

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

October 20, 2017

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 October 13, 2017.
- Event posted on the State of Nebraska website (Public Meeting Calendar) October 13, 2017.
- Tentative agenda emailed to each board member and interested persons on October 13, 2017.
- 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, October 20, 2017.
- Relaxation of Standards hearing notice emailed to NDOT on October 16, 2017.

Board members present:

Roger Figard, Lincoln, Chairman
James A. Litchfield, Wakefield, Vice Chairman
LeRoy G. Gerrard, Stromsburg
Barbara Keegan, Alliance
John F. Krager, Omaha
Lisa Kramer, Kennard
Mick Syslo, Lincoln
Darold E. Tagge, Holdrege
David Wacker, Hastings
Timothy W. Weander, Omaha
Edward R. Wootton, Sr., Bellevue

Board members absent: None

Staff members present:

LeMoyne D. Schulz, Board Secretary & Highway Local Liaison Coordinator, NDOR, Lincoln
Dennis R. Smith, Highway Local Coordinator, Liaison Services Section, Nebraska
LTAP/NDOR, Lincoln
Barbara Hasterlo, Office Associate, Liaison Services Section, Nebraska LTAP/NDOR,
Lincoln

Others in attendance:

Jodi Gibson, Materials & Research Division, Highway Local Project and Research Administration, Nebraska Department of Transportation
Jeffrey T. Schroeder, Assistant Attorney General, Nebraska Department of Transportation Building, Lincoln
Erich Strack, Legislative Coordinator, Government Affairs Office, Nebraska Department of Transportation, Lincoln
Mark Traynowicz, Bridge Division, Nebraska Department of Transportation, Lincoln
Fouad Jaber, Bridge Division, Nebraska Department of Transportation, Lincoln
Brian Johnson, Roadway Design Division, Nebraska Department of Transportation, Lincoln
Mike Owen, Roadway Design Division, Nebraska Department of Transportation, Lincoln
Terry L. Gibson, Roadway Design Division, Nebraska Department of Transportation, Lincoln
Beverly Vonasek, Intermodal Planning Division, Nebraska Department of Transportation, Lincoln
Larry L. Legg, Roadway Design Division, Nebraska Department of Transportation, Lincoln

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Chairman Figard called the meeting to order at 9:00 a.m. The meeting was open to the public.

* * * * *

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.

* * * * *

Mr. Schulz noted the following changes from the originally published agenda:

Added: "Maskell" to the, "Consideration of lifting suspension (1) Maskell."

Added: "2018" to the, "2017-2018 Annual Reports received."

Removed: the word "Speed" from "Design Speed Standard" of the 9:30 a.m. Informal Hearing

Added: "2018" to the, "2017-2018 Work Plan/Vision for the Future."

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Mr. Gerrard moved to approve the July 21, 2017 meeting minutes. Mr. Wootton seconded the motion. Members Gerrard, Keegan, Krager, Syslo, Wacker, Weander, Wootton and Figard voted YES. Members Kramer, Litchfield and Tagge abstained. The motion carried.

* * * * *

The board considered the Final Status of the submission of the 2016 – 2017 Standardized System of Annual Reports.

- A total of 93 County, 529 Municipal, and the Nebraska Department of Transportation's Reports have been received.

- A total of 93 County, 528 Municipal, and Nebraska Department of Transportation's Reports were accepted at previous meetings.
- One (1) Municipal Report is recommended for acceptance: Maskell *(Received 8-28-17)*.
- The Municipality of Maskell, which was cited to the State Treasurer for suspension of Highway Allocation Funds, has submitted its Report. Highway Allocation Funds have been under suspension, beginning with the May distribution, and is currently in the sixth month of suspension. The State Treasurer should be advised to cease the suspension and restore the suspended funds.

Mr. Wootton moved to accept the Final Status Report of the Standardized System of Annual Reports for 2016 – 2017, as presented. Mr. Krager seconded the motion. Members Gerrard, Keegan, Krager, Kramer, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. The motion carried.

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Mr. Wacker moved to lift the suspension of Highway Allocation Funds to the Village of Maskell. Mr. Wootton seconded the motion. Members Gerrard, Keegan, Krager, Kramer, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. The motion carried. *(See Attachment #1.)*

* * * * *

The board considered the Final Status of the submission of the 2017 One- and Six-Year Plans.

- A total of 93 County, 529 Municipal, and the Nebraska Department of Transportation's One-and Six-Year Plans have been received.
- A total of 93 County, 528 Municipal, and the Nebraska Department of Transportation's One-and Six-Year Plans were accepted at previous meetings.
- One (1) Municipal One- and Six-Year Plan is recommended for acceptance: Maskell *(Received 8-25-17)*.
- The Municipality of Maskell, which was cited to the State Treasurer for suspension of Highway Allocation Funds, has submitted its Plan. Highway Allocation funds have been under suspension, beginning with the June distribution, and is currently in the fifth month of suspension. The State Treasurer should be advised to cease the suspension and restore the suspended funds.

Mr. Wootton moved to accept the Final Status Report of the 2017 One- and Six-Year Plans as presented. Mr. Tagge seconded the motion. Members Gerrard, Keegan, Krager, Kramer, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. The motion carried.

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Mr. Wootton moved to lift the suspension of Highway Allocation Funds to the Village of Maskell. Mr. Krager seconded the motion. Members Gerrard, Keegan, Krager, Kramer, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. The motion carried. *(See Attachment #2.)*

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The board considered the Initial Status of the submission of the 2017 – 2018 Standardized System of Annual Reports.

- Thirty-six (36) County, six (6) Municipal, and the Nebraska Department of Transportation's Reports have been received.
- Thirty-six (36) County Reports are being held pending review.
- Six (6) Municipal Reports are recommended for acceptance.

Alma
Giltner

Hamlet
Heartwell

Norman
Stockham

- The Nebraska Department of Transportation's Report is recommended for acceptance.

Mr. Wootton moved to accept the Initial Status report of the Standardized System of Annual Reports for 2017-2018 as presented. Mr. Krager seconded the motion. Members Gerrard, Keegan, Krager, Kramer, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. The motion carried.

* * * * *

The Board considered the Buffalo County One- and Six-Year Plan revision advancing County Project Nos. C-10(961), C-10(962) and C-10(963) from the Six-Year Plan to the 2017 One-Year Plan. A copy of a Certification from the Buffalo County Board, adopted August 22, 2017, was received on August 31, 2017. No one was present to present the request. Following two motions to table and reopen, Ms. Vonasek was asked to answer questions from the board on behalf of Buffalo County.

Project C-10(961) (Evergreen Road) consists of grade crossing protection on a Local road. The total cost of the project is \$466,194 (Federal Funding \$419,575 and Other Funding - Union Pacific Railroad, \$46,619).

Project C-10(962) (Sodtown Road) consists of grade crossing protection on a Local road. The total cost of the project is \$369,522 (County Funding \$18,476; Federal Funding \$332,570; and Other Funding – Union Pacific Railroad, \$18,476).

Project C-10(963) (Arrow Road) consists of grade crossing protection on a Local road. The total cost of the project is \$678,793 (County Funding \$33,940; Federal Funding \$610,913; and Other Funding – Union Pacific Railroad, \$33,940).

Mr. Wacker moved to accept the revisions contingent upon, 1) the county re-submitting the projects on the NBCS Interim Work/Project Form, and 2) include the "Estimated Costs" under the appropriate category (i.e., 'Federal Funding' instead of 'State Funding,' and 'Other Funding – Union Pacific Railroad' instead of 'Other Funding').

Mr. Gerrard seconded the motion. Members Gerrard, Keegan, Krager, Kramer, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. The motion carried. (*On January 3, 2018, Buffalo County filed the corrected forms.*)

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The board considered the Cheyenne County One- and Six-Year Plan revision adding Work/Project No. C-17(190) to the 2017 One-Year Plan. A copy of county board Resolution No. 2017-23, adopted October 2, 2017, was received on October by email on October 2, 2017. No one was present to present the request.

The Work/Project consists of Work/Type 3R, Asphalt Surfacing on a Major Collector/Other Arterial Road. The county board Resolution references a different project number [C-17(179)]. The estimated cost is \$1,400,000 (County Funding).

