

STATE OF NEBRASKA
Minutes of the
Board of Public Roads Classifications and Standards

September 24, 2020

Nebraska Department of Transportation,
Central Headquarters Building Auditorium, Room 139A
1500 Highway 2, Lincoln, Nebraska

Meeting and Hearings Notices:

- Statewide news release emailed and posted on Nebraska Department of Transportation website, September 18, 2020.
- Event posted on the State of Nebraska website (Public Meeting Calendar), September 18, 2020.
- Tentative agenda emailed to each board member and interested persons, September 18, 2020.
- Meeting agenda kept current and on public display in Liaison Services Section, Room 123B, Nebraska Department of Transportation, 1400 Highway 2, Lincoln, Nebraska.
- Meeting agenda posted in the main entrance of the Nebraska Department of Transportation's 1500 Highway 2 building, September 24, 2020.
- Relaxation of Standards hearing notice emailed to NDOT and Jefferson County, September 18, 2020.

Board members present:

Roger Figard, Lincoln, Chairman
James A. Litchfield, Wakefield, Vice Chairman
Barbara Keegan, Alliance
John F. Krager, Omaha
Steven D. Rames, Norfolk
Mick Syslo, Lincoln
Timothy W. Weander, Omaha
Edward R. Wootton, Sr., Bellevue

Board members absent:

LeRoy G. Gerrard, Stromsburg (*term expired 11/30/2019 – serves until replaced*)
Lisa Kramer, Kennard
Darold E. Tagge, Holdrege

Staff members present:

LeMoyne D. Schulz, Board Secretary & Highway Local Liaison Coordinator, NDOT, Lincoln
Barbara Hasterlo, Office Associate, Liaison Services Section, UNL, LTAP/NDOT, Lincoln

Others in attendance:

Jodi Gibson, Local Assistance Division Manager, NDOT, Lincoln

Erich Strack, Government Affairs Manager, Communication Division, NDOT, Lincoln
Mike Owen, Roadway Design, NDOT, Lincoln
Bill Wehling, Roadway Design, NDOT, Lincoln
Bruce Grupe, Nebraska Concrete Paving Association, Lincoln
Jay Fallick, JEO Consultants, Lincoln, for the Nebraska Department of Transportation
Tim Farmer, Speece Lewis, Lincoln, for Jefferson County and for the Nebraska Department
of Transportation
Brad Reid, Roadway Design, NDOT, Lincoln
Joseph Haines, Roadway Design, NDOT, Lincoln
Taylor Eman, Roadway Design, NDOT, Lincoln
Jacqueline Baird, Roadway Design, NDOT, Lincoln
Jeff Schroeder, Assistant Attorney General for NDOT, Lincoln

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Chairman Figard called the meeting to order at 9:00 a.m. The meeting was open to the public. He welcomed new member, Steven D. Rames and congratulated him on the appointment. Mr. Rames was appointed by Governor Ricketts as a City representative, replacing former member David L. Wacker. His term expires November 30, 2023.

The appointment is contingent on approval by the Legislature.

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Chairman Figard made the following announcements in compliance with the Open Meetings Act.

- A copy of the Open Meetings Act is available for inspection and is posted by the entrance to this room.
- The Meeting Agenda and a copy of all materials that were provided to the Board Members, prior to the start of this meeting, are available on the table by the entrance to this room.
- A sign in sheet is available. Visitors are not required to sign, but are encouraged to do so.

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Mr. Schulz noted the following changes from the originally published agenda (noted in red):

- Additional: 2020 County and Municipal Annual Certification of Program Compliance received

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Mr. Wootton moved to approve the July 21, 2020 meeting minutes. Mr. Litchfield seconded the motion. Members Litchfield, Keegan, Krager, Rames, Weander, Wootton and Figard voted YES. Member Syslo abstained. Members Gerrard, Kramer and Tagge were absent. The motion carried.

* * * * *

Initial Status of the submission of the 2020 Annual Certification of Program Compliance and Signing Resolution.

- Thirty-three (33) County, 152 Municipal, and the NDOT, certifications have been received.

