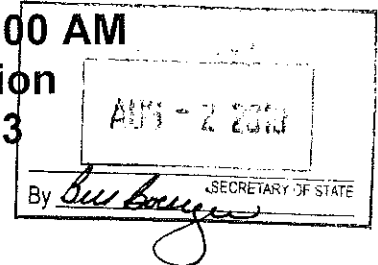


***Legal Notice of Rulemaking***  
**Nebraska Department of Transportation**  
***Public Hearing***  
**Wednesday, September 4, 2019, 9:00-11:00 AM**  
**Nebraska Department of Transportation**  
**Central Headquarters Bldg., Rm. 103**  
**1500 Hwy 2, Lincoln, Nebraska**



The Nebraska Department of Transportation (NDOT) has commenced rulemaking and will hold a public hearing concerning the repeal and re-adoption of the following regulations:

- **Repeal 17 NAC 5** - Petitioning for Rulemaking
- **Adopt 407 NAC 4** - Petitioning for Rulemaking
- **Repeal 17 NAC 6** - Procedures Governing Declaratory Orders
- **Adopt 407 NAC 3** - Procedures Governing Declaratory Orders
- **Repeal 410 NAC 1** - Utility Permits
- **Adopt 412 NAC 3** - Utility Permits
- **Repeal 410 NAC 2** - Driveway and Approach Road Permits
- **Adopt 412 NAC 1** - Driveway and Approach Road Permits
- **Repeal 410 NAC 7** - The Accommodation of Mailboxes and Newspaper Delivery Boxes and Supports
- **Adopt 412 NAC 2** - The Accommodation of Mailboxes and Newspaper Delivery Boxes and Supports

Due to the merging of the Nebraska Department of Aeronautics and the Nebraska Department of Roads into the Nebraska Department of Transportation with the passage of LB 339 (2017) by the Nebraska Legislature and reorganization within the Department, the regulations are being repealed so they can be re-adopted verbatim to new title and chapter numbers which reflect proper division ownership.

Interested persons are invited to attend the public hearing. Comments and recommendations may be presented orally or in writing at the hearing. They may also be mailed, faxed, or e-mailed prior to the hearing or until the close of the public comment period (September 19, 2019). Pre-hearing and post-hearing comments should be directed in writing to NDOT's Public Involvement Manager, Sarah Soula, P.O. Box 94759, Lincoln, Nebraska

68509-4759; sarah.soula@nebraska.gov; voice telephone 402-479-4871, TDD telephone 402-479-3834, fax 402-479-3989. Comments may also be posted online through the Secretary of State's website (see below).

To view or download the proposed changes to the regulations or to comment online, visit: [www.sos.state.ne.us/rules-and-regs/regtrack](http://www.sos.state.ne.us/rules-and-regs/regtrack) ("Agency": Transportation). To obtain a free paper copy of the proposed changes, the Proposed Regulation Policy Pre-Review Checklists, or the Fiscal Impact Statements, contact NDOT's Government Affairs Office, PO Box 94759, Lincoln, Nebraska 68509-4759; [erich.strack@nebraska.gov](mailto:erich.strack@nebraska.gov); voice telephone 402-479-4324, TDD telephone 402-479-3834, fax 402-479-3758. Copies may be viewed or picked up in person at the NDOT Director's Office, 1500 Highway 2, Lincoln, NE.

NDOT will make every reasonable accommodation to provide an accessible meeting facility for all persons. Appropriate provisions for the hearing and visually challenged or persons with limited English proficiency (LEP) will be made if NDOT is notified by August 28, 2019. Notification should be submitted to Sarah Soula, Public Involvement Manager (see contact information above).

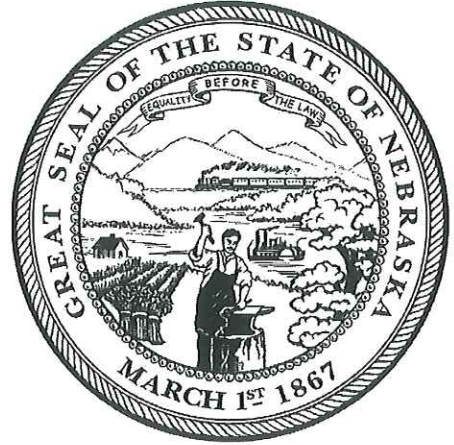
This notice is provided pursuant to the Administrative Procedure Act.

# NEBRASKA

Good Life. Great Journey.

**DEPARTMENT OF TRANSPORTATION**

August 2, 2019



The Honorable Bob Evnen  
Secretary of State  
PO Box 94608  
Lincoln NE 68509-4608

Attn: Bess Boesiger

Please accept this letter as notification that although Title 410, Chapter 7 and Title 412, Chapter 2 were advertised as a part of a public rulemaking hearing to be held on September 4, 2019, both regulations have been withdrawn so additional revisions can be made. Both regulations will be scheduled for hearing at a later date.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Erich Strack".

