

NEBRASKA ADMINISTRATIVE CODE

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance

001 GENERAL

001.01 PURPOSE. The purpose of this rule is to implement the Relocation Assistance Act of 1989 as amended, in accordance with the following objectives:

001.01A To ensure that persons displaced as a direct result of publicly financed projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

001.01B To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

001.02 DEFINITIONS.

001.02A AGENCY.

001.02A1 The term "Agency" shall mean any department, agency, or instrumentality of:

001.02A1a The State of Nebraska,

001.02A1b Any political subdivision of the State of Nebraska,

001.02A1c Any combination of states which includes the State of Nebraska,

001.02A1d Any combination of political subdivisions, either of the State of Nebraska alone or of the State of Nebraska and any other state or states acting in combination; and

001.02A2 Any person who has the authority to acquire property by eminent domain under state law.

001.02B APPRAISAL. The term "appraisal" shall mean a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date supported by the presentation and analysis of relevant market information.

001.02C BUSINESS. The term "business" means any lawful activity, except a farm operation, that is conducted:

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.02C1 Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

001.02C2 Primarily for the sale of services to the public; or

001.02C3 Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

001.02C4 By a nonprofit organization that has established its nonprofit status under applicable federal and state law.

001.02D COMPARABLE REPLACEMENT DWELLING. The term “comparable replacement” means a dwelling which is:

001.02D1 Decent, safe and sanitary as described in section 001.02F;

001.02D2 Functionally equivalent to the displacement dwelling. The term “functionally equivalent” means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is “equal to or better than” the displacement dwelling. (See Appendix A, section 001.02D.);

001.02D3 Adequate in size to accommodate the occupants;

001.02D4 In an area not subject to unreasonable adverse environmental conditions;

001.02D5 In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

001.02D6 On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also section 004.03A2.);

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.02D7 Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A, section 001.02D7.); and

001.02D8 Within the financial means of the displaced person:

001.02D8a A replacement dwelling purchased by a homeowner in occupancy at the displacement dwelling for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner will receive the full price differential as described in section 004.01C, all increased mortgage interest costs as described in section 004.01D and all incidental expenses as described in section 004.01E, plus any additional amount required to be paid under section 004.04, Replacement Housing of Last Resort.

001.02D8b A replacement dwelling rented by an eligible displaced person is considered to be within his or her financial means if, after receiving rental assistance under this rule, the person's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described in section 004.02B2.

001.02D8c For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if an Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. Such rental assistance must be paid under section 004.04, Replacement Housing of Last Resort.

001.02E CONTRIBUTE MATERIALLY. The term "contribute materially" means that during the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

001.02E1 Had average annual gross receipts of at least \$5000; or

001.02E2 Had average annual net earnings of at least \$1000; or

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.02E3 Contributed at least 33 percent of the owner's or operator's average annual gross income from all sources.

001.02E4 If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

001.02F DECENT, SAFE, AND SANITARY DWELLING. The term "decent, safe, and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply. The dwelling shall:

001.02F1 Be structurally sound, weathertight, and in good repair.

001.02F2 Contain a safe electrical wiring system adequate for lighting and other devices.

001.02F3 Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climatic conditions do not require such a system.

001.02F4 Be adequate in size with respect to the number of rooms and area of living space needed to accommodate the displaced person. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and a refrigerator.

001.02F5 Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

001.02F6 For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

001.02G DISPLACED PERSON.

001.02G1 GENERAL. ~~The term "displaced Displaced person" means any person who moves from their real property or moves his or her personal property from the real property: (This includes a person who occupies the real property prior to its acquisition, but who does not meet the length of occupancy requirements of the Relocation Assistance Act as described in Sections 004.01A and 004.02A.):~~

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.02G1a ~~As~~ Any person who, on or after April 2, 1989, moves from or moves his or her personal property from real property as a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a publicly financed project.

001.02G1b ~~As~~ Any person who as a result of a publicly financed project moves from or moves his or her personal property from real property on which such person is a residential tenant, conducts a small business as defined by criteria established by the lead Agency which are consistent with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq. as amended, conducts a farm operation, or conducts a business as a direct result of rehabilitation, demolition, or other displacing activity, when the displacement is permanent; ~~or . The phrase "other displacing activity" means only those activities that are included with regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended.~~

