providing an opportunity for public comment**

The Transportation Department hereby proposes to amend Chapter 822, “Railroad Revolving Loan and Grant Fund Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 307.12.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 327H.20A.

*Purpose and Summary*

Chapter 822 provides the guidelines under which the Railroad Revolving Loan and Grant Funds are awarded and administered. This rule making reflects changes that have been identified to improve the process to provide fiscally sound financial assistance for rail projects, speed project completion and increase accountability. Some of the specific drivers of the changes include:

- In 2011, a portion of the appropriation for the Railroad Revolving Loan and Grant Fund Program was made available for rail port planning studies. The Department found that feasibility and planning studies increased the quality of projects that were later submitted by ensuring that there were demand and cost justification for the projects to move forward and, in some cases, not to move forward. Planning grants, especially for more speculative rail port projects, help future potential applicants have a more realistic understanding of the potential benefits and risks of an infrastructure project and result in better quality projects for applicants and a better use of limited state funding if or when an applicant is awarded a grant or loan for an infrastructure project.
- The Federal Railroad Administration approached the Department about developing an agreement to assist railroads in accessing available federal loans, which require certain out-of-pocket expenses. States are encouraged to participate in these expenses. Eligibility of loan development costs, whether through a private or federal source for otherwise qualifying projects, will be another way to leverage limited state funds while meeting the objective of encouraging rail development and improvements.
- Adding an allowance for an advance eligibility exemption to maintain the eligibility of costs if funding is later awarded allows applicants, with approval, to complete certain preliminary project activities (such as clearing and grading). Allowing these preparatory activities before an agreement is reached prevents the possible loss of a construction season in project completion. Faster project completion benefits the awardee and the Department and the terms of the exemption protect the Department from risk.
- The Department has had a number of projects which have been stalled or delayed, leaving funds obligated but unused. Adding time frames for each step of the process following an award is expected to mitigate delays in utilizing funding. This change will result in more timely completion of projects and, particularly in the case of loans, establish a repayment schedule more rapidly, making better use of limited state funds to support rail development.
- Some applications pledge that the project will create or retain a certain number of jobs and are scored on that criteria. This rule making formalizes the process for verification of those claims and defines acceptable performance. If an applicant fails to meet acceptable performance in the creation of jobs, a repayment of the funds will be requested. This requirement builds in accountability for the

recipients of awards and protects the state's investment by ensuring that development associated with the award occurs.

The following list explains each proposed amendment:

Item 1 amends rule 761—822.1(327H) to include the purpose of the program so that the introduction and purpose are included in the same rule. Item 4 rescinds rule 761—822.4(327H), the current rule which describes the purpose of the program. Item 1 also updates the citation to Iowa Code section 327H.20A to remove an unnecessary reference to 2009 Iowa Acts.

Item 2 amends rule 761—822.2(327H) regarding definitions. The definition of “rail facilities” is amended to include transload yards, railroad bridges, railroad scales and other railroad infrastructure to address common questions received from potential applicants on what is included as a “rail facility.” A new definition of “rail port” is added. In 2011, a special appropriation was made to assist in the development of rail ports. Grants under this appropriation were administered by the program manager under revised guidelines. The amendment formalizes the definition of a rail port for later inclusion as an eligible project for this program (Item 7).

Item 3 amends rule 761—822.3(327H) to state that program information and application forms are available on the Department's website and that completed applications shall be submitted as directed in the application materials. The telephone number for the Office of Rail Transportation is also corrected. The applications on the Department's website are designed to be computer fillable and include an email link for submitting applications to the program manager. This process benefits both the applicant and the program manager in storing, retrieving, and archiving digital files.

Items 4 and 5 rescind and reserve rules 761—822.4(327H) and 761—822.6(327H). As stated above, part of rule 761—822.4(327H) is revised and incorporated into rule 761—822.1(327H) to include both the introduction and the purpose of the rule. Rule 761—822.6(327H) concerning project criteria is rescinded, and the information is clarified and incorporated into rule 761—822.8(327H) in order to make program cost eligibility clearer to applicants.

Item 6 amends rule 761—822.7(327H) to clarify the responsibility of eligible applicants. A sole applicant or one of the applicants in a joint application must be fiscally responsible for any awarded grants or loans. Joint applications are encouraged. However, if a joint application is the recipient of an award, the designated party shall be the fiscal agent working with the Department. This would include fiscal responsibility throughout the project: agreements, project administration, and loan or default payments. Other arrangements for cost sharing or financial responsibility would need to be worked out between the joint applicants and not the Department. Similarly, the Department cannot transfer or assign fiscal responsibility to a party other than the applicant. Some past applicants have not clearly understood the financial responsibilities associated with an award. The amendment clarifies that complex multiparty agreements or the transfer of fiscal responsibility to a third party is not acceptable under this program.