Ms. Kramer moved to accept the Cheyenne County revision, contingent upon a corrected Resolution being filed with the correct project number. Mr. Wootton seconded the motion. Members Gerrard, Keegan, Krager, Kramer, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. The motion carried. *(On November 6, 2017, Cheyenne County filed an amended Resolution, No. 2017-26, for Project C-17(190).)*

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The board considered the Nemaha County One- and Six-Year Plan revision adding Work/Project No. C-64(321) to the 2017 One-Year Plan. A copy of county board Resolution 2017-26, adopted August 9, 2017, was received by email on August 28, 2017. No one was present to present the request.

The Work/Project consists of Work/Type N&R, replacing culverts with culverts on a Local road. The 'Surface Type' was not clearly identified on the Work/Project form. The Drainage Study was completed. The estimated cost is \$15,000 (County Funding).

Mr. Wootton moved to accept the Nemaha County revision, contingent upon the corrected Surface Type being specified on the Work/Project form. Mr. Tagge seconded the motion. Members Gerrard, Keegan, Krager, Kramer, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. The motion carried. *(On February 13, 2018, Nemaha County filed an amended Work/Project form.)*

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The board considered the Thurston County One- and Six-Year Plan revision adding Work/Project No. C-87(170) to the 2017 One-Year Plan. A copy of county board Resolution No. 17-12, adopted July 24, 2017, was received on July 26, 2017. No one was present to present the request.

The Work/Project consists of Work/Type N&R, replacing a bridge with a culvert on a Minor Collector/Collector road. The Drainage Study is pending. The estimated cost is \$30,000 (County Funding).

Mr. Tagge moved to accept the Thurston County revision, contingent upon the completion of the Drainage Study. Mr. Wootton seconded the motion. Members Gerrard, Keegan, Krager, Kramer, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. The motion carried.

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The board considered the Wheeler County One- and Six-Year Plan revision adding Work/Project No. C-92(187) to the 2017 One-Year Plan. A copy of county board Resolution No. 2017-07-01, adopted July 25, 2017, was received on July 28, 2017. No one was present to present the request.

The Work/Project consists of Work/Type N&R, extend section line road to new dwelling, on a Local road. The estimated cost is \$2,000 (County Funding).

Mr. Wootton moved to accept the Wheeler County revision. Ms. Keegan seconded the motion. Members Gerrard, Keegan, Krager, Kramer, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. The motion carried.

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The board considered the City of Ashland One- and Six-Year Plan revision adding Work/Project No. M-121(53) to the 2017 One-Year Plan. A copy of city Resolution No. 2017-7, adopted August 3, 2017, was received on August 22, 2017. No one was present to present the request.

The Work/Project consists of Work/Type N&R, concrete surfacing on Local streets. The estimated cost is \$715,000 (\$315,000 Municipal Funding) and (\$400,000 Other Funding).

Mr. Gerrard moved to accept the City of Ashland revision. Mr. Wootton seconded the motion. Members Gerrard, Keegan, Krager, Kramer, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. The motion carried.

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At 9:40 a.m., the Board heard the NDOT request for a Relaxation for Project No. S-680-9(35), C.N. 22632, Mormon Bridges. *(The hearing was held in an informal format, the NDOT having declined the option of a formal hearing.)* The request is for a Relaxation of the 428 NAC 2-001.02N, Resurfacing, Restoration and Rehabilitation (3R) Rural-State Highway System – Design Standard, as specified in its October 12, 2017 letter. Mr. Traynowicz and Mr. Johnson presented the request. No one appeared in opposition. The hearing concluded at 9:58 a.m. The Board then considered the request.

Mr. Wacker moved to grant the NDOT Relaxation request. Mr. Wootton seconded the motion. Members Gerrard, Keegan, Krager, Kramer, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. The motion carried.

* * * * *

Update on revision of 428 NAC 3, Annual Reporting of One- and Six-Year Plans and 428 NAC 4, Standardized System of Annual Reporting Regulations, and the Governor's Executive Order No 17-04 Regulations Review.

Assistant Attorney General Jeff Schroeder briefed the Board on the status of the response to the Governor's Executive Order No. 17-04. *(See Attachment #3.)* The Executive Order (of July 6, 2017) declared a review of all state regulations by each state agency, while placing a stay on all new rule-making through December 31, 2017. The Executive Order affects five (5), NBCS regulations: 428 NAC 1, 2, 3, 4 and 5. Meetings have taken place involving himself; NDOT staff members: Jodi Gibson, LeMoyne Schulz, Dennis Smith and Barb Hasterlo; and Chairman Figard. Copies of the draft internal work documents were provided to the board members. Mr.

Schroeder provided an overview of the steps involved, such as, what to regulate; the objectives; and what can be made less burdensome. Once the documents are finalized, they will be submitted to the Governor, and copies will be provided to the board members. Final submittals that went to the governor were received on December 12, 2017. (See Attachment #4.)

Following review and discussion, Chairman Figard presented a draft resolution in support of the recommended changes. Mr. Wacker moved to 1) adopt the resolution; 2) empower Chairman Figard to work with the Assistant Attorney General; and 3) give authority to Chairman Figard to modify the resolution slightly - with the legal opinion of the Assistant Attorney General. Mr. Wootton seconded the motion. Members Gerrard, Keegan, Krager, Kramer, Litchfield, Syslo, Tagge, Wacker, Weander, Wootton and Figard voted YES. The motion carried. (See Attachment #5.)

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Other business:

- Mr. Strack provided a state and federal Legislative Report.
- 2017 Work Plan/Vision for Future: Mr. Schulz advised that the 2017 Work Plan/Vision is on hold, due to the Governor's Executive Order No. 17-04.
- Annual Mailing to Clerks & Superintendents was done October 23, 2017. (See Attachment #6.)
- Board members received a **tentative** schedule of meeting dates for 2018-2019 that will be voted on at the next meeting.

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Mr. Schulz reported the following correspondence and general information.

- Reappointment/Replacement of Members Keegan, Litchfield, Syslo and Wootton (*terms expire November 30, 2017*). (*Members serve until a successor is appointed.*)
- Board members received a copy of the *2016 Annual Report Traffic Crash Facts*.
- Board members received a copy of the *Board of Examiners for County Highway and City Street Superintendents August 25, 2017 meeting minutes*.
- Board members received a copy of the NDOT, Materials and Research, Boards- Liaison Services Section handout presented at the County Highway Superintendents 2017 Fall District Meetings.
- Board members received a copy of an article, *Infrastructure to Help Nebraska Grow*, by Governor Pete Ricketts, as published in the July 2017 *Nebraska Municipal Review* magazine.

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There were no Comments from the Audience.

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The next regular meeting will be held November 17, 2017 at 9:00 a.m., in the Nebraska Department of Transportation's Central Headquarters Building Auditorium, Room 139A, 1500 Highway 2, Lincoln, Nebraska. *(Note: On November 9, 2017, Chairman Figard cancelled the November 17, 2017 meeting for want of a sufficient agenda. The next meeting will be held on January 19, 2018. On January 5, 2018, Chairman Figard cancelled the January 19, 2018 meeting for want of a sufficient agenda. The next meeting will be held on February 16, 2018.)*

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There being no further agenda items, Chairman Figard adjourned the meeting at 10:57 a.m.

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LeMoyne D. Schulz
Secretary for the Board
<http://www.transportation.nebraska.gov/gov-aff/gov-aff-main.html>

NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

October 20, 2017



State of Nebraska, Governor

Mr. Don Stenberg
Nebraska State Treasurer
State Capitol Rm 2003
Lincoln NE 68509

Dear Mr. Stenberg:

The Board of Public Roads Classifications and Standards, at their regular meeting on October 20, 2017, voted to lift the suspension of Highway-User Revenue to the **Village of Maskell**. The suspension was initiated by letter of this board dated May 1, 2017, pursuant to action taken at the April 21, 2017 meeting. By action of your office, funds were suspended beginning with the May 10, 2017 allocation. Maskell's Standardized Annual Street Program Report for 2016-2017 was received August 28, 2017.