001.02G1c ~~As~~ Solely for purposes of Neb.Rev.Stat. §§76-1228, 76-1229, and 76-1238 , any person who moves from or moves his or her personal property from real property as a direct result of a written notice of intent to acquire, or the acquisition, ~~rehabilitation or demolition of, in whole or in part, of~~ other real property, in whole or in part, on which ~~the~~ such person conducts a business or farm operation, ~~for a project or the rehabilitation, demolition, or other displacing activity or other real property on which such person conducts a business or a farm operation, which such displacement is permanent. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under Section 002.05B, and moving expenses under Sections 003.01, 003.02 or 003.03.~~

001.02G2 ~~PERSONS NOT DISPLACED.~~ The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part: DISPLACED PERSON does not include:

001.02G2a A person who ~~moves before the initiation of negotiations (see also Section 004.03D), unless the Agency determines that the person was displaced as a direct result of the program or project; or is determined by the displacing Agency to be in unlawful occupancy of the real property prior to or after the initiation of negotiations for acquisition of the real property or a person who has been evicted for cause;~~

001.02G2b ~~A person who initially enters into occupancy of the property after the date of its acquisition for the project; or In any case in which the displacing Agency acquires property for a publicly financed project, any person who occupies such property on a rental basis after~~

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

the property has been acquired by the displacing Agency or for a person subject to termination when the property is needed for the project;

001.02G2c A person who has occupied the property for the purpose of obtaining assistance under the Relocation Assistance Act; A person who moves before the initiation of negotiations for acquisition of the real property unless the Agency determines that the person was displaced as a direct result of the program or project;

001.02G2d A person who is not required to relocate permanently as a direct result of a project. Such determination shall be made by the Agency (see Appendix A, Section 001.02G2); or A person who initially enters into occupancy of the property after the date of its acquisition for the project;

001.02G2e An owner-occupant who moves as a result of a voluntary acquisition (see Appendix A, Section 001.02G2), or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a project is subject to this rule.); or A person who has occupied the property for the purpose of obtaining assistance under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. 4601 et seq., as amended;

001.02G2f A person whom the Agency determines is not displaced as a direct result of a partial acquisition; or A person who is not required to relocate permanently as a direct result of a project;

001.02G2g A person who, after receiving a notice of relocation eligibility (described in Section 002.03B), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility; or An owner-occupant who moves as a result of the rehabilitation or demolition of the real property or an owner-occupant who moves as a result of an acquisition of real property when the acquisition of the real property meets all the following conditions:

001.02G2g(1) No specific site or real property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area;

001.02G2g(2) The real property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the real property within the area is to be acquired within specific time limits;

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.02G2g(3) The Agency will not acquire the real property if negotiations fail to result in an amicable agreement and the owner is so informed in writing; and

001.02G2g(4) The Agency informs the owner in writing of what it believes to be the market value of the real property.

Subsection (g) of this section does not apply to any tenant who must move as a direct result of the acquisition, rehabilitation, or demolition of real property;

001.02G2h An owner-occupant who voluntarily conveys his or her property, as described in Appendix A, Section 001.02G2, after being informed in writing that if a mutually satisfactory agreement on terms of the conveyance cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this rule; or An owner-occupant who moves as a result of an acquisition of real property when the acquisition of the real property is for a program or project undertaken by an Agency or person that does not have authority to acquire real property by eminent domain, if such Agency or person:

001.02G2h(1) Prior to making an offer for the real property, clearly advises the owner that it is unable to acquire the real property if negotiations fail to result in an agreement; and

001.02G2h(2) Informs the owner in writing of what it believes to be the market value of the real property.

Subsection (h) of this section does not apply to any tenant who must move as a direct result of the acquisition of real property.

001.02G2i A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency; or A person who the Agency determines is not displaced as a direct result of a partial acquisition.

001.02G2j A person who is determined to be in unlawful occupancy prior to the initiation of negotiations (see Section 001.02U), or a person who has been evicted for cause, under applicable law, as provided for in Section 002.06. A person, who, after receiving a notice of the intent to acquire, the initiation of negotiations, or the acquisition of the real property, is notified in writing that he or she will not be displaced for a project.

001.02G2k A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.02G2l Tenants required to move as a result of the sale of their dwelling to a person using down payment assistance authorized by section 102 of the American Dream Downpayment Act, 42 U.S.C. 12821, as amended; or

001.02G2m A person who is not lawfully present in the United States.

001.02H DISPLACING AGENCY. The term “displacing Agency” shall mean any Agency carrying out a publicly financed project which causes an individual to become a displaced person or any person lacking the power of eminent domain who carries out a publicly financed project when that project causes an individual to be a displaced person.

001.02I DWELLING. The term “dwelling” means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

001.02J FARM OPERATION. The term “farm operation” means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operators support.