Erich Strack  
Government Affairs Manager  
Nebraska Department of Transportation



Kyle Schneweis, P.E., Director  
**Department of Transportation**  
1500 Highway 2  
PO Box 94759  
Lincoln, NE 68509-4759  
[dot.nebraska.gov](http://dot.nebraska.gov)

OFFICE 402-471-4567 FAX 402-479-4325  
[NDOT.ContactUs@nebraska.gov](mailto:NDOT.ContactUs@nebraska.gov)

# RULE & REGULATION PRELIMINARY FISCAL IMPACT STATEMENT

<b>AGENCY:</b>	Nebraska Department of Transportation		
<b>TITLE:</b>	17	<b>PREPARED BY:</b>	
<b>CHAPTER:</b>	5	<b>DATE PREPARED:</b>	
<b>SUBJECT:</b>	Petitioning for Rulemaking	<b>TELEPHONE:</b>	

**TYPE OF FISCAL IMPACT:**

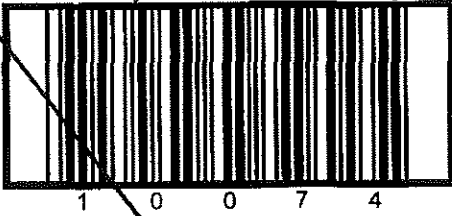
	STATE AGENCY	POLITICAL SUBDIVISION	REGULATED PUBLIC
No Fiscal Impact	X	X	X
Increased Costs			
Decreased Costs			
Increased Revenue			
Decreased Revenue			
Indeterminable			

**PROVIDE AN ESTIMATED COST AND DESCRIPTION OF IMPACT:**

<b>State Agency</b>	
<b>Political Subdivision</b>	
<b>Regulated Public</b>	

**IF INDETERMINABLE, EXPLAIN WHY:**

Secretary of State - Rules and Regs



**Document #: 10074**

**Date Filed:** 7/10/2003

**Dept, Agency, Comm:** Aeronautics

**Title:** 17

**Book:** NAC

**Chapter:** 5

**Section:**

**Subject Matter:** Petitioning for Rule Making

**Effective Date:** 7/15/2003

**Amendment Date:**

JUL 10 2003

NEBRASKA ADMINISTRATIVE CODE

TITLE 17 – NEBRASKA DEPARTMENT OF AERONAUTICS

CURRENT ISSUE – August 2002

CHAPTER 5 – PETITIONING FOR RULEMAKING

001 Rule Making Petition.

001.01 Petition. Any person may petition the Nebraska Department of Aeronautics requesting the promulgation, amendment, or repeal of a rule or regulation.

001.02 Form. The petition shall:

002.02A. Be clearly designated as a petition for a rules change;

002.02B. In the case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety;

002.02C. In the case of a petition for the repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by agency rule number;

002.02D. Describe the reason for the rules change

002.02E. Include an address and telephone where the petitioner can be reached during regular work hours; and

002.02F. Be signed by:

002.02F(1). The petitioner or his or her attorney in which case the attorney shall also state his or her address and telephone number;

002.02F(2). A duly authorized officer of the petitioner, if petitioner is a corporation or other legal entity.

JUL 10 2003

NEBRASKA ADMINISTRATIVE CODE

TITLE 17 – NEBRASKA DEPARTMENT OF AERONAUTICS

CURRENT ISSUE – August 2002

002 Petition Consideration and Disposition.

002.01. Within sixty (60) days after submission of a petition, the agency shall either:

002.01A. Deny the petition in writing, stating the reason therefor; or

002.01B. Initiate rulemaking or regulation making proceedings in accordance with the Administrative Procedure Act; or

002.01C. If otherwise lawful, adopt a rule or regulation.

**TITLE 407, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 4**

**NEBRASKA DEPARTMENT OF TRANSPORTATION**  
**GOVERNMENT AFFAIRS**

**RULES AND REGULATIONS CONCERNING**  
**PETITIONING FOR RULEMAKING**



## TITLE 407 – NEBRASKA DEPARTMENT OF TRANSPORTATION – GOVERNMENT AFFAIRS

### Chapter 4 – Petitioning for Rulemaking

001 - The Nebraska Department of Transportation adopts by reference Title 53, Chapter 2, the Nebraska Attorney General's model rule for Petitioning for Rulemaking.

002 - This regulation shall govern the Nebraska Department of Transportation and the following two statutory boards for which the Department is required to provide clerical and other support:

002.01 Nebraska Board of Public Roads Classifications and Standards

002.02 Nebraska Board of Examiners for County Highway and City Street Superintendents

### ANNOTATION

Title 407  
Chapter 4

Enabling Legislation  
§39-2107; 39-2305;  
84-909.01  
Neb. Rev. Stat.

# RULE & REGULATION PRELIMINARY FISCAL IMPACT STATEMENT

<b>AGENCY:</b>	Nebraska Department of Transportation		
<b>TITLE:</b>	17	<b>PREPARED BY:</b>	
<b>CHAPTER:</b>	6	<b>DATE PREPARED:</b>	
<b>SUBJECT:</b>	Procedures Governing Declaratory Orders	<b>TELEPHONE:</b>	

**TYPE OF FISCAL IMPACT:**

	STATE AGENCY	POLITICAL SUBDIVISION	REGULATED PUBLIC
No Fiscal Impact	X	X	X
Increased Costs			
Decreased Costs			
Increased Revenue			
Decreased Revenue			
Indeterminable			

**PROVIDE AN ESTIMATED COST AND DESCRIPTION OF IMPACT:**

State Agency	
Political Subdivision	
Regulated Public	

**IF INDETERMINABLE, EXPLAIN WHY:**

**~~TITLE 17, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 6~~**

**~~NEBRASKA DEPARTMENT OF TRANSPORTATION  
AERONAUTICS DIVISION~~**

**~~RULES AND REGULATIONS CONCERNING  
PROCEDURES GOVERNING DECLARATORY ORDERS~~**

TITLE 17 — NEBRASKA DEPARTMENT OF TRANSPORTATION — AERONAUTICS DIVISION

Chapter 6 — Procedures Governing Declaratory Orders

**Table of Contents**

001 General Information .....1

002 Definitions .....1

003 Petition for Declaratory Order .....2

004 Submission and Service of Declaratory Order Petition .....4

005 Disposition of the Petition .....4

006 Intervention in Declaratory Order Proceeding .....5

007 Declaratory Order Proceedings .....6

008 Issuance of Declaratory Order .....6

009 Circumstances Under Which Agency will not Issue Declaratory Orders .....7

010 Appeal .....8

APPENDIX "A" .....9

## **TITLE 17 — NEBRASKA DEPARTMENT OF TRANSPORTATION — AERONAUTICS DIVISION**

### **Chapter 6 — Procedures Governing Declaratory Orders (continued)**

#### 001 General Information

~~001.01 Scope of this Chapter This chapter pertains solely to the procedures to be used by any person or entity seeking issuance of a declaratory order by the Nebraska Department of Transportation.~~

