

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 165
“Recreational Trails Program”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 465B.2

State or federal law(s) implemented by the rulemaking: Iowa Code chapter 465B

Public Hearing

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

October 2, 2024

1 to 1:30 p.m.

[Microsoft Teams Link](#)

Or dial: 515.817.6093

Conference ID: 227 508 568

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written 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

These proposed rules implement a statewide trails program as described in Iowa Code chapter 465B. The recreational trails program provides funds to establish recreational trails in Iowa for the use, enjoyment and participation of the public.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

Local public agencies or nonprofit organizations that apply for State Recreational Trail Program funds will bear the costs of the proposed rules.

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

Local public agencies or nonprofit organizations that apply for and are approved for State Recreational Trail Program funding will benefit from the rules. Bicyclists, pedestrians, and other trail users of trails constructed with program funds will also benefit from the rules.

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:

Local public agencies or nonprofit organizations interested in applying for State Recreational Trail Program funding will require staff time to complete an application. The cost of this staff time will vary depending on the compensation of such staff.

- Qualitative description of impact:

Beyond the direct benefit of State Recreational Trail Program funding to local public agencies or nonprofit organizations toward the completion of trail improvements, trail users will also benefit from implementation of these rules. Local businesses also benefit from tourism dollars generated by nonlocal or out-of-state trail users.

3. Costs to the State:

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

Department staff maintains the application form and processes for the State Recreational Trail Program and performs project monitoring. Staff also reviews and prepares funding recommendations for Iowa Transportation Commission consideration.

- Anticipated effect on state revenues:

The rules have no anticipated fiscal impacts.

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

The Department will not be able to carry out its administrative duties for the State Recreational Trail Program without prescribing the form and manner of application submittal, review, award, and expected project performance. The only parties that bear the costs of the rules are those that will potentially benefit from the program.

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

None were considered. Iowa Code chapter 465B requires the Department to administer this program.

6. Alternative methods considered by the agency:

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

Topics included in this chapter could be incorporated into a single published guidance document. For example, the Department administers the federal Transportation Alternatives Set-Aside program for similar types of projects. No administrative rules are promulgated for this program, but guidance is published on the program website at www.iowadot.gov/systems_planning/pdf/IIJA-TAP-Guidance.pdf. If this chapter were rescinded, the Department would publish a similar document to the State Recreational Trail Program website.

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

The alternative method was deemed inconsistent with existing statutory rulemaking authority included in Iowa Code chapter 465B.

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 proposed chapter does not directly impact small business; therefore, the impact to small business is neutral.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 165 and adopt the following **new** chapter in lieu thereof:

CHAPTER 165
RECREATIONAL TRAILS PROGRAM

761—165.1(465B) General.

165.1(1) Definitions.

“*Authority*” means a state or local government agency, municipal corporation, county or nonprofit organization having authority and responsibility for a trail.

“*Commission*” means the state transportation commission.

“*Recreational trail*” means a thoroughfare or track across land or snow, used for recreational purposes, such as pedestrian activities, including wheelchair use; skating or skateboarding; equestrian activities, including carriage driving; nonmotorized snow trail activities, including skiing; bicycling or use of other human-powered vehicles; providing access to aquatic or water activities; and motorized vehicular activities, including all-terrain vehicle riding, motorcycling, snowmobiling, use of off-road light trucks, or use of other off-road motorized vehicles.

“*Recreational trails funds*” means funds appropriated for the acquisition, construction, and improvement of recreational trails.

165.1(2) Information and forms. Information, instructions and application forms may be obtained from the Local Systems Bureau, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone 515.239.1252; or through the department’s website at www.iowadot.gov/systems_planning/Grant-Programs/-Federal-and-State-Recreational-Trails.

761—165.2(465B) Program administration.

165.2(1) Purpose. The recreational trails program provides funds to establish recreational trails in Iowa for the use, enjoyment and participation of the public. The department administers the recreational trails fund as a statewide program.