001.02K INITIATION OF NEGOTIATIONS. Unless a different action is specified in applicable federal program regulations, the term “initiation of negotiations” means the following:

001.02K1 Whenever the displacement results from the acquisition of the real property by an Agency, the “initiation of negotiations” means the delivery of the initial written offer of just compensation by the Agency to the owner or the owners representative to purchase the real property for the project. However, if the Agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the “initiation of negotiations” means the actual move of the person from the property.

001.02K2 Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by an Agency), the “initiation of negotiations” means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

001.02K3 In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Public Law 96-510, or “Superfund”), as amended, the “initiation of negotiations” means the formal announcement of such relocation or the federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.02L LEAD AGENCY. The term “lead Agency” means the Nebraska Department of Roads.

001.02M MORTGAGE. The term “mortgage” means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of real property, under the laws of the state, together with the credit instruments, if any, secured thereby.

001.02N NONPROFIT ORGANIZATION. The term “nonprofit organization” means an organization that is incorporated under the applicable laws of a state as a nonprofit organization, and exempt from paying federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

001.02O NOTICE OF INTENT TO ACQUIRE OR NOTICE OF ELIGIBILITY FOR RELOCATION ASSISTANCE. Written notice furnished to a person to be displaced, including those to be displaced by rehabilitation or demolition activities from property acquired prior to the commitment of federal financial assistance to the activity, that establishes eligibility for relocation benefits prior to the initiation of negotiation and/or prior to the commitment of federal financial assistance.

001.02P OWNER OF A DWELLING. A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

001.02P1 Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or

001.02P2 An interest in a cooperative housing project which includes the right to occupy a dwelling; or

001.02P3 A contract to purchase any of the interests or estates described in sections 001.02P1 and 001.02P2; or

001.02P4 Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

001.02Q PERSON. The term “person” ~~shall mean~~ means any individual, partnership, corporation, or association.

001.02R PUBLICLY FINANCED PROJECT. The term “publicly financed project” shall mean any project undertaken by an Agency in which any part of the cost is to be paid from funds derived from federal, state, or local taxes of any type, by revenue, or general obligation bonds issued by the Agency, or from funds derived by the Agency from the sale of products or services in a proprietary capacity. Publicly financed project shall not mean a project in which the federal funds involved are in the form of a federal guarantee or insurance.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.02S SMALL BUSINESS. A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes of section 003.04. (See Appendix A, section 001.02S.)

001.02T TENANT. The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

001.02U UNLAWFUL OCCUPANCY. A person is considered to be in unlawful occupancy if the person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations or is determined by the Agency to be a squatter who is occupying the real property without the permission of the owner and otherwise has no legal right to occupy the property under state law. A displacing Agency may, at its discretion, consider such a squatter to be in lawful occupancy.

001.02V UTILITY COSTS. The term "utility costs" means expenses for heat, lights, water and sewer.

001.03 NO DUPLICATION OF PAYMENTS. No person shall receive any payment under this rule if that person receives a payment under federal, state, or local law which is determined by the Agency to have the same purpose and effect as such payment under this rule. (See Appendix A, section 001.03.)

001.04 MANNER OF NOTICES. Each notice which the Agency is required to provide to a property owner or occupant, shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in the Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

001.05 APPEALS.

001.05A GENERAL.

001.05A1 SCOPE AND APPLICATION. These rules shall govern practice and procedure in all hearings involving contested cases as that term is defined in 84-901(3) Neb.Rev.Stat. Practice and procedure for hearings involving any Agency shall also be governed by Chapter 84, Article 9 Neb.Rev.Stat. In the absence of a specific rule, practice pertaining to proceedings in the district courts of this state shall be applicable.

001.05A2 ACTIONS WHICH MAY BE APPEALED. Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the persons eligibility for, or the amount of a relocation payment required under these rules.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.05A3 FILINGS. All correspondence and filings shall be addressed or delivered to the head of the Agency.

001.05A4 TIME LIMIT FOR INITIATING APPEAL. Appeals must be filed with the Agency within 60 days of the displaced person's receipt of written notification of the Agency's determination on the displaced persons claim.

001.05A5 TIME COMPUTATION. In computing any period of time prescribed or allowed by these rules the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday or a legal holiday, in which event, the period runs until the end of the next day which is neither a Saturday, a Sunday nor a holiday. When the period of time prescribed or allowed is less than five days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. When the federal government (~~Post Office~~) and the Agency observe the same holiday on different days, and such prevents a party from acting within the prescribed time, both days observed shall be considered as holidays.