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At 9:08 a.m., the Board heard the Jefferson County request for a Relaxation for County Project No. C-48(396) Brickyard Road. *(The hearing was held in an informal format, Jefferson County having declined the option of a formal hearing.)* The request is for a Relaxation of the 428 NAC 2 – 001.03H, New and Reconstructed – County Road Systems Standards on a Major Collector/Other Arterial road, as specified in its September 14, 2020 letter, and County Resolution No. 2020-15, Adopted September 8, 2020, and received by email on September 16, 2020. Mr. Farmer presented the request. No one appeared in opposition. The hearing concluded at 9:27 a.m. The Board then considered the request.

Mr. Weander moved to grant in whole, the Jefferson County relaxation, contingent upon Jefferson County revising their plans to provide for the regrading to the board's Minimum Design Standards of the four (4) vertical curves that do not meet standards, in view of the peculiar, special or unique local situation presented whereby the application of a specific Minimum Design Standards would work a special hardship. Mr. Wootton seconded the motion. Members Keegan, Krager, Litchfield, Rames, Syslo, Weander, Wootton and Figard voted YES. Members Gerrard, Kramer and Tagge were absent. The motion carried with the requisite majority vote.

* * * * *

At 9:32 a.m., the Board heard the NDOT request for a Relaxation for Project No. STP-36-7(117), C.N. 22598, N-133 East. *(The hearing was held in an informal format, NDOT having declined the option of a formal hearing.)* The request is for a Relaxation of the 428 NAC 2 – 002Q, Resurfacing Restoration and Rehabilitation (3R) Rural – State Highway System Standards, on a Major Arterial/Minor Arterial State Highway, N-36, as specified in NDOT letter of August 23, 2020. Mr. Farmer presented the request. No one appeared in opposition. The hearing concluded at 9:47 a.m. The Board then considered the request.

Mr. Rames moved to grant the NDOT relaxation, contingent upon the receipt of a revised request letter for Relaxation, in view of the peculiar, special or unique local situation presented whereby the application of a specific Minimum Design Standard would work a special hardship. Mr. Krager seconded the motion. Members Keegan, Krager, Litchfield, Rames, Syslo, Weander, Wootton and Figard voted YES. Members Gerrard, Kramer and Tagge were absent. The motion carried with the required six (6) votes. *(The revised information was received by email on 9/30/2020).*

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At 9:53 a.m., the Board heard the NDOT request for a Relaxation for Project No. STP-97-3(106), C.N. 61618, Tryon North. *(The hearing was held in an informal format, NDOT having declined the option of a formal hearing.)* The request is for a Relaxation of the 428 NAC 2 – 001.02R, Resurfacing Restoration and Rehabilitation (3R) Rural – State Highway System Standards, on a Major Arterial/Major Collector State Highway, N-97, as specified in NDOT letter of September 14, 2020. Mr. Fallick presented the request. No one appeared in opposition. The hearing concluded at 10:09 a.m. The Board then considered the request.

Mr. Wootton moved to grant the NDOT relaxation, contingent upon the receipt of a revised request letter for Relaxation, in view of the peculiar, special or unique local situation presented whereby the application of a specific Minimum Design Standard would work a special hardship. Ms. Keegan seconded the motion. Members Keegan, Krager, Litchfield, Rames, Syslo, Weander, Wootton and Figard voted YES. Members Gerrard, Kramer and Tagge were absent. The motion carried with the required six (6) votes. *(The revised information was received by email on 10/13/2020).*

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Other business:

- Mr. Strack provided an oral Legislative Report.
- Implementation of LB82 (2019) and other Statutes; and changes to the Board's 428 NAC Regulations and Operating Procedures.
 - A. Repeal of 428 NAC 3 and 4 Regulations. Mr. Strack reported a hearing has been scheduled for October 21, 2020, 9:00 a.m. to 11:00 a.m., at the Nebraska Department of Transportation (*Attachment #1*)
 - B. Practical Design Sub-committee(s). Mr. Schroeder provided guidance to the board. No further action has been initiated by Chairman Figard on this item to date.
 - C. Design Standards Questions and Relaxation Request Practice. Mr. Figard proposed a process for interim approval for authority to conduct business for the board as it relates to communications, questions and information requests of the board and staff. (*Attachment #2*)

Mr. Wootton moved to approve the above process. Mr. Syslo seconded the motion. Members Keegan, Krager, Litchfield, Rames, Syslo, Weander, Wootton and Figard voted YES. Members Gerrard, Kramer and Tagge were absent. The motion carried.