165.2(2) Funding.

a. The commission is solely responsible for all funding commitments and determines the projects to be funded, subject to the availability of recreational trails funds. The commission may approve, modify, or deny an application. The commission may fund all or part of a project and may make funding conditional upon adherence to a time schedule or to fulfillment of an agreement.

b. The commission need not commit all funds available during a programming cycle. The commission may reserve unexpended or repaid funds for the next programming cycle or for anticipated present and future project needs and other contingencies.

c. Project costs that exceed the commission’s funding commitment are not eligible for reimbursement from the recreational trails fund. Reimbursement for project costs is limited to the percentage match approved by the commission and actual eligible project costs incurred.

761—165.3(465B) Applicant eligibility.

165.3(1) A state or local government agency, a municipal corporation, a county or a nonprofit organization is eligible to apply for and receive funds from the recreational trails program.

165.3(2) A private business or developer is not eligible to apply directly for funds from the recreational trails program.

761—165.4(465B) Project eligibility.

165.4(1) Public use. The recreational trails program is limited to the acquisition, construction or improvement of recreational trails open for public use or trails that will be dedicated to public use

upon completion. A private trail project or a project for a private purpose is not eligible for funding under this program.

165.4(2) Criteria. A proposed recreational trails project is to meet all of the following:

a. The project is to be part of a local, areawide, regional or statewide plan.

b. The trail route is to be designed to allow enjoyment of scenic views or points of historical interest and to maximize safety. The route may use existing roads, streets or parkways, if the normal flow of motor vehicle traffic will not be hindered; abandoned railroad corridors; utility corridors; or new right-of-way as necessary.

c. The project is to include a contribution of at least 25 percent matching funds.

d. Matching funds may include grants from other state agencies or programs if their laws and rules allow and the donation of in-kind labor, materials, equipment, and services from a third party. The department has the sole authority to determine the value of noncash contributions. The value of donated land may be an eligible matching contribution if:

(1) The land is donated after the commission's funding commitment, and

(2) The value is based on a real estate appraisal acceptable to the department. The appraisal is subject to review and approval by the department after a funding commitment has been made.

761—165.5(465B) Eligible project costs.

165.5(1) Land. Land acquisition costs, including but not limited to appraisals, negotiation, compensation and cultural resources surveys necessary to comply with applicable local, state and federal laws, rules and regulations, are eligible project costs. Land may be acquired by lease, easement or fee simple and as allowed by Iowa Code section 6A.21. The performance of land negotiation and acquisition activities is not the responsibility of the department, although the department may provide advisory services.

165.5(2) Other eligible costs. Other project costs that are eligible for funding are limited to the following:

a. Trail surfacing, resurfacing, rehabilitation, modernization, upgrading and reconstruction, including pavement repairs and overlays and shoulder widening and stabilization; or initial trail construction, including grading, drainage, paving and erosion control.

b. Bridge and culvert repair, modernization, replacement or initial construction.

c. Roadway intersection and interchange improvements, including warranted traffic signalization that is an integral part of the project.

d. Construction or improvement of rest areas, information centers, waysides, permanent interpretive displays, lighting and rest rooms, including the costs of utility connections that are an integral part of the project.

e. Design engineering costs leading to construction plan development and construction inspection costs directly associated with the project.

f. Storm drainage and storm sewer costs to the extent needed for draining the trail.

g. Reconstruction or adjustment of utilities, including but not limited to water, sanitary sewer, electric, telephone, and natural gas when utilities are located on private property and replacement or relocation due to project construction is necessary; or said utilities are located in the public right-of-way and agreements in place allow for compensation to the utility if relocation is necessary.

h. Trail signs, fencing, landscaping, parking areas, and walkways.

761—165.6(465B) Ineligible project costs.

165.6(1) Before commission approval. Any and all costs incurred prior to a funding commitment by the commission are ineligible for funding notwithstanding rule 761—165.7(465B).