The penalty provision of 39-2121 Nebraska Revised Statutes provides that if any county or municipality fails to file such plan on or before its due date, the Board shall notify the local governing board, the Governor and the State Treasurer who shall suspend distribution of any Highway-User Revenue allocated to such county or municipality until the report has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period, it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

The Board of Public Roads Classifications and Standards respectfully requests that you release the funds held in escrow, pursuant to 39-2121 Neb.Rev.Stat., and resume distribution of Highway-User Revenue to the **Village of Maskell** at this time. Please note that this Board's action does not alter sanctions imposed by the State Auditor pursuant to other statutes.

Sincerely,

LeMoyné D. Schulz
Secretary for the Board

LDS/BPR10-zf

xc: Pete Ricketts, Governor
Kyle Schneweis, Nebraska Department of Transportation
Maskell Village Board
Teresa Kuper, Nebraska Department of Transportation
Keith Gilmore, Maskell Street Superintendent
File

Kyle Schneweis, P.E., Director
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Secretary – ex officio

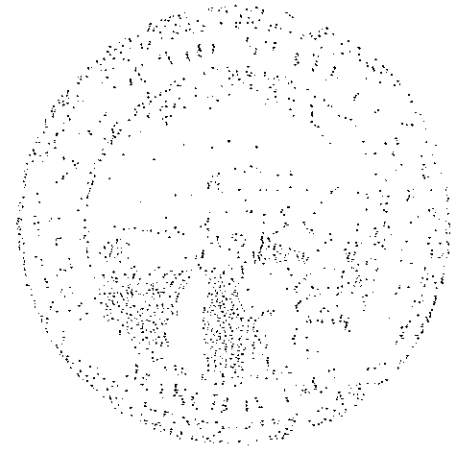
Attachment No. 1
Page 1 of 1 Pages

NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

October 20, 2017



Mr. Don Stenberg
Nebraska State Treasurer
State Capitol Rm 2003
Lincoln NE 68509

Dear Mr. Stenberg:

The Board of Public Roads Classifications and Standards, at their regular meeting on October 20, 2017, voted to lift the suspension of Highway-User Revenue to the **Village of Maskell**. The suspension was initiated by letter of this board dated June 1, 2017, pursuant to action taken at the May 19, 2017 meeting. By action of your office, funds were suspended beginning with the June 9, 2017 allocation. Maskell's One- and Six- Year Improvement Plan for 2017 was received August 25, 2017.

The penalty provision of 39-2119 Nebraska Revised Statutes provide that if any county of municipality fails to file such a plan on or before its due date, the Board shall notify the local governing board, the Governor and the State Treasurer who shall suspend distribution of any Highway-User Revenue allocated to such county of municipality until the report has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies with the six-month period, it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in escrow account shall be lost to the county or municipality.

The Board of Public Roads Classifications and Standards respectfully requests that you release the funds held in escrow pursuant to 39-2119 Neb. Rev. Stat. and resume distribution of Highway-User Revenue to the **Village of Maskell** at this time. Please note that this Board's action does not alter sanctions imposed by the State Auditor pursuant to other statutes.

Sincerely,

LeMoyne D. Schulz
Secretary for the Board

LDS/BPR10-zg

xc: Pete Ricketts, Governor
Maskell Village Board
Keith Gilmore, Maskell Village Superintendent
Kyle Schneweis, Nebraska Department of Transportation
Teresa Kuper, Nebraska Department of Transportation
File

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Bellevue
- LeMoyne D. Schulz
Secretary – ex officio

Attachment No. 2
Page 1 of 1 Pages



STATE of NEBRASKA
OFFICE OF THE GOVERNOR
LINCOLN

EXECUTIVE ORDER No. 17-04

Regulatory Reform

WHEREAS, the effective, efficient operation of state government requires the least restrictive regulatory environment; and

WHEREAS, the Nebraska Administrative Code has more than 7,500,000 words and more than 100,000 restrictive words; and

WHEREAS, Nebraska's existing regulatory framework hinders economic growth and creates undue barriers to upward mobility for hardworking Nebraskans; and

WHEREAS, removing burdensome regulations will help Grow Nebraska.

NOW, THEREFORE, I, Pete Ricketts, Governor of the State of Nebraska, do hereby issue the following Executive Order:

1. This order applies to all Cabinet agencies and boards and commissions with rulemaking authority located within Cabinet agencies. All non-Cabinet agencies, boards, and commissions are strongly urged to participate in this order.
2. All state agencies shall immediately suspend all rulemaking.
 - a. This suspension shall remain in effect until December 31, 2017.
 - b. Any proposed regulation that affects public health, safety, welfare, or is time sensitive or subject to statutory deadlines shall be promulgated pursuant to the Nebraska Administrative Procedure Act.
3. Every state agency shall conduct a review of all existing and pending agency regulations.
 - a. Each state agency director shall designate an individual responsible for oversight of the review.
 - b. Every state agency shall submit a report to the Office of the Governor by November 15, 2017 for each existing or proposed regulation. The report shall answer the following questions:
 - i. Is the regulation essential to the health, safety, or welfare of Nebraskans?

- ii. Do the costs of the regulation outweigh the benefits? Provide specific data and reasoning.
 - iii. Does a process exist to measure the effectiveness of the regulation? If so, explain.
 - iv. Has a less restrictive alternative been considered?
 - v. Was the regulation solely promulgated due to a state statutory requirement? If so, provide citations.
 - vi. Was the regulation promulgated as the result of a federal mandate? If so, include copies of the applicable federal statutes and regulations.
- c. Any regulation deemed to be more restrictive than required under state or federal law or creates an undue burden on Nebraskans, shall be revised or repealed pursuant to the Nebraska Administrative Procedure Act.

This Executive Order shall take effect immediately.

IN WITNESS THEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nebraska to be affixed on this 6th day of July, 2017.



Attest:


Pete Ricketts, Governor
State of Nebraska


John A. Gale, Secretary of State
State of Nebraska

AGENCY RULE AND REGULATION REVIEW REPORT

- Pursuant to Executive Order 17-04, reports are due by November 15, 2017
- Submit completed reports to Regulation.Reform@nebraska.gov

Agency Name: Nebraska Department of Transportation	
Citation of Rule and Regulation (i.e., 22 NAC Chapter 3): 428 NAC 1	Responsible Department or Board: Board of Public Roads Classifications and Standards (NBCS)
Rule and Regulation title and description: <u>Procedures for Classifications</u>	
Brief explanation of the reason for the Rule and Regulation: Sets <u>criteria for each state functional classification</u> of public roadway in Nebraska; also sets <u>appeal procedures</u> for state functional classifications determined and assigned by NDOT. Note: Nebraska's state functional classifications are distinct from Federal functional classifications that govern Federal-aid highway projects and the National Highway System in Nebraska.	
Is there a Nebraska statute that <u>either requires or authorizes</u> the promulgation of the Rule and Regulation: <div style="text-align: center;"> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> </div>	
If yes, which? Required ("shall") <input checked="" type="checkbox"/> Discretionary ("may") <input type="checkbox"/> Unclear <input type="checkbox"/>	
What is the statutory citation? Neb. Rev. Stat. §§ 39-2109; 39-2111; 39-2112; 39-2108: <u>39-2109 (Shall)</u> – Directs NBCS to <i>set criteria</i> for the Functional Classifications named in 39-2102 – 39-2104 after public hearings have been held to assure interested parties have an opportunity to be heard. Then states that those criteria "shall be printed and published" and "copies thereof shall be deposited with" various governmental entities. (Governs §§ 001 – 003 of the regulation) <u>39-2111 & 39-2112 (Shall)</u> – Provides for <i>appeal to NBCS</i> of NDOT assignment of functional classification for a particular highway, road or street. (Governs § 004 of the regulation) <u>39-2108</u> – "All proceedings of the [NBCS] shall be subject to the provisions of the Administrative Procedure Act." (General citation for all NBCS regulations) <u>Other pertinent statutes for this regulation:</u> 39-2102 – Functional classification broad categories: Rural Highways and Municipal Streets 39-2103 – Nine (9) functional classifications for Rural Highways 39-2104 – Six (6) functional classifications Municipal Streets 39-2105 – Jurisdictional responsibility for each functional classification.	

Attachment No. 4
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AGENCY RULE AND REGULATION REVIEW REPORT

Is there a federal statute or mandate that either requires or authorizes the promulgation of the Rule and Regulation?