#### 002 Definitions As used in this chapter:

~~002.01 Agency shall mean the State of Nebraska, Department of Transportation.~~

~~002.02 Agency director shall mean the director of the agency.~~

~~002.03 Argument shall mean the oral statement of the petitioner or any other party which explains his or her view of the facts and issue to be decided, the law applicable to the question presented, and the reasoning that connects the facts and law.~~

~~002.04 Contested case shall mean a proceeding before the agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after hearing before the agency.~~

~~002.05 Declaratory order proceeding shall mean a proceeding initiated by a petitioner seeking issuance of a binding order by the agency as to the applicability of specified circumstances to a statute, rule, regulation, or order within the primary jurisdiction of the agency.~~

~~002.06 Hearing officer shall mean the person or persons conducting a declaratory order proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title.~~

~~002.07 Intervenor(s) shall mean persons, political subdivisions, corporations, organizations, or other entities who have or claim to have any interest, legal right, duty, privilege, or immunity, which would be directly affected by the agency's issuance of a binding declaratory order.~~

~~002.08 Necessary party shall mean a person who or an entity which has a specific interest in the applicability of the statute, rule, regulation, or order, as distinguished from a general interest such as may be the concern of the public at large. A necessary party is one which is or would be adversely affected in a legally cognizable way by the uncertainty sought to be resolved.~~

~~002.09 Parties shall mean persons, political subdivisions, corporations, organizations, or other entities subject to the jurisdiction of the agency who are involved in a declaratory order proceeding according to the procedures set forth in this chapter.~~

~~002.10 Petition shall mean the document filed in accordance with section 003 of this chapter to initiate a declaratory order proceeding.~~

~~002.11 Petitioner(s) shall mean a party or parties who have filed a petition with the agency seeking issuance of a declaratory order.~~

~~002.12 Pleading shall mean any written petition, answer, or motion used in any declaratory order proceeding before the agency as set forth in this chapter.~~

## **TITLE 17 — NEBRASKA DEPARTMENT OF TRANSPORTATION — AERONAUTICS DIVISION**

### **Chapter 6 — Procedures Governing Declaratory Orders (continued)**

#### 003 Petition for Declaratory Order

~~003.01 Generally A request for a declaratory order must be made by a petition that meets the requirements of section 003.~~

~~003.02 Who May File Any person may petition the agency for issuance of a declaratory order as to the applicability to specified circumstances of a statute, rule, regulation, or order which is within the primary jurisdiction of the agency.~~

~~003.03 When Orders Appropriate A declaratory order may be requested on the applicability of a statute, rule, regulation, or order enforced by the agency. "Applicability" refers to the appropriateness of the relation of the law to the person, property, or state of facts, or its relevance under the circumstances given. It may include such questions as whether the law applies at all, to whom it applies, when it applies, how it applies, or which law applies. Considerations as to whether issuance of a declaratory order is appropriate include:~~

~~003.03A A declaratory order may be requested only on the applicability of existing statutes and rules and regulations.~~

~~003.03B A declaratory order may be requested to obtain a determination of proposed conduct, not to obtain a determination of the effect of conduct that has already occurred.~~

~~003.03C A declaratory order is not a mechanism for review or appeal of a decision made by the agency in a contested case.~~

~~003.03D A declaratory order may not be requested to obtain a declaration by the agency that a statute or regulation is unconstitutional or that a regulation of the agency is invalid.~~

~~003.03E A declaratory order may not be issued by the agency that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.~~

~~003.04 Form of Petition A petition for declaratory order shall be in the form of either a pleading or letter which shall contain each of the following:~~

~~003.04A A caption, which shall include:~~

~~003.04A1 The venue: BEFORE THE DEPARTMENT OF TRANSPORTATION,  
STATE OF NEBRASKA;~~

~~003.04A2 A heading specifying the subject matter and the name of the petitioner;  
and~~

~~003.04A3 The name of the pleading: PETITION FOR DECLARATORY ORDER.~~

~~003.04B The statements required in subsection 003.05 of this chapter.~~

~~003.04C The signature of the petitioner, or when represented by an attorney, the signature of the attorney.~~

## **TITLE 17 — NEBRASKA DEPARTMENT OF TRANSPORTATION — AERONAUTICS DIVISION**

### **Chapter 6 — Procedures Governing Declaratory Orders (continued)**

~~003.04D~~ The name and address of the petitioner, and when represented by an attorney, the name, address, telephone number, and bar number of the attorney.

~~003.04E~~ Size and Paper. The petition shall be made on white, letter-sized (8-1/2" x 11") paper.

~~003.04F~~ Print The petition shall be legibly typewritten, photostatically reproduced, printed, or handwritten. If handwritten, the petition must be written in ink. Only one side of a page shall contain any writing.

~~003.04G~~ Attachments Any documents attached to a petition shall be securely fastened to the pleading and shall meet the requirements of 003.04E and 003.04F and, when possible, be reproduced on 8-1/2" x 11" paper or placed in an 9" x 12" envelope and clearly marked as an attachment to the petition.

