

### Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 27  
“Interest on Retained Funds”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 307.12(1)“j” and 573.12  
State or federal law(s) implemented by the rulemaking: Iowa Code section 573.12

#### *Public Hearing*

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

October 28, 2024  
10 to 10:30 a.m.

[Microsoft Teams Link](#)  
Or dial: 515.817.6093  
Conference ID : 912 076 967

#### *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](mailto:traci.springer@iowadot.us)

#### *Purpose and Summary*

This chapter is intended to implement Iowa Code section 573.12 regarding interest payments on retained funds.

#### *Analysis of Impact*

1. Persons affected by the proposed rulemaking:
  - Classes of persons that will bear the costs of the proposed rulemaking:

There are no classes of persons that will bear costs of the proposed rule.

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

The contractors and subcontractors will benefit from this rule since they will receive interest on their retained funds.

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:

This rule allows the Department to pay its construction contractors interest on the funds the Department holds as retainage on the contractor’s work.

- Qualitative description of impact:

This rule allows the Department to provide interest to the contractors on the retention the Department holds on the funds due to the contractor to ensure the contractor completes the job, performs the labor, provides the materials, etc., according to the contract signed between the Department and the contractor.

## 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 this rule.

- Anticipated effect on state revenues:

No revenues are affected.

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

This allows the Department to pay interest on the funds the Department is holding as retainage from the contractors.

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

There is no less costly or less intrusive method to achieve the purpose of the proposed rule. Establishing procedures that the Department will follow ensures the process is clear to the Department's contractors 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 to the proposed rule.

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

Not applicable.

*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?

This rule would not have a substantial impact on small businesses since they would be eligible for the same interest as other larger businesses.

*Text of Proposed Rulemaking*

ITEM 1. Rescind 761—Chapter 27 and adopt the following **new** chapter in lieu thereof:

CHAPTER 27  
INTEREST ON RETAINED FUNDS

**761—27.1(573) Interest on retained funds.**

**27.1(1) Scope.** This rule implements Iowa Code section 573.12, regarding payment to a contractor of interest earned on retained funds. This rule does not address payment of interest under Iowa Code section 573.14.

**27.1(2) General requirements.**

*a.* Interest is paid on retained funds of a contract only if the accrued interest on those funds is at least \$25. This dollar threshold reflects the cost to the department of processing an interest payment on retained funds.

*b.* Interest is not to be paid on retained funds of a contract declared in default.

**27.1(3) Procedures.**

*a.* Interest begins to accrue on retained funds on the date the first progress payment is issued. An interest rate is established on this date in accordance with Iowa Code section 12C.6. This interest rate applies for the duration of the contract.

*b.* In general, interest continues to accrue on retained funds until the date the final payment is issued.

(1) Final payment is payment of retained funds less assessed liquidated damages, if applicable.

(2) The final payment and the interest payment are paid by separate warrants. The interest payment is issued within two weeks after issuance of final payment.

*c.* Notwithstanding paragraph 27.1(3)“*b*,” interest is to cease to accrue on retained funds:

(1) Upon the expiration of 90 days following field acceptance of a project if the contractor has failed to submit to the department the documentation necessary for final payment as specified in the contract provisions.

(2) Upon payment of retained funds via a retention release voucher. A retention release voucher releases the retained funds and the interest accrued on those funds less assessed liquidated damages, twice the amount of claims on file, and the amount of possible overpayments or adjustments to contract items and change orders. A retention release voucher may be paid at any time after 30 days have expired following completion and final acceptance of the project if the contractor has submitted the necessary documentation.

(3) Upon the court’s obtaining jurisdiction of the retained funds pursuant to Iowa Code section 573.16. Retained funds turned over to the court will include the interest accrued on those funds to the date the action was filed if the interest has not been paid to the contractor.

This rule is intended to implement Iowa Code sections 307.12(1)“*j*” and 573.12.