

**RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING**

AGENCY: RHODE ISLAND DEPARTMENT OF TRANSPORTATION

DIVISION: *N/A*

RULE IDENTIFIER: ERLID 1298 to be repealed

REGULATION TITLE: RULES AND REGULATIONS FOR THE PAVEMENT
MANAGEMENT PROGRAM

RULEMAKING ACTION: *Direct Final*

Direct Final: If no formal objection is received on or before **MARCH 22, 2018 Rhode Island Department of Transportation** will file the **repeal** without opportunity for public comment.

TYPE OF FILING: *Repeal*

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Public notice date: FEBRUARY 20, 2018

End of comment period: MARCH 22, 2018

SUMMARY OF PROPOSED RULE: The purpose of the regulation is to carry out an equitable system for the determination of highway jurisdiction. The classification is now done by Rhode Island State Planning. Therefore, this regulation is no longer applicable and has not been funded for an extended amount of time.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed regulations by **MARCH 22, 2018** to the addresses listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

Mailing Address:

SIOBHAN L. STEPHENS-CATALA, ESQ., SENIOR LEGAL COUNSEL
RIDOT

2 CAPITOL HILL, PROVIDENCE, RI 02903

Email Address:

Siobhan.catala@dot.ri.gov

WHERE COMMENTS MAY BE INSPECTED:

Mailing Address:

Rhode Island Department of Transportation

2 Capitol Hill

Providence, RI 02903

FOR FUTHER INFORMATION CONTACT:

Siobhan L. Stephens-Catala, Esq., Senior Legal Counsel

RIDOT, 2 Capitol Hill

Providence, RI 02903

401-222-6510 ext. 4463

Siobhan.catala@dot.ri.gov

SUPPLEMENTARY INFORMATION:

Regulatory Analysis Summary and Supporting Documentation:

Any changes in societal costs are de minimus considering this program has not been utilized for an extended period of time. For full regulatory analysis or supporting documentation see agency contact person above.

Authority for This Rulemaking: *State Statute*

Regulatory Findings:

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

The Proposed Repeal:

Rhode Island Department of Transportation proposes to repeal 290-RICR-10-00-3 as follows:

~~RULES AND REGULATIONS~~
~~FOR THE PAVEMENT MANAGEMENT PROGRAM~~

~~R.I. DEPARTMENT OF TRANSPORTATION~~

~~WILLIAM D. ANKNER, Ph.D.~~
~~DIRECTOR~~

RULES AND REGULATIONS REGARDING THE PAVEMENT MANAGEMENT PROGRAM

1.0 ORGANIZATIONAL RULES

AUTHORITY

Pursuant to Title 24, Chapter 8, Section 1.7 and Title 42, Chapter 13, Section 1, and Title 42, Chapter 13, Section 1 and Title 42, Chapter 35, Section 4(b)(2) of the Rhode Island General Laws, the Rhode Island Department of Transportation hereby adopts the following rules and regulations to carry out the provisions of RIGL, 43-3-17 and the Pavement Management Program.

2.0 RULES AND REGULATIONS REGARDING THE PAVEMENT MANAGEMENT PROGRAM

3.0 PURPOSE

The purpose of these rules and regulations is to carry out the provisions of RIGL 43-3-17 and the Pavement Management Program. Under RIGL, 43-3-17, an equitable system for the determination of highway jurisdiction was established. The principles of highway functional classification, i.e. the importance of roads in terms of the type of travel service provided, is used to determine jurisdiction. Roads serving longer distance travel, connecting city and town centers and major traffic generators shall be the State's responsibility. Roads serving shorter distance and local travel shall be under city or town jurisdiction.

4.0 DEFINITIONS

RHODE ISLAND HIGHWAY SYSTEM : all public roads including both state and municipal roads.

STATE ROADS : all public roads classified as arterials and major collectors, except urban minor arterials located in the 8 cities of Central Falls, Cranston, East Providence, Newport, Pawtucket, Providence, Warwick and Woonsocket.

MUNICIPAL ROADS : any public road not designated as a State road under the statute or under the functional classification guidelines, (i.e. minor arterials in the eight cities, minor collectors, collectors and local roads shall be considered municipal roads).

URBAN : an area so designated for purposes of highway functional classification, based on criteria as established by the U.S. Bureau of the Census.

RURAL : an area not included in the boundary of an urban area.

ARTERIAL : a public road that provides a high level of travel services for a long, uninterrupted distance. Except for minor arterials in the eight cities, arterials are under state jurisdiction.

