

Title 408 - NEBRASKA DEPARTMENT OF ROADS - OPERATIONS DIVISION

Chapter 1 - Hay Harvesting Permits

001 PURPOSE

The following Rules and Regulations govern permits for mowing and harvesting of hay on the right-of-way of highways of the state highway system in accordance with the requirements of Chapter 39, Article 13, Neb. Rev. Stat. 39-1359.01.

002 DEFINITIONS

002.01 Abutting owner. Owner of land immediately adjacent to the highway right-of-way, including those persons having an intervening strip ownership of land. Some examples of intervening strip ownership include but are not limited to railroads, canal systems, trail systems, etc.

002.02 Aesthetic Mowing. Cutting of hay without baling.

002.03 Assignee. One to whom property rights or powers are transferred by another.

002.04 Department. Nebraska Department of Roads.

002.05 Freeway. An expressway with full control of access (having no at-grade intersections).

002.06 Harvesting. Cutting of hay and removing hay from the ground by baling.

002.07 Hay. All vegetation including annuals and including woody plants that are one-inch or less in diameter.

002.08 Normal business hours. 8:00 a.m. - 4:30 p.m., Monday through Friday, excludes holidays.

002.09 Owner. A person, other than a lien-holder, having title in whole or part to real estate and entitled to the use and possession, including a person entitled to the use and possession of the real estate under a land contract, 99 year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition.

002.10 Person. Every natural person, firm, partnership, association, organization, or corporation, both public and private.

002.11 Right-of-Way. Land, property, or interest therein, usually in a strip acquired for or devoted to the state highway system.

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003 LIABILITY

003.01 The applicant for a permit shall sign a release acknowledging that the applicant:

003.01A Will assume all risk and liability for hay quality, including any contaminants, which may be contained in the harvested hay.

003.01B Will assume all risk and liability for any accidents and damages that may occur as a result of the work.

003.01C Acknowledges that the State of Nebraska is not liable for work performed by the permittee.

003.02 The applicant shall provide to the Department an ACORD Certificate of Insurance or substantially equivalent certificate showing the types and amounts of Liability Insurance carried by the applicant and showing that each policy includes coverage of at least one million dollars for mowing, baling, and removing hay from state highway property. The Applicant shall provide the Department with a copy of any policy of insurance used to meet the coverage limits.

003.03 All risk of injury or damage to the permittee, property of the permittee or his or her employees or sub-contractors which may result from debris, foreign objects, or chemical contamination resulting from handling or feeding hay is assumed by the permittee.

003.04 The permittee shall assume all risk and liability for accidents and damages that may occur to persons or property as a result of a permit to harvest hay on the right-of-way. The permittee shall indemnify and hold the Department harmless from any and all costs, liabilities, expenses, suits, judgments, or damages to persons or property, or claims of any nature arising out of or in connection with a permit to harvest hay on the right-of-way or the operation and performance by the permittee, his or her employees or sub-contractors.

003.05 The permittee shall be liable for any damage to Department right-of-way, culverts, bridges, drainage channels, slopes, right-of-way markers, pavement, shoulders, inlets, fences, signs, guardrail, trees and shrubs or appurtenances, or any other thing or device located on the highway right-of-way by permit, as a result of work associated with a permit to harvest hay on the right-of-way.

004 CRITERIA

004.01 Mowing and harvesting of hay may begin on or after July 15 and shall end no later than September 15 of every other each year. Only one cutting per permit will be allowed. ~~If hay harvesting is permitted during consecutive years by drought or other declaration, hay permits will not be issued the following year and the alternating year sequence will resume.~~

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004.02 The abutting owner or the owner's assignee shall have priority to receive a permit for such land during normal business hours before 4:30 p.m. from March 1 through July 29 of each year.

004.03 All applicants who are not abutting owners or owners' assignees shall not be eligible to receive a permit until, and may not apply until, July 30 of each year.

004.04 Applicants who are not abutting owners or owners' assignees shall be limited to a permit for a distance not to exceed a total of five miles per year. These miles may be on either side of the highway as long as the combined distance on both sides does not exceed five miles. These five miles need not be continuous. Distance will be measured to the nearest tenth (0.1) of a mile and will be referenced to the nearest milepost.

005 REQUIREMENTS

005.01 To assure compliance with Neb. Rev. Stat. 2-945.01 to 2-966, Noxious Weed Control Act, the permittee shall obtain noxious weed identification, location, and demarcation from the County Weed Superintendent prior to harvesting hay on the highway right-of-way. Noxious weeds shall be mowed but not windrowed or baled.

005.02 The permittee shall have a copy of the permit on site during all harvesting activities.

005.03 Vegetation shall be mowed no lower than a height of five inches.

005.04 No selective mowing will be allowed. All vegetation including grasses, weeds, sunflowers, or volunteer growth, excluding landscaping, must be mowed even if not harvested.

