

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

July 20, 2018

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 July 13, 2018.
- Event posted on the State of Nebraska website (Public Meeting Calendar) on July 13, 2018.
- Tentative agenda emailed to each board member and interested persons on July 13, 2018.
- 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 on July 20, 2018.
- Relaxation of Standards hearing notice emailed to Blaine and Sherman Counties on July 13, 2018.

Board members present:

James A. Litchfield, Wakefield, Vice Chairman  
Barbara Keegan, Alliance  
John F. Krager, Omaha  
Lisa Kramer, Kennard  
Darold E. Tagge, Holdrege  
David Wacker, Hastings  
Timothy W. Weander, Omaha  
Edward R. Wootton, Sr., Bellevue

Board members absent:

Roger Figard, Lincoln, Chairman  
LeRoy G. Gerrard, Stromsburg  
Mick Syslo, Lincoln

Staff members present:

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

Others in attendance:

Erich Strack, Manager, Government Affairs, NDOT, Lincoln  
Roger Hoffs, Sherman County Highway Superintendent

Lance Harter, Oak Creek Engineering, Kearney representing Blaine County and Sherman County

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

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Vice-Chairman Litchfield 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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There were no changes from the originally published agenda.

\* \* \* \* \*

Mr. Wacker moved to approve the June 8, 2018 meeting minutes. Mr. Tagge seconded the motion. Members Keegan, Krager, Tagge, Wacker, Weander, Wootton and Litchfield voted YES. Member Kramer abstained. Members Figard, Gerrard and Syslo were absent. The motion carried.

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

- A total of 93 County, 528 Municipal and the Nebraska Department of Transportation's Reports have been received.
- A total of 93 County, 528 Municipal and the Nebraska Department of Transportation's Reports were accepted at previous meetings.
- One (1) municipality has not submitted a Report: Maskell. The Report has been delinquent since January 1, 2018. Highway Allocation Funds are under suspension beginning with the May 10 distribution. Currently in the third month of suspension.

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

\* \* \* \* \*

The board considered the Final Status of the submission of the 2018 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.
- Ninety (90) County and 529 Municipal and the Nebraska Department of Transportation's One- and Six-Year Plans were accepted at previous meetings.
- Three (3) County One- and Six-Year Plans are recommended for acceptance: Douglas, Hall and Sarpy.

Mr. Krager moved to accept the Final Status Report of the 2018 One- and Six-Year Plans, as presented. Mr. Tagge seconded the motion. Members Keegan, Krager, Kramer, Tagge, Wacker, Weander, Wootton and Litchfield voted YES. Members Figard, Gerrard and Syslo were absent. The motion carried.

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The board considered the Nemaha County One- and Six-Year Plan revision adding Work/Project No. C-64(326) to the 2018 One-Year Plan. A copy of the County Board Resolution #2018-15, adopted May 30, 2018, was received on June 11, 2018. No one was present to present the request.

The Work/Project consists of Work Type N&R, grading and gravel surfacing on a Local road. The estimated cost is \$20,000 (County Funding).

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

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The board considered the Village of Axtell One- and Six-Year Plan revisions adding Work/Project Nos. M-128(127), M-128(128) and M-128(130) to the 2018 One-Year Plan. A copy of the Village Resolution, adopted June 11, 2018, was received on June 20, 2018. No one was present to present the request.

Project M-128(127) consists of Work Type Maint, asphalt surfacing on an existing asphalt surfaced Local street. The estimated cost is \$203,000 (Municipal Funding).

Projects M-128(128) and M-128(130) consist of Work Type Maint, bituminous surfacing on existing asphalt surfaced Local streets. The Total estimated cost is \$39,000 (Municipal Funding).

Mr. Tagge moved to accept the Village of Axtell revisions. Mr. Krager seconded the motion. Members Keegan, Krager, Kramer, Tagge, Wacker, Weander, Wootton and Litchfield voted YES. Members Gerrard, Syslo and Figard were absent. The motion carried.

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The board considered the Kimball County One- and Six-Year Plan revision adding Work/Project No. C-53(265) to the 2018 One-Year Plan. A copy of the County Board Resolution #2018-16 adopted June 19, 2018, was received on June 29, 2018. No one was present to present the request.

The Work/Project consists of Work Type Maint, asphalt surfacing on an existing asphalt surfaced roads. The estimated cost is \$253,000 (County Funding).

Mr. Krager moved to accept the Kimball County revision contingent upon the county submitting (1) a corrected NBCS Form 10 showing the individual project locations, and (2) the State and National Functional Classification maps with the individual project locations identified. Mr. Wacker seconded the motion. Members Keegan, Kramer, Krager, Tagge, Wacker, Weander, Wootton and Litchfield voted YES. Members Figard, Gerrard and Syslo were absent. The motion carried. *(On August 13, 2018, the Kimball County Highway Superintendent, David Hottell, filed a revised NBCS Form 10 and Functional Classification maps.)*

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The board considered the Village of Hemingford One- and Six-Year Plan revisions adding Work/Project Nos. M-336(63) and M-336(64) to the 2018 One-Year Plan. A copy of the Village Resolution #2018-05, adopted June 18, 2018, was received on July 13, 2018. No one was present to present the request.