165.6(2) Other ineligible costs. Other project costs that are ineligible for funding include but are not limited to the following:

a. Routine maintenance of a trail, bridge, culvert, fence or sign; winter maintenance of a trail or bridge, including but not limited to snow plowing, sanding, and salting.

- b.* Overhead and operating costs associated with a project, such as auditing, legal and administrative costs.
- c.* Expenses associated with the preparation and submission of a project application.
- d.* Predesign engineering, feasibility, or alignment studies and other planning expenses.
- e.* Utility construction, reconstruction or adjustment except for those activities or costs described in subrule 165.5(2).
- f.* Pavement markings, traffic signs, safety appurtenances or lighting except as an integral part of a trail project.
- g.* Purchases of office furnishings or equipment, construction or maintenance equipment, or personal property.
- h.* General government expenses and expenses associated with the provision of any public service that are not otherwise eligible for project funding.

761—165.7(465B) Advance eligibility of land acquisition and preliminary design costs incurred prior to funding commitment by commission.

165.7(1) *Need for advance eligibility.* If there is extreme urgency involving land acquisition or preliminary design and a necessity to protect or preserve a project corridor or to proceed with the preparation of project construction plans prior to a recreational trails program funding commitment, a potential applicant may submit a written request to the department for a determination of advance eligibility to incur costs for land acquisition or preliminary design immediately. A determination of advance eligibility by the department will allow specified costs incurred prior to a funding commitment by the commission to be eligible for reimbursement with recreational trails program funding without jeopardizing the project's eligibility for funding approval but does not imply or guarantee that the commission will commit recreational trails program funding to a subsequent application.

165.7(2) *Request, justification and review.* The request is to be received by the department prior to the expenditure and is to include justification regarding the extreme urgency and necessity to incur costs prior to a recreational trails program funding commitment. A request for land acquisition is to also include a description of the land to be acquired, a summary of the estimated costs, and a map showing the parcels to be acquired. Preliminary design requests are to include a description of the project scope, location map, and proposed cross section. If the request will include consultant design costs, a draft agreement between the jurisdiction and the consultant is to be submitted that includes the scope of services to be rendered. Costs for recreational trails program application preparation and submission or project feasibility, route alignment studies or other planning expenses as cited in paragraphs 165.6(2) "c" and "d" remain ineligible for recreational trails program funding and are not to be included in a request for determination of advance eligibility. The department will review the submittal. The department will provide written confirmation of the determination of advance eligibility following receipt of a request consistent with this rule.

165.7(3) *Eligibility of costs for reimbursement.* Any cost incurred before the request is received by the department will be ineligible for reimbursement. Costs receiving a determination of advance eligibility are to be noted in the subsequent recreational trails program funding application submitted to the department. Land acquired or design work completed following a determination of advance eligibility will not be eligible for reimbursement with recreational trails program funds if the property acquired or design work completed is not necessary to construct the proposed recreational trails program project included in the subsequent application. Design costs receiving a determination of advance eligibility are not to exceed 10 percent of the total construction costs for the project. An application for funding that includes the expenditure is to be received by the department within two years following the determination of advance eligibility, or the costs may become ineligible for recreational trails program funding.

761—165.8(465B) Application.

165.8(1) *Submission.* An eligible applicant is to complete and submit an application on a form and in the quantity prescribed by the department.

- a.* An eligible applicant may submit more than one application in a funding cycle.
- b.* Two or more eligible applicants may submit a joint application and are encouraged to do so when mutual action supports the development of the project. A joint application is to designate a lead applicant to serve as the principal contact with the department.
- c.* The application deadline is to be on the first day of the fiscal year for which funding has been provided to the program and any additional stated deadline as deemed necessary by the department to fully award program funding.
- d.* Applications are to be received by the department by the stated application deadline.
- e.* All applications for funding are to be complete. The department reserves the right to return an incomplete application to the applicant without further consideration for funding. An applicant may then submit a completed application for the next available funding cycle.
- f.* An application that is considered but not funded in one funding cycle may be resubmitted by the applicant for consideration in the next cycle.