MAJOR COLLECTOR : a public road, under state jurisdiction, that provides a service to built up areas of towns and traffic generators of regional importance and not directly served by arterials and is found only in rural areas.

MINOR COLLECTOR : a public road, under municipal jurisdiction that provides a link between locally important traffic generators and is found only in rural areas.

COLLECTOR: a public road, under municipal jurisdiction, that provides both land access service and traffic circulation within residential, commercial and residential areas.

LOCAL: a public road, under municipal jurisdiction, provides direct access to abutting land. These roads offer the lowest level of mobility.

PAVEMENT MANAGEMENT PROGRAM: The purpose of this program is to provide for highway work not already performed as part of routine maintenance. Such work is meant to prolong the life of highways; it includes: resurfacing, striping and signing, minor drainage improvements, minor guardrail improvements, crack sealing, chip sealing, retaining wall repair, sidewalk and curb repair. Said program shall also include educational activities, training programs, research grants, and such technical assistance as can be provided by maximizing the use of state educational resources.

FULL TIME HIGHWAY DEPARTMENT: one that a) has a full time public works director or full time highway superintendent who worked not less than 20 hours per week as of 1 June 1988 and b) does not contract out 100% of its highway maintenance work. Any municipality that does not have a full time highway department will be exempt from the turnback provision and shall

~~be eligible for \$10,000.00 annually, but shall be subject to compliance with the rules and regulations established herein.~~

~~5.0~~ ADMINISTRATION

~~This Pavement Management Program shall be administered by the Rhode Island Department of Transportation, under the provisions set forth in RIGL 43-3-17 and the Pavement Management Program as defined in RIGL 24-8.~~

~~5.1~~ FUNDING AUTHORITY

~~The funds for the Pavement Management Program shall be annually appropriated by the Rhode Island General Assembly and will be distributed to the State and Municipalities based upon the funding formula. The Director of the Department of Transportation shall be responsible for the disbursement of these funds in accordance with the distribution formula as established in these rules and regulations. No funds shall be carried forward to subsequent years.~~

- ~~1. FUNDING FORMULA The formula for the distribution of funds under the Pavement Management Program shall be based upon mileage of roads with a higher than local function and motor vehicle registrations; said formula shall be weighted 75% on functional classification mileage (exclusive of local roads) and 25% on the motor vehicle registrations of each municipality. Mileage shall be determined by the Department of Administration, Division of Planning in accordance with the functional~~

~~classification system and shall be finalized by the State Planning Council and provided by the Director of Administration, on the last day of each calendar year, to the Director of Transportation. For the purposes of these rules and regulations, the number of motor vehicle registrations shall be determined by the Director of the Department of Transportation on the last day of each calendar year. Said mileage and registration tabulations shall be reviewed by the Director of Transportation on or before the 15th day of January, each year for the purposes of apportioning the Pavement Management funds in the succeeding fiscal year. The Director shall on or before the 15th day of January, notify the Chief Elected Official of each municipality of the proposed dollar amount for their municipality. In no case shall any municipality be eligible for less than \$10,000.00 annually.~~

~~5.1~~ IMPLEMENTATION OF PROPOSED WORK PLAN

~~The Rhode Island Department of Transportation hereby develops a work plan for purposes of the implementation of the Pavement Management Program. Said "work plan" shall contain the following:~~

- ~~1. SUBMITTAL OF PROPOSED WORK PLAN~~ The chief elected official of each municipality is hereby required to develop a work plan, and to submit it to the Director of the Department of Transportation for review by the 15th day of March of every year. The work plan shall consist of a worklist delineating the

~~work to be funded by the Pavement Management funding grant. Worklist specifies shall include, but shall not be limited to:~~

- ~~-the name of the road~~
- ~~-the termini (from/to)~~
- ~~-distance (mileage or footage)~~
- ~~-estimated cost~~
- ~~-estimated start/completion date~~
- ~~-description of work~~

~~The Director shall approve or reject the work plan on or before the 15th day of June in every year. In the event that a work plan is rejected by the Director of Transportation, then the municipality shall have an additional 30 days to submit an alternative work plan. Upon receipt of the alternative work plan, the Director of Transportation shall have 30 days to approve or reject the same.~~

~~a) workplan appeals board: there is hereby created a workplan appeals board to hear and decide appeals from a municipality concerning a decision of the Director of Transportation disapproving a proposed activity submitted in the comprehensive workplan of a municipality.~~

~~The board shall consist of 1 representative from The RI League of Cities and Towns, 1 representative from the municipality affected, 1 repre-~~