~~003.05~~ Contents of Petition To be considered, the petition shall include the following:

~~003.05A~~ The name and address of the petitioner;

~~003.05B~~ The name and address of all persons or entities, known to the petitioner, who may have a specific interest in the applicability of the statute, rule, regulation, or order or who may be adversely affected by the issue sought to be resolved by the petitioner.

~~003.05C~~ The statute, rule, regulation, or order upon which the petitioner seeks issuance of a declaratory order;

~~003.05D~~ A detailed statement of all of the material facts and specific circumstances which apply to petitioner's request for issuance of a declaratory order;

~~003.05E~~ All propositions of law or contentions asserted by the petitioner;

~~003.05F~~ A demand for the relief to which the petitioner alleges entitlement. The petition shall state the petitioner's position as to how the agency should rule and why the agency should rule in the manner requested; and

~~003.05G~~ Any documents pertinent to the petition that the petitioner wishes to be considered by the agency.

~~003.06~~ The petition shall be subscribed and verified by the petitioner. If the petitioner is a corporation, political subdivision, or other entity, then the petition shall be subscribed and verified by a duly authorized agent of the petitioning entity.

~~003.07~~ Sample Petition The petitioner may use the sample form of a petition which is attached as "Appendix A" and incorporated within this chapter. The petitioner may also prepare a reasonable facsimile of "Appendix A" so long as the requirements of subsections 003.04, 003.05, and 003.06 of this chapter are satisfied.

~~003.08~~ Written Consents The petitioner shall also attach to the petition any written consents obtained from any necessary party that the petition may be determined by use of a declaratory order proceeding.

## **TITLE 17 — NEBRASKA DEPARTMENT OF TRANSPORTATION — AERONAUTICS DIVISION**

### **Chapter 6 — Procedures Governing Declaratory Orders (continued)**

#### 004 Submission and Service of Declaratory Order Petition

~~004.01~~ The original petition for declaratory order shall be filed with the agency director by mail or in person during the agency's normal business hours.

~~004.02~~ The petition shall be deemed as filed when it is actually received by the agency. The agency shall date stamp all petitions upon receipt.

~~004.03~~ At the same time the petition is filed with the agency, the petitioner shall serve a copy of the petition, by certified mail, return receipt requested, on all necessary parties, including all persons, political subdivisions, corporations, organizations, or other entities who are known to have or claim any interest, legal right, duty, privilege, or immunity which would be directly affected by issuance of a declaratory order in this matter by the agency.

#### 005 Disposition of the Petition

~~005.01~~ Generally Upon the filing of a petition, the agency director may consider the petition, refer the petition to an appropriate licensing or governing board, or delegate the matter to a designated hearing officer, board, or agency employee to consider the petition and recommend a decision to the agency director. In reviewing the petition, the agency may, in its discretion, do one or more of the following:

~~005.01A~~ Require that additional information be submitted before the petition will be further considered;

~~005.01B~~ Require a petitioner to provide notice to persons or entities who may be necessary parties and other persons that a request for a declaratory order has been filed with the agency;

~~005.01C~~ Schedule a date, time, and location at which the petitioner and any other parties to the proceeding may make an oral presentation on the petition;

~~005.01D~~ Consider the petition and any attachments without oral presentation.

~~005.02~~ Within thirty (30) days after the petition is filed, the agency shall, in writing:

~~005.02A~~ Issue an order declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

~~005.02B~~ Agree to issue an order by a specified time declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

~~005.02C~~ Set the matter for specified proceedings as set forth in subsection 005.01 of this Chapter; or

~~005.02D~~ Decline to issue a declaratory ruling, stating the reasons for the agency's decision.



## **TITLE 17 — NEBRASKA DEPARTMENT OF TRANSPORTATION — AERONAUTICS DIVISION**

### **Chapter 6 — Procedures Governing Declaratory Orders (continued)**

~~005.03~~ Notwithstanding section 005.02 of this rule, the agency may determine at any time that it will not issue a declaratory order if issuance of an order under the circumstances would be contrary to any provisions of section 009 of this Chapter. The agency shall notify the petitioner and, if applicable, any intervenor or necessary party in writing when the agency determines not to issue a declaratory order.

#### 006 Intervention in Declaratory Order Proceeding

~~006.01~~ Intervention by any person or entity in a declaratory order proceeding shall be allowed when the following requirements are met:

~~006.01A~~ A petition for intervention must be submitted in writing to the agency. Copies must be mailed to all parties to the proceeding.

~~006.01B~~ The contents of the petition must be as specified in 006.02.

~~006.01C~~ The agency must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

~~006.02 Contents of Petition~~ The petition for intervention shall be submitted to the agency, in writing, on 8 1/2" x 11" white paper, and shall include each of the following:

~~006.02A~~ The statute, regulation, rule, or order that may apply to or effect the person, property, entity, or facts at issue in the matter;

~~006.02B~~ A statement of facts sufficient to show the intervenor's interest;

~~006.02C~~ A statement of facts which demonstrate that the intervenor's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the intervenor may intervene pursuant to a provision of law;

~~006.02D~~ All propositions of law or contentions asserted by the intervenor; and

~~006.02E~~ A statement of the specific relief requested by the intervenor.

~~006.03~~ The agency may, at its discretion, invite any person or entity to file a petition for intervention.

~~006.04~~ The agency shall grant a petition for intervention if the requirements of §006.01 and §006.02 are satisfied.

~~006.05~~ The agency shall deny a petition for intervention upon determining that the interests of justice or the orderly and prompt conduct of the proceedings would be impaired by allowing the intervention.

~~006.06~~ The agency's decision to grant or deny a petition for intervention shall be in writing and served upon all parties.