Item 7 amends rule 761—822.8(327H) which explains eligible and ineligible project costs. The list of activities or items that are eligible for funding is expanded to include feasibility or planning studies. Studies have been found to be particularly beneficial for proposed developments of complex, speculative or rail port projects and are now an eligible cost. A legislative “set aside” in 2011 allocated a portion of the Railroad Revolving Loan and Grant Fund Program appropriation for studies. Since that time, it has proven valuable to fund certain studies which can verify or refute the potential success and benefits of a proposed project, which can ultimately lead to better developments or discourage investments that are less likely to succeed. In addition, loan development costs that a Class II or III railroad may have in obtaining a loan for a project that would have otherwise qualified under this chapter are added to the list as a way to further leverage federal or private funding, as explained previously. The list of ineligible costs is amended to address questions frequently received from applicants about which costs are or are not eligible. Item 7 strikes feasibility studies from the list since they are now added as an eligible cost. Since the program is focused on economic development and improvement of the freight transportation system, other rail costs are clearly stated as ineligible, including facilities solely used for historical or tourist railroad activities; capital or operating costs associated with passenger rail, commuter rail or public transit; and acquisition or capital costs associated with recreational trails,

which are often built upon abandoned railroad rights-of-way. Environmental studies and design and engineering costs are ineligible as stand-alone projects but are eligible as a part of a construction award under this program so that investments are targeted to completed infrastructure and not preparatory-only activities. Surface repair or replacement and crossing protection are ineligible as stand-alone projects because there are independent funding sources for those stand-alone improvements but are eligible if the improvement is a necessary part of a larger construction project. Item 7 also adds new subrule 822.8(3) pertaining to an advance eligibility exemption. An applicant may request a written advance eligibility exemption from the Department for specified costs incurred prior to an award or agreement, such as land acquisition, advance design costs, clearing and grubbing, i.e., activities preparatory to the installation of the rail infrastructure. If granted, the exemption will permit the specified eligible expenditure(s) by the applicant without jeopardizing the project's eligibility for future funding approval. Granting an exemption shall not imply or guarantee that the Department will fund a subsequent application. An advance eligibility exemption must be requested and approved prior to the expenditure; any cost incurred before a written exemption is granted will be ineligible for reimbursement. Allowing these preparatory activities prevents the possible loss of a construction season in project completion. Faster project completion benefits both the awardee, who can derive the benefit from the improvement, and the Department in managing the fund balances and making the best use of limited funding.

Item 8 amends rule 761—822.10(327H) concerning project applications. Item 8 provides that applications may be submitted at any time and the Office of Rail Transportation will hold the applications until the next evaluation cycle, and that when sufficient funds are available, a notice of funding availability is published on the Department's website. An email is sent to past applicants, railroads in Iowa, economic development professionals, cities, counties, municipal planning organizations, regional planning affiliations and others who have inquired about the program. The email announces the notice of funding availability and directs recipients to the website for complete information. The notice will include a deadline for applications and the approximate amount of funding available. Applications may be electronically submitted to the Department or sent to the Office of Rail Transportation. This item also requires a location map and a project plan or drawing to be submitted with the application. Item 8 also amends the justification needed for the project to require specific information which demonstrates the benefits the project will provide and a cost estimate for project construction or feasibility planning studies. If a loan is requested, the proposed loan term and interest rate are not needed on the application because loan terms are now determined by the Department and included in the program guidelines for an evaluation cycle. If the project is for a new or expanded development, a letter from the serving railroad(s) indicating the railroad(s) that will serve the planned development is required as part of the application to ensure that coordination with the railroad about the design and extent of the development has occurred and that the railroad's standards have been met in order to serve the facility.

Item 9 amends rule 761—822.11(327H) to clarify that the Department will request additional application information if necessary to understand the project. This item also states that projects involving job creation which do not meet 100 percent of the annual laborshed wage rate for their area will not be considered in order to ensure that any jobs created are "high quality jobs" for the area of the project. Item 9 also changes the word "preserved" to "retained" to clarify that the Transportation Commission may review the number of new and retained jobs when deciding which projects will receive funding awards.

Item 10 renumbers rule 761—822.12(327H) as 761—822.13(327H).

Item 11 adopts new rule 761—822.12(327H) concerning award acceptance to formalize a recent addition to the process. In some cases, the Transportation Commission approves an award for less than the requested amount, and the 45-day award acceptance process allows an awardee the time to arrange additional funding or opt out of the award if additional funding to complete the project is unavailable. In other cases, hurdles to the project which threaten completion may have developed since the application process began. The addition of the award acceptance process within a specified period of time helps ensure that projects are ready to move forward without unnecessary delay.

Item 12 amends renumbered rule 761—822.13(327H) to provide additional information that must be included in the agreement. The agreement will specify the approved process for any consultant selection

related to the project to ensure the selection meets the Department's standards. Loan repayment terms have always been a part of an agreement, but were not previously stipulated in the rule. A requirement that the agreement be executed within 180 days following acceptance of the award was recently added to the agreements in order to move the project forward toward construction. Similarly, a project completion date has been added to minimize delays. Both the agreement and completion timelines can be extended for good cause. Since the program functions as a revolving fund, these timelines minimize the obligated but unused funds in the account and ensure that any loan repayments begin in a timely manner, making the best use of limited funding. Extended delays in agreement negotiations and delayed construction have been relatively common in the past, and the added timelines provide a tool to minimize these delays. This item also amends renumbered subrule 822.13(4), which spells out the remedies that can be taken for an unfulfilled project agreement. This amendment clarifies that the Commission (and not the Department) may revoke a funding commitment, require repayment or do both when an award recipient has not fulfilled the terms of the agreement. This amendment also provides the Commission recourse if a project does not meet requirements and increases accountability.

Item 13 amends the chapter's implementation sentence to remove an unnecessary reference to 2009 Iowa Acts.

