

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 150, “Improvements and Maintenance on Primary Road Extensions,” Iowa Administrative Code.

The Department proposes amending Chapter 150 to improve the overall quality of the language in the chapter as well as to provide more positive guidance and remove ambiguities. There are currently 13 separate occurrences in Chapter 150 which include “expect” and “expected” language in the form of “the department shall expect the city to” or “the city shall be expected to.” Couching responsibilities in the form of “expectations” creates ambiguity about whether action is required, which diminishes the ability to attain consistent standards, and accordingly, the Department determined that this language should be amended to better define the responsibilities for the Department and for cities. To address this, the Department proposes amending these rules to strike “expect” language and replace it with “shall” language (see Items 4, 5, 7, 8, 10 and 12).

In Item 15, the Department proposes adding new rule 761—150.5(307) to reference 761—Chapter 11, Waiver of rules, to assist the Department and cities in unforeseen special circumstances. A city may submit a petition to the Department’s rules administrator to request a waiver of specific requirements of Chapter 150, and the petition for waiver must follow the procedures set out in 761—subrule 11.5(2). If the waiver request involves the interstate highway system, the request must also be approved by the Federal Highway Administration.

The Department also proposes making the following changes to Chapter 150:

- Item 1 amends the definition of “federal control limits” to replace “federal” with “access” because “federal” is no longer used in this context. The term “federal control limit” came from the governance for the construction of the interstate highway system in Iowa in the early 1960s. Over time the concept of access control was extended to noninterstate roads too, and the term “access control limits” came into use. The new term “access control limits” is used in paragraphs 150.2(1)“b” and 150.2(1)“c” (see Item 4).
- Item 2 adds new definitions for “encroachment,” “obstruction,” “urban-state traffic engineering program,” and “utility” to rule 761—150.1(306) because these terms are used several times in the chapter and the definitions assist in the understanding of the rules.
- Items 3, 9 and 14 amend the implementation sentences for rules 761—150.1(306), 761—150.3(306) and 761—150.4(306) to reflect the correct Iowa Code citations.
- Item 5 amends introductory language in subrule 150.2(2) to be consistent with the introductory language in subrule 150.3(2).
- Item 6 strikes “thereto” to improve readability, adds new paragraph 150.2(3)“g” to clarify the responsible jurisdiction for certain types of lighting installations, and references the current roadway lighting design guide.
- Item 7 references the current standard practice in roadway design.
- Item 8 updates the Iowa Code reference because “bridge” is now defined in Iowa Code section 309.1. Also, the word “that” is removed from paragraph 150.3(2)“b” to improve readability, and a new subparagraph is added to paragraph 150.3(2)“c” to clarify that the city is responsible for maintenance and repair of bicycle overpasses and underpasses including snow removal, painting and structural repairs on primary roads constructed with a curbed cross section.
- Item 10 updates the heading of subrule 150.4(2) to read “Encroachments and obstructions” and amends the language to better define cities’ responsibilities concerning encroachments and obstructions.

Iowa Code chapter 318, Obstructions in Highway Rights-of-Way, is now referenced to emphasize public safety.

- Item 11 addresses pedestrian, equestrian and bicycle routes (sidewalks) and the Americans with Disabilities Act (ADA). Existing paragraph 150.4(3)“c” is divided into two paragraphs to draw a process distinction between Department projects and local projects. The types of Department projects and local projects the Department may fund have been expanded to clarify that the Department will also fund turning spaces, transitions, sidewalks, curb drops and pedestrian signals to meet the requirements of the ADA if such improvements are in the project.

- Item 12 strikes paragraph 150.4(5)“b” because the language in the paragraph is already included in Iowa Code sections 306A.10 and 306A.12. Item 12 also strikes paragraph 150.4(5)“d” because the term “utility” is proposed to be defined in rule 761—150.1(306).

- Item 13 corrects the name for this Department program.

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, Strategic Communications and Policy, 800 Lincoln Way, Ames, Iowa 50010; e-mail: tracy.george@iowadot.us.
5. Be received by the Department’s rules administrator no later than October 31, 2017.

A meeting to hear requested oral presentations is scheduled for Thursday, November 2, 2017, at 9 a.m. in 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.9A, 306.4, 307.12, 309.1, and 321E.3 and chapters 306A and 318.

The following amendments are proposed.

ITEM 1. Amend rule **761—150.1(306)**, definition of “Federal control limits,” as follows:

“*Federal Access control limits*” means the area within the primary highway right-of-way limits, including right-of-way lines extended across side streets and roads. The term includes areas on side streets and roads where the department has acquired access control rights in accordance with 761—Chapter 112.

ITEM 2. Adopt the following **new** definitions of “Encroachment,” “Obstruction,” “Urban-state traffic engineering program” and “Utility” in rule **761—150.1(306)**:

“*Encroachment*” means an item which is supported or located on the highway right-of-way or which overhangs into the airspace of the highway right-of-way.