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Mr. Schulz reported the following correspondence and general information:

- Legislative Confirmation. Members Figard, Krager, Rames, Tagge and Weander reappointments to the board were confirmed by the Legislature on August 12, 2020. The appointments will expire November 30, 2023.
- Miscellaneous Information. Mr. Schulz advised that seven (7) people successfully completed the August 26 and the August 27, 2020 examinations and are now licensed by the *Nebraska Board of Examiners for County Highway and City Street Superintendents*. There are now two (2) new City Street Superintendents and five (5) new County Highway Superintendents.

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There were no comments from the Audience.

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Acknowledgement of Visitors.

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The next tentative meeting will be held on October 16, 2020 at 9:00 a.m., in the Nebraska Department of Transportation Central Headquarters Building Auditorium, Room 139A, 1500 Highway 2, Lincoln, Nebraska. *(There was no October 16, 2020 meeting, due to lack of agenda items. No further meetings were held from October 2020 through March 2021. The next meeting is scheduled for April 16, 2021, at 9:00 a.m. in the Auditorium.)*

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There being no further agenda items, Chairman Figard adjourned the meeting at 10:58 a.m.

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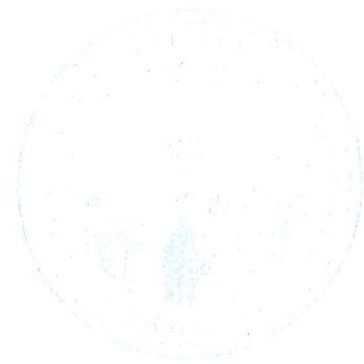
LeMoyne D. Schulz
Secretary for the Board
<https://dot.nebraska.gov/business-center/lpa/boards-liaison/>

NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

State Headquarters
1500 Highway 2
PO Box 94759
Lincoln, NE 68509-4759
Communication Office: 402-479-4512
dot.nebraska.gov



Pete Ricketts, Governor

FOR IMMEDIATE RELEASE

Public Hearing October 21 on Repeal and Revision of Regulations

October 7, 2020 (Lincoln, Neb.) — The Nebraska Department of Transportation (NDOT) will hold a public hearing on Wednesday, October 21, concerning the revision and repeal of regulations. The hearing will be held from 9:00 to 11:00 AM, at NDOT's Central Headquarters Building, Room 103, 1500 Highway 2, in Lincoln.

The proposed revisions of regulations include: **Revision 17 NAC 1** – Public Use Airport/Heliport Licensing; **Revision 412 NAC 2** – Accommodation of Mailboxes and Delivery Boxes and Support Posts on Highway Rights of Way (re-adopt after repealing from 410 NAC 7 and updating); and **Revision 414 NAC 1** – Nebraska Scenic Byways Program. The proposed repeals of regulations include: **Repeal 410 NAC 7** – Accommodation of Mailboxes and Newspaper Delivery Boxes and Support Posts on Highway Rights of Way; **Repeal 428 NAC 3** – Instruction Manual for Annual Reporting of One- and Six-year Plans for Highway, Road and Street Improvements; and **Repeal 428 NAC 4** – Instruction Manual for Standardized System of Annual Reporting Road, Street, and Highway Programs as Adopted by the Board of Public Roads Classifications and Standards and Approved by the Auditor of Public Accounts.

Interested persons are invited to attend the public hearing. Comments and recommendations may be presented orally or in writing at the hearing. They may also be mailed, faxed, or emailed prior to the hearing or until the close of the public comment period (October 31, 2020). Pre- and post-hearing comments should be directed in writing to NDOT's External Affairs Manager, Sarah Soula, PO Box 94759, Lincoln, Nebraska 68509-4759; sarah.soula@nebraska.gov; voice telephone (402) 479-4871, TDD telephone (402) 479-3834, fax (402) 479-3989. Comments may also be posted online through the Secretary of State's website (see below).

#MORE#

To view or download the proposed changes to the regulations or to comment online, visit: <https://www.nebraska.gov/nesos/rules-and-regs/regtrack/index.cgi> ("Agency": Transportation). To obtain a free paper copy of the proposed changes, the Proposed Regulation Policy Pre-Review Checklists, or the Fiscal Impact Statements, contact NDOT's Government Affairs Office, PO Box 94759, Lincoln, Nebraska 68509-4759; erich.strack@nebraska.gov voice telephone (402) 479-4324, TDD telephone (402) 479-3834, fax (402) 479-3758. To view or pick up copies in person: Director's Office, 1500 Highway 2, Lincoln, NE.