001.05A6 RIGHT TO REPRESENTATION. A person may be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

001.05A7 DEFINITIONS. As used in these rules of practice and procedure, the following definitions shall apply unless the context, to be intelligible or to prevent absurdity, otherwise requires:

001.05A7a PLEADINGS DEFINED: Pleadings shall mean any written application, petition, protest, complaint, answer or motion used in any proceedings pursuant to this rule.

001.05A7b AGENCY DEFINED: Agency shall mean the entity providing relocation assistance, or as provided in section 001.02A.

001.05A7c FILED WITH THE AGENCY DEFINED. The filing of pleadings with the Agency as required by these rules shall be made by filing them with the Agency head. If mailed to the Agency, the date of receipt at the Agency and not the date of deposit in the mail, is determinative.

001.05A7d HOLIDAY DEFINED: A holiday is a day or any portion of a day designated by statute or authorized by the Governor ~~in~~ on which no business is transacted by the Agency.

001.05A7e OFFICE HOURS DEFINED: Office hours will be the normal business hours of the Agency involved with the appeal.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.05A7f HEARING DEFINED: All hearings shall be informal hearings conducted by a Hearing Examiner ~~who is an employee of the Agency~~. The record of each hearing shall be transcribed or recorded, by the Agency at which either party may elect to be bound by the rules of evidence applicable in the district courts, if such election is in accordance with the requirements of 84-914 Neb.Rev.Stat.

001.05A7g PARTY DEFINED: Party shall mean the Agency (see section 001.05A7b) or the displaced person. (See section 001.02G.)

001.05B HEARING EXAMINER.

001.05B1 APPOINTMENT OF HEARING EXAMINER. Upon receipt of a request for a hearing by a party, the Agency head shall appoint a Hearing Examiner or Hearing Examiners to administer, conduct and preside over all hearings. The Hearing Examiner may be the Agency head, an individual or individuals who is/are employed by the Agency, or any other authorized designee, provided, the individual(s) so appointed can, in the opinion of the Agency head, serve as Hearing Examiner(s) in a competent and efficient manner. The Hearing Examiner(s) shall not have been directly involved in the action appealed.

001.05B2 DUTIES OF HEARING EXAMINER.

001.05B2a CONDUCT OF HEARING. The Hearing Examiner shall preside at the hearing, open the proceedings, acknowledge appearance of parties and counsel, receive evidence for the record, rule on all motions and objections, may interrogate witnesses, and shall close the proceedings. If a party or parties are not represented by legal counsel, the Hearing Examiner shall explain to them the rules of practice and procedure and shall conduct the hearing generally in a less formal manner.

001.05B3 CUSTODIAN OF ALL PLEADINGS. Upon appointment as Hearing Examiner, the Hearing Examiner shall become the custodian of all pleadings, exhibits, documents, and briefs entered, filed and introduced into evidence by the parties. Discovery documents, including depositions, need not be filed with the Hearing Examiner unless ordered by the Hearing Examiner or when introduced into evidence.

001.05B4 LIMITATION OF POWERS. A Hearing Examiner shall have no power to take any action involving a final determination of the proceedings.

001.05B5 RECORD OF PROCEEDINGS.

001.05B5a RECORD. The Hearing Examiner shall prepare an official record which shall include testimony and exhibits, however, it shall not be necessary to transcribe shorthand

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

notes or recordings unless requested by either party, in which event the costs of such transcription shall be borne by whomever makes such request.

001.05B5b NOTICE OF HEARING. It shall be the duty of the Hearing Examiner to determine that notice of hearing has been given in accordance with these rules.

001.05B5c OATH. All testimony presented before the Hearing Examiner shall be given under oath which the Hearing Examiner will have the authority to administer.

001.05B5d CONDUCT OF PARTIES. The Hearing Examiner shall have the power to exclude or remove from the hearing any person who engages in improper conduct.

001.05B5e FINDINGS AND RECOMMENDATIONS. The Hearing Examiner shall, in writing, make complete findings of fact and conclusions of law together with a recommendation for disposition of the issue to the Agency head.

001.05C COMMENCEMENT OF PROCEEDING. A hearing shall be scheduled upon receipt of a written appeal.

001.05D SCHEDULING OF HEARING. A hearing shall be held no sooner than ten days after receipt of a written request, unless agreed upon in writing by the parties.

001.05E LOCATION OF HEARING. In setting the time and place for hearings in contested cases, appropriate consideration shall be made for the convenience and necessity of all of the parties, which includes the Agency or its representative.

001.05F NOTICE OF HEARING. The Agency head shall give reasonable notice of hearing stating the date, time, location and general subject matter of the hearing. Notice shall be given by certified mail no later than five days prior to a hearing. Failure of a party to appear at a scheduled hearing shall be grounds for dismissal of the proceeding.