~~representative from the RI Department of Transportation and 1 representative from the Governor's Office and the Chairman of Civil Engineering at URI, or his designee. This board shall have final authority over any controversy involving proposed work/activities.~~

~~b) emergency change of workplan: in the event of an emergency condition, the chief elected official of a municipality may petition the Director of Transportation for permission to deviate from the proposed and accepted workplan on file in the office of the Director. All such requests must be in writing and must be proposed before any non-conforming activity is begun. Failure to adhere to these guidelines will result in forfeiture of funds equal to the amount of the unapproved portion of work.~~

~~2 NOTIFICATION TO LOCAL OFFICIALS—On or before the 30th day of June of every year the Director of Transportation shall notify the chief elected official of each municipality advising him/her of the dollar amount allocated to the municipality under the provisions of the Pavement Management Program. For purposes of disbursement of funds, the Director of Transportation hereby transfers his supervision and authority over the funds to the Director of Administration for~~

~~purposes of actual cash distribution to each municipality. This transfer of authority shall in no way alter or inhibit the Director of Transportation's ability to oversee and review each municipality's use of funds under the Pavement Management Program; nor does this transfer of authority affect the Director of Transportation's ability to impose sanctions against any municipality that misuses the funds received.~~

~~60 — TYPES OF WORK ELIGIBLE UNDER THE PROGRAM Work not usually associated with routine maintenance will be eligible for Pavement Management Program funds. Such work shall include:~~

- ~~-resurfacing~~
- ~~-striping and signing~~
- ~~-minor drainage improvements~~
- ~~-minor guardrail improvements~~
- ~~-crack and chip sealing~~
- ~~-retaining wall repair~~
- ~~-minor sidewalk and curb repair~~
- ~~-bridge repair and replacement~~

~~The direct labor, equipment, and contractual services specific to the Pavement Management Program shall be considered eligible costs. The funds allocated for this program are eligible for expenditure on those roads that function at a higher than local level, i.e., minor arterials in the eight cities, minor collectors and collectors. The Department of Transportation shall furnish a listing of these roads each time notification is sent to the~~

~~chief elected official as described under 5.2.1 of these rules and regulations. In the event that a municipality has certified within its respective work plan that the roads eligible for the funds under this program have been brought to an acceptable level, said funds may be used on any public road.~~

~~Each municipality will be entitled to spend 25% of the funds allocated on any pavement management need. The Department of Transportation encourages municipalities to develop and maintain pavement management systems and therefore, the initial cost for the acquisition of a pavement management system will be eligible for funding; however this activity may not exceed this 25% mentioned above. The Director of Transportation shall grant approval over work/activity eligibility.~~

~~6.1 TYPES OF WORK NOT ELIGIBLE UNDER THE PROGRAM Work usually associated with routine maintenance will not be eligible for the Pavement Management Program. Examples of such work are listed below:~~

- ~~-pothole, trench, or similar small-scale patching~~
- ~~-sign replacements~~
- ~~-street lighting~~
- ~~-snow removal and winter sanding~~
- ~~-street and sidewalk sweeping~~
- ~~-grass mowing, weed control and brush clearing~~
- ~~-catch basin, ditch, swale, waterway or pipe~~

cleaning

~~-litter or refuse removal~~

~~-erection of temporary fencing~~

~~-purchase of vehicles or equipment~~

~~-new installations and replacement~~

~~installations of municipally owned utilities~~

~~unless necessitated by road reconstruction~~

~~Any administrative responsibilities associated with implementing/maintaining the Pavement Management Program shall not be eligible for funds under this program. The Director of Transportation shall grant approval over work/activity eligibility.~~

~~7.0 — PAYMENT CERTIFICATION TO RECONCILE GRANT~~

~~Each municipality shall receive a grant in the amount allocated under the funding formula. The chief elected official of each municipality must certify on or before the 15th day of July of every year to the Director of the Department of Transportation that the funds allocated in the preceding year under the Pavement Management Program were spent in accordance with the procedures outlined in these rules and regulations.~~

~~1. — GRANT TO COVER COSTS OF PROPOSED WORK PLAN~~

~~The work plan submitted by each chief elected official and approved by the Director of Transportation is hereby eligible for the funds allotted in each municipality's grant.~~

~~2. — MAINTENANCE OF COST RECORDS Each municipality is~~

~~required to maintain a record of the expenditures made on projects submitted, approved, and completed under the work plan.~~

~~3. GRANT SUBJECT TO AUDIT BY THE AUDITOR GENERAL~~

~~Any municipality found by the Auditor General not to be in conformance with the procedures outlined in these rules and regulations shall forfeit the funds equal to the amount of the unapproved portion of the work.~~