005.05 All windrowed vegetation shall be baled within three days, weather permitting.

005.06 Bales of vegetation shall not at any time be located closer than 30 feet from the near edge of pavement.

005.07 All baled vegetation shall be removed from the right-of-way within 10 days after being baled or by September 15, whichever comes first, except during conditions described in section 005.08. Bales not removed within this time limit may be removed and/or disposed of by the Department at a cost chargeable to the permit holder. No baling of mowed hay will be allowed after the expiration date.

005.08 The permit holder shall not engage in harvesting operations during periods when resultant wheel ruts would cause possible drainage or erosion problems. Costs for repair by the Department of damage to the right-of-way caused by such operations will be chargeable to the permit holder.

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005.09 No mowing or harvesting shall be allowed on any of the following non-exclusive listed areas:

005.09A On the right-of-way of any interstate or freeway.

005.09B Within 15 feet from the edge of the pavement.

005.09C On slopes steeper than three feet horizontal to one foot vertical.

005.09D On newly seeded areas where adequate vegetation is not established.

005.09E On areas with sparse or marginal vegetative cover as determined by the Department.

005.09F On medians, interchange quadrants, rest areas, and construction zones.

005.09G Within corporate limits.

005.09H On other areas excluded by the Department.

005.10 The harvesting operations by the permittee shall be completed in a workmanlike manner in a way that meets all requirements of these regulations.

005.11 Right-of-way markers, land monuments, fences, signs, landscape plantings or other highway features or structures shall not be removed, altered or damaged. The permittee shall be financially responsible for any damages.

005.12 Hay harvesting operations within the right-of-way shall be confined to the hours between one hour after sunrise to one hour before sunset.

005.13 Equipment shall be parked at the right-of-way line. In no case shall equipment be parked closer than 30 feet from the near edge of the pavement. In the event that right-of-way line is too close to allow the equipment to be greater than 30 feet from the traveled way, the permittee shall park the equipment off the right-of-way.

005.14 All hay harvested from the right-of-way shall be for the private use of the permittee.

005.15 When on foot, all persons shall be required to wear high-visibility safety apparel that meets the performance Class 2 or Class 3 requirements of the ANSI/ISEA 107-2004 publication entitled "American National Standard for High-Visibility Safety Apparel and Headwear." One Class 2 vest shall be provided per permit. Additional vests may be purchased at cost from the Department.

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006 APPLICATION PROCESS

006.01 An application for a permit to harvest hay shall be made to the Department through the District Engineer or designee in charge of the geographic area where the right-of-way is located.

006.02 All submitted applications shall be complete and shall be accompanied by the items noted in Section 003 and shall include the permit fee.

006.02A When the owner(s) are signing for themselves or in designating an assignee, under Section 004.02, all owner(s) must sign the application.

006.03 The permit fee shall be \$40. The Department shall annually review the adequacy of the fee based on actual application processing costs, permit reporting costs, and field observation costs.

006.04 The permit fee is not refundable.

006.05 All fees received under this rule and regulation by the Department shall be remitted to the State Treasurer for credit to the Highway Cash Fund.

007 PERMITS

007.01 A permit must be issued before an applicant can begin mowing operations.

007.02 The permittee shall give the Department 48 hours notice of his or her intention to start haying operations. Notification instructions will be identified on the permit.

007.03 The permit shall be non-transferable.

007.04 The permit shall be subject to any laws now in effect or any laws which may be hereafter enacted and all applicable rules and regulations of local, state and federal agencies.

007.05 The permit shall expire on September 15 of the year of issue.

007.06 The Department reserves the right to cancel or modify the permit due to unforeseen circumstances.

007.07 The Department will consider performance and compliance with requirements of the permit when considering whether or not to cancel a permit. Future permits may be denied if a permittee has had a permit cancelled.

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007.08 A permit will not be required for the mowing of highway right-of-way by the adjacent property owner or tenant for aesthetic appearances only.

008 FAILURE OF COMPLIANCE

008.01 Any person harvesting hay without a permit shall be subject to the denial of future applications for a permit. Any hay harvested without a permit will become the property of the State and shall be confiscated by the Department. Said person shall be responsible for all incurred costs and damages, and may be prosecuted to the fullest extent of the law for property theft.

008.02 The permittee shall be financially responsible for any damages as described in Section 003.

008.03 Failure of the permittee to comply with these Rules and Regulations including the terms of the permit to harvest hay shall be cause for cancellation of the permit and may result in refusal to grant future permits for harvesting hay.

ANNOTATION

**Title 408
Chapter 1**

**Enabling Legislation
39-1359.01 Neb.Rev.Stat.**