001.05G MOTIONS.

001.05G1 Motions made prior to a hearing shall be in writing and a copy thereof shall be served on the parties. Such motions, except motions constituting final disposition of a proceeding, shall be ruled on by the Hearing Examiner. Motions constituting final disposition of a proceeding shall be ruled upon by the Agency head.

001.05G2 Motions may be ruled on ex parte, without argument. A copy of the motion with the ruling thereon shall be mailed to the parties.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.05G3 MOTION FOR CONTINUANCE. Motions for continuance shall be granted at the discretion of the Hearing Examiner, however, no continuance shall be requested and none allowed but for good cause shown and in no case shall a hearing be continued for a period of more than twenty days.

001.05H DISCOVERY.

001.05H1 The party shall have the right to request answers to questions, and to request the production of specified documents relevant to the proceedings. The Agency shall permit a party to inspect and copy all materials pertinent to the appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the persons right to inspect, consistent with applicable laws. Further, each may take depositions of any witness, upon ten working days notice to the other.

001.05H2 Discovery requests and/or notice shall be addressed to the party from whom the information or documents are sought.

001.05H3 Answers and documents must be provided within ten working days of receipt of request. Objections to such requests shall be made to the Hearing Examiner within five days of receipt of the request. The Hearing Examiner shall affirm or deny such objection within five days of receipt thereof and shall establish time limits for response when objections are denied.

001.05H4 Failure to respond to any discovery request, except where objections to such requests are sustained, may, at the discretion of the Hearing Examiner, result in the nonresponding party being denied the right to introduce any evidence on the subject of the request, or such other remedy as deemed appropriate.

001.05H5 The time limits of the discovery procedure may, if necessary and justified in the opinion of the Hearing Examiner, be adjusted to accommodate the time required by the circumstances.

001.05I SUBPOENA. A subpoena may be had upon request which shall indicate to the Hearing Examiner the names and the last known addresses of the witnesses to be called. If evidence other than oral testimony is required, each item to be produced shall be adequately described. All requests for subpoena shall be directed to the attention of the Hearing Examiner no less than seven days prior to the published date of said hearing. The Hearing Examiner shall issue subpoena as requested and mail the same to the party so requesting within five days of receipt of request therefor. Service may be made either by mailing a copy thereof by registered or certified mail, return receipt requested, no less than three days before the hearing date of the cause which the witness is required to attend, or personally by any person not interested in the action. No costs for serving a subpoena will be allowed.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

001.05J CONDUCT OF HEARING. The Agency shall present its case first, setting forth the grounds and reasons for its actions, and then the other party shall be heard. In cases where the Agency feels that the other party should be heard first, that party shall be notified not less than five days in advance of the hearing.

001.05K DECISION OF THE AGENCY HEAD. The decision of the Agency head shall be in writing and a copy of the decision shall be mailed to the party by certified or registered mail no later than thirty days after the recommendation of the Hearing Examiner is received by the Agency head. The Agency head may, at his discretion, adopt the recommendation of the Hearing Examiner, or he may make an independent decision accompanied by his findings of fact and conclusions of law. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

001.06 RECORDS.

001.06A RECORDS. The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least three years after each person displaced from the property receives the final payment to which he or she is entitled under this rule.

001.06B CONFIDENTIALITY OF RECORDS. Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

ANNOTATION

**Title 410
Chapter 5
Section 001**

**Enabling Legislation
4-108 through 4-111, and
76-1214 through 76-1242
Neb. Rev. Stat.**

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

002 GENERAL RELOCATION REQUIREMENTS

002.01 PURPOSE. This section prescribes general requirements governing the provision of relocation payments and other relocation assistance in this rule.

002.02 APPLICABILITY. These requirements apply to the relocation of any displaced person as defined in Section 001.02G.

002.03 RELOCATION NOTICES.

002.03A GENERAL INFORMATION NOTICE. As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's relocation program which does at least the following:

002.03A1 Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

002.03A2 Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

002.03A3 Informs the person that he or she will not be required to move without at least 90 days advance written notice (see Section 002.03C), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

002.03A4 Describes the person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this rule.

002.03B NOTICE OF RELOCATION ELIGIBILITY. Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in Section 001.02K) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

002.03C NINETY-DAY NOTICE.

002.03C1 GENERAL. No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

002.03C2 TIMING OF NOTICE. The displacing Agency may issue the notice 90 days before it expects the person to be displaced or earlier.