“*Obstruction*” means the same as defined in Iowa Code section 318.1.

“*Urban-state traffic engineering program*” or “*U-STEP*” refers to a department program that is intended for use by any Iowa city in order to solve traffic operations and safety problems on primary roads in Iowa cities as documented in the department’s “Guide to Transportation Funding Programs.”

“*Utility*” means the same as defined in Iowa Code section 306A.13.

ITEM 3. Amend rule **761—150.1(306)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 306.2, 306.3, 306A.13, 318.1 and 362.2.

ITEM 4. Amend subrule 150.2(1) as follows:

150.2(1) Construction. Except as otherwise provided, the department shall be responsible for all right-of-way and construction costs associated with the construction of freeways and their extensions.

a. The ~~department city shall expect the city to~~ be responsible for providing, without cost to the department, all necessary right-of-way which involves:

(1) and (2) No change.

b. Outside the ~~federal~~ access control limits, the department shall be responsible for the costs of construction of longitudinal and outlet storm sewers made necessary by highway construction in the proportion that the street right-of-way of the primary road extension bears to the total drainage area to be served by the proposed sewers. The city shall ~~be expected to~~ be responsible for the remaining portion of storm sewer costs not paid for by the department.

c. The department shall be responsible for all storm-sewer related costs within the ~~federal~~ access control limits.

ITEM 5. Amend subrule 150.2(2) as follows:

150.2(2) Maintenance. The department shall ~~have~~ enter into an agreement with a city regarding the maintenance of primary roads within the corporate city limits. This is intended to include corporate line roads, when appropriate. Unless otherwise mutually agreed to and specified in the agreement, maintenance responsibilities shall be as follows:

a. and b. No change.

c. Where city streets cross the freeway, the ~~department city shall expect the city to~~ be responsible for:

(1) to (5) No change.

d. The ~~department city shall expect the city to~~ be responsible for maintenance and repair of pedestrian overpasses and underpasses including snow removal, painting, lighting and structural repairs.

e. No change.

ITEM 6. Amend subrule 150.2(3) as follows:

150.2(3) Lighting.

a. and b. No change.

c. The department shall be responsible for the energy and maintenance costs of lighting through interchange areas and ramps ~~thereto~~ at interchanges between freeways which do not provide service to local streets.

d. to f. No change.

g. The department shall not be responsible for the installation, energy and maintenance costs of any lighting on pedestrian overpasses, pedestrian underpasses, bicycle overpasses or bicycle underpasses. The city may elect to provide lighting at its own expense.

~~g- h.~~ h. Warrants for the lighting of freeways shall be according to the 1984 2005 "AASHTO Information Guide for Roadway Lighting Design Guide."

ITEM 7. Amend subrule 150.3(1) as follows:

150.3(1) Construction.

a. The department shall be responsible for all right-of-way and construction costs to construct nonfreeway primary highways and their extensions to the minimum design criteria as established by the department. Construction improvement costs beyond minimum design criteria shall be the responsibility of the city, as specified in the project agreement. Minimum design criteria shall be in accordance with "A Policy on Geometric Design of Highways and Streets, 2001 2011" (~~Fourth~~ Sixth Edition AASHTO Green Book).

b. The ~~department city shall expect the city to~~ be responsible for providing, without cost to the department, all necessary right-of-way which involves:

(1) and (2) No change.

c. The city shall ~~be expected to~~ take all necessary legal action to discontinue and prohibit any past or present use of project right-of-way for private purposes. The city shall ~~be expected to~~ prevent any future encroachment or obstruction within the limits of project right-of-way.

d. The department shall be responsible for the costs of construction of longitudinal and outlet storm sewers made necessary by highway construction and construction of local service roads developed as a part of the construction or reconstruction of the through traffic lanes in the proportion that the

right-of-way of the primary road extension bears to the total drainage area to be served by the proposed sewers. The city shall be expected to be responsible for the remaining portion of storm sewer costs not paid for by the department.

e. No change.

ITEM 8. Amend subrule 150.3(2) as follows:

150.3(2) Maintenance. The department shall enter into an agreement with a city regarding the maintenance of primary roads within the corporate city limits. This is intended to include corporate line roads, when appropriate. Unless otherwise mutually agreed to and specified in the agreement, maintenance responsibilities shall be as follows:

a. On primary roads constructed with a curbed cross section, the department shall be responsible for:

(1) to (4) No change.

(5) Inspection, painting and structural maintenance of bridges as defined in Iowa Code section ~~309.75~~ 309.1.

b. On primary roads constructed with a rural cross section (no curb), the department shall be responsible for all maintenance, except that tree removal, sidewalks, retaining walls and repairs due to utility construction and maintenance shall be the city's responsibility.

c. On primary roads constructed with a curbed cross section, the city shall be responsible for:

(1) to (7) No change.