## **TITLE 17 — NEBRASKA DEPARTMENT OF TRANSPORTATION — AERONAUTICS DIVISION**

### **Chapter 6 — Procedures Governing Declaratory Orders (continued)**

#### 007 Declaratory Order Proceedings

007.01 Oral Argument: ~~When Oral argument shall be had only on specific order of the agency. A petitioner, intervenor, necessary party, or the agency may submit a motion for oral argument to the agency director. If opportunity for oral argument is granted, then argument shall be scheduled to be conducted not more than forty-five (45) days after filing of the petition. Petitioner and all other parties or, when represented, their attorneys, shall be served by the agency with a notice of the date, time, and location for oral argument. The agency shall provide each of the parties with notice of the proceeding not less than seven (7) days in advance of the scheduled date. Service shall be made by certified mail, return receipt requested.~~

007.02 Oral Argument: ~~Procedure Oral argument will be made before a hearing officer or before any representative of the agency who is authorized to render or to recommend a decision to the agency. The hearing officer or agency representative shall be in control of the proceeding and shall:~~

007.02A ~~Identify the proceeding and introduce himself or herself and identify each party for the record;~~

007.02B ~~Hear the oral argument of the petitioner, intervenor, or necessary parties;~~

007.02C ~~Close the proceedings.~~

007.03 ~~At the declaratory order proceeding, agency staff shall have the right to present oral argument.~~

007.04 ~~The hearing officer or representative may impose reasonable time limits on the amount of time allocated to each party for oral argument.~~

007.05 ~~The parties and agency staff may file briefs in support of their respective positions. The hearing officer may fix the time and order of filing briefs and may direct that briefs be submitted prior to the date of oral argument.~~

007.06 ~~The oral argument may be conducted either in person or by telephone conference call.~~

#### 008 Issuance of Declaratory Order

008.01 ~~The agency shall issue its declaratory order within sixty (60) days of the date on which the petition was filed.~~

008.02 ~~The declaratory order shall be in writing and shall include the following:~~

008.02A ~~The names of all parties to the proceeding upon which the order is based;~~

008.02B ~~The facts upon which the order is based;~~

008.02C ~~The statute, regulation, rule, or order at issue in the matter;~~

008.02D ~~The agency's conclusion as to the applicability of the statute, regulation, rule, or order to the facts;~~

008.02E ~~The agency's conclusion as to the legal effect or result of applying the statute, regulation, rule, or order to the facts; and~~

## **TITLE 17 — NEBRASKA DEPARTMENT OF TRANSPORTATION — AERONAUTICS DIVISION**

### **Chapter 6 — Procedures Governing Declaratory Orders (continued)**

~~008.02F~~ The reasons relied upon by the agency to support its conclusions.

~~008.03~~ A copy of the declaratory order shall be served upon each party by certified mail, return receipt requested.

~~008.04~~ Effect of Declaratory Order. A declaratory order shall have the same status and binding effect as any other order issued in a contested case.

~~008.05~~ No Response within 60 Days. If the agency has not issued a declaratory order within sixty (60) days after the petition has been filed, then the petition shall be deemed to have been denied by the agency.

#### ~~009~~ Circumstances Under Which Agency will not Issue Declaratory Orders.

~~009.01~~ Grounds upon which the agency shall refuse to issue a declaratory order include, but are not limited to, the following:

~~009.01A~~ The petition requests a declaratory order on a matter that is outside the scope of authority of the agency;

~~009.01B~~ The petition requests review or appeal of a decision made by the agency in a contested case;

~~009.01C~~ The petition requests a declaratory order on the effect of past conduct;

~~009.01D~~ An investigation for purposes of a formal adjudication, a contested case, or a petition to issue, amend, or repeal regulations is pending before the agency involving the petitioner on substantially the same or similar facts or issues raised in the petition;

~~009.01E~~ The petition seeks a declaration that a statute or rule or regulation is unconstitutional or invalid;

~~009.01F~~ The issue raised in the petition has been settled by a change in circumstances or other means so as to render moot the need for a declaratory order;

~~009.01G~~ An order would substantially prejudice the rights of a person or entity who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding;

~~009.01H~~ An order would not resolve the controversy or uncertainty; or

~~009.01I~~ The question posed or facts presented are insufficiently specific, overly broad, or are otherwise inappropriate as a basis upon which to decide the matter.

~~009.02~~ Grounds upon which the agency may determine to refuse to issue a declaratory order include, but are not limited to, the following:

~~009.02A~~ Refusal is necessary to assure adequate allocation of agency resources are available for issuing rulings on petitions raising questions of greater urgency or significance;

**TITLE 17 — NEBRASKA DEPARTMENT OF TRANSPORTATION — AERONAUTICS DIVISION**

**Chapter 6 — Procedures Governing Declaratory Orders (continued)**

~~009.02B~~ The question presented is of such complexity that the agency has had insufficient opportunity or resources to develop a fully matured ruling;

~~009.02C~~ The petitioner fails to submit any additional information requested by the agency or submits such information after the date established by the agency;

**010 Appeal**

~~010.01~~ A declaratory order is subject to review in the manner provided for review of contested cases by the Administrative Procedure Act, Neb. Rev. Stat. § 84-901 — § 84-920. Specific procedures for appeal are set forth in Neb. Rev. Stat. § 84-917.

**ANNOTATION**

Title 17  
Chapter 6

Enabling Legislation  
~~§84-910~~  
Neb. Rev. Stat.