002.03C3 CONTENT OF NOTICE. The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. A 90-day notice will not be issued to a residential occupant until a comparable replacement dwelling is available. (See Section 002.04A.)

002.03C4 URGENT NEED. In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing agency determines that a 90-day notice is impracticable, such as when the persons continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

002.04 AVAILABILITY OF COMPARABLE REPLACEMENT DWELLING BEFORE DISPLACEMENT.

002.04A GENERAL. No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined in Section 001.02D) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

002.04A1 The person is informed of its location; and

002.04A2 The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

002.04A3 Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

002.04B CIRCUMSTANCES PERMITTING WAIVER. The Agency head may grant a waiver of the policy in Section 002.04A in any case where it is demonstrated that a person must move because of:

002.04B1 A major disaster as defined in Section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

002.04B2 A presidentially declared national emergency; or

002.04B3 Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a substantial danger to the health or safety of the occupants or the public.

002.04C BASIC CONDITIONS OF EMERGENCY MOVE. Whenever a person is required to relocate for a temporary period because of an emergency as described in Section 002.04B, the Agency shall:

002.04C1 Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe and sanitary dwelling; and

002.04C2 Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

002.04C3 Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

002.05 RELOCATION PLANNING, ADVISORY SERVICES, AND COORDINATION.

002.05A RELOCATION PLANNING. During the early stages of development, programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should be scoped to the complexity and nature of the anticipated displacing activity including an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

002.05A1 An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.

002.05A2 An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that are expected to be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of housing of last resort actions should be instituted.

002.05A3 An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced and the approximate number of employees that may be affected.

002.05A4 Consideration of any special relocation advisory services that may be necessary from the displacing Agency and other cooperating agencies.

002.05B RELOCATION ASSISTANCE ADVISORY SERVICES.

002.05B1 GENERAL. The Agency shall carry out a relocation assistance advisory program for all persons displaced by the Agency. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

002.05B2 SERVICES TO BE PROVIDED. The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

002.05B2a Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

002.05B2b Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in Section 002.04A.

002.05B2b(1) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see Sections 004.03A and 004.03B) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

002.05B2b(2) Where feasible, housing shall be inspected by the Agency prior to being made available to assure that it meets applicable standards. (See Sections 001.02D and 001.02F.) If such an inspection has not been made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

002.05B2b(3) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

002.05B2b(4) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

002.05B2c Provide current and continuing information on the availability, purchase prices, and rental costs of suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

002.05B2d Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

002.05B2e Supply persons to be displaced with appropriate information concerning federal and state housing programs, disaster loan and other programs administered by the Small Business Administration, and other federal and state programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

002.05B2f Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

002.05C COORDINATION OF RELOCATION ACTIVITIES. Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

002.06 EVICTION FOR CAUSE. Eviction for cause must conform to applicable state and local law. Any person who occupies the real property and is not in unlawful occupancy on the date of the initiation of negotiations, is presumed to be entitled to relocation payments and other assistance set forth in this rule unless the Agency determines that:

002.06A The person received an eviction notice prior to the initiation of negotiations and, as a result of that notice is later evicted; or

002.06B The person is evicted after the initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

002.06C In either case, the eviction was not undertaken for the purpose of evading the obligation to make available the payments and other assistance set forth in this rule.

002.06D For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves, or if later, the date a comparable replacement dwelling is made available. This section applies only to persons who would otherwise have been displaced by the project.

002.07 GENERAL REQUIREMENTS - CLAIMS FOR RELOCATION PAYMENTS.

002.07A DOCUMENTATION. Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

002.07B EXPEDITIOUS PAYMENTS. The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentations to support the claim.

002.07C ADVANCE PAYMENTS. If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

002.07D TIME FOR FILING.

002.07D1 All claims for a relocation payment shall be filed with the Agency within 18 months after:

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

002.07D1a For tenants, the date of displacement;

002.07D1b For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

002.07D2 This time period shall be waived by the Agency for good cause.

002.07E MULTIPLE OCCUPANTS OF ONE DISPLACEMENT DWELLING. If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

002.07F DEDUCTIONS FROM RELOCATION PAYMENTS. An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, an Agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by Section 002.04. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

002.07G NOTICE OF DENIAL OF CLAIM. If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

002.08 RELOCATION PAYMENTS NOT CONSIDERED AS INCOME. No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the states tax law or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under any other state law, except for any law providing low-income housing assistance.

