

RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: RHODE ISLAND DEPARTMENT OF TRANSPORTATION

RULE IDENTIFIER: ERLID 3703

REGULATION TITLE: RULES AND REGULATIONS FOR POTHOLE CLAIMS

RULEMAKING ACTION: *Direct Final*

Direct Final: If no formal objection is received on or before **MARCH 16, 2018 Rhode Island Department of Transportation** will file the **repeal** without opportunity for public comment.

TYPE OF FILING: *repeal*

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Public notice date: FEBRUARY 14, 2018

End of comment period: MARCH 16, 2018

SUMMARY OF PROPOSED RULE: Allows recovery for damage incurred to motor vehicles by reason of a pothole on any state highway, causeway, or bridge, up to and not exceeding the sum of three hundred dollars (\$300.00). This is a duplicative version of an adoption of 290-RICR-30-00-4, "Rules and Regulations Governing Pothole Claims," and is no longer needed.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed regulations by **MARCH 16, 2018** to the addresses listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

Mailing Address:

SIOBHAN L. STEPHENS-CATALA, ESQ., SENIOR LEGAL COUNSEL
RIDOT
2 CAPITOL HILL, PROVIDENCE, RI 02903

Email Address:

Siobhan.catala@dot.ri.gov

WHERE COMMENTS MAY BE INSPECTED:

Mailing Address:

Rhode Island Department of Transportation
2 Capitol Hill
Providence, RI 02903

FOR FUTURE INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:**Regulatory Analysis Summary and Supporting Documentation:**

Benefits in improving clarity in understanding the regulation and law. Any changes in societal costs are de minimus. For full regulatory analysis or supporting documentation see agency contact person above.

Authority for This Rulemaking: *R.I. Gen. Laws § 42-13-1(b)*

Regulatory Findings:

In the development of the proposed **repeal** consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Repeal:

Rhode Island Department of Transportation proposes to repeal ERLID 3703, "Rules and Regulations for Pothole Claims," as follows:

RHODE ISLAND DEPARTMENT OF TRANSPORTATION

RULES AND REGULATIONS

FOR

POTHOLE CLAIMS

1. Purpose:

The purpose of these Rules and Regulations is to establish a procedure implementing Section 24-8-35 of the Rhode Island General Laws of 1956, as amended, which allows recovery for damage incurred to motor vehicles by reason of a pothole on any state highway, causeway, or bridge, up to and not exceeding the sum of three hundred dollars (\$300.00).

2. Authority:

These Rules and Regulations are promulgated pursuant to R.I. Gen. Laws § 42-13-1(b), which relates to Powers of the Director of the Rhode Island Department of Transportation, and in accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 et seq.

3. Definitions:

Department—The Department of Transportation through its Highway and Bridge Maintenance Division.

Final Agency Decision—The decision of the Director of the Rhode Island Department of Transportation, as indicated by the Highway and Bridge Maintenance Division notice of approval or denial of claim.

Claim—Written request for compensation for damage incurred to a motor vehicle caused by a pothole, up to and not exceeding the sum of three hundred dollars (\$300.00), as defined in R.I. Gen. Laws § 24-8-35, Damage Caused by Potholes.

4. Procedure for Filing a Pothole Claim:

(a) Claims must be submitted to:

Department of Transportation
Highway and Bridge Maintenance
Attn: Pothole Claims
360 Lincoln Avenue
Warwick, RI 02888

~~(b) — Claims must be submitted by the registered owner and postmarked or received within seven (7) days from the date on which the damage was incurred.~~

~~(c) — Claimant must furnish the following documentation:~~

- ~~1. — Description of the exact, verifiable location of the pothole encountered (closest pole or street address, direction of travel, lane identification, etc.); and~~
- ~~2. — Date and time damages incurred; name, address, and telephone number of all witnesses; and~~
- ~~3. — *If the motor vehicle is registered in another state, a copy of a statute in the state of registry, comparable to R.I. Gen. Laws § 24-8-35, which affords similar protection to persons owning motor vehicles registered in Rhode Island;* and~~
- ~~4. — Copy of police report, police complaint, tow report, auto club report, or equivalent documentation; and~~
- ~~5. — Copy of the motor vehicle registration, and in the case of a leased vehicle, a copy of the vehicle lease or insurance certificate documenting the contractual relationship between the claimant and registered owner; and~~
- ~~6. — Copies of itemized receipts and proof of payment for repairs or replacement with current odometer reading noted.~~
- ~~7. — All documentation noted in items 3—6 must be submitted within sixty (60) days from the date on which the damage was incurred.~~

~~5. — **Evaluation of Claims:**~~

~~The Department is responsible for evaluating claims according to the following criteria:~~

- ~~1. — The claim must be postmarked or received within seven (7) days from the date on which the damage was incurred, and all documentation noted in Section 4(c) above must be submitted within sixty (60) days from the date on which the damage was incurred; and~~
- ~~2. — The existence of a pothole at the location described must be verified by the Department; and~~
- ~~3. — Responsibility for the existence of the pothole must be fixed solely and exclusively on the Department and not another agency or private party; and~~
- ~~4. — The pothole must be reasonably construed as the sole and proximate cause of the damage; and~~
- ~~5. — Damage to a motor vehicle registered in another state will not be considered unless the state of registry has a statute affording similar protection to persons owning motor vehicles registered in Rhode Island.~~

6. Processing Claims:

- (a) ~~The Department will deny any claim not meeting the criteria described in Section 5 above.~~
- (b) ~~The Department will review the merits of the claim and if approved, assess damages based upon actual paid receipts for repair or replacement, adjusted for depreciation.~~
- (c) ~~The Department will issue a Final Agency Decision, approving or denying the claim; if approved, the claimant will receive a General Release, Affidavit and a W-9/IRS for completion.~~
- (d) ~~Throughout the processing of a claim, the claimant has the responsibility to respond in a timely manner to requests for information or documentation. Failure of a claimant to provide such information or documentation within the time frame specified may result in closure of the claim file without further notice to the claimant.~~

7. Severability:

~~If any provision of these Rules and Regulations or their application to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of these Rules and Regulations shall not be affected thereby.~~

8. Application:

~~These Rules and Regulations will take effect twenty (20) days after filing with the Secretary of State.~~

~~I certify that the above is a true copy.~~



James R. Capaldi,
P.E. Director