#### *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 person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 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 May 15, 2018. Comments should be directed to:

Tracy George  
Department of Transportation  
DOT Rules Administrator, Strategic Communications and Policy  
800 Lincoln Way  
Ames, Iowa 50010  
Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

#### *Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

May 17, 2018  
9 a.m.

Department of Transportation  
Administration Building  
First Floor, South Conference Room  
800 Lincoln Way  
Ames, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed 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, the Department's rules administrator, 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—822.1(327H) as follows:

**761—822.1(327H) Introduction and purpose.** The railroad revolving loan and grant fund program provides funding in the form of loans and grants for railroad-related improvement projects ~~that~~. The purpose of the program is to spur economic development and job growth and provide benefits to Iowa through economic benefits derived from railroad transportation system or service improvements. The railroad revolving loan and grant fund is established in Iowa Code section 327H.20A ~~as amended by 2009 Iowa Acts, Senate File 151, section 11,~~ and is under the control of the department.

ITEM 2. Amend rule 761—822.2(327H) as follows:

**761—822.2(327H) Definitions.**

"Rail facilities" includes railroad main lines, branch lines, switching yards, sidings, rail connections, transload yards, intermodal yards, and highway grade separations, railroad bridges, railroad scales and other railroad infrastructure.

"Rail port" means a commercial or industrial development that has the potential to provide rail service to multiple users through shared rail infrastructure, including transload or intermodal yards.

ITEM 3. Amend rule 761—822.3(327H) as follows:

**761—822.3(327H) Information.** Information Program information and application forms are available on the department's website at [www.iowadot.gov](http://www.iowadot.gov). Completed applications shall be submitted as directed in the application materials. Assistance may be obtained at the following address: Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1140 (515)239-1066. Completed applications shall be submitted to this address.

ITEM 4. Rescind and reserve rule **761—822.4(327H)**.

ITEM 5. Rescind and reserve rule **761—822.6(327H)**.

ITEM 6. Amend rule 761—822.7(327H) as follows:

**761—822.7(327H) Applicant eligibility.** A railroad company, railroad user, city, county, metropolitan planning organization, regional planning affiliation, or any other entity with an interest in a rail transportation improvement is eligible to apply for funding. The applicant shall be fiscally responsible for any awarded loans or grants. Joint applications are allowed and encouraged, ~~but the applicants shall designate one contact person~~ joint applications shall designate one entity that shall be fiscally responsible for any awarded loans or grants.

ITEM 7. Amend rule 761—822.8(327H) as follows:

**761—822.8(327H) Eligible and ineligible project costs.**

**822.8(1) Eligible costs.** Activities or items eligible for funding include, but are not limited to, the following:

- a. Modernization, upgrading or reconstruction of existing rail facilities or rail ports.
- b. Construction of new rail facilities or rail ports.
- c. and d. No change.
- e. Feasibility studies or planning studies for proposed projects that are otherwise eligible.
- f. Loan development costs that a Class II or III railroad may have in obtaining a loan for a project that would have otherwise qualified under this chapter.

**822.8(2) Ineligible costs.**

- a. The following activities or items are ineligible for funding:
  - ~~a. (1) Contract administration.~~
  - ~~b. (2) Freight car or locomotive lease, purchase or repair.~~
  - ~~c. Feasibility studies, environmental studies or major investment studies related to a railroad improvement project.~~
  - ~~d. (3) Refinancing of a completed project that would have otherwise qualified under this chapter.~~
  - (4) Facilities solely used for historical or tourist railroad activities.
  - (5) Capital or operating costs associated with passenger rail, commuter rail or public transit.
  - (6) Acquisition or capital costs associated with recreational trails.
- b. The following costs are ineligible unless the costs are part of a larger construction award under this program:

- (1) Design and engineering.
- (2) Environmental studies.
- (3) At-grade crossing surface repair or replacement.
- (4) Signals, gates or other crossing protection.

**822.8(3) Advance eligibility exemption.** No part of a project may be under construction prior to a signed and executed agreement. Certain preliminary costs may be eligible for an advance eligibility exemption, if the exemption is requested in writing and granted by the department in writing. If granted, an exemption will permit a specified expenditure by the applicant without jeopardizing the project's eligibility for future funding approval. Granting an exemption shall not imply or guarantee that the department will fund a subsequent application. An advance eligibility exemption must be requested and approved prior to the expenditure; any cost incurred before a written exemption is granted will be ineligible for reimbursement.

ITEM 8. Amend rule 761—822.10(327H) as follows:

**761—822.10(327H) Project application.**

**822.10(1) Submission.** Applications may be submitted at any time and will be held until the next evaluation cycle.

a. The applicant shall submit an original and two copies of a project application to the address in rule 761—822.3(327H). A notice of funding availability will be published on the department's website when funding is available. The notice will include the approximate amount of funding available and a deadline for consideration of applications.

b. An applicant shall submit the appropriate application on the prescribed forms either electronically to the email address included in the application or to the address in rule 761—822.3(327H).

~~b. c.~~ If an application is incomplete, department staff shall return the application to the applicant to be resubmitted when it is complete.

~~e. d.~~ An application may be withdrawn at any time after submission.

**822.10(2) Contents of application.** Each application shall contain the following:

- a. No change.

b. A detailed description of the project proposed for funding, including a location map or sketch and a project plan or drawing.

c. The justification for the project, including the following information:

(1) No change.