NDOT will make every reasonable accommodation to provide an accessible meeting facility for all persons. Appropriate provisions for the hearing and visually challenged or persons with Limited English Proficiency (LEP) will be made if NDOT is notified by October 14, 2020. Notification should be submitted to Sarah Soula (see contact information above).

This notice is provided pursuant to the Administrative Procedure Act.

#NDOT#

Contact:

Erich Strack, (402) 479-4324
NDOT Government Affairs Office

NR18-zu

**SUBMIT TO GOVERNOR BEFORE SUBMITTING TO EXECUTIVE BOARD AND
BEFORE PUBLIC HEARING DATE IS SET**

**PROPOSED REGULATION
GPRO COVERPAGE
(ATTACH TO PRE-REVIEW CHECKLIST)**

Agency: Nebraska Department of Transportation

Title, Chapter of Rules submitted: Title 428, Chapter 4

**Subject: Defines the method for completing and filing of a county's, municipality's,
or NDOT's Annual Report which consists of financial and inventory data.**

Prepared by: Erich Strack, Government Affairs Manager

Telephone: 402-479-4324

Date submitted to Governor: _____

Projected dates for public
hearings

November, 2020

Projected deadline for final approval January, 2021

- A copy of the section of laws or federal regulations that triggered these changes is attached. **LB 82 (2019)**

FOR GOVERNOR OFFICE RECORDS

Advisor Assigned: _____

Date approved to proceed: _____

Options for proceeding: _____

- _____ a) No further contact with GPRO is necessary until final rules have been approved by the Attorney General.
- _____ b) Contact Governor through GPRO concerning issues raised in Negotiated Rulemaking procedures.
- _____ c) Submit Rules and Regulations Policy Review Checklist to Governor if rules are changed hereafter and a new public hearing is scheduled.
- _____ d) Keep the Governor informed through GPRO as issues arise in negotiations, drafting sessions, advisory board meetings, and public hearings.
- _____ e) Specific policy comments per Governor's instructions is attached.

**PROPOSED REGULATION
POLICY PRE-REVIEW CHECKLIST**

Agency: **Nebraska Department of Transportation**

Title, Chapter of Regulation: Title 428, Chapter 4

Subject: Defines the method for completing and filing of a county's, municipality's,
or NDOT's Annual Report which consists of financial and inventory data.

Prepared by: Erich Strack, Government Affairs Manager

Telephone: 402-479-4324

A. Policy Changes and Impacts

1. What does the regulation do and whom does it impact? Provide a brief description of the proposed rule or regulation and its impacts on state agencies, political subdivisions, and regulated persons or entities.

This regulation belongs to the Nebraska Board of Public Roads Classifications and Standards (NBCS).

2. Describe changes being proposed to current policy and briefly provide rationale.

NDOT is proposing to repeal the regulation in its entirety.

The regulation is no longer necessary due to NDOT- and Board-sponsored legislation (LB 82) passed in 2019 by the Legislature. The Legislation requires local political subdivisions to certify to the NBCS their compliance with law rather than submission of the Standardized System Annual Reporting paperwork to the NBCS for NBCS staff to review. Because of this change in law, 428 NAC 4 is obsolete and unnecessary.

B. Why is the rule necessary? Explain and provide an identification of authorizing statute(s) or legislative bill(s).

1. Update of regulation (repeal of obsolete statutes, reflect current policy, editing or technical language changes, etc.)
2. Annual changes – cost of living, hunting season schedules, etc.
3. Law was changed – federal or state
4. Extension of established policy or program, new initiatives or changes in policy (within statutory authority)
5. Constituent initiated
6. Financial needs – increases/decreases in fees
7. Litigation requires changes in rules
8. Addresses legal or constitutional concerns of Attorney General's office
9. Implements federal or court mandate
10. Other (explain) Repeal

C. What happens if these rules are not adopted?

If the regulation is not repealed, the NBCS will be the owner of a regulation which is obsolete and unnecessary.