Yes No X Unknown

If yes, which? Required ("shall") **Discretionary ("may")** **Unclear**

There is no Federal requirement for a state functional classification system. The rules for the National Functional Classification System (NFC) have no impact on the State Functional Classification System (SFC) – they are two independent systems.

Would changes require federal review and approval? Yes No X

This regulation applies only to the *state* functional classification system. This state system is not required, preempted or prohibited by Federal statute or regulation. Although the SFC has not been found to undermine the NFC or the national standards governing the NHS in Nebraska, the two systems are duplicative in many respects. Furthermore, the complexity of the dual system, and the fact that the two systems do not relate to each other, is a source of confusion, particularly for county and municipal officials and their road and street agencies.

What is the citation of the federal statute ("USC") and/or federal regulation ("CFR")? N/A

Attach a copy of the applicable statutes and regulations.

If this regulation is required by statute, and if the regulation merely restates the statutory requirements, the Rule and Regulation should either be eliminated or reviewed to narrow the minimum requirements that are needed to expand and complement the existing statutory text.

Generally, no. Only two very brief sections – 001.01 and 002.01A, pertaining to the functional classification for the Interstate – restate statutory language (from 39-2103 and 39-2104).

State your conclusions on this issue.

Other than as noted above, the regulation does not merely restate the statutory requirements. The statutes themselves provide limited criteria to identify what segment of highways, roads and streets fits under which state functional classification. The statutes generally rely on the regulation to make such determinations. The only exception is for the special state functional classifications: Scenic-Recreation, Minimum Maintenance and Remote Residential; the statute provides significant guidance for those specific items.

Special Note: This review was conducted by NDOT, in consultation with the Board of Public Roads Classifications and Standards (NBCS), which has statutory responsibility for this regulation. The NBCS recently adopted a resolution in support of NDOT's approach, findings and proposed report regarding the EO review of this regulation – see attached copy.

Does this regulation merely restate existing and binding federal law? No

If yes, consider repealing or revising the regulation to require only what is necessary.

State your conclusions on this issue.

Observation. There is some question as to the value and efficiency of having a comprehensive system of *state* minimum standards, particularly since (1) a substantial portion of those standards overlap the federally-mandated *national* minimum standards for the National Highway System, and (2) Nebraska appears to be the only state with such a dual system of standards. However, that question is beyond the scope of this EO Review. NDOT and NBCS may explore this policy issue in the near future.

Attachment No. 4

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AGENCY RULE AND REGULATION REVIEW REPORT

High voluntary compliance.

Does this regulation deal with a subject where we currently see a high level of voluntary compliance? No
If yes, consider whether the regulation can be repealed or narrowed.

State your conclusions on this issue. This regulation does not place any burdens on the NDOT, counties or municipalities. The absence of this regulation would not affect how NDOT, counties and municipalities conduct their business. The regulation does provide options for certain minor classifications.

Cost-benefit analysis.

Consider whether the monetary costs to the regulated entity outweigh the benefits to the public.
If the costs outweigh the benefit, revise or repeal the regulation.

State your conclusions on this issue. There is a minor cost associated with managing the SFC, particularly its duplicative aspects.

Less restrictive alternative.

Is the current regulation the least restrictive regulatory alternative? Yes.
If not, repeal or revise.

State your conclusions on this issue.

While the regulation comports with the State statutes, the dual classification system is duplicative and awkward. *Repealing the SFC statutes and recognizing the NFC in Nebraska law* arguably would result in a less confusing and more efficient alternative overall.

Note: If Nebraska law is changed to remove the SFC and to adopt the NFC, the legislation will also need to: 1) provide a new means of identifying roads under NDOT's jurisdiction (i.e. "define" the State Highway System), and 2) preserve Nebraska's special functional classifications. The SFC currently provides the statutory jurisdictional basis for the State Highway System. The SFC also provides for Scenic Recreation Roads, Remote Residential Roads and Minimum Maintenance Roads – special functional classifications that do not exist in the NFC, but are not prohibited or discouraged by federal law, regulation or guidance.

Does the regulation involve any of the following:

- Prescribe a penalty.
- Affect a private right or interest.

Does the Rule and Regulation impact the ease of doing business with the agency? Somewhat

Explain.

The dual classification system does impose a burden on NDOT internally (to develop, mesh and fine-tune the two systems) and on counties and municipalities who must learn both systems.

Recommendation: NO REVISION

AGENCY RULE AND REGULATION REVIEW REPORT

- Pursuant to Executive Order 17-04, reports are due by November 15, 2017
- Submit completed reports to Regulation.Reform@nebraska.gov

Agency Name: Nebraska Department of Transportation	
Citation of Rule and Regulation (i.e., 22 NAC Chapter 3): 428 NAC 2	Responsible Department or Board: Board of Public Roads Classifications and Standards (NBCS)
Rule and Regulation title and description: <u>Procedures for Standards</u>	
Brief explanation of the reason for the Rule and Regulation: Establishes <u>minimum standards</u> for the <u>design</u> , <u>construction</u> and <u>maintenance</u> of all Nebraska public roads and streets. Also establishes procedures for <u>relaxation of standards</u> and for <u>compliance inspections</u> .	
Is there a Nebraska statute that <u>either requires or authorizes</u> the promulgation of the Rule and Regulation: <div style="text-align: center;"> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> </div>	
If yes, which? Required ("shall") <input checked="" type="checkbox"/> Discretionary ("may") <input checked="" type="checkbox"/> Unclear <input type="checkbox"/>	
What is the statutory citation? Neb. Rev. Stat. § 39-2113 – <i>shall</i> – for standards and for relaxations; § 39-2122 – <i>may</i> – for compliance inspections. Also: § 39-2108 – “All proceedings of the [NBCS] shall be subject to the provisions of the Administrative Procedure Act.” Additional details: 39-2113 (1) “... shall develop minimum standards of design, construction, and maintenance for each [state] functional classification...” 39-2113 (5) “... shall by rule provide for the relaxation of standards for any [state] functional classification in those instances in which their application is not feasible because of peculiar, special or unique local situations.” 39-2113 (2), (3) &(4) – special provisions for Scenic-Recreation, Minimum Maintenance and Remote Residential functional classifications. 39-2113 (6) – procedure for request for relaxation of standards by: (a) a county or municipality for any segment of highway, road or street; (b) NDOT “... for any any segment of highway that is not hard surfaced [i.e. an NDOT gravel highway] ...”	
Is there a federal statute or mandate that <u>either requires or authorizes</u> the promulgation of the Rule and Regulation? <div style="text-align: center;"> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> </div>	
If yes, which? Required ("shall") <input type="checkbox"/> Discretionary ("may") <input type="checkbox"/> Unclear <input type="checkbox"/>	
Would changes require federal review and approval? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
What is the citation of the federal statute ("USC") and/or federal regulation ("CFR")? Attach a copy of the applicable statutes and regulations.	
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AGENCY RULE AND REGULATION REVIEW REPORT

If this regulation is required by statute, and if the regulation merely restates the statutory requirements, the Rule and Regulation should either be eliminated or reviewed to narrow the minimum requirements that are needed to expand and complement the existing statutory text.

No.

Most of the statute provides very little or no detail for the standards. The regulation, on the other hand, goes into extensive detail. Furthermore, the regulation was extensively revised and updated in 2016 following three years of study, consultation and review.

Only limited portions of the regulation describe reporting procedures and terminology, instead of setting forth aspects of a standard. For example, § 003 Maintenance Standards, could be streamlined by retaining only the actual standard(s), leaving the reporting and documentation instructions to a separate guidance document. The streamlining benefits would be limited, however, since § 003 already is quite short, covering only 4 pp. of the 96 pp. of 428 NAC 2.

State your conclusions on this issue.

See above and below

Special Note: This review was conducted by NDOT in consultation with the Board of Public Roads Classifications and Standards (NBCS), which has statutory responsibility for this regulation. The NBCS recently adopted a resolution in support of NDOT's approach, findings and proposed report regarding the EO review of this regulation – see attached copy.

Does this regulation merely restate existing and binding federal law?

No – see above

If yes, consider repealing or revising the regulation to require only what is necessary.

State your conclusions on this issue.

High voluntary compliance.

Does this regulation deal with a subject where we currently see a high level of voluntary compliance?

No

If yes, consider whether the regulation can be repealed or narrowed.

State your conclusions on this issue.