(2) ~~How the project will impact the local and state economies, including the number of new jobs to be created, the number of potential jobs that may be created and the number of jobs to be retained as a result of the project.~~ Specific information demonstrating that the proposed project will provide benefits to Iowa in terms of direct economic development and job growth or retention or through economic transportation or other benefits derived from railroad transportation system or service improvements. Benefits are to be quantified whenever possible.

~~(3) The long-term growth and development potential of the area or industry to be supported and the direct and indirect economic, transportation, and environmental impacts of the project.~~

d. An itemized estimate of all project or planning study costs and the proposed match or cost sharing based on the requested funding. A detailed financial plan to explain the funding for the entire project should be included, along with any associated development costs.

e. and f. No change.

g. If loan funds are requested, ~~the proposed loan term and interest rate and~~ a detailed description of the applicant's ability to repay the loan. Department staff may require the applicant to provide audited financial statements for the past two years plus a current balance sheet and profit/loss statement for the entity that is to repay the loan. If the entity that is to repay the loan is a new entity, the applicant shall, instead, provide a pro forma balance sheet and pro forma profit/loss statement.

h. No change.

i. If the project is a new or expanded development, a letter from the serving railroad(s) indicating that the railroad(s) will serve the planned development.

ITEM 9. Amend rule 761—822.11(327H) as follows:

**761—822.11(327H) Project evaluation and approval.**

**822.11(1) Staff review.** Department staff shall review the contents of each application ~~for completeness and request any additional information necessary to understand the scope and benefits of a project.~~ Projects involving job creation which do not meet 100 percent of the annual laborshed wage rate for their area will not be considered. Department staff may visit the project site and may require the applicant to verify the information in the application. After department staff determines that the application is complete, the staff shall develop a funding recommendation and shall schedule the project for submission to the transportation commission for approval.

**822.11(2)** No change.

**822.11(3) Commission approval.** In making its decision to fund a project, the transportation commission may consider the railroad transportation service benefits of the project, the economic development benefits of the project, the applicant's total capital investment, the number of direct and indirect jobs to be created or ~~preserved~~ retained by the project, the financing requested, an analysis of public benefits versus public costs, and other potential impacts or benefits of the project.

ITEM 10. Renumber rule **761—822.12(327H)** as **761—822.13(327H)**.

ITEM 11. Adopt the following new rule 761—822.12(327H):

**761—822.12(327H) Award acceptance.** After the transportation commission approves the project, department staff shall notify the applicant of the amount of the award. The applicant shall either accept or reject the award in writing within 45 days.

ITEM 12. Amend renumbered rule 761—822.13(327H) as follows:

**761—822.13(327H) Project agreement and administration.**

**822.13(1) Agreement.** After the ~~transportation commission has approved funding~~ applicant has accepted the award for a project, department staff shall negotiate and execute an agreement with the applicant. Department staff shall administer the agreement.

a. No change.

b. As applicable, the agreement shall address responsibilities for consultant selection, project design, right-of-way acquisition, contracting, construction and materials inspection; documentation required for reimbursement of project costs; loan repayment terms; audit requirements; and maintenance of the completed project.

c. The applicant shall execute the agreement within 180 days following the acceptance of the award. The applicant may request an extension, and department staff may approve an extension for good cause. Failure to execute an agreement within the specified time may result in forfeiture of the award.

**822.13(2) and 822.13(3)** No change.

**822.13(4) *Default Remedies for noncompliance with project agreement.*** ~~Department staff~~ The commission may revoke a funding commitment, ~~seek~~ require repayment of funds loaned or granted or take both actions if when the applicant fails to fulfill has not fulfilled the terms of the project agreement.

ITEM 13. Amend **761—Chapter 822**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 327H.20A ~~as amended by 2009 Iowa Acts, Senate File 151, section 11.~~

**TRANSPORTATION DEPARTMENT[761]**

**Notice of Intended Action**

**Proposing rule making related to railroad transportation and safety and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 800, “Items of General Application for Railroads,” Chapter 810, “Railroad Safety Standards,” and Chapter 813, “Close-Clearance Warning Signs Along Railroad Tracks,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 307.12, 327F.13, 327F.39 and 327G.24.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 307.26, 321.449A, 327C.2, 327C.4, 327C.38, 327C.41, 327F.13, 327F.39 and 327G.24.

*Purpose and Summary*

The proposed amendments to Chapter 800 correct a due date for annual reports, update the adoption date of a federal regulation, and provide a source for federal citations. The following list further explains the amendments to the chapter:

- Item 1 changes the due date for railroad annual reports from “no later than March 31” to “on or before April 1,” which makes the deadline in subrules 800.4(1) and 800.4(2) consistent with the reporting deadline railroads must meet under 49 Code of Federal Regulations (CFR) Part 1241. This item also corrects the implementation sentence for rule 761—800.4(327C) by striking Iowa Code sections 327C.28 and 327C.43 because they are unnecessary.
- Item 2 adopts the current CFR dated October 1, 2017, for 49 CFR Part 1152. Iowa Code section 327G.24 requires the Department to adopt rules consistent with the Surface Transportation Board’s Abandonment and Discontinuance of Rail Lines and Rail Transportation promulgated under United States Code, Title 49, and found in 49 CFR Part 1152.
- Item 3 adds new rule 761—800.21(327G) that provides sources where the federal citations may be found.

