

CHAPTER 40  
RECOVERY OF DAMAGES TO HIGHWAYS OR HIGHWAY STRUCTURES

Chapter rescission date pursuant to Iowa Code section 17A.7: 1/1/28

**761—40.1(321) Scope.** This chapter of rules is limited to recovery of damages to highways or highway structures in two situations:

**40.1(1)** As a result of any illegal operation, driving, or moving of a vehicle, object, or contrivance; or

**40.1(2)** As a result of operation, driving, or moving any vehicle, object, or contrivance weighing in excess of the maximum weight in Iowa Code chapter 321 but authorized by a special permit issued pursuant to Iowa Code chapter 321.

**761—40.2(321) Definitions.**

*“Department”* means the Iowa department of transportation.

*“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.

*“Labor additive”* means the labor additive rate approved annually by the Federal Highway Administration. This rate includes indirect labor costs, such as sick leave, vacation, holidays, other leaves with pay and departmental training. The labor additive rate produces an accurate charge for labor costs.

*“Traffic control”* means the labor, materials and equipment used to control traffic through or around the site of an accident on or adjacent to the highway, including but not limited to signs, barricades, signals, pavement markings, and lighting, channelizing, or hand signaling devices.

**761—40.3(321) Information.** Information about the recovery of damages to highway facilities may be obtained from: Office of Finance, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

**761—40.4(321) Accident scene.** The department shall exclude from recoverable damages the cost of traffic control at the scene of an accident during the period required to conduct the initial investigation, arrange for care of the injured, and either perform cleanup required to return traffic flow to normal conditions or establish a detour.

**761—40.5(321) Repair of facilities.**

**40.5(1)** When notified of a damaged highway or highway structure, the department shall arrange for its repair or replacement by department personnel or by a contractor.

**40.5(2)** The department shall document all of the repair or replacement cost incurred including, but not limited to:

- a. Disposal of remaining debris.
- b. Review and inspection of damaged facility.
- c. Preparation of design plans.
- d. Material and equipment used by the department.
- e. Costs paid to private contractors.
- f. Costs paid to another jurisdiction for a detour route when a highway closure is required.
- g. Traffic control costs incurred during the inspection, repair or replacement.
- h. Labor costs incurred by the department, including labor additive.

**40.5(3)** Rescinded IAB 9/4/02, effective 10/9/02.

**761—40.6(321) Recovery of damages.**

**40.6(1)** The department shall investigate to determine the person(s) responsible for the damages pursuant to Iowa Code section 321.475.

**40.6(2)** The department shall summarize the repair or replacement costs and submit the claim to the person(s) responsible for the damage.

**40.6(3)** The department may seek recovery through civil court action.

**40.6(4)** Collections for recovery of damages shall be deposited in the primary road fund.

These rules are intended to implement Iowa Code section 321.475.

[Filed 1/15/92, Notice 12/11/91—published 2/5/92, effective 3/11/92]<sup>1</sup>

[Filed 8/26/92, Notice 6/24/92—published 9/16/92, effective 10/21/92]

[Filed 8/7/02, Notice 6/26/02—published 9/4/02, effective 10/9/02]

<sup>1</sup> Effective date of 761—40.6(321) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 9, 1992.