

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 307.12 and section 307A.2 as amended by 2015 Iowa Acts, House File 635, section 20, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 10, “Administrative Rules,” Chapter 11, “Waiver of Rules,” and Chapter 12, “Declaratory Orders,” Iowa Administrative Code.

The proposed amendments to Chapter 10 strike the definition of “written criticisms” since this term was removed from Iowa Code section 17A.7, change “department’s administrative rules coordinator” to “department’s rules administrator” for clarity and consistency, clarify what the Department includes in the Notice of Intended Action, strike rules concerning the procedures on nonsubstantive amendments since the Department no longer uses emergency procedures to make nonsubstantive changes, make technical changes, and correct the implementation sentence.

The proposed amendments to Chapter 11 add “rules administrator” and “Iowa” to the address for clarity and consistency, make changes to expand the retention period of waiver records, and correct the implementation sentence.

The proposed amendments to Chapter 12 change “department’s administrative rules coordinator” to “department’s rules administrator.”

These rules do not provide for waivers. Any person who believes that the circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; Internet e-mail address: tracy.george@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than September 22, 2015.

A meeting to hear requested oral presentations is scheduled for Thursday, September 24, 2015, at 10 a.m. at the Administration Building, First Floor, South Conference Room, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

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

These amendments are intended to implement Iowa Code sections 17A.1 to 17A.9A, 17A.19 and 307.12 and section 307A.2 as amended by 2015 Iowa Acts, House File 635, section 20.

The following amendments are proposed.

ITEM 1. Amend rule 761—10.1(17A) as follows:

761—10.1(17A) General.

~~10.1(1) Rescinded, effective 1/7/87.~~

10.1(2) 10.1(1) Definitions. The definitions in Iowa Code section 17A.2 and the definition of “small business” in Iowa Code section 17A.4A are hereby adopted. In addition:

“*Commission*” means the Iowa transportation commission.

“Department” means the Iowa department of transportation.

“Director” means the director of transportation or the director’s designee.

“Written criticisms” means:

1. ~~Petitions for rule making, objections filed pursuant to Iowa Code subsection 17A.4(4), and written and oral submissions received during rule making pursuant to Iowa Code paragraph 17A.4(1)“b.”~~

2. ~~Petitions for waiver of a rule tendered to the department or granted by the department under 761—Chapter 11.~~

3. ~~Letters to the director criticizing or recommending changes to a rule.~~

~~10.1(3)~~ 10.1(2) *Address.* The address of the department’s administrative rules coordinator administrator is: ~~Administrative Rules Coordinator~~ Administrator, Office of Policy and Legislative Services, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 2. Amend rule 761—10.2(17A) as follows:

761—10.2(17A) Rule making.

10.2(1) *Notice of Intended Action—approval and content.* Written authorization to publish proposed rules under Notice of Intended Action in the “Iowa Administrative Bulletin” shall be made by the director. Each commissioner shall be sent a copy of the Notice of Intended Action before its publication in the Iowa Administrative Bulletin. The Notice of Intended Action shall contain:

~~a. Either the complete text of the proposed rules or a summary of the subjects and issues involved. A copy of the complete text of the proposed rules and a brief explanation of the purpose of the proposed rules.~~

b. The specific legal authority for the proposed rules.

~~b. c.~~ The methods that persons and agencies may use to present their views on the proposed rules. In addition to providing for the submission of written comments, the Notice shall afford any interested person or agency the opportunity to make an oral presentation.

~~c. d.~~ Any other information required by statute or rule.

~~d. Each commissioner shall be sent a copy of the Notice of Intended Action before its publication in the Iowa Administrative Bulletin.~~

10.2(2) No change.

10.2(3) *Adoption and filing of rules.*

~~a. The director shall adopt proposed rules unless statutes specifically provide for commission adoption. The commission shall approve rules prior to their adoption by the director except as provided in subrule 10.2(5).~~

~~b. No change.~~

10.2(4) *Regulatory analysis.* A request for issuance of a regulatory analysis shall be submitted to the department’s administrative rules coordinator administrator at the address in subrule ~~10.1(3)~~ 10.1(2).

