

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 sections 307.12 and 307A.2, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 821, “Highway-Railroad Grade Crossing Surface Repair Fund,” Iowa Administrative Code.

These amendments propose to change the way in which funds are distributed by the Department to assist railroads and highway authorities in repairing highway-railroad grade crossing surfaces. The repair of highway-railroad grade crossing surfaces restores a safe and smooth crossing for the motorist. The proposed amendments allow the Department to set aside an amount not to exceed 50 percent of the repair fund in any fiscal year for discretionary project selection and set out the criteria to take into consideration when utilizing that funding. Currently, applications are only funded in the order in which they are received. Funding applications in the order received leaves no discretion or process to advance projects based on need, safety or other considerations. Cost sharing between the Department, railroad, and highway authority remains unchanged.

Other proposed amendments update the contact information of the Department and the chapter implementation sentence.

These rules do not provide for 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.

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, Operations and Finance Division, 800 Lincoln Way, Ames, Iowa 50010; e-mail: tracy.george@dot.iowa.gov.
5. Be received by the Department’s rules administrator no later than November 1, 2016.

A meeting to hear requested oral presentations is scheduled for Thursday, November 3, 2016, at 1 p.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 section 327G.29.

The following amendments are proposed.

ITEM 1. Amend subrule 821.2(2) as follows:

~~821.2(2) Information about the repair fund may be obtained by contacting the department at the following address: Program information, applications and application instructions are available on the department’s Web site at www.iowadot.gov. The program is administered by the Office of Rail Transportation, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1140 (515)239-1108. Submissions to the department under this chapter shall be sent or delivered to this address.~~

ITEM 2. Amend rule 761—821.3(327G) as follows:

761—821.3(327G) Procedures for the use of grade crossing surface repair funds.

821.3(1) *Use of funds.* A portion of the repair fund, not to exceed 50 percent in any fiscal year, shall be set aside to meet critical or atypical needs. In identifying priorities for the set-aside funds, criteria including, but not limited to, the following shall be considered:

- a. Condition of the crossing.
- b. Safety concerns.
- c. Utilization of the rail line.
- d. Train and motor vehicle traffic density at the site. Special consideration may be given to heavy truck traffic.
- e. Recent or planned development or construction in the vicinity of the crossing.

821.3(1) 821.3(2) *Notification to department.* If a railroad and a jurisdiction agree to use the repair fund for grade crossing surface repair, written notification of the action signed by both parties shall be sent to the department.

a. The notification shall include the American Association of Railroads—Department of Transportation (AAR-DOT) crossing number, the total estimated cost of the repair, and a statement that the railroad and the jurisdiction each agree to pay 20 percent of the cost of the repair.

b. Notification shall be accepted by the department in order of receipt.

821.3(2) 821.3(3) *Processing an agreement.*

a. The department shall determine if the agreed-upon work constitutes grade crossing surface repair and may consult with the jurisdiction or the railroad if further information is needed.

b. If the work constitutes grade crossing surface repair and when funds are available in the repair fund, the department shall furnish the railroad and the jurisdiction with three copies of an agreement for grade crossing surface repair.

c. The railroad and the jurisdiction shall sign all three copies of the agreement and return them to the department.

d. The department shall:

(1) Approve the agreement and obligate from the repair fund an amount equal to 60 percent of the cost of the agreed-upon work.

(2) Sign all three copies of the agreement, retain one copy of the fully executed agreement, transmit one copy to the jurisdiction, and transmit one copy to the railroad, authorizing work to proceed.

821.3(3) 821.3(4) *Preaudit.* Prior to approval of the agreement, the department may perform a preaudit evaluation of the railroad.

The preaudit evaluation may include an examination of the railroad's accounting methods and procedures to determine the railroad's ability to segregate and accumulate costs to be charged against the surface repair project; an examination of the railroad's cost factors to ensure their propriety and allowability; and an examination of any other general information available which might be pertinent or necessary in determining the railroad's auditability.

821.3(4) 821.3(5) *Review of completed project.* Upon completion of the agreed-upon work, the department, the railroad and the jurisdiction shall review the project to determine satisfactory completion.

821.3(5) 821.3(6) *Project billing and payment.*

a. The railroad shall submit to the jurisdiction and the department a final detailed billing covering the actual and necessary costs incurred by the railroad for the agreed-upon work.

b. The jurisdiction and the department shall review the billing for reasonable conformance with the agreement. The department may audit the billing to determine the allowability and propriety of the billing costs in accordance with the agreement.

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

d. The jurisdiction shall pay to the railroad an amount equal to 20 percent of the actual cost of the agreed-upon work.

ITEM 3. Amend **761—Chapter 821**, implementation sentence, as follows:
These rules are intended to implement Iowa Code sections ~~312.2(5)~~ 312.2(2), 327G.29, and 327G.30,
and ~~327G.31~~.