Projects M-336(63) and M-336(64) consist of Work Type 3R, asphalt surfacing on existing asphalt surfaced Local streets. The total estimated cost is \$420,000 (Municipal Funding).

Mr. Wacker moved to accept the Village of Hemingford revisions. Mr. Tagge seconded the motion. Members Keegan, Krager, Kramer, Weander, Wootton and Litchfield voted NO. Members Tagge and Wacker voted YES. Members Gerrard, Syslo and Figard were absent. The motion failed.

Mr. Weander moved to request the Village of Hemingford resubmit the revisions, without prejudice, with clarification of drainage on the Work/Project form for Project M-336(63). Mr. Krager seconded the motion. Members Keegan, Krager, Kramer, Tagge, Wacker, Weander, Wootton and Litchfield voted YES. Members Gerrard, Syslo and Figard were absent. The motion carried.

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The board considered the Sherman County One- and Six-Year Plan revision adding Work/Project No. C-82(328) to the 2018 One-Year Plan. A copy of the County Board Resolution #13-18 adopted June 26, 2018, was received on July 10, 2018. Mr. Hofts presented the request.

The Work/Project consists of Work Type N&R, grading and replacement of culverts on a Local road. The estimated cost is \$20,000 (County Funding).

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

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At 9:40 a.m., the Board heard the Blaine County request for a Relaxation of Standards for County Project No. C-5(17) on a Remote Residential road. *(The hearing was held in an informal format, Blaine County having declined the option of a formal hearing.)* The request is for Construction of Bridge (No. C000501505P) and a Relaxation of the 428 NAC 2-001.03Q New and Reconstructed County Road and 35 MPH Minimum Design Speed and the HL93 Design Loading and the 428 NAC 2-001.03B, Note 8 first paragraph Standards. The request was denied without prejudice at the April 20, 2018 NBCS meeting, with the recommendation that the County seek reclassification of the road from “Local” to “Remote Residential.” Mr. Harter presented the request. No one appeared in opposition. The hearing concluded at 9:58 a.m. The Board then considered the request.

Mr. Weander moved to deny in whole, the Blaine County Relaxation request. Ms. Kramer seconded the motion. Members Keegan, Krager, Kramer, Tagge, Wacker, Weander, Wootton and Litchfield voted YES. Members Gerrard, Syslo and Figard were absent. The motion carried with the requisite majority vote.

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At 10:00 a.m., the Board heard the Sherman County request for a Relaxation for County Project No. C-82(314), on a Major Collector/Other Arterial road. *(The hearing was held in an informal format, Sherman 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 – 50 MPH Design Speed, Vertical Alignment Crest K Value and Stopping Sight Distance, and the 428 NAC 2-001.03B Note 8 first paragraph Standards. The letter of request and County Board Resolution were incomplete. Mr. Harter and Mr. Hofts presented the request. No one appeared in opposition. The hearing concluded at 10:12 a.m. The Board then considered the request.

Mr. Wacker moved to continue the Sherman County Relaxation request until the next meeting, for additional information, and request the County provide the following documentation within fourteen (14) days (by the close of business on August 3, 2018, [reference 428 NAC 2-004.01G]), specifically, that the County provide a corrected Resolution to include the Vertical Curve K Value and Stopping Sight Distance Design Speed. Ms. Kramer seconded the motion. Members Keegan, Krager, Kramer, Tagge, Wacker, Weander, Wootton and Litchfield voted YES. Members Gerrard, Syslo and Figard were absent. The motion carried with the requisite majority vote. *(On September 6, 2018, the Sherman County Highway Superintendent, Roger Hofts, filed a revised County Board Resolution.)*

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Other business:

- There was no Legislative Report.
- Mr. Strack announced his new title as Manager of Government Affairs. Mr. Cunningham will continue to serve in an advisory capacity.
- Repeal and Replacement of 428 NAC 5. Mr. Strack, on behalf of NDOT, presented a request that the board repeal its 428 NAC 5 regulation.

Mr. Weander moved that 1) NDOT schedule a public hearing and 2) the Vice-Chairman be authorize to sign the *Proposed Resolution Policy Pre-Review Check List*. Mr. Krager seconded the motion. Members Keegan, Krager, Kramer, Tagge, Wacker, Weander,

Wootton and Litchfield voted YES. Members Gerrard, Syslo and Figard were absent. The motion carried. (Attachment #1.)

- NBCS Vision/Mission Implementation Committee presentation on proposed changes to the State Statutes, and rules and regulations for OneAndSix, SSAR, and Construction and Maintenance Standards. Chairman Figard and Mr. Schulz made their presentation at the June 13-14, 2018, County Highway Superintendents meeting, as directed by the board at the June 8, 2018 meeting in Valentine. The board staff and Chairman continue to work with legal counsel on the proposed changes to state statutes.