**TITLE 17 — NEBRASKA DEPARTMENT OF TRANSPORTATION — AERONAUTICS DIVISION**

**Chapter 6 — Procedures Governing Declaratory Orders (continued)**

**APPENDIX "A"**

**BEFORE THE DEPARTMENT OF TRANSPORTATION, STATE OF NEBRASKA**

In the matter of	}	PETITION FOR
The application of [name]	}	DECLARATORY ORDER
	}	
	}	

1. Petitioner's name and address;
2. The name and address of all persons who or entities which may have a specific interest in the applicability of the statute, rule, regulation, or order who may be adversely affected by the issue sought to be resolved;
3. All material facts and specific circumstances;
4. All rules of law which apply;
5. Petitioner's demand for relief;

DATED THIS \_\_\_\_\_ DAY of \_\_\_\_\_, 20\_\_\_\_

**VERIFICATION**

STATE OF \_\_\_\_\_ )  
\_\_\_\_\_)  
COUNTY OF \_\_\_\_\_ )

\_\_\_\_\_, [NAME], being first duly sworn, states that he/she, is the petitioner/petitioner's agent in the above entitled matter that he/she has read the foregoing **Petition For Declaratory Order**; and that the allegations of fact therein are true.

(Petitioner's Signature)

\_\_\_\_\_, SUBSCRIBED and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

\_\_\_\_\_, NOTARY SEAL \_\_\_\_\_

(NOTARY SIGNATURE)

# RULE & REGULATION PRELIMINARY FISCAL IMPACT STATEMENT

<b>AGENCY:</b>	Nebraska Department of Transportation		
<b>TITLE:</b>	407	<b>PREPARED BY:</b>	
<b>CHAPTER:</b>	3	<b>DATE PREPARED:</b>	
<b>SUBJECT:</b>	Procedures Governing Declaratory Orders	<b>TELEPHONE:</b>	

**TYPE OF FISCAL IMPACT:**

	STATE AGENCY	POLITICAL SUBDIVISION	REGULATED PUBLIC
No Fiscal Impact	X	X	X
Increased Costs			
Decreased Costs			
Increased Revenue			
Decreased Revenue			
Indeterminable			

**PROVIDE AN ESTIMATED COST AND DESCRIPTION OF IMPACT:**

<b>State Agency</b>	
<b>Political Subdivision</b>	
<b>Regulated Public</b>	

**IF INDETERMINABLE, EXPLAIN WHY:**

**TITLE 407, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 3**

**NEBRASKA DEPARTMENT OF TRANSPORTATION**  
**GOVERNMENT AFFAIRS**

**RULES AND REGULATIONS CONCERNING**  
**PROCEDURES GOVERNING DECLARATORY ORDERS**

**TITLE 407, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 3**

**NEBRASKA DEPARTMENT OF TRANSPORTATION**  
**GOVERNMENT AFFAIRS**

**RULES AND REGULATIONS CONCERNING**  
**PROCEDURES GOVERNING DECLARATORY ORDERS**



## **TITLE 407 – NEBRASKA DEPARTMENT OF TRANSPORTATION –GOVERNMENT AFFAIRS**

### **Chapter 3 – Procedures Governing Declaratory Orders**

001 - The Nebraska Department of Transportation adopts by reference Title 53, Chapter 3, the Nebraska Attorney General's model rule for Procedures Governing Declaratory Orders.

002 - This regulation shall govern the Nebraska Department of Transportation and the following two statutory boards for which the Department is required to provide clerical and other support:

002.01 Nebraska Board of Public Roads Classifications and Standards

002.02 Nebraska Board of Examiners for County Highway and City Street Superintendents

### **ANNOTATION**

Title 407  
Chapter 3

Enabling Legislation  
§39-2107; 39-2305;  
84-909.01  
Neb. Rev. Stat.

# RULE & REGULATION PRELIMINARY FISCAL IMPACT STATEMENT

<b>AGENCY:</b>	Nebraska Department of Transportation		
<b>TITLE:</b>	410	<b>PREPARED BY:</b>	
<b>CHAPTER:</b>	1	<b>DATE PREPARED:</b>	
<b>SUBJECT:</b>	Utility Permits	<b>TELEPHONE:</b>	

**TYPE OF FISCAL IMPACT:**

	STATE AGENCY	POLITICAL SUBDIVISION	REGULATED PUBLIC
No Fiscal Impact	X	X	X
Increased Costs			
Decreased Costs			
Increased Revenue			
Decreased Revenue			
Indeterminable			

**PROVIDE AN ESTIMATED COST AND DESCRIPTION OF IMPACT:**

<b>State Agency</b>	
<b>Political Subdivision</b>	
<b>Regulated Public</b>	

**IF INDETERMINABLE, EXPLAIN WHY:**

**~~TITLE 410, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 1~~**

**~~NEBRASKA DEPARTMENT OF TRANSPORTATION  
RIGHT OF WAY DIVISION~~**

**~~RULES AND REGULATIONS CONCERNING  
UTILITY PERMITS~~**

## **TITLE 410—NEBRASKA DEPARTMENT OF TRANSPORTATION—RIGHT OF WAY DIVISION**

### **Chapter 1—Utility Permits**

#### **001 PERMITS FOR THE OCCUPANCY OF HIGHWAYS BY POLE LINES**

001.01 DEFINITIONS: As used in the Regulations applicable to the issuance of permits for the occupancy of highways by pole lines, unless the context otherwise requires:

001.01A APPLICANT: A person who makes application for or acquires a permit to occupy a highway with pole lines.

001.01B DEPARTMENT: The Nebraska Department of Transportation.

001.01C HIGHWAY: A road or street including the entire area within the right of way and all structures thereon, which has been designed as a part of the State Highway System.

001.01D PERSON: Every natural person, firm, co-partnership, association, organization, or corporation, both public and private.