For the standards to be understood and applied, they must be promulgated by an authoritative agency. NBCS has accomplished through this balanced and technically clear rule regarding a complex matter.

Cost-benefit analysis. Consider whether the monetary costs to the regulated entity outweigh the benefits to the public.

See below

If the costs outweigh the benefit, revise or repeal the regulation.

State your conclusions on this issue.

The regulations reflect a very reasonable application of the statute. The public is well served by the improved logic and consistency of the standards. The entities that are directly regulated are NDOT, counties, municipalities and other government entities directly responsible for public highways, roads and streets in Nebraska.

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AGENCY RULE AND REGULATION REVIEW REPORT

Less restrictive alternative.

Is the current regulation the least restrictive regulatory alternative?

Arguably, yes.

If not, repeal or revise.

State your conclusions on this issue.

The regulations reflect a very reasonable application of the statute. The public is well served by the improved logic and consistency of the standards. The entities that are directly regulated are NDOT, counties, municipalities and other government entities directly responsible for public highways, roads and streets in Nebraska.

Does the regulation involve any of the following:

- Prescribe a penalty.
- Affect a private right or interest.

Does the Rule and Regulation impact the ease of doing business with the agency?

Yes

Explain.

The current regulation has been well received and is viewed as a careful and systematic improvement to the clarity, logic and application of the standards.

Recommendation: NO REVISION

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AGENCY RULE AND REGULATION REVIEW REPORT

- Pursuant to Executive Order 17-04, reports are due by November 15, 2017
- Submit completed reports to Regulation.Reform@nebraska.gov

Agency Name: Nebraska Department of Transportation	
Citation of Rule and Regulation (i.e., 22 NAC Chapter 3): 428 NAC 3	Responsible Department or Board: Board of Public Roads Classifications and Standards
Rule and Regulation title and description: Instruction Manual for Annual Reporting of One- and Six-Year Plans for Highway, Road and Street Improvements	
Brief explanation of the reason for the Rule and Regulation: Defines the method for completing and filing of a county's, a municipality's or NDOT's one- and six-year plan for highway, road and street improvements.	
Is there a Nebraska statute that <u>either requires or authorizes</u> the promulgation of the Rule and Regulation: <p style="text-align: center;"> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> </p> If yes, which? Required ("shall") <input type="checkbox"/> Discretionary ("may") <input type="checkbox"/> Unclear <input type="checkbox"/>	
What is the statutory citation? Substantive Provisions found at: Neb. Rev. Stat. §§ 39-2115; 39-2116; 39-2117; 39-2118; 39-2119; 39-2119.01	
Is there a federal statute or mandate that <u>either requires or authorizes</u> the promulgation of the Rule and Regulation? <p style="text-align: center;"> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> </p> If yes, which? Required ("shall") <input type="checkbox"/> Discretionary ("may") <input type="checkbox"/> Unclear <input type="checkbox"/> <p> Would changes require federal review and approval? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> </p>	
What is the citation of the federal statute ("USC") and/or federal regulation ("CFR")? <u> </u> Attach a copy of the applicable statutes and regulations. Not applicable.	
If this regulation is required by statute, and if the regulation merely restates the statutory requirements, the Rule and Regulation should either be eliminated or reviewed to narrow the minimum requirements that are needed to expand and complement the existing statutory text. State your conclusions on this issue. Not applicable. The Board requests that minor changes be made to Neb.Rev.Stat. §§ 39-2115, 39-2118 and 39-2119 and then these Rules and Regulations can be repealed in their entirety.	

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AGENCY RULE AND REGULATION REVIEW REPORT

Does this regulation merely restate existing and binding federal law?

If yes, consider repealing or revising the regulation to require only what is necessary.

State your conclusions on this issue.

Not applicable. The Board requests that minor changes be made to Neb. Rev. Stat. §§ 39-2115, 39-2118 and 39-2119 and then these Rules and Regulations can be repealed in their entirety.

High voluntary compliance.

Does this regulation deal with a subject where we currently see a high level of voluntary compliance?

If yes, consider whether the regulation can be repealed or narrowed.

State your conclusions on this issue.

Not applicable. The Board requests that minor changes be made to Neb. Rev. Stat. §§ 39-2115, 39-2118 and 39-2119 and then these Rules and Regulations can be repealed in their entirety.

Cost-benefit analysis.

Consider whether the monetary costs to the regulated entity outweigh the benefits to the public.

If the costs outweigh the benefit, revise or repeal the regulation.

State your conclusions on this issue.

Not applicable. The Board requests that minor changes be made to Neb. Rev. Stat. §§ 39-2115, 39-2118 and 39-2119 and then these Rules and Regulations can be repealed in their entirety.

Less restrictive alternative.

Is the current regulation the least restrictive regulatory alternative?

If not, repeal or revise.

State your conclusions on this issue.

Not applicable. The Board requests that minor changes be made to Neb. Rev. Stat. §§ 39-2115, 39-2118 and 39-2119 and then these Rules and Regulations can be repealed in their entirety.

Does the regulation involve any of the following:

Prescribe a penalty.

Affect a private right or interest.

Does the Rule and Regulation impact the ease of doing business with the agency?

Explain.

Yes. The Board requests that minor changes be made to Neb. Rev. Stat. §§ 39-2115, 39-2118 and 39-2119 and then these Rules and Regulations can be repealed in their entirety. See attached Plan for 428 NAC 3.

Recommendation: **REPEAL**

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PLAN FOR 428 NAC 3

Two of the Rules and Regulations of the Board of Public Roads Classifications and Standards (Board), 428 NAC 3 and 4, set out **instructions** for the annual filing of forms related to the following three plans and reports by the municipalities, the counties and the state: (a) the one-year plan (§ 39-2118 and 2119), (b) the six year plan (§ 39-2115) and (c) a report known as the standardized system of annual reporting (SSAR)(§ 39-2120). The primary purpose for these two instructional rules and regulations is to make sure the various municipalities, counties and the state use the Board-approved forms to submit yearly reports. A secondary purpose is to detail a public hearing requirement as mandated by the fourth sentence of § 39-2119.

The statutes that require these rules and regulations have remained essentially unchanged for more than 45 years. The Board believes these rules and regulations that merely provide “instructions” are unnecessary and should be repealed. However, a repeal of these instructional rules and regulations may raise a question about the authority of the Board to approve the forms used to submit annual reports. Simple revisions of the statutes would make clear the authority of the Board to specify forms and process, thus allowing the repeal of 57 pages of unnecessary regulations.

The Board proposes that §§ 39-2115, 39-2118 and 39-2119 be amended slightly to authorize the Board to specify the manner and form to be used to report the annual one and six-year plans to the Board (see attached). This authority would remove any question as to the repeal of the entire rule and regulation. The rule and regulation would then be revised and made into a guidance document that would continue to provide instructions for the filing of the annual reports.

The fourth sentence of § 39-2119 should also be amended to allow the Board to specify the details of the public hearing in a guidance document, rather than in a rule and regulation. The part of the rule and regulation setting the hearing requirements could then also be repealed.

Finally, § 39-2120 requires an annual report with six specific areas that must be reported each year. The Board is convinced that this requirement is redundant and unnecessary. The financial records of these entities are subject to audit by the State Auditor. Additionally, many entities produce annual reports including information of this type. Finally, public records statutes make it easy to obtain this type of information from these entities, even if they are not self-reporting.

The Board would like to ease the regulatory burden on the entities that report information to the Board. Accordingly, § 39-2120 should be amended to allow the Board to specify what additional information it believes should be submitted to the Board, including the form in which it is submitted, and potentially using a simple certification or other similar process (see attached). The Board also requests that it be allowed to require different information from the various classes of cities, the counties and the state, when appropriate.

The Board believes all these changes will reduce unnecessary burdens on these entities while allowing the Board to gather information necessary so that the public knows how its tax revenues are spent.

39-2115. Six-year plan; basis; filing; failure to file; penalty; funds placed in escrow.