The proposed amendments to Chapter 810 update the adoption date of a federal regulation, provide a source for the federal citation, add a new rule which concerns worker transportation rest periods and make changes for clarity and consistency. The following list further explains the amendments to the chapter:

- Item 4 adopts the current CFR dated October 1, 2017, for 49 CFR Part 213. Iowa Code section 327C.4 requires the Department to inspect railroads’ track for safe operations. To accomplish this, the Department is a member of the Federal Railroad Administration’s (FRA) State Rail Safety Participation Program, which provides some benefits to states in training and technical proficiency in understanding and applying federal standards. The FRA’s track safety standards set out standards for track safety applicable to all railroads nationwide and are found in 49 CFR Part 213.
- Item 4 also adds new subrule 810.1(2) to provide sources where the federal regulations may be found and updates the rule’s implementation sentence by striking Iowa Code section 327C.2 because it is unnecessary.
- Item 5 amends rule 761—810.5(327F), which concerns heating systems within motor vehicles used to transport railroad workers. The amendments make the reporting procedure for a violation more consistent with new rule 761—810.6(327F) and revise the rule for clarity.

- Item 6 adopts new rule 761—810.6(327F). This new rule implements Iowa Code section 327F.39, which sets out the enforcement for a violation of railroad worker transportation company drivers’ allowable hours of service. Certain railroads contract with railroad worker transportation companies to transport rail crews to and from work locations on a railroad, often to remote locations and at all hours. The railroad worker transportation companies normally use motor vehicles of a size smaller than those that fall under federal regulations for motor carriers. To cover this gap and ensure the safety of railroad workers being transported, Iowa Code section 321.449A establishes requirements for the allowable time that a railroad worker transportation company driver can be on duty and the driver’s required rest periods, similar to federal regulations for motor carriers, and Iowa Code section 327F.39 prohibits both railroad transportation companies and railroad companies from requiring a driver to violate Iowa Code section 321.449A, and requires the Department to make, enter, and serve upon the owner of the motor vehicle an order as necessary to protect the safety of workers transported in the motor vehicle. To implement Iowa Code sections 321.449A and 327F.39, this new rule states that violations of Iowa Code section 321.449A are to be reported to the Department and describes how the Department will handle that report and any possible violation, including issuance of a decision and any necessary orders.

- Items 5 and 6 both provide that potential violations of motor vehicle requirements for the transportation of railroad workers may be investigated by the director of the Office of Rail Transportation or the director’s designee, which may include peace officers in the Office of Motor Vehicle Enforcement. These provisions are intended to ensure the prompt and effective investigation of potential violations by recognizing that the Office of Rail Transportation has limited staff to conduct investigations and that peace officers serving as motor vehicle enforcement officers are well-positioned and trained to conduct inspections regarding motor vehicle equipment requirements and driver hours of service requirements.

The proposed amendment to Chapter 813 in Item 7 updates the Department’s website reference to be consistent with changes made in other Department chapters. The Department’s main website address is used instead of a more specific link that may change.

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 Surface Transportation Board and the FRA.

The following list provides a specific description of the amendments to the federal regulations that have become final and effective from September 30, 2016, to October 1, 2017, and that affect 761—Chapters 800 and 813:

Amendment to the Surface Transportation Board Abandonment Regulations

Part 1152 (FR Vol. 82, No. 127, Pages 30997-31008, 07-05-2017)

This final rule amends the Surface Transportation Board’s regulations to change its rules pertaining to offers of financial assistance to improve the process and protect it against abuse. The rule amendment requires a party making an offer of financial assistance (purchase or subsidy) during a railroad abandonment proceeding to formally express intent of an offer and prove itself preliminarily financially responsible. Effective date: July 29, 2017.

Amendment to the FRA’s Track Safety Standards

Part 213 (FR Vol. 82, No. 62, Pages 16127-16136, 04-03-2017 and FR Vol. 82, No. 70, Page 17765, 04-13-2017)

Both final rules amend the civil penalties for a violation of a federal railroad safety law, FRA safety regulation or order as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. Effective dates: April 3, 2017, and April 13, 2017.

### *Fiscal Impact*

The fiscal impact cannot be determined. The federal regulations proposed to be adopted by this rule-making action were subject to fiscal impact review by either the FRA or the Surface Transportation Board 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 person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 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 May 15, 2018. Comments should be directed to:

Tracy George  
Department of Transportation  
DOT Rules Administrator, Strategic Communications and Policy  
800 Lincoln Way  
Ames, Iowa 50010  
Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

### *Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

May 17, 2018	Department of Transportation
10 a.m.	Administration Building
	First Floor, South Conference Room
	800 Lincoln Way
	Ames, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed 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, the Department's rules administrator, 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—800.4(327C) as follows:

**761—800.4(327C) Annual reports.**

**800.4(1)** A railroad company submitting an annual report to the Surface Transportation Board under 49 CFR Part 1241 shall submit a copy of this report to the department ~~no later than March 31~~ on or before April 1 following the close of the calendar year. Included with this report shall be a “State Statistics” report which shall include the following: annual data on additions and deletions of mileage within the state; mileage operated within the state at the end of the year; railway operating revenues earned within the state; statistics on rail line operations within the state including locomotive unit-miles, car-miles and ton-miles; revenue freight carried within the state by commodity class; and a freight density map showing gross ton-miles for the railroad company’s system within the state.

**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 ~~no later than March 31~~ on or before April 1 following the close of the calendar year.

This rule is intended to implement Iowa Code sections ~~327C.28, 327C.38, and 327C.41~~ and 327C.43.