001.02 Any person desiring to occupy any portion of a highway with a pole, pole-line anchor, or brace shall apply for a permit to do so except where the occupancy is a cross-arm overhang or a single private service pole.

001.03 All applications for permits shall be made on the form prepared and furnished by the Department.

001.04 Applications may be made to the Department of Transportation, Box 94759, Lincoln, Nebraska 68509-4759.

001.05 Any person desiring to construct a single private service connection across a highway, a pole of which will rest upon the highway, will be required to make a report to the Department and within forty-five days after the completion of the crossing. Such report shall be made on DR Form 21, furnished by the Department and shall give the pertinent data with regard to the crossing and pole location. Where feasible, the above mentioned pole shall be located adjacent to an entrance to the property being served and no guy wires or braces to this pole shall be located on the highway.

001.06 All applications for a permit shall show the full name and address of the applicant and shall set forth the type of use that is desired by the applicant, that is, whether it is to be a crossing or parallel occupancy of the highway.

001.07 The applicant shall submit a plan or sketch showing in detail the type of pole line he proposes to install, the size and height of the poles, the number of wires to be carried, the voltage of any transmission line, or any other information that may pertain to the location of the pole line on the highway to be occupied and shall show the exact location of the portions of the highway to be occupied with respect to land lines and civil subdivision. The plan or sketch shall also indicate the exact location of all proposed guy wires, anchors, or braces.

001.08 No permit will be issued for the placing of deadmen, anchors, guy wires or braces unless the conditions requiring the same have been thoroughly investigated by a representative of the Department and it is found feasible to construct the line without the same.

001.09 If permission to place guy wires and braces on the highway is given subsequent to a Department investigation, the exact point of entry of the wires or braces into the ground shall be marked distinctly by the applicant in a manner meeting the approval of the Department.

## **TITLE 410 — NEBRASKA DEPARTMENT OF TRANSPORTATION — RIGHT OF WAY DIVISION**

### **Chapter 1 — Utility Permits (continued)**

~~001.10 The applicant will be required to indemnify and hold harmless the State of Nebraska from any damage of any nature to any person or property which may result from the applicant's operations on and from the occupancy of the highway.~~

~~001.11 The applicant will be held fully responsible for any damages to or defacing of the highway that may be caused by his operations and he will be required to restore said highway to its original condition.~~

~~001.12 After the receipt of the written application for permission to cross or parallel occupy any portion of the highway with a pole line, a permit may be granted by the Department. The permit shall set forth the regulations and restrictions governing the installation of the pole line and any specific instructions applying to the particular installation under consideration.~~

~~001.13 No work shall be performed by the applicant until he has obtained a permit.~~

~~001.14 The applicant shall provide and maintain, at his expense, adequate lights, signs or other protective devices so as to properly protect the traveling public during his operation on the highway.~~

~~001.15 The applicant shall conduct his operations in such a manner so as not to unreasonably interfere with or obstruct vehicular traffic on the highway.~~

~~001.16 Should the construction and maintenance of a highway necessitate the moving or relocating of any pole line, the owner shall move or relocate the line at his own expense and as directed by the Department except as otherwise provided by law with regard to the National System of Interstate and Defense Highways.~~

~~001.17 Any owner required to move or relocate any pole line because of construction and maintenance of a highway will not be required to file application for relocation of existing pole lines.~~

### **002 PERMITS FOR THE OCCUPANCY OF HIGHWAYS BY UNDERGROUND PIPES OR CONDUITS**

~~002.01 DEFINITIONS: As used in the Regulations applicable to the issuance of permits for the occupancy of highways by underground pipes or conduits, unless the context otherwise requires:~~

~~002.01A APPLICANT: A person who makes application for or acquires a permit to occupy a highway with underground pipes and conduits.~~

~~002.01B DEPARTMENT: The Nebraska Department of Transportation~~

~~002.01C HIGHWAY: A road or street including the entire area within the right of way and all structures thereon, which has been designated as a part of the State Highway System.~~

~~002.01D PERSON: Every natural person, firm, co-partnership, association, organization or corporation, both public and private.~~

~~002.02 Any person desiring to occupy any portion of a highway with an underground pipe line or conduit shall apply to the Department for a permit to so occupy.~~

~~002.03 All applications for permits shall be made on the form prepared and furnished by the Department.~~

## **TITLE 410 — NEBRASKA DEPARTMENT OF TRANSPORTATION — RIGHT OF WAY DIVISION**

### **Chapter 1 — Utility Permits (continued)**

~~002.04 Applications may be made to the Department of Transportation, Box 94759, Lincoln, Nebraska 68509-4759.~~

~~002.05 All applications for a permit shall show the full name and address of the applicant and shall set forth the type of use that is desired by the applicant that is, whether it is to be a crossing or a parallel occupancy of the highway.~~

~~002.06 The applicant shall submit a plan or sketch showing in detail the type and the nature of the pipe or conduit, the length of the pipe or conduit, and the depth at which the pipe or conduit will be installed beneath the highway surface. The plan or sketch shall set forth the number and surface type of the highway and the exact locations of the portions of the highway to be occupied with respect to land lines and civil subdivisions.~~

~~002.07 The applicant will be required to backfill all excavated trenches in thin layers and shall compact the replaced material until its density is equal to at least that of the surrounding earth. No "mounding over" of the trench will be permitted.~~

~~002.08 The Department may require the pipes or conduits to be installed in casings.~~

#### **ANNOTATION**

**Title 410  
Chapter 1**

**Enabling Legislation  
§39-699; 39-1335; 39-  
1359; 39-1361; 70-515;  
70-667 and 86-303.01  
Neb. Rev. Stat.**

# RULE & REGULATION PRELIMINARY FISCAL IMPACT STATEMENT

<b>AGENCY:</b>	Nebraska Department of Transportation		
<b>TITLE:</b>	412	<b>PREPARED BY:</b>	
<b>CHAPTER:</b>	3	<b>DATE PREPARED:</b>	
<b>SUBJECT:</b>	Utility Permits	<b>TELEPHONE:</b>	