The Department of Transportation and each county and municipality shall develop and file with the Board of Public Roads Classifications and Standards a long-range, six-year plan of highway, road, and street improvements based on priority of needs and calculated to contribute to the orderly development of an integrated statewide system of highways, roads, and streets. Each such plan shall be filed with the board promptly upon preparation but in no event later than March 1, 1971. If any county or municipality, or the department, shall fail to file its plan on or before such date, the board shall so notify the local governing board, the Governor, and the State Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality, or the department, until the plan has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

Source: Laws 1969, c. 312, § 15, p. 1124; Laws 1971, LB 100, § 4; Laws 1973, LB 137, § 1; Laws 1976, LB 724, § 2; Laws 2017, LB339, § 153.

Operative Date: July 1, 2017

The plan shall be filed using the method and on the forms or reports approved in advance by the board.

39-2118. Department of Transportation; plan for specific highway improvements; file annually with Board of Public Roads Classifications and Standards; review.

The Department of Transportation shall annually prepare and file with the Board of Public Roads Classifications and Standards a plan for specific highway improvements for the current year. The annual plan shall be filed on or before July 1 of each year. In so doing, the department shall take into account all federal funds which will be available to the department for such year. The board shall review each such annual plan to determine whether it is consistent with the department's current six-year plan. The department shall be required to justify any inconsistency with the six-year plan to the satisfaction of the board.

Source: Laws 1969, c. 312, § 18, p. 1125; Laws 1971, LB 100, § 7; Laws 1976, LB 724, § 4; Laws 2017, LB339, § 155.

Operative Date: July 1, 2017

in the method and using the former reports approved in advance by the board.

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39-2119. Counties and municipalities; plan or program for specific improvements; file annually with Board of Public Roads Classifications and Standards; hearing; notice; adoption; review; failure to file; penalty; funds placed in escrow.

Each county and municipality shall annually prepare and file, under sections 39-2115 to 39-2117 or 39-2119.01, with the Board of Public Roads Classifications and Standards, a plan or program for specific road or street improvements for the current year. The annual plan or program shall be filed on or before March 1 of each year. No such plan or program shall be adopted until after a local public hearing thereon and its approval by the local governing body. The board shall prescribe the nature and time of notice of such hearing, which shall be such as shall be likely to come to the attention of interested citizens in the jurisdiction involved. The board shall review each such annual plan or program within sixty days after it has been filed to determine whether it is consistent with the county's or municipality's current six-year plan. The county or municipality shall be required to justify any inconsistency with the six-year plan to the satisfaction of the board. If any county or municipality shall fail to comply with the provisions of this section, the board shall so notify the local governing board, the Governor, and the State Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality until there has been compliance. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

Any county or municipality on a fiscal construction year basis may apply to the Board of Public Roads Classifications and Standards for a new anniversary date. The board may grant a new anniversary date, but such date shall not be later than July 1.

Source: Laws 1969, c. 312, § 19, p. 1126; Laws 1971, LB 137, § 2; Laws 1976, LB 724, § 5; Laws 2007, LB27

Using the method and the forms or reports approved in advance by the board.

in a guidance

39-2120. Standardized system of annual reporting; Auditor of Public Accounts and Board of Public Roads Classifications and Standards; develop.

The Auditor of Public Accounts and the Board of Public Roads Classifications and Standards ~~shall develop and schedule for implementation a standardized system of annual reporting to the board by the Department of Transportation and by counties and municipalities, which system shall include:~~

(1) A procedure for documenting and certifying that standards of design, construction, and maintenance of roads and streets have been met;

(2) A procedure for documenting and certifying that all tax revenue for road or street purposes has been expended in accordance with approved plans and standards, to include county and municipal tax revenue, as well as highway-user revenue allocations made by the state;

(3) A uniform system of accounting which clearly indicates, through a system of reports, a comparison of receipts and expenditures to approved budgets and programs;

(4) A system of budgeting which reflects uses and sources of funds in terms of programs and accomplishments;

(5) An approved system of reporting an inventory of machinery, equipment, and supplies; and

(6) An approved system of cost accounting of the operation of equipment.

Source: Laws 1969, c. 312, § 20, p. 1126; Laws 1971, LB 100, § 9; Laws 2017, LB339, § 156.

Operative Date: July 1, 2017

shall develop a system of annual reporting to the board, using the standard report^s or form^s used by such municipality or county to report such information to the public, or using forms pre-approved by the board, which forms may be different for the various classes of municipalities, counties and the State, and such reporting may include, when deemed appropriate by the board, consideration of any of the following information:

AGENCY RULE AND REGULATION REVIEW REPORT

- Pursuant to Executive Order 17-04, reports are due by November 15, 2017
- Submit completed reports to Regulation.Reform@nebraska.gov

Agency Name: Nebraska Department of Transportation	
Citation of Rule and Regulation (i.e., 22 NAC Chapter 3): 428 NAC 4	Responsible Department or Board: Board of Public Roads Classifications and Standards
Rule and Regulation title and description: Instruction Manual for Standardized System of Annual Reporting for Roads, Street and Highway Programs	
Brief explanation of the reason for the Rule and Regulation: 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.	
Is there a Nebraska statute that <u>either requires or authorizes</u> the promulgation of the Rule and Regulation: <p style="text-align: center;"> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> </p> <p> If yes, which? Required ("shall") <input type="checkbox"/> Discretionary ("may") <input type="checkbox"/> Unclear <input type="checkbox"/> </p> <p>The board believes that the rule and regulation was promulgated in order to meet the requirements of Neb. Rev. Stat. § 39-2120. The board does not believe that the rule and regulation is necessary and that the provisions could be contained in a guidance document.</p>	
What is the statutory citation? Substantive provisions Neb. Rev. Stat. §§ 39-2120; 39-2121; See also §§ 39-810, 39-2510, 39-2520	
Is there a federal statute or mandate that <u>either requires or authorizes</u> the promulgation of the Rule and Regulation? <p style="text-align: center;"> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> </p> <p> If yes, which? Required ("shall") <input type="checkbox"/> Discretionary ("may") <input type="checkbox"/> Unclear <input type="checkbox"/> </p> <p> Would changes require federal review and approval? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> </p>	
What is the citation of the federal statute ("USC") and/or federal regulation ("CFR")? <u> </u> Attach a copy of the applicable statutes and regulations. Not applicable.	
If this regulation is required by statute, and if the regulation merely restates the statutory requirements, the Rule and Regulation should either be eliminated or reviewed to narrow the minimum requirements that are needed to expand and complement the existing statutory text. State your conclusions on this issue. Not applicable. The Board requests that minor changes be made to Neb. Rev. Stat. §§ 39-2115, 39-2118 and 39-2119 and then these Rules and Regulations can be repealed in their entirety.	

Attachment No. 4

AGENCY RULE AND REGULATION REVIEW REPORT

Does this regulation merely restate existing and binding federal law?
If yes, consider repealing or revising the regulation to require only what is necessary.

State your conclusions on this issue.

Not applicable. The Board requests that minor changes be made to Neb. Rev. Stat. §§ 39-2115, 39-2118 and 39-2119 and then these Rules and Regulations can be repealed in their entirety.

High voluntary compliance.
Does this regulation deal with a subject where we currently see a high level of voluntary compliance?
If yes, consider whether the regulation can be repealed or narrowed.

State your conclusions on this issue.

Not applicable. The Board requests that minor changes be made to Neb. Rev. Stat. §§ 39-2115, 39-2118 and 39-2119 and then these Rules and Regulations can be repealed in their entirety.

Cost-benefit analysis.
Consider whether the monetary costs to the regulated entity outweigh the benefits to the public.
If the costs outweigh the benefit, revise or repeal the regulation.

State your conclusions on this issue.

Not applicable. The Board requests that minor changes be made to Neb. Rev. Stat. §§ 39-2115, 39-2118 and 39-2119 and then these Rules and Regulations can be repealed in their entirety.

Less restrictive alternative.
Is the current regulation the least restrictive regulatory alternative?
If not, repeal or revise.

State your conclusions on this issue.

Not applicable. The Board requests that minor changes be made to Neb. Rev. Stat. §§ 39-2115, 39-2118 and 39-2119 and then these Rules and Regulations can be repealed in their entirety.

Does the regulation involve any of the following:

- Prescribe a penalty.
- Affect a private right or interest.

Does the Rule and Regulation impact the ease of doing business with the agency?

Explain.

Yes. The Board requests that minor changes be made to Neb. Rev. Stat. §§ 39-2115, 39-2118 and 39-2119 and then these Rules and Regulations can be repealed in their entirety. See attached Plan for 428 NAC 4.