ANNOTATION

**Title 410
Chapter 5
Section 002**

**Enabling Legislation
76-1214 through 76-1242
Neb. Rev. Stat.**

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

003 PAYMENTS FOR MOVING AND RELATED EXPENSES.

003.01 PAYMENT FOR ACTUAL REASONABLE MOVING AND RELATED EXPENSES - RESIDENTIAL MOVES. Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined in section 001.02G) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

003.01A Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

003.01B Packing, crating, unpacking, and uncrating of the personal property.

003.01C Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.

003.01D Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

003.01E Insurance for the replacement value of the property in connection with the move and necessary storage.

003.01F The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

003.01G Other moving-related expenses that are not listed as ineligible under section 003.05, as the Agency determines to be reasonable and necessary.

003.02 FIXED PAYMENT FOR MOVING EXPENSES - RESIDENTIAL MOVES.

003.02A Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under section 003.01.

003.02B Section 76-1229 of the Relocation Assistance Act provides that the Director of the lead Agency (Nebraska Department of Roads) shall take into consideration the reasonable expenses associated with relocation and the regulations adopted and promulgated by the United States Department of Transportation under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, ~~P.L. 91-646~~ 42 U.S.C. 4601 et seq., as amended.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

003.02C This allowance will be determined according to the applicable schedule developed by the Director of the lead agency (Nebraska Department of Roads) and approved by the Federal Highway Administration.

003.02D The following exceptions and limitations apply to this schedule:

003.02D1 The expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons or a person whose residential move is performed by an Agency at no cost to the person shall be limited to \$50.

003.02D2 An occupant will be paid on an actual cost basis for moving a mobile home from the displacement site. In addition, a reasonable payment to the occupant for packing and securing personal property for the move may be paid at the Agency's discretion.

003.02D3 An occupant who moves from a mobile home may be paid for the removal of personal property from the mobile home in accordance with the moving and dislocation allowance payment schedule.

003.02E The schedule is based on the number of rooms of furniture owned by a displaced individual or family. In the interest of fairness and accuracy, and to encourage the use of the schedule (and thereby simplify the computation and payment of moving expenses), an Agency should increase the room count for purposes of applying the schedule if the amount of possessions in a single room or space actually constitute more than the normal contents of one room of furniture or other personal property. For example, a basement may count as two rooms if the equivalent of two rooms worth of possessions is located in the basement. In addition, an Agency may elect to pay for items stored outside the dwelling unit by adding the appropriate number of rooms.

003.02F The actual Fixed Residential Moving Cost Schedule will be printed in the Federal Register. For further information on the actual room amounts contact the Nebraska Department of Roads, Relocation Office, PO Box 94759, Lincoln NE 68509-4759 or call at ~~(402)479-4713~~ (402)479-4761 or (800)764-0422.

003.03 PAYMENT FOR ACTUAL REASONABLE MOVING AND RELATED EXPENSES - NONRESIDENTIAL MOVES.

003.03A ELIGIBLE COSTS. Any business or farm operation which qualifies as a displaced person (defined in section 001.02G) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

003.03A1 Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

003.03A2 Packing, crating, unpacking, and uncrating of the personal property.

003.03A3 Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described in section 003.03A12. This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

003.03A4 Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

003.03A5 Insurance for the replacement value of the personal property in connection with the move and necessary storage.

003.03A6 Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

003.03A7 The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

003.03A8 Professional services necessary for:

003.03A8a Planning the move of the personal property,

003.03A8b Moving the personal property, and

003.03A8c Installing the relocated personal property at the replacement location.

003.03A9 Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

003.03A10 Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

003.03A10a The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or

003.03A10b The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated cost shall be based on a moving distance of 50 miles.)

003.03A11 The reasonable cost incurred in attempting to sell an item that is not to be relocated.

003.03A12 Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

003.03A12a The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

003.03A12b The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

003.03A13 Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual reasonable expenses, not to exceed ~~\$1,000~~ \$2,500, ~~as the Agency determines to be reasonable~~, which are incurred in searching for a replacement location, including:

003.03A13a Transportation.

003.03A13b Meals and lodging away from home.

003.03A13c Time spent searching, based on reasonable salary or earnings.

003.03A13d Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

003.03A14 Other moving-related expenses that are not listed as ineligible under section 003.05, as the Agency determines to be reasonable and necessary.

003.03B NOTIFICATION AND INSPECTION. The following requirements apply to payments under section 003.03:

003.03B1 The Agency shall inform the displaced person, in writing, of the requirements of sections 003.03B2 and 003.03B3 as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in Section 002.03.

003.03B2 The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

003.03B3 The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

003.03C SELF MOVES. If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate. Low cost or uncomplicated moves are those with amounts of \$5,000 or less.

