

TRANSPORTATION DEPARTMENT[761]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 116
“Junkyard Control”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 306C.2, 306C.3, 306C.4, and 306C.6
State or federal law(s) implemented by the rulemaking: Iowa Code chapter 306C and 23 U.S.C. Section 136

Public Hearing

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

May 21, 2024
1 to 1:30 p.m.

[Microsoft Teams Link](#)
Or dial: 515.817.6093
Conference ID: 407 636 09

Public Comment

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

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Purpose and Summary

This proposed chapter provides some necessary definitions and screening requirements to implement Iowa Code chapter 306C, subchapter I, which restricts the development of junkyards adjacent to major routes in Iowa unless the site is in an industrial area or has effective screening so that motorists are not able to view the contents from the highway.

Key definitions included in the proposed rules are “adjacent area,” “automobile graveyard,” “inoperative motor vehicle,” and “nonconforming junkyard.” Implementation of the law relies upon the use of these terms. Without these definitions, ambiguity will be present on whether a site complies with the law.

The statute defers to rules to be promulgated by the Department concerning the installation of screens that will effectively block the view of the site from the highway. This chapter provides the criteria to ensure that the screens accomplish the intended purpose of the law.

Analysis of Impact

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

The persons who will bear the costs of the proposed rules are the owners of junkyards located adjacent to the National Highway System in areas that are not zoned industrial and owners of junkyards located adjacent to the National Highway System in areas that are not subject to a zoning ordinance and are not used for industrial purposes. In these areas, screens are necessary to protect the roadside views. The cost of a screen is the responsibility of the owner unless the site pre-exists the law and federal and state funds are available for screening.

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

The general traveling public benefits from improved roadside views in nonindustrial areas and from the receipt of federal highway funds to construct and maintain road systems in Iowa. As an added benefit, local officials are able to rely on the Department for assistance in controlling a junkyard located within the local officials’ jurisdiction that is also under the purview of the Department.

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

- Quantitative description of impact:

Owners of sites that qualify under the definition of a junkyard that are located adjacent to and visible from the National Highway System in areas that are not zoned industrial are required to install a screen that effectively obscures the site from view of the highway. This has affected less than one site per year in the state.

The costs of screening vary greatly, depending upon the size of the site and whether contents of the site can be relocated behind existing buildings, fences, or foliage. The elevation of the site in relation to the highway can also be a factor in determining how high the screen needs to be for complete obscurement. The state has not generally been advised of the amounts paid by operators to purchase the materials or plantings.

- Qualitative description of impact:

Impacts in the form of a cost obligation to an operator are generally quantitative rather than qualitative. However, for the general traveling public, a positive qualitative impact occurs when a developing site is screened from view from the highway. Indirectly, all Iowans benefit from the annual federal highway apportionment that is used to improve the quality of the state's road systems.

3. Costs to the State:

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

The junkyard control program is administered by the Advertising Management section of the Department. This section is self-supporting through the permit fees that are charged for various sign permits. The junkyard control program utilizes about 5 percent of a full-time employee in the section, with the other duties being the review of outdoor advertising signs. There are no additional costs to the State at this time. The use of State funds with matching federal funds to screen pre-existing nonconforming junkyards has not been and is not expected to be approved by the Department in the foreseeable future

- Anticipated effect on state revenues:

This regulatory program does not affect State revenues. Junkyards subject to the purview of the Department do not pay any license fees, at least not associated with the Highway Beautification Act. Junkyards in the business of recycling are required to have a recycler's license, but that requirement is unrelated to this regulatory program and not covered by this proposed chapter.

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

The program is not very active currently, with an occasional site being required to install a screen when needed. The costs are borne by the operator of the site and should be considered part of the development costs of the site. Many local jurisdictions prohibit the development of junkyards unless they are located in an industrial zone or similar heavy classification. State law does not restrict such development but does require a screen, if not located in an industrial zone. The costs are very slight as compared to a 7 percent penalty calculated at \$43.7 million. The federal law, 23 U.S.C. Section 136, contains a 7 percent reduction penalty on annual federal-aid highway apportionments for states that do not meet the federal requirements.

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

The cost of an effective screen will depend upon the size of the junkyard, existing vegetation and buildings, and the elevation differences in relation to the highway. The Department welcomes cost-saving ideas, provided they still yield year-round obscurement from the highway. The Department strives for flexibility when working with site owners regarding options and time frames.