Attachment No. 4

Recommendation: REPEAL

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PLAN FOR 428 NAC 4

Two of the Rules and Regulations of the Board of Public Roads Classifications and Standards (Board), 428 NAC 3 and 4, set out **instructions** for the annual filing of forms related to the following three plans and reports by the municipalities, the counties and the state: (a) the one-year plan (§§ 39-2118 and 2119), (b) the six year plan (§ 39-2115), and (c) a report known as the standardized system of annual reporting (SSAR)(§ 39-2120). The primary purpose for these two instructional rules and regulations is to make sure the various municipalities, counties and the state use the Board approved forms to submit yearly reports. A secondary purpose is to detail a public hearing requirement as mandated by the fourth sentence of § 39-2119.

The statutes that require these rules and regulations have remained essentially unchanged for more than 45 years. The Board believes these rules and regulations that merely provide "instructions" are unnecessary and should be repealed. However, a repeal of these instructional rules and regulations may raise a question about the authority of the Board to approve the forms used to submit annual reports. Simple revisions of the statutes would make clear the authority of the Board to specify forms and process, thus allowing the repeal of 57 pages of unnecessary regulations.

The Board proposes that §§ 39-2115, 39-2118 and 39-2119 be amended slightly to authorize the Board to specify the manner and form to be used to report the annual one and six-year plans to the Board (See attached). This authority would remove any question as to the repeal of the entire rule and regulation. The rule and regulation would then be revised and made into a guidance document that would continue to provide instructions for the filing of the annual reports.

The fourth sentence of § 39-2119 should also be amended to allow the Board to specify the details of the public hearing in a guidance document, rather than in a rule and regulation. The part of the rule and regulation setting the hearing requirements could then also be repealed.

Finally, § 39-2120 requires an annual report with six specific areas that must be reported each year. The Board is convinced that this requirement is redundant and unnecessary. The financial records of these entities are subject to audit by the State Auditor. Additionally, many entities produce annual reports including information of this type. Finally, public records statutes make it easy to obtain this type of information from these entities, even if they are not self-reporting.

The Board would like to ease the regulatory burden on the entities that report information to the Board. Accordingly, § 39-2120 should be amended to allow the Board to specify what additional information it believes should be submitted to the Board, including the form in which it is submitted, and potentially using a simple certification or other similar process (See attached). The Board also requests that it be allowed to require different information from the various classes of cities, the counties and the State, when appropriate.

The Board believes all these changes will reduce unnecessary burdens on these entities while allowing the Board to gather information necessary so that the public knows how its tax revenues are spent.

39-2115. Six-year plan; basis; filing; failure to file; penalty; funds placed in escrow.

The Department of Transportation and each county and municipality shall develop and file with the Board of Public Roads Classifications and Standards a long-range, six-year plan of highway, road, and street improvements based on priority of needs and calculated to contribute to the orderly development of an integrated statewide system of highways, roads, and streets. Each such plan shall be filed with the board promptly upon preparation but in no event later than March 1, 1971. If any county or municipality, or the department, shall fail to file its plan on or before such date, the board shall so notify the local governing board, the Governor, and the State Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality, or the department, until the plan has been filed. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

Source: Laws 1969, c. 312, § 15, p. 1124; Laws 1971, LB 100, § 4; Laws 1973, LB 137, § 1; Laws 1976, LB 724, § 2; Laws 2017, LB339, § 153.

Operative Date: July 1, 2017

The plan shall be filed using the method and on the forms or reports approved in advance by the board.

39-2118. Department of Transportation; plan for specific highway improvements; file annually with Board of Public Roads Classifications and Standards; review.

The Department of Transportation shall annually prepare and file with the Board of Public Roads Classifications and Standards a plan for specific highway improvements for the current year. The annual plan shall be filed on or before July 1 of each year. In so doing, the department shall take into account all federal funds which will be available to the department for such year. The board shall review each such annual plan to determine whether it is consistent with the department's current six-year plan. The department shall be required to justify any inconsistency with the six-year plan to the satisfaction of the board.

Source: Laws 1969, c. 312, § 18, p. 1125; Laws 1971, LB 100, § 7; Laws 1976, LB 724, § 4; Laws 2017, LB339, § 155.

Operative Date: July 1, 2017

*in the method and using the
former reports approved in
advance by the board.*

39-2119. Counties and municipalities; plan or program for specific improvements; file annually with Board of Public Roads Classifications and Standards; hearing; notice; adoption; review; failure to file; penalty; funds placed in escrow.

Each county and municipality shall annually prepare and file, under sections 39-2115 to 39-2117 or 39-2119.01, with the Board of Public Roads Classifications and Standards, a plan or program for specific road or street improvements for the current year. The annual plan or program shall be filed on or before March 1 of each year. No such plan or program shall be adopted until after a local public hearing thereon and its approval by the local governing body. The board shall prescribe the nature and time of notice of such hearing, which shall be such as shall be likely to come to the attention of interested citizens in the jurisdiction involved. The board shall review each such annual plan or program within sixty days after it has been filed to determine whether it is consistent with the county's or municipality's current six-year plan. The county or municipality shall be required to justify any inconsistency with the six-year plan to the satisfaction of the board. If any county or municipality shall fail to comply with the provisions of this section, the board shall so notify the local governing board, the Governor, and the State Treasurer, who shall suspend distribution of any highway-user revenue allocated to such county or municipality until there has been compliance. Such funds shall be held in escrow for six months until the county or municipality complies. If the county or municipality complies within the six-month period it shall receive the money in escrow, but after six months, if the county or municipality fails to comply, the money in the escrow account shall be lost to the county or municipality.

Any county or municipality on a fiscal construction year basis may apply to the Board of Public Roads Classifications and Standards for a new anniversary date. The board may grant a new anniversary date, but such date shall not be later than July 1.

Source: Laws 1969, c. 312, § 19, p. 1126; Laws 1971, LB 137, § 2; Laws 1976, LB 724, § 5; Laws 2007, LB27

using the method and the forms or reports approved in advance by the board.

in a guidance

39-2120. Standardized system of annual reporting; Auditor of Public Accounts and Board of Public Roads Classifications and Standards; develop.

The Auditor of Public Accounts and the Board of Public Roads Classifications and Standards, ~~shall develop and schedule for implementation a standardized system of annual reporting to the board by the Department of Transportation and by counties and municipalities, which system shall include:~~

(1) A procedure for documenting and certifying that standards of design, construction, and maintenance of roads and streets have been met;

(2) A procedure for documenting and certifying that all tax revenue for road or street purposes has been expended in accordance with approved plans and standards, to include county and municipal tax revenue, as well as highway-user revenue allocations made by the state;

(3) A uniform system of accounting which clearly indicates, through a system of reports, a comparison of receipts and expenditures to approved budgets and programs;

(4) A system of budgeting which reflects uses and sources of funds in terms of programs and accomplishments;

(5) An approved system of reporting an inventory of machinery, equipment, and supplies; and

(6) An approved system of cost accounting of the operation of equipment.

Source: Laws 1969, c. 312, § 20, p. 1126; Laws 1971, LB 100, § 9; Laws 2017, LB339, § 156.

Operative Date: July 1, 2017

shall develop a system of annual reporting to the board, using the standard report^s or form^s used by such municipality or county to report such information to the public, or using forms pre-approved by the board, which forms may be different for the various classes of municipalities, counties and the State, and such reporting may include, when deemed appropriate by the board, consideration of any of the following information:

AGENCY RULE AND REGULATION REVIEW REPORT

- Pursuant to Executive Order 17-04, reports are due by November 15, 2017
- Submit completed reports to Regulation.Reform@nebraska.gov

Agency Name: Nebraska Department of Transportation	
Citation of Rule and Regulation (i.e., 22 NAC Chapter 3): 428 NAC 5	Responsible Department or Board: Board of Public Roads Classifications and Standards
Rule and Regulation title and description: Hearing Practice and Procedure of the Board of Public Roads Classifications and Standards	
Brief explanation of the reason for the Rule and Regulation: Governs the procedure for the adoption, revision or repeal of rules & regulations for the Board (§001) and the process for conducting rules & regulations hearings (§002) for the Board in compliance with the Administrative Procedure Act.	
Is there a Nebraska statute that <u>either requires or authorizes</u> the promulgation of the Rule and Regulation: Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> Unknown <input type="checkbox"/> If yes, which? Required ("shall") <input checked="" type="checkbox"/> Discretionary ("may") <input type="checkbox"/> Unclear <input type="checkbox"/>	
What is the statutory citation? Neb. Rev. Stat. § <u>84-909</u> ;	
Is there a federal statute or mandate that <u>either requires or authorizes</u> the promulgation of the Rule and Regulation? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Unknown <input type="checkbox"/> If yes, which? Required ("shall") <input type="checkbox"/> Discretionary ("may") <input type="checkbox"/> Unclear <input type="checkbox"/> Would changes require federal review and approval? Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
What is the citation of the federal statute ("USC") and/or federal regulation ("CFR")? <u> </u> Attach a copy of the applicable statutes and regulations. N/A	

AGENCY RULE AND REGULATION REVIEW REPORT

If this regulation is required by statute, and if the regulation merely restates the statutory requirements, the Rule and Regulation should either be eliminated or reviewed to narrow the minimum requirements that are needed to expand and complement the existing statutory text.

