

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 40
“Recovery of Damages to Highways or Highway Structures”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321.475

State or federal law(s) implemented by the rulemaking: Iowa Code section 321.475

Public Hearing

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

October 28, 2024
11 to 11:30 a.m.

[Microsoft Teams Link](#)
Or dial: 515.817.6093
Conference ID: 611 359 34

Public Comment

Any interested person may submit written or oral 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:

Traci Springer
800 Lincoln Way
Ames, Iowa 50010
Phone: 515.239.1338
Email: traci.springer@iowadot.us

Purpose and Summary

This chapter’s intended benefit is to recover damages to highway or highway structures because of illegal and/or overweight operations.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:
The public and any party that is operating in an illegal and/or overweight operation that causes damage to highway or highway structures will bear the costs of these rules.
 - Classes of persons that will benefit from the proposed rulemaking:
The public and any party that is operating in an illegal and/or overweight operation that causes damage to highway or highway structures will benefit by having clear Department procedures on how the Department recovers damages.
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:
The Department will be able to recover the costs of any damages incurred from a simple sign repair to bridge damage rather than using budget dollars for the repairs.
 - Qualitative description of impact:
This chapter should increase the quality of our highways and highway structures, making them safer for motorists.

3. Costs to the State:

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

There are no costs to the Department to implement or enforce these rules.

- Anticipated effect on state revenues:

The revenue generated from this chapter will balance out the expenses incurred with the damage.

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

The benefit of the proposed chapter is consistency and a defined process. The Department would be responsible for the repairs to the highway and/or highway structures if Iowa Code section 321.475 and this chapter did not exist.

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

There are no less costly or less intrusive methods to achieve the purpose of the proposed rules. Establishing procedures that the Department will follow ensures the process is clear and is consistently applied.

6. Alternative methods considered by the agency:

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

The Department did not consider alternatives for the proposed rules. The Department is required by Iowa Code to adopt this chapter.

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

No alternatives were considered for the proposed rules.

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?

Small businesses may be impacted by this chapter. However, there is no small business impact beyond what was already anticipated under the statute.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 40 and adopt the following **new** chapter in lieu thereof:

CHAPTER 40
RECOVERY OF DAMAGES TO HIGHWAYS OR HIGHWAY STRUCTURES

761—40.1(321) General.

40.1(1) This chapter is limited to recovery of damages to highways or highway structures in accordance with Iowa Code section 321.475, Iowa Code chapter 321E and 761—Chapter 511.

40.1(2) Information about this chapter may be obtained from the Finance Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, or the department's website at www.iowadot.gov/claimsmanagement.

761—40.2(321) Definitions.

“Highway” means any segment of the primary road system or a municipal extension and includes but is not limited to the pavement surface, shoulder, median, earth fill, ditches and vegetation.

“Highway structure” means all the appurtenances of a highway, including but not limited to guardrails, culverts, bridges, signs, light poles, attenuators, traffic control devices, or buildings at rest areas, information sites, commercial vehicle inspection and enforcement sites, or other appurtenances adjacent to the highway.

761—40.3(321) Recovery of damages. The department:

40.3(1) Will investigate to determine the person(s) responsible for the damages.

40.3(2) Will summarize the repair or replacement costs and submit the claim to the person(s) responsible for the damage.

40.3(3) May seek recovery through civil court action.

40.3(4) Will deposit the collections for recovery of damages in the primary road fund.

These rules are intended to implement Iowa Code section 321.475.