ITEM 2. 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 is adopted as of October 1, ~~2002~~ 2017.

ITEM 3. Adopt the following new rule 761—800.21(327G):

**761—800.21(327G) Federal citations.** Copies of the federal code or regulations cited in this chapter are available from the state law library or online at www.gpo.gov.

This rule is intended to implement Iowa Code section 327G.24.

ITEM 4. Amend rule 761—810.1(327C) as follows:

**761—810.1(327C) Track safety standards.**

**810.1(1) Standards.** The department adopts the railroad track safety standards contained in 49 CFR Part 213 (October 1, ~~2002~~ 2017).

**810.1(2) Obtaining copies of regulations.** Copies of the federal regulations are available from the state law library or online at www.gpo.gov.

This rule is intended to implement Iowa Code sections ~~307.26, 327C.2, and 327C.4~~.

ITEM 5. Amend rule 761—810.5(327F) as follows:

**761—810.5(327F) Worker transportation motor vehicle equipment.**

**810.5(1)** No change.

**810.5(2) Report procedure.**

*a.* A person shall report an alleged violation in writing to the responsible railroad company at its corporate headquarters.

*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 Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

*b. c.* The report ~~shall be written and~~ shall include the date, time, weather conditions and all facts pertinent to the alleged violation. The report shall also include a copy of the railroad’s response or, if the railroad failed to respond, proof of the date the report was submitted to the railroad.

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

f. The director of the office of rail transportation or the director's designee shall issue a decision within 20 days after the report is received by the department of receipt of the report or 20 days after receipt of the requested additional information is received. 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. The department shall notify the person and the railroad of the decision, which is the final decision of the department.

h. The decision is final agency action.

This rule is intended to implement Iowa Code section 327F.39.

ITEM 6. Adopt the following **new** rule 761—810.6(327F):

**761—810.6(327F) Worker transportation rest periods.**

**810.6(1) Requirements.** A railroad worker transportation company and railroad worker transportation company driver shall comply with the rest period requirements of Iowa Code sections 321.449A and 327F.39(5).

**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 Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

b. The report shall include the date, time, circumstances and any evidence of an alleged violation, and the name and contact information of the driver employed by the railroad worker transportation company or the railroad worker transportation company alleged to require a driver to violate the provisions of Iowa Code section 321.449A or 327F.39(5).

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

e. The director of the office of rail transportation 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. The department shall notify the driver and the railroad worker transportation company of the decision.

g. The decision is final agency action.

This rule is intended to implement Iowa Code sections 321.449A and 327F.39.

ITEM 7. Amend subrule 813.10(4) as follows:

**813.10(4)** Form 291303 is available on the department's ~~Internet Web site~~ website at <http://www.iowadot.gov/forms/index.htm> [www.iowadot.gov](http://www.iowadot.gov) or from the office of rail transportation.

PPM-2018-76

Stuart Anderson, Planning, Programming and Modal Division; The next batch are five railroad related chapters of rules.

Chapter 802 we did include language to clarify and expand the notification to the department of those accidents and incidents.

To Chapter 822 makes changes to provide fiscally sound financial assistance for rail projects

speed project completion and increase accountability.

For Chapter 800 we updated a due date for annual reports, update the adoption date of a federal regulation, and provided a source for federal citations.

For Chapter 810 we adopted a date of a federal regulation, provided a source for the federal citation, established a new rule concerning worker transportation rest periods and make changes for clarity and consistency. Chapter 813 minor change to update the department's website reference.

The public comment period ended May 15 for all three of these rule makings. The department did not receive any comments or requests for oral presentations. Therefore, it is recommended that the Commission approve the rule amendments included in the Notice of Intended Action attached to the Commission Order.

Commissioner Yanney made a motion to approve the rule amendments, as recommended on the Commission Order. Commissioner Maher seconded the motion. The motion passed unanimously.

DEPARTMENT OF TRANSPORTATION  
COMMISSION ORDER

Division/Bureau/Office Planning, Programming and Modal Division Order No. PPM-2018-77

Submitted by Stuart Anderson Phone No. 515-239-1661 Meeting Date June 12, 2018

Title Administrative Rules — 761 IAC 161, Federal-Aid Highway Bridge Program and 162, Surface Transportation Block Grant Program

**DISCUSSION/BACKGROUND:**

The amendments to Chapters 161 and 162 add language stating that primary road funds may be swapped with Surface Transportation Block Grant funds allocated to cities and counties for road and bridge construction projects.

A complete summary explaining the proposed amendments is included in the attached Notice of Intended Action which was published in the May 9 Iowa Administrative Bulletin.

The Commission did approve a draft Notice of Intended Action for this rule making at its April 10, 2018, meeting.

The public comment period ended May 29. The department did not receive any comments or requests for oral presentations.

**PROPOSAL/ACTION RECOMMENDATION:**

It is recommended that the Commission adopt the rule amendments included in the attached Notice of Intended Action so the Department may publish an adopted and filed rulemaking in the July 4 Iowa Administrative Bulletin.