While some states regulate all routes under state jurisdiction, the Iowa Department only regulates the routes that are required to be controlled under federal law. These routes consist of the National Highway System, which includes the interstates and major highways in Iowa as shown on this webpage: [National Highway System | Iowa Department of Transportation - Open Data \(iowadot.gov\)](#).

6. Alternative methods considered by the agency:

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

Alternative methods for avoiding a 7 percent penalty on federal highway funds are not available. The only method for avoiding a 7 percent penalty is to satisfy the minimum requirements in the federal law. The Department's objective is to meet, but not exceed, the minimum federal requirements necessary for receipt of the full annual apportionment.

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

Alternative methods are not available after review of federal law.

Small Business Impact

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

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

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

The existing chapter has not had a substantial impact on small business. The number of sites that have been required to install a screen are less than one per year. These sites were developed by operators in nonindustrial areas adjacent to interstates or major routes without forethought that screening may be necessary or with knowledge that screening would be necessary to comply with state law and, often, local ordinances.

The Department does not pressure operators into quick decisions or installing screens in a 30-day period. Rather, the Department informs operators of the law and allows time for the operator to research options to achieve compliance. This may include construction of buildings, relocation of contents to areas not visible from the highway, installation of screens, planting of trees, creation of berms, and other measures to obscure the junkyard contents, with flexible time frames.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 116 and adopt the following **new** chapter in lieu thereof:

CHAPTER 116 JUNKYARD CONTROL

761—116.1(306C) Definitions. The definitions in Iowa Code section 306C.1 apply to this chapter. In addition:

“Adjacent area” means an area that is contiguous to and within 1,000 feet of the nearest edge of the right-of-way of any highway on the national highway system.

“Automobile graveyard,” as used in Iowa Code section 306C.1, means any site that is maintained, used, or operated for storing, keeping, buying, or selling ten or more wrecked, scrapped, ruined, dismantled or inoperative motor vehicles, but does not include any location where motor vehicle bodies are placed along stream banks for purposes of bank stabilization and soil erosion control, if such placement conforms with guidelines established by the department of natural resources.

“Industrial activities” means activities that are generally permitted only in industrial or heavier zone classifications by zoning authorities within the state, except that none of the following are considered to be industrial activities:

1. Outdoor advertising structures.
2. Agricultural, forestry, ranching, grazing, farming and related activities, including but not limited to wayside fresh produce stands.
3. Activities normally and regularly in operation less than three months of the year.
4. Transient or temporary activities.
5. Activities not visible from the main traveled way.
6. Activities more than 300 feet from the nearest edge of the main traveled way within the corporate limits of cities.
7. Activities more than 1,000 feet from the nearest edge of the main traveled way outside the corporate limits of cities.
8. Activities conducted in a building principally used as a residence.
9. Railroad tracks, minor sidings, and passenger depots.
10. Junkyards.

“*Industrial zone*” means a zone established by zoning authorities as being most appropriate for industry or manufacturing. A zone that simply permits certain industrial activities as an incident to the primary land use designation is not considered to be an industrial zone.

“*Inoperative motor vehicle*” means any of the following:

1. A motor vehicle that does not have a valid title.
2. A motor vehicle that does not have a current registration unless the motor vehicle is in the inventory of a motor vehicle dealer licensed under Iowa Code chapter 322.
3. A motor vehicle with one or more of the following items missing or in need of substantial repair: windshield, driver’s seat, steering wheel or steering system, battery, ignition system, fuel tank or fuel supply system, engine, transmission, drive shaft, differential, axle, suspension system, brake system, or frame.
4. A motor vehicle that is not immediately capable of legal operation on a public road or street.

However, any one of the following by itself does not render a motor vehicle inoperative: a battery that can be recharged, one tire and wheel missing or in need of repair, or lack of fuel.

“*Main traveled way*” means the portion of the roadway for movement of vehicles on which through traffic is carried, exclusive of shoulders and auxiliary lanes. In the case of a divided highway, the main traveled way includes each of the separated roadways for traffic moving in opposite directions, exclusive of shoulders, auxiliary lanes, frontage roads, turning roadways, and parking areas.