(8) Maintenance and repair of bicycle overpasses and underpasses including snow removal, painting and structural repairs.

d. ~~The department shall expect the city to~~ shall comply with the access control policy of the department as adopted in 761—Chapter 112; and ~~to~~ obtain prior approval from the department for any changes to existing entrances or for the construction of new entrances.

e. and f. No change.

~~g.—Rescinded IAB 10/2/02, effective 11/6/02.~~

ITEM 9. Amend rule ~~761—~~**150.3(306)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 306.4, 313.5, 313.21 to 313.24, 313.27, 313.36, 314.5, 314.6 and ~~321E.2~~ 321E.3 and chapter 306A.

ITEM 10. Amend subrule 150.4(2) as follows:

150.4(2) Encroachments ~~or~~ and obstructions.

a. ~~The department city shall expect the city to~~ remove any existing encroachment or obstruction obstructions within the highway right-of-way and prevent any further encroachment or obstruction future obstructions from occurring within the highway right-of-way, in a manner consistent with Iowa Code chapter 318. This includes private signs within the right-of-way.

b. ~~The department city shall expect the city to prevent the erection on private property of any private sign, awning, marquee, etc., which will overhang the right-of-way and obstruct the view of any portion of the road or the traffic signs or traffic control devices located thereon in such a manner as to render it dangerous within the meaning of Iowa Code section 319.10~~ remove any existing encroachments and prevent any future encroachments from occurring within the highway right-of-way, except those authorized or permitted by the highway authority. Under no circumstances shall an overhanging sign or awning be allowed within two feet of the inside edge of the curb (also known as the face of the curb, which is that part of the curb that is next to traffic) or within two feet of the edge of the pavement in the absence of a curb. Any encroachments authorized or permitted by the highway authority shall be in accordance with Iowa Code chapter 318.

~~e.—No overhanging sign shall be permitted within two feet of the inside edge of the curb.~~

ITEM 11. Amend subrule 150.4(3) as follows:

150.4(3) Pedestrian, equestrian, and bicycle routes (sidewalks).

a. and b. No change.

c. If a project is initiated by the department, the department shall fund 100 percent of all curb ramps, turning spaces, transitions, sidewalks, curb drops and pedestrian signals within the right-of-way of primary road extensions to meet the requirements of the Americans with Disabilities Act if such improvements are in the project.

d. If a project is initiated by a local jurisdiction, the department may participate by funding 55 percent of the cost of constructing curb ramps, turning spaces, transitions, sidewalks, curb drops and pedestrian signals on existing sidewalks within the right-of-way of primary road extensions to meet the requirements of the Americans with Disabilities Act if such improvements are in the project. However, departmental participation shall not exceed \$250,000 per year for any one local jurisdiction and \$5 million per year in total.

ITEM 12. Amend subrule 150.4(5) as follows:

150.4(5) Utility relocation and removal.

a. ~~Except as otherwise provided by paragraph “b” of this subrule, the department~~ The city shall expect the city to relocate or cause to be relocated, without cost to the department, all city-owned utilities necessary for construction when these utilities are within the existing street or alley right-of-way. The department shall reimburse the owner of a utility which is located on private right-of-way for the costs of relocation or removal, including the costs of installation in a new location.

~~b.—Iowa Code section 306A.10 authorizes the department to pay the costs of relocation or removal, including the costs of installation in a new location, of utilities within existing street right-of-way when determined necessary for the construction of a project on routes of the national system of interstate and defense highways or resulting from interstate substitutions in a qualified metropolitan area. In accordance with Iowa Code section 306A.12, no reimbursement shall be made for any relocation or removal of facilities unless funds to be provided by federal aid amount to at least 85 percent of each reimbursement payment.~~

~~e. b.~~ The department city shall expect the city to comply with the utility accommodation policy of the department, as adopted in 761—Chapter 115.

~~d.—The term “utility” shall be as defined in Iowa Code section 306A.13.~~

ITEM 13. Amend paragraph **150.4(6)“a”** as follows:

a. As early as possible after an urban project is included in the department’s “Five-Year ~~Construction~~ Iowa Transportation Improvement Program,” a concept statement for the project shall be developed and shall be reviewed with the officials of the city prior to the public hearing.

ITEM 14. Amend rule **761—150.4(306)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 306.4, 313.21 to 313.24, 313.27, 313.36, 314.5 and 314.6; and chapters 306A and ~~349~~ 318.

ITEM 15. Adopt the following new rule 761—150.5(307):

761—150.5(307) Special circumstances.

150.5(1) Waivers. The director of transportation may, in response to a written petition, waive provisions of this chapter in accordance with 761—Chapter 11. The written petition must contain the information as required in 761—subrule 11.5(2) and shall be submitted to the Rules Administrator, Strategic Communications and Policy, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

150.5(2) Waivers involving interstate highways. The director of transportation shall not waive these rules if the request involves the interstate highway system, including its ramps, without the approval of the Federal Highway Administration.

This rule is intended to implement Iowa Code sections 17A.9A and 307.12.