**COMMISSION ACTION:**

Moved by Kathleen Fehrman Seconded by David Rose

	Aye	Vote Nay	Pass
Fehrman	<u>x</u>	<u>      </u>	<u>      </u>
Huber	<u>x</u>	<u>      </u>	<u>      </u>
Maher	<u>x</u>	<u>      </u>	<u>      </u>
Putney	<u>x</u>	<u>      </u>	<u>      </u>
Rielly	<u>x</u>	<u>      </u>	<u>      </u>
Rose	<u>x</u>	<u>      </u>	<u>      </u>
Yanney	<u>x</u>	<u>      </u>	<u>      </u>

\_\_\_\_\_  
Division Director                      Legal                      State Director

**TRANSPORTATION DEPARTMENT[761]**

**Notice of Intended Action**

**Proposing rule making related to highway bridge program and surface transportation block grant program and providing an opportunity for public comment**

The Transportation Department hereby proposes to amend Chapter 161, “Federal-Aid Highway Bridge Program,” and Chapter 162, “Surface Transportation Block Grant Program,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 307A.2(4).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 307.44 and 313.4(1).

*Purpose and Summary*

The Department is proposing to amend Chapters 161 and 162 to add language stating that primary road funds may be swapped with Surface Transportation Block Grant (STBG) funds allocated to cities and counties for road and bridge construction projects. The highway bridge program is funded through STBG funds. These amendments are necessary to make the rules consistent with 2017 Iowa Acts, chapter 13, which amended Iowa Code section 313.4(1) and allows for the swap of STBG funds.

The following list explains the additional proposed amendments to Chapters 161 and 162:

- Amend the title of Chapter 161 by striking “federal-aid” and adding “for cities and counties.” The change in the title is being made to clarify that the highway bridge program is for cities and counties and that with the addition of the swap language, the funds will no longer be federal aid.
- Strike “federal-aid” within rule 761—161.1(307) for consistency.
- Amend rules 761—161.2(307) and 761—162.2(307) to add references to the Department’s website where additional information may be found about the swap process.
- Amend rule 761—161.3(307) to add the words “Block Grant” to the name of the Surface Transportation Program and to amend the wording of the federal citation for consistency.
- Amend the implementation sentences within both chapters to add references to Iowa Code section 313.4(1). The implementation sentence for Chapter 162 is also amended to strike the reference to 2016 Iowa Acts, Senate File 2320, and to add a reference to Iowa Code section 307.44 for consistency.
- Correct the parenthetical implementation statutes of existing rules within Chapter 162 to reference Iowa Code chapter 307 and to strike the reference to 2016 Iowa Acts, Senate File 2320.

Iowa Code section 313.4(1)“c” allows the Transportation Commission to allocate money from the primary road fund to be swapped. The Transportation Commission approved the proposed amendments to Chapters 161 and 162 at its April 10, 2018, meeting.

*Fiscal Impact*

2017 Iowa Acts, chapter 13, amended Iowa Code section 313.4(1)“c” to increase efficiency and reduce project costs. The Department is implementing this legislation and, because it is early in the implementation stage, swap projects have not yet been constructed. Therefore, a fiscal impact cannot be determined, but the Department believes the impact will be positive.

### *Jobs Impact*

After analysis and review of this rule making, the Department has determined that the proposed amendments may have a positive impact on private sector jobs and employment opportunities in Iowa. The amendments will result in cost savings that will in turn be reinvested into additional construction projects throughout the state. The additional projects should increase the number of jobs for the contracting and consulting industry.

### *Waivers*

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 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 May 29, 2018. Comments should be directed to:

Tracy George  
Department of Transportation  
DOT Rules Administrator, Strategic Communications and Policy  
800 Lincoln Way  
Ames, Iowa 50010  
Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

### *Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

May 31, 2018	Department of Transportation
10 a.m.	Administration Building
	First Floor, South Conference Room
	800 Lincoln Way
	Ames, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed 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, the Department's rules administrator, 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 161**, title, as follows:

~~FEDERAL-AID HIGHWAY BRIDGE PROGRAM FOR CITIES AND COUNTIES~~

ITEM 2. Amend rule 761—161.1(307) as follows:

**761—161.1(307) Purpose.** The purpose of these rules is to establish requirements for the counties' and cities' ~~federal-aid~~ highway bridge program, in accordance with Iowa Code section 307.44.

ITEM 3. Amend rule 761—161.2(307) as follows:

**761—161.2(307) ~~Contact information~~ Information.** ~~Questions regarding~~ Information relating to this chapter may be directed to obtained from the Office of Local Systems, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; or on the department's website at [www.iowadot.gov](http://www.iowadot.gov).

ITEM 4. Amend rule 761—161.3(307) as follows:

**761—161.3(307) Source of funds.** The Surface Transportation Block Grant Program established in ~~Section 133 of Title 23 of the United States Code~~ 23 U.S.C. Section 133 provides for the use of federal funds to replace or rehabilitate public road bridges. The department, in consultation with county and city officials through their representative organizations, has dedicated a portion of these funds for replacement and rehabilitation of city and county bridges.

ITEM 5. Renumber rule **761—161.4(307)** as **761—161.5(307)**.

ITEM 6. Adopt the following new rule 761—161.4(313):

**761—161.4(313) Swapping of funds.** Surface Transportation Block Grant funds allocated to city and county road or bridge construction projects may be swapped with primary road funds in accordance with Iowa Code section 313.4(1).

ITEM 7. Amend **761—Chapter 161**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 307.44 and 313.4(1).