003.03D TRANSFER OF OWNERSHIP. Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

003.03E ADVERTISING SIGNS. The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

003.03E1 The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

003.03E2 The estimated cost of moving the sign, but with no allowance for storage.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

003.04 REESTABLISHMENT EXPENSES - NONRESIDENTIAL MOVES. In addition to the payments available under section 003.03, a small business, as defined in section 001.02S, farm or nonprofit organization is entitled to receive a payment, not to exceed \$10,000, for eligible expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

003.04A ELIGIBLE EXPENSES. Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They may include, but are not limited to, the following:

003.04A1 Repairs or improvements to the replacement real property as required by federal, state or local law, code or ordinance.

003.04A2 Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business.

003.04A3 Construction and installation costs for exterior signing to advertise the business.

003.04A4 Provision of utilities from right-of-way to improvements on the replacement site.

003.04A5 Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling, or carpeting.

003.04A6 Licenses, fees and permits when not paid as part of moving expenses.

003.04A7 Feasibility surveys, soil testing and marketing studies.

003.04A8 Advertisement of replacement location.

003.04A9 Professional services in connection with the purchase or lease of a replacement site.

003.04A10 Estimated increased costs of operation during the first two years at the replacement site for such items as:

003.04A10a Lease or rental charges,

003.04A10b Personal or real property taxes,

003.04A10c Insurance premiums, and

003.04A10d Utility charges, excluding impact fees.

003.04A11 Impact fees or one-time assessments for anticipated heavy utility usage.

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

003.04A12 Other items that the Agency considers essential to the reestablishment of the business.

003.04B INELIGIBLE EXPENSES. The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible.

003.04B1 Purchase of capital assets, such as, office furniture, filing cabinets, machinery, or trade fixtures.

003.04B2 Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

003.04B3 Interest on money borrowed to make the move or purchase the replacement property.

003.04B4 Payment to a part-time business in the home which does not contribute materially to the household income.

003.05 INELIGIBLE MOVING AND RELATED EXPENSES. A displaced person is not entitled to payment for:

003.05A The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this rule does not preclude the computation under section 004.01C4c₇; or

003.05B Interest on a loan to cover moving expenses; or

003.05C Loss of goodwill; or

003.05D Loss of profits; or

003.05E Loss of trained employees; or

003.05F Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in section 003.04A10; or

003.05G Personal injury; or

003.05H Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

003.05I Expenses for searching for a replacement dwelling; or

003.05J Physical changes to the real property at the replacement location of a business or farm operation except as provided in sections 003.03A3 and 003.04A; or

003.05K Costs for storage of personal property on real property already owned or leased by the displaced person.

003.06 FIXED PAYMENT FOR MOVING EXPENSES - NONRESIDENTIAL MOVES.

003.06A BUSINESS. A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by sections 003.03 and 003.04. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with section 003.06E, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for the payment if the Agency determines that:

003.06A1 The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and the business vacates or relocates from its displacement site.

003.06A2 The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage; and

003.06A3 The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.

003.06A4 The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

003.06A5 The business is not operated at the displacement site solely for the purpose of renting the site to others.

003.06A6 The business contributed materially to the income of the displaced person during the two taxable years prior to displacement (see section 001.02E).

003.06B DETERMINING THE NUMBER OF BUSINESSES. In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

003.06B1 The same premises and equipment are shared;

003.06B2 Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

003.06B3 The entities are held out to the public, and to those customarily dealing with them, as one business; and

003.06B4 The same person or closely related persons own, control, or manage the affairs of the entities.

003.06C FARM OPERATION. A displaced farm operation (defined in section 001.02J) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with section 003.06E, but not less than \$1,000 nor more than \$20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

003.06C1 The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

003.06C2 The partial acquisition caused a substantial change in the nature of the farm operation.

003.06D NONPROFIT ORGANIZATION. A displaced nonprofit organization may choose a fixed payment of \$1,000 to \$20,000, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise. Any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two years annual gross revenues less administrative expenses. (See Appendix A, section 003.06D.)

003.06E AVERAGE ANNUAL NET EARNINGS OF A BUSINESS OR FARM OPERATION. The average annual net earnings of a business or farm operation are one-half of its net earnings before federal, state, and local income taxes during the two taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full two taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two taxable years prior to displacement, projected to an annual rate. Average annual net

Title 410 - NEBRASKA DEPARTMENT OF ROADS - RIGHT OF WAY DIVISION

Chapter 5 - Relocation Assistance (Continued)

earnings may be based upon a different period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owners spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

ANNOTATION

**Title 410
Chapter 5
Section 003**

**Enabling Legislation
76-1214 through 76-1242
Neb. Rev. Stat.**