\* \* \* \* \*

Mr. Schulz reported the following correspondence and general information:

- Board members received a final, bound copy of the *Nebraska Surface Transportation Program Book, Fiscal Years 2019 - 2024.*
- Board members received a copy of the handouts given at the *Highway Superintendent's Summer Meeting*, held on June 13-14, 2018, in Valentine.

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There were no comments from the Audience.

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Acknowledgement of Visitors.

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The next regular meeting will be held on September 21 at 9:00 a.m., in the Nebraska Department of Transportation Central Headquarters Building Auditorium, Room 139A, 1500 Highway 2, Lincoln, Nebraska.

\* \* \* \* \*

There being no further agenda items, Mr. Weander moved to adjourn. Mr. Tagge seconded the motion. Members Keegan, Krager, Kramer, Tagge, Wacker, Weander, Wootton and Litchfield voted YES. Members Gerrard, Syslo and Figard were absent. The motion carried and Vice-Chairman Litchfield adjourned the meeting at 10:33 a.m.

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

**PROPOSED REGULATION  
POLICY PRE-REVIEW CHECKLIST**

**Agency:** Nebraska Department of Transportation

**Title, Chapter of Regulation:** 428 NAC 5

Hearing Practice and Procedure of the Board of Public Roads

**Subject:** Classifications and Standards

**Prepared by:** Erich Strack

**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 mostly mirrors the Administrative Procedure Act (APA).

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

This regulation was originally adopted in 1983, eleven years before LB 446 (§84-909.01) was passed requiring agencies to adopt model rules drafted by the Attorney General (AG). The Nebraska Department of Transportation (NDOT), which is tasked in statute to provide "...necessary professional, technical, and clerical assistants" to the Board of Public Roads Classifications and Standards (NBCS), complied with §84-909.01 and adopted the AG's model rules that were considered practicable to itself and the Boards it assists. This procedure regulation mostly re-states various statutes contained within the APA and does not mirror a model rule. Additionally, no other agency has a comparable rule that NDOT was able to locate. For these reasons, NDOT is proposing to repeal the regulation in its entirety, as NBCS is governed by NDOT's other procedural regulations..

**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  [Cite authorizing statute(s) or legislative bill(s)]
- 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) The rule is not necessary.

**C. What happens if these rules are not adopted?**

.....  
If this rule is not repealed, NDOT will continue to have a regulation that is partly out of date and completely 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?
- No 3. Is the policy proposed in the regulation a state mandate on local government?
- No 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:

- |           |  |
|-----------|--|
| No Change | 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?   |
| No        | 3. Does the proposed regulation impact another agency? Explain the impact.   |
| No Change | 4. Will the proposed regulation reduce, increase, or have no change on reporting requirements of businesses?   |
| None      | 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. |
| None      | 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 or issues.

**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.**

No person or organization is expected to be affected if the regulation is repealed. The content of 428 NAC 5 is merely restating what is already in statute and is unnecessary.

**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

**Director'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 *Jana A. Fitchell* Date *July 20, 2018*

# 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

FOR IMMEDIATE RELEASE

## Public Hearing August 24 on Repeal of Regulations

August 10, 2018 (Lincoln, Neb.) — The Nebraska Department of Transportation (NDOT) will hold a public hearing on Friday, August 24, concerning the repeal of regulations. These include: Practice and Procedure for Hearings in Contested Cases; Hearing Practice and Procedure of the Department of Roads; Roadside Trees, Shrubs, Bushes and Vines; Snowmobiles on State Highways; Consultant Services; Hearing Practice and Procedure of the Board of Public Roads Classifications and Standards. The hearing will be held from 1:00 to 3:00 p.m., at NDOT's Central Headquarters Building, Room 103, 1500 Highway 2, in Lincoln.

NDOT completed a detailed review of its rules and regulations by directive of the Governor's Executive Order 17-04; the above regulations were determined to be unnecessary, outdated, or both. NDOT may issue guidance documents covering some of the subject matter of these regulations if needed.

Comments and recommendations may be presented orally or in writing at the hearing. They may also be mailed, faxed or emailed no later than September 3. Pre-hearing and post-hearing comments should be directed in writing to NDOT's Public Hearings Officer, Tony Bui, P.O. Box 94759, Lincoln, Nebraska 68509-4759; [tony.bui@nebraska.gov](mailto:tony.bui@nebraska.gov); voice telephone (402) 479-4994, TDD telephone (402) 479-3834, fax (402) 479-3989.

The proposed changes to the regulations may be viewed, downloaded, or commented on at: [www.sos.state.ne.us/rules-and-regs/regtrack](http://www.sos.state.ne.us/rules-and-regs/regtrack) ("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 at PO Box 94759, Lincoln, Nebraska 68509-4759; [erich.strack@nebraska.gov](mailto:erich.strack@nebraska.gov); voice telephone (402) 479-4324, TDD telephone (402) 479-3834, fax (402) 479-3758. Copies may be viewed or picked up in person at the NDOT Director's Office, 1500 Highway 2, Lincoln, Nebraska.

#NDOT#

### Contact:

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

NR25-ze

Attachment No. 1  
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