ITEM 8. Amend rule 761—162.1(86GA,SF2320), parenthetical implementation statute, as follows:

**761—162.1(~~86GA,SF2320~~ 307) Purpose.**

ITEM 9. Amend rule 761—162.2(86GA,SF2320) as follows:

**761—162.2(~~86GA,SF2320~~ 307) ~~Contact information~~ Information.** Information relating to this chapter may be obtained from the Office of Program Management, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1661; or on the department's website at [www.iowadot.gov](http://www.iowadot.gov).

ITEM 10. Amend rule 761—162.3(86GA,SF2320), parenthetical implementation statute, as follows:

**761—162.3(86GA,SF2320 307) Source of funds.**

ITEM 11. Amend rule 761—162.4(86GA,SF2320), parenthetical implementation statute, as follows:

**761—162.4(86GA,SF2320 307) Administration of funds.**

ITEM 12. Renumber rule 761—162.4(307) as 761—162.5(307).

ITEM 13. Adopt the following new rule 761—162.4(313):

**761—162.4(313) Swapping of funds.** Surface Transportation Block Grant funds allocated to city and county road or bridge construction projects may be swapped with primary road funds in accordance with Iowa Code section 313.4(1).

ITEM 14. Amend **761—Chapter 162**, implementation sentence, as follows:

These rules are intended to implement ~~2016 Iowa Acts, Senate File 2320, section 4~~ Iowa Code sections 307.44 and 313.4(1).

PPM-2018-77

Stuart Anderson, Planning, Programming and Modal Division; Next we have proposed changes to two chapters of administrative rules, and both of these changes are necessary to implement your adoption of a federal aid swap policy earlier this year.

Chapter 161 is the chapter for the Federal Aid Highway Bridge Program; this is federal funds allocated to cities and counties for bridge replacement, we added language stating that primary road funds may be swapped for federal funds in that program. In addition, because these funds can be swapped changed the name of the program to eliminate the reference to federal-aid since it can be state funding. Now it will be called the Highway-Bridge Program for Cities and Counties.

For the Surface Transportation Block Program. Chapter 162, we just added language indicating that state primary road funds may be swapped for federal funds in that program.

You previously approved a draft Notice of Intended Action for this rule making at your April 10 meeting.

The public comment period ended May 29. We did not receive any comments or requests for oral presentations. Therefore, it is recommended that the Commission adopt the rule amendments included in the Notice of Intended Action attached to the Commission Order so that the department may publish an adopted and filed rulemaking in the July 4 Iowa Administrative Bulletin.

Commissioner Fehrman made a motion to adopt the rule amendments, as recommended on the Commission Order. Commissioner Rose seconded the motion. The motion passed unanimously.

DEPARTMENT OF TRANSPORTATION  
COMMISSION ORDER

Division/Bureau/Office Highway Division  
Office of Local Systems Order No. H-2018-78

Submitted by Mitchell J. Dillavou Phone No. 515-239-1124 Meeting Date June 12, 2018

Title Administrative Rules — 761 IAC 174, Reimbursable Services and Supplies

**DISCUSSION/BACKGROUND:**

The proposed amendment to Chapter 174 clarifies a paragraph pertaining to structural analysis and concerns the list of the reimbursable services and supplies that counties and cities may request from the department.

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

The public comment period ended May 29, 2018. The department did not receive any comments or requests for oral presentations.

**PROPOSAL/ACTION RECOMMENDATION:**

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

**COMMISSION ACTION:**

Moved by Charese Yanney Seconded by Tom Rielly

	Aye	Vote Nay	Pass
Fehrman	x		
Huber	x		
Maher	x		
Putney	x		
Rielly	x		
Rose	x		
Yanney	x		

\_\_\_\_\_  
Division Director                      Legal                      State Director

**TRANSPORTATION DEPARTMENT[761]**

**Notice of Intended Action**

**Proposing rule making related to reimbursable services and supplies and providing an opportunity for public comment**

The Transportation Department hereby proposes to amend Chapter 174, “Reimbursable Services and Supplies,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 307.12.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 307.12.

*Purpose and Summary*

This proposed amendment concerns the list of the reimbursable services and supplies that counties and cities may request from the Department and pertains to structural analysis. The Department is clarifying paragraph 174.3(1)“a” because it was unclear as written.

*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 person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 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 May 29, 2018. Comments should be directed to:

Tracy George  
Department of Transportation  
DOT Rules Administrator, Strategic Communications and Policy  
800 Lincoln Way  
Ames, Iowa 50010  
Email: [tracy.george@iowadot.us](mailto:tracy.george@iowadot.us)

*Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

May 31, 2018  
11 a.m.

Department of Transportation  
Administration Building  
First Floor, South Conference Room  
800 Lincoln Way  
Ames, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed 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, the Department's rules administrator, 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 paragraph **174.3(1)“a”** as follows:

*a.* Structural analysis: The department will provide ~~standards~~, an initial load-rating analysis for standard bridge types issued by the department. The department will provide a detailed field inspection of an existing or proposed structure to determine condition or load-carrying capacity and advise on capacity calculations.

H-2018-78

Mitch Dillavou, Highway Division; Good morning. The proposed amendment to Chapter 174 clarifies a paragraph pertaining to structural analysis which is one of the reimbursable services the DOT offers to counties and cities.

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

The public comment period ended May 29, 2018. The department did not receive any comments or requests for oral presentations. It is recommended that the Commission approve the rule amendment included in the attached Notice of Intended Action.

Commissioner Yanney made a motion to approve the rule amendment as attached to the Commission Order. Commissioner Rielly seconded the motion. The motion passed unanimously.