“*Nonconforming junkyard*” means a junkyard located in an area not exempted by Iowa Code section 306C.2 and that was lawfully established:

1. Prior to July 1, 1972, and is located within the adjacent area of an interstate highway.
2. Prior to May 6, 2015, and is located within the adjacent area of a noninterstate highway on the national highway system.
3. Prior to the effective date of a zoning change that caused nonconformity with these rules.
4. Prior to the departure or closure of an industrial activity that caused nonconformity with these rules.
5. Prior to the establishment of a highway as part of the national highway system.

“*Right-of-way*” means land area dedicated to public use for the highway and its maintenance, and includes land acquired in fee simple or by permanent easement for highway purposes but does not include temporary easements or rights for supplementary highway appurtenances.

“*Unzoned industrial area,*” as used in Iowa Code sections 306C.2 and 306C.3, means land occupied by a regularly used building, parking lot, storage area or processing area of an industrial activity, and land within 1,000 feet thereof that is:

1. Located on the same side of the highway as the activity,
2. Not predominantly used for residential or commercial purposes, and
3. Not zoned by state or local law, regulation, or ordinance.

This rule is intended to implement Iowa Code sections 306C.1 to 306C.9 and Title 23 U.S.C. Section 136, as implemented through 23 CFR 751.

761—116.2(306C) Screening or removal costs. Screening or removal shall be paid for and provided by the following:

116.2(1) The department, only for nonconforming junkyards and subject to Iowa Code sections 306C.3 and 306C.5.

116.2(2) The owner, for junkyards established within the adjacent area of a highway on the national highway system in an area not exempted by Iowa Code section 306C.2, or for nonconforming junkyards that have expanded in size since becoming nonconforming.

This rule is intended to implement Iowa Code sections 306C.3 and 306C.5.

761—116.3(306C) Screening standards.

116.3(1) Composition. Screens may be natural or manmade, but all screens shall be of a height and type to provide year-round obscurement of the contents.

a. Natural screens may consist of non-deciduous plantings, provided the variety, size, and growth rate will obscure the site within a reasonable time period. Earthen berms or existing natural features on the site may also be incorporated into the screening solution.

b. Manmade screens may consist of any variety of materials, provided the screen is constructed in a sturdy, permanent manner and blends with the natural surroundings. Buildings may be incorporated into the screening solution, but inoperative motor vehicles may not be stacked or arranged as a component of the screening feature.

116.3(2) Screening plan. For junkyards that are not exempted by Iowa Code section 306C.2, a screening plan should be submitted to the department for review before investing in plants, materials, and labor. This allows for the department to review the plan to ensure that the proposed screen will completely obscure the contents of the site from view, will be structurally sound, and will blend in with the natural surroundings for the area. While submitting a screening plan is not required, doing so adds confidence that investments made will yield the desired result.

This rule is intended to implement Iowa Code sections 306C.3 and 306C.4, and Title 23 U.S.C. Section 136, as implemented through 23 CFR 751.

761—116.4(306C) Removal. Removal or relocation of contents to areas not viewable from the highway may be necessary for the following reasons:

116.4(1) The difference in elevation between the highway and junkyard is such that a screen tall enough to completely obscure the site is not cost effective.

116.4(2) The owner is financially unwilling or otherwise unable to complete the installation of or maintain a screen that can pass review by the department.

116.4(3) Local regulations do not permit the construction of screening of such type that would provide complete obscurement.

This rule is intended to implement Iowa Code sections 306C.2, 306C.3 and 306C.5.

761—116.5(306C) Notice and enforcement.

116.5(1) Notice. The department may provide a 30-day written notice by certified mail to the owner of a junkyard and, if not the same person or entity, the owner of the property, demanding that steps be taken to bring a site into compliance. Steps may include but are not limited to the submission of a screening plan, completion of a screen, and extending or repairing a screen.

116.5(2) Enforcement. If the junkyard remains out of compliance after notice is served and steps toward compliance are not accomplished within the time frames prescribed by the department, the department may apply for an injunction to abate the public nuisance as provided in Iowa Code section 306C.6.

This rule is intended to implement Iowa Code sections 306C.4 and 306C.6.

761—116.6(17A) Hearings and appeals. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision pursuant to 761—Chapter 13.

This rule is intended to implement Iowa Code chapter 17A.

761—116.7(306C) Contact information. Inquiries regarding this chapter may be directed to the Advertising Management Section, Traffic and Safety Bureau, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone 515.239.1255.

This rule is intended to implement Iowa Code sections 306C.1 to 306C.9.