165.8(2) *Contents of application.* Each application is to contain the following:

- a.* The applicant's name, mailing address, email address, and telephone number, and the contact person who will serve as liaison with the department.
- b.* A project concept statement, including a location map, a cross section and a sketch of the project intended to be constructed with program funds. The proposed project need not be designed before applying, but the concept is to be reasonable from a transportation engineering standpoint and detailed enough to generate project cost estimates.
- c.* An itemized cost estimate for the total project to be constructed, showing for each item the cost and funding source. When a project is part of a larger multiphase project, the application is to differentiate the costs and scope of the proposed construction project from the costs and scope of the overall multiphase project.
- d.* A time schedule for project completion. A time schedule adjustment may be approved by the department if the project involves unusually complex studies, extensive real estate negotiations, extensive analyses for environmental clearances, complex planning for associated developments, or another compelling reason.
- e.* An adequate justification for the recreational trails project based on the project eligibility criteria in subrule 165.4(2) and the evaluation criteria in subrule 165.9(2).
- f.* A formal resolution passed by the governing body of the responsible authority endorsing the application and the time line for project completion provided therein. The resolution is to also state that the proposed trail project will be adequately maintained and made available for the intended public use for a minimum of 20 years after completion of the project and acknowledge intent to provide all funds necessary to complete the project beyond any funding award.

165.8(3) *Funding requests.* An applicant is to specify in the application the amount of grant funding requested from the recreational trails program and may offer a matching fund contribution larger than 25 percent.

761—165.9(465B) Evaluation and approval.

165.9(1) The department will review each application, may verify the contents and may visit the trail site.

165.9(2) The department will evaluate each complete application primarily on the basis of whether the predicted use of the trail justifies the construction and maintenance costs, including but not limited to the following criteria:

- a.* Need, in terms of the population to be served and existing trails in the area.
- b.* Compatibility with local, areawide, regional or statewide plans.
- c.* Benefits of multiple uses and recreational opportunities.

- d.* Economic and tourism benefits to the local area.
- e.* Accessibility.
- f.* Project readiness for development.
- g.* Local match to be contributed to the project.

165.9(3) Completed applications are to be reviewed by a committee composed of representatives from state agencies with jurisdiction over transportation, tourism, cultural resources and natural resources. The committee is to recommend applications to the department by ranking them in order of funding priority.

165.9(4) The department is to prepare a list of applications and funding recommendations and present it to the commission for final approval and award of funding.

761—165.10(465B) Project agreement.

165.10(1) After the commission has approved funding for a recreational trails project, the department enters into a project agreement with the applicant.

a. The agreement is to specify the responsibilities for project planning, design, land acquisition, contracting, construction and materials inspection, and documentation and the criteria for each. The agreement is to also specify the overall funding level approved and contain an estimated budget for eligible work items.

b. By executing the agreement, the applicant agrees to comply with all local, state and federal laws, rules and regulations that may apply to the project.

165.10(2) The department will reimburse the authority for actual eligible project costs incurred as specified in the agreement, not to exceed the amounts authorized by the project agreement.

165.10(3) Project expenditures incurred after the commission has made a funding commitment, but before execution of the agreement, are eligible for reimbursement if a project agreement is subsequently executed. Reimbursement is to be paid following execution of the project agreement.

165.10(4) The department may audit all project costs incurred for compliance with the agreement, including costs that are part of the matching contribution. All force account work performed by a county or city on the project is to be audited.

165.10(5) The department may revoke funding commitments, seek repayment of funds already reimbursed, or take both actions if:

- a.* The terms of the project agreement have not been fulfilled.
 - b.* An agreement has not been signed within six months after the project sponsor receives the signature copy.
 - c.* The department finds that the application contained inaccuracies, omissions, errors or misrepresentations.
 - d.* The time schedule for project completion was misrepresented or has not been maintained.
- These rules are intended to implement Iowa Code chapter 465B.