D. Policy Checklist

- | | |
|-----|--|
| N/A | 1. Is this an update or editorial change reflecting essentially no change in policy? |
| N/A | 2. Does the policy in the proposed regulation reflect legislative intent? |
| N/A | 3. Is the policy proposed in the regulation a state mandate on local government? |
| N/A | 4. Is the policy proposed in the regulation a federal mandate on local government? |

E. Fiscal Impact. In addition to completing the required Fiscal Impact Statement (a copy must be attached to this document), the agency must address the following:

- | | |
|-----|--|
| N/A | 1. Will the proposed regulation reduce, increase, or have no change in resources – funds, personnel or FTE? |
| N/A | 2. Have initial contacts been made with citizens or organizations that may be impacted by the proposed regulation? |
| N/A | 3. Does the proposed regulation impact another agency? Explain the impact. |
| N/A | 4. Will the proposed regulation reduce, increase, or have no change on reporting requirements of businesses? |
| N/A | 5. What is the agency's best estimate of the additional or reduced spending? If there is none, please note. If receipt of federal funds is contingent upon approval of the proposed regulation, then indicate the amount and nature of the federal funds affected, and enclose laws or correspondence from federal officials substantiating the information. |
| N/A | 6. Include a description of the impact that the proposed regulation will have on the number of state employees and how the agency intends to address proposed increases or decreases in FTE. |

F. Unique problems or issues and recommendations.

There are no unique problems, issues or recommendations.

G. Who is expected to be affected, or to oppose or support the proposed regulation? Explain what initial informal contacts have been made with organizations or citizens who may be affected by the regulation prior to the public hearing.

The regulation no longer affects any member of the public. Changes made by LB 82 are in effect and opposition to this repeal is not expected.

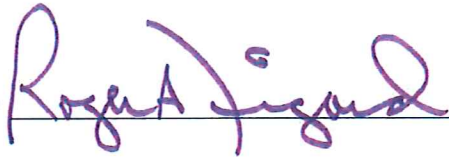
- H. Are these proposed rules a likely candidate for negotiated rulemaking?
Explain. Has the process been completed? If so, explain how the issues were addressed.

N/A

Chairman's Verification of Review

I have reviewed these proposals and verify that, at this stage of the regulation's development, these questions have been accurately addressed.

Chairman's Signature



Date

8/20/2020

STATE OF NEBRASKA
Minutes of the
Board of Public Roads Classifications and Standards

September 24, 2020

**NBCS Authority to Conduct Business for the Board as it Relates to Communications,
Questions and Information Requests of the Board and Staff.**

1. Routine communications, questions and requests can be discussed and resolved quickly electronically or telephonically by the Secretary of the Board (Secretary) and need not involve the Board. Non-routine communications, questions and requests for information (examples are relaxation of standards requests and inquiries about design standards) should be sent in writing (hard-copy) or electronically (e-mail to ndot.blshelp@nebraska.gov , or file-sharing) to the Secretary of the Board for review and determination of proper handling, filing, responding and or answering etc.
2. Non-routine communications, questions etc, that require a response are to be handled as follows:
 - a. The Secretary of the Board (Secretary) shall answer all communications and questions that are within his/her experience and knowledge to resolve. All responses to non-routine communications shall be in writing (hard-copy) or electronic (e-mail or file-sharing), to the requesting individual or entity.
 - b. The Nebraska Department of Transportation (NDOT) shall provide supplemental/additional professional engineering (Professional Support) support to the Secretary, and the Secretary shall be authorized to confer with, and request reviews/evaluations, and recommendations from Professional Support on issues that are not routine and are less common, that require additional effort to research and answer. The Secretary, if in agreement, will respond and communicate directly to the individual or entity in writing, as above in 2.a.
 - c. For those issues, questions and requests where the Secretary and Professional Support do not agree, or are not sure of an appropriate response, both shall confer with the Chair of the Board and/or Counsel for a proper response, and either the Chair or Secretary shall respond back to the individual or entity, as above in 2.a and b.
 - d. Any issues, questions and requests not resolved to the satisfaction of the individual or entity in any of the above steps, may be taken to the full Board for resolution.
 - e. All non-routine communications, questions and requests for information will be reported to the Board at any subsequent meetings, for the purpose of transparency in the conduction of the business of the Board. These may not have all details; they may be summaries, relevant portions of communications, and /or listings.

Intention of the Motion; To establish, for the sake of managing communications and for transparency, a more formal process to receive and respond to questions and inquires of the NBCS.