State your conclusions on this issue.

The regulation is required by 84-909, but does not merely restate the statute. It does, however, summarize several other statutes within the Administrative Procedures Act, such as 84-907.

Additionally, except for 001.06 of the rule touching the same topic as 53 NAC 2 regarding petitioning for rulemaking, the rule does not mirror any model rule from the Attorney General. Furthermore, no other agency has a comparable rule.

Elimination of this rule would rid the department of a redundant regulation.

Does this regulation merely restate existing and binding federal law?

If yes, consider repealing or revising the regulation to require only what is necessary.

State your conclusions on this issue.

N/A

High voluntary compliance.

Does this regulation deal with a subject where we currently see a high level of voluntary compliance?

If yes, consider whether the regulation can be repealed or narrowed.

State your conclusions on this issue.

The rule regulates the Department and not the public.

Cost-benefit analysis.

Consider whether the monetary costs to the regulated entity outweigh the benefits to the public.

If the costs outweigh the benefit, revise or repeal the regulation.

State your conclusions on this issue.

Because the rule regulates the Department, there is no monetary cost to the public.

Less restrictive alternative.

Is the current regulation the least restrictive regulatory alternative?

If not, repeal or revise.

State your conclusions on this issue.

The regulation is not any more restrictive than the statutes.

Does the regulation involve any of the following:

- Prescribe a penalty.
- Affect a private right or interest.

Attachment No. 4

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AGENCY RULE AND REGULATION REVIEW REPORT

Does the Rule and Regulation impact the ease of doing business with the agency?

Explain.

The regulation's subject is provided in statutes for practice and procedure that exist within the Administrative Procedure Act. Therefore, this regulation is redundant and should be repealed.

The Board of Public Roads should consider adopting the Attorney General's model rule for Contested Cases to provide some guidance and a framework for hearings.

Recommendation: **REPEAL**

Attachment No. 4

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RESOLUTION No. NBCS 10-20-2017
Board of Public Roads Classifications and Standards

WHEREAS, Governor Ricketts has placed a moratorium on all Rule Making;

WHEREAS, the Board of Public Roads Classifications and Standards (NBCS) is responsible for Title 428 NAC Chapters 1, 2, 3, 4 and 5, Rules and Regulations;

WHEREAS, the NBCS from May of 2013 through May of 2016, revised Chapter 2 and was in process of continued review of Chapters 3 and 4 for additional revisions;

WHEREAS, the Nebraska Department of Transportation (NDOT), by the Governor's Executive Order No. 17-04, has convened small Committees of appropriate staff and Board Members to review all Rules and Regulations under its purview;

WHEREAS, the Committees have concluded their review and are recommending the following to the NBCS as it relates to Title 428 NAC Chapters 1, 2, 3, 4 and 5:

1. Chapters 1 and 2 be retained as a required rule and regulation, per Neb.Rev.Stat. 39-2109 through 39-2112; and 39-2113;
2. Chapters 3, 4 and 5 be repealed as not being specifically required per Neb.Rev.Stat. 39-2115 through 39-2119.01; 39-2120 and 39-2121; and 84-909 and 84-909.01;

WHEREAS, the Committees also recommended that the NBCS:

1. Continue to review Title 428 Chapters 1 and 2 for additional consolidation and reduction of duplication in future efforts, (i.e., possibly using one Functional Classification System; and consideration of using the AASHTO Green Book as the Minimum Design Standards, rather than having a separate Minimum Design Standards for Nebraska); and
2. Consider by Board motion converting the rules and regulations for Chapters 3 and 4 to a recommended policy and practice for submittal of the One- and Six-Year Plan and the Standardized System of Annual Reporting; and

WHEREAS, this work is still under review and not final.

NOW, THE MEMBERS OF THE BOARD OF PUBLIC ROADS CLASSIFICATIONS AND STANDARDS DO HEREBY:

1. Agree with the recommendations, and move to have NDOT Director Kyle Schneeweis, on behalf of the NBCS, send said Recommendations to the Governor; and
2. Authorizes the Chairman and Board Staff to act on behalf of the Board, to consider and continue working on these modifications and possible further revisions.

DONE this 20th day of October 2017 at Lincoln, Nebraska.

VOTING AYE: Figard, Gerrard, Keegan, Krager, Kramer, Litchfield, Syslo, Tagge, Wacker, Weander, and Wootton.

FOR THE BOARD: Roger A. Figard, Chairman

ATTEST: LeMayne D. Schutz, Secretary

NEBRASKA

Good Life. Great Journey.

DEPARTMENT OF TRANSPORTATION

October 2017

To All Appointed Highway/Street Superintendents:

We are taking this opportunity to remind you that the Nebraska Department of Transportation is requiring that the appointed Highway/Street Superintendents file the **2017-2018 SSAR & 2018 One- and Six-Year Plans** using the Nebraska Enterprise Content Management System (ECM) Portal. The link is: <https://ecmndorportal.nebraska.gov/NDOR-BLS/Account/Login>. **The timeline for state filing of two required local reports is:**

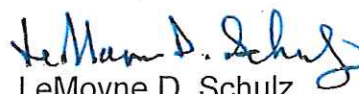
- The *2017– 2018 Annual Road/Street Program Report (Standardized System of Annual Reporting)*.
 - ◆ County Annual Reports (SSAR) will be accepted as “on time” if received by October 31, 2017.
 - ◆ Municipal (City* and Village) Annual Reports (SSAR) are due December 31, 2017. (*Except metropolitan class – due March 31, 2018 – and primary class – due November 30, 2017.)
- The *2018 One- and Six-Year Road and Street Improvement Plan (One and Six) Municipal** 1 & 6-Yr. Plans and County*** 1 & 6-Yr. Plans* are due March 1, 2018. (**Except Lexington, due June 1, 2018. *** Except Cheyenne, Morrill and Nance, due June 1, 2018; and Douglas, Hall and Sarpy Counties, due July 1, 2018.)

The forms and maps are available on the **NDOT Boards - Liaison Services Section website: <http://dot.nebraska.gov/business-center/lpa/boards-liaison/>**. We will supply **NBCS forms and Functional Classification Maps** upon request.

All municipalities and counties are advised that:

- **Any road and street work (other than minor maintenance) must be in the One-Year Plan.** Construction, reconstruction 3R work, or extensive maintenance that were not listed in the One-Year Plan, or that have changed substantially from the adopted One-Year Plan, must be filed as a revision to the One-Year Plan **prior to commencing construction**.
- **Revisions and relaxation of standards requests cannot be submitted electronically. They must be sent via mail.**
- **Incomplete or inaccurate forms, including lack of supporting documentation, will be rejected.** Please review your SSAR, One- and Six-Year Plan, Revisions and Relaxation of Standards requests carefully prior to submission.
- Finally, the Board is in the process of updating the SSAR and 1 & 6 Plan regulations. Specifically, this year you have the option of using the interim NBCS forms and instruction which can be downloaded at: <http://dot.nebraska.gov/business-center/lpa/boards-liaison/nbcs/downloads/>

Sincerely,


LeMoyne D. Schulz
Secretary for the Board
bpr10-zd

Kyle Schneeweis, P.E., Director
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Attachment No. 6

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