~~10.2(5) Nonsubstantive amendments to rules.~~ In reliance upon Iowa Code subsection 17A.4(2), rule making concerning nonsubstantive amendments shall be exempted from Iowa Code subsection 17A.4(1) and subrules 10.2(1) and 10.2(2). ~~Because nonsubstantive amendments do not alter the meaning or consequence of a rule, it is determined unnecessary and contrary to the public interest to expend resources in publishing a Notice of Intended Action and providing an opportunity for public comment during the rule-making process. Nonsubstantive amendments may be adopted and filed by the director. Nonsubstantive amendments shall include the following:~~

~~a. Correcting the name, address or telephone number of an organizational unit within the department.~~

~~b. Updating references to the Iowa Code or the Iowa Acts to reflect the most current citation.~~

~~c. Correcting spelling, typographical or grammatical errors.~~

~~d. Eliminating references to gender.~~

~~10.2(6)~~ 10.2(5) *Concise statement.* If requested in accordance with this subrule, the department shall issue a concise statement of the principal reasons for and against a rule that has been adopted, incorporating therein the reasons for overruling considerations urged against the rule.

~~a. The request shall:~~

- (1) No change.
- (2) Be submitted in writing to the department's ~~administrative rules coordinator at the address in subrule 10.1(3)~~ administrator.
- (3) Be delivered to the ~~coordinator~~ administrator or postmarked no later than the thirtieth calendar day following adoption of the subject rule.
 - b.* A requested concise statement shall be issued either at the time of rule adoption or within 35 days after the department's ~~administrative rules coordinator~~ administrator receives the request.

10.2(7) 10.2(6) Registration.

- a.* and *b.* No change.
- c.* *Submission and acknowledgment of requests.* Requests for registration under this subrule shall be submitted to the department's ~~administrative rules coordinator at the address in subrule 10.1(3)~~ administrator. The receipt of requests for registration shall be promptly acknowledged by the department. The acknowledgment shall either:
 - (1) and (2) No change.

ITEM 3. Amend rule 761—10.3(17A) as follows:

761—10.3(17A) Petitions for rule making.

10.3(1) The department shall accept and consider, from any person or agency, petitions for rule making when submitted to the department's ~~administrative rules coordinator at the address in subrule 10.1(3)~~ administrator and prepared in conformance with the following:

- a.* to *c.* No change.
- ~~*d.* Rescinded IAB 6/8/94, effective 7/13/94.~~

10.3(2) The date of receipt of a petition is the day it reaches the department's ~~administrative rules coordinator~~ administrator. The ~~coordinator~~ administrator shall promptly notify the petitioner of the date of receipt and the assigned docket number.

10.3(3) and **10.3(4)** No change.

ITEM 4. Amend **761—Chapter 10**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter 25B~~ and sections 17A.1 to 17A.9, 17A.19, ~~307.10~~ and 307.12 and section 307A.2 as amended by 2015 Iowa Acts, House File 635, section 20.

ITEM 5. Amend subrule 11.5(3) as follows:

11.5(3) Submission of petition. A petition for waiver from the requirements of a rule shall be submitted to the Rules Administrator, Office of Policy and Legislative Services, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 6. Amend subrule 11.8(2) as follows:

11.8(2) The office of policy and legislative services shall, at a minimum, retain for five years records relating to waivers granted or denied under this chapter.

ITEM 7. Amend **761—Chapter 11**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~sections 17A.7(2)“b”~~ and section 17A.9A and Executive Order Number 11, dated September 14, 1999.

ITEM 8. Amend subrule 12.2(2) as follows:

12.2(2) The petition must be submitted to the department's ~~administrative rules coordinator~~ administrator at the following address: ~~Administrative Rules Coordinator~~ Administrator, Office of Policy and Legislative Services, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 9. Amend subrule 12.2(6) as follows:

12.2(6) The date of receipt of the petition is the day it reaches the department's ~~administrative rules coordinator~~ administrator. The ~~coordinator~~ administrator shall promptly send an acknowledgment of receipt to the petitioner or, if applicable, petitioner's representative.