~~8.0 IMPLEMENTATION~~

~~The Rhode Island Department of Transportation hereby is granted the authority to implement RIGL 43-3-17 and the Pavement Management Program.~~

~~8.1 INTENTION TO TURNBACKROADS~~

~~It is the intent of the Rhode Island Department of Transportation to turnback and accept roads from the municipalities over a three year period, based upon the amount of funding appropriated by the General Assembly. Any roads that are the subject of jurisdictional change under this section, shall carry within them, along with jurisdictional transfer, any and all responsibilities connected with said road(s). No road shall be turned back to the municipality until it is brought to an acceptable condition as provided for under Section 8.3 Condition Survey of these rules and regulations.~~

~~8.2 JURISDICTIONAL CHANGES~~

~~The jurisdictional change under RIGL 43-3-17 shall be accomplished only by formal, written approval by the Director of the Rhode Island Department of Transportation; addressed to the chief elected official of each municipality.~~

~~8.3 — CONDITION SURVEY~~

~~A survey to determine the condition of all roads included in the Turn Back Plan shall be conducted. This survey shall be conducted by a Review Team comprised of one representative from the Rhode Island Department of Transportation/Division of Maintenance, two representatives from the Rhode Island Department of Transportation/Division of Public Works, and one representative of the municipality; to be designated by the Chief elected official of the municipality.~~

~~The Review Team shall commence with the condition survey for the Turn Back Plan in January 1989 and shall be completed by May 31, 1989. The Review Team shall use the condition survey form developed by the subcommittee and found under section 9.0 of these rules and regulations. Each member of the Review Team shall complete a condition survey form for each roadway with the overall score representing the average of the four condition surveys. Once the condition survey has been completed in any given municipality, a cutoff value will be determined by the Review Team. This cutoff value will be used as the break point of whether or not any improvements to the road will be needed prior to turning the road back to the municipality.~~

~~The Review Team will also be responsible, at the time of the condition survey, to make a recommendation as to the type of improvement that might be needed prior to the State Department of Transportation turning the roadway back to the municipality. In addition, the Review Team shall also provide an estimate of the costs for these improvements.~~

~~In the event that a dispute should arise over the type of improvement that will be required and made prior to the turn back of a roadway, the municipality may make an appeal to the Work Plan Appeals Board described under section 5.1.1(a) of these rules and regulations. Appeals for the purpose of the Turn Back Plan, must be sent in writing by the chief elected official, to Director of the Department of Transportation within thirty (30) working days of the completion of the condition survey within the respective municipality. The Work Plan Appeals Board shall have thirty (30) working days to render a decision. All decisions made by the Work Plan Appeals Board shall be final.~~

~~10.0 SEVERABILITY~~

~~These rules and regulations are hereby declared to be severable and any finding that any portion or part of these rules and regulations are unenforceable, illegal or unconstitutional shall not serve to nullify or negate the remaining rules and regulations not affected thereby.~~

DATED: _____

~~William D. Ankner, Ph.D.
DIRECTOR~~

9.0 TURN BACK PROVISION CONDITION SURVEY FORM

NAME: _____ ODOMETER: start _____

LIMITS: from _____ finish _____

to _____ TOTAL MILEAGE: _____

MUNICIPALITY: _____

STATE MAINTAINED: yes [] no [] BRIDGE COUNT: _____

I. PAVEMENT CONDITION 40%

Transverse Cracks 0-5 _____ Shoving or Pushing 0-10 _____

Longitudinal Cracks 0-5 _____ Excess Asphalt 0-10 _____

Alligator Cracks 0-10 _____ Polished Aggregate 0-5 _____

Shrinkage Cracks 0-5 _____ Deficient Drainage 0-10 _____

Rutting Cracks 0-10 _____ Pot Holes 0-10 _____

Corrugations 0-5 _____ Overall Riding Quality.. 0-10 _____

Raveling 0-5 _____ (10 is exc 0 is poor)

II. SAFETY 30%

Sidewalks & Curbing 0-25 Hazards and Encroachments 0-10 _____

Horizontal Alignment 0-25 _____ Striping 0-5 _____

Guardrail 0-5 _____ Vertical Alignment 0-25 _____

Signing 0-5 _____

III. DRAINAGE 30%

Catch Basins 0-20 _____

Drainage Ditches 0-10 _____

Outfalls 0-10 _____

Pipes 0-50 _____

SIGNATURE: _____