**TYPE OF FISCAL IMPACT:**

	STATE AGENCY	POLITICAL SUBDIVISION	REGULATED PUBLIC
No Fiscal Impact	X	X	X
Increased Costs			
Decreased Costs			
Increased Revenue			
Decreased Revenue			
Indeterminable			

**PROVIDE AN ESTIMATED COST AND DESCRIPTION OF IMPACT:**

<b>State Agency</b>	
<b>Political Subdivision</b>	
<b>Regulated Public</b>	

**IF INDETERMINABLE, EXPLAIN WHY:**

**TITLE 412, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 3**

**NEBRASKA DEPARTMENT OF TRANSPORTATION**  
**ROADWAY DESIGN DIVISION**

**RULES AND REGULATIONS CONCERNING**  
**UTILITY PERMITS**



## TITLE 412 – NEBRASKA DEPARTMENT OF TRANSPORTATION – ROADWAY DESIGN DIVISION

### Chapter 3 – Utility Permits

#### 001 PERMITS FOR THE OCCUPANCY OF HIGHWAYS BY POLE LINES

001.01 DEFINITIONS: The following definitions apply within this regulation unless the context otherwise requires:

001.01A APPLICANT: A person who makes application for or acquires a permit to occupy a highway with pole lines.

001.01B DEPARTMENT: The Nebraska Department of Transportation.

001.01C HIGHWAY: A road or street including the entire area within the right of way and all structures thereon, which has been designed as a part of the State Highway System.

001.01D PERSON: Every natural person, firm, co-partnership, association, organization, or corporation, both public and private.

001.02 Any person desiring to occupy any portion of a highway with a pole, pole line anchor, or brace will apply for a permit to do so except where the occupancy is a cross-arm overhang or a single private service pole.

001.03 All applications for permits will be made on the form prepared and furnished by the Department.

001.04 Applications may be made to the Department of Transportation, Box 94759, Lincoln, Nebraska 68509-4759.

001.05 Any person desiring to construct a single private service connection across a highway, a pole of which will rest upon the highway, will be required to make a report to the Department and within forty-five days after the completion of the crossing. Such report will be made on DR Form 21, furnished by the Department and will give the pertinent data with regard to the crossing and pole location. Where feasible, the above mentioned pole will be located adjacent to an entrance to the property being served and no guy wires or braces to this pole will be located on the highway.

001.06 All applications for a permit will show the full name and address of the applicant and will set forth the type of use that is desired by the applicant, that is, whether it is to be a crossing or parallel occupancy of the highway.

001.07 The applicant will submit a plan or sketch showing in detail the type of pole line he proposes to install, the size and height of the poles, the number of wires to be carried, the voltage of any transmission line, or any other information that may pertain to the location of the pole line on the highway to be occupied and will show the exact location of the portions of the highway to be occupied with respect to land lines and civil subdivision. The plan or sketch will also indicate the exact location of all proposed guy wires, anchors, or braces.

001.08 No permit will be issued for the placing of deadmen, anchors, guy wires or braces unless the conditions requiring the same have been thoroughly investigated by a representative of the Department and it is found feasible to construct the line without the same.

001.09 If permission to place guy wires and braces on the highway is given subsequent to a Department investigation, the exact point of entry of the wires or braces into the ground will be marked distinctly by the applicant in a manner meeting the approval of the Department.

## TITLE 412 – NEBRASKA DEPARTMENT OF TRANSPORTATION – ROADWAY DESIGN DIVISION

### Chapter 3 – Utility Permits (continued)

001.10 The applicant will be required to indemnify and hold harmless the State of Nebraska from any damage of any nature to any person or property which may result from the applicant's operations on and from the occupancy of the highway.

001.11 The applicant will be held fully responsible for any damages to or defacing of the highway that may be caused by his operations and he will be required to restore said highway to its original condition.

001.12 After the receipt of the written application for permission to cross or parallel occupy any portion of the highway with a pole line, a permit may be granted by the Department. The permit will set forth the regulations and restrictions governing the installation of the pole line and any specific instructions applying to the particular installation under consideration.

001.13 No work will be performed by the applicant until he has obtained a permit.

001.14 The applicant will provide and maintain, at his expense, adequate lights, signs or other protective devices so as to properly protect the traveling public during his operation on the highway.

001.15 The applicant will conduct his operations in such a manner so as not to unreasonably interfere with or obstruct vehicular traffic on the highway.

001.16 Should the construction and maintenance of a highway necessitate the moving or relocating of any pole line, the owner will move or relocate the line at his own expense and as directed by the Department except as otherwise provided by law with regard to the National System of Interstate and Defense Highways.

001.17 Any owner needing to move or relocate any pole line because of construction and maintenance of a highway will not be expected to file application for relocation of existing pole lines.

### 002 PERMITS FOR THE OCCUPANCY OF HIGHWAYS BY UNDERGROUND PIPES OR CONDUITS

002.01 Any person desiring to occupy any portion of a highway with an underground pipe line or conduit will apply to the Department for a permit to so occupy.

002.02 All applications for permits will be made on the form prepared and furnished by the Department.

002.03 Applications may be made to the Department of Transportation, Box 94759, Lincoln, Nebraska 68509-4759.

002.04 All applications for a permit will show the full name and address of the applicant and will set forth the type of use that is desired by the applicant that is, whether it is to be a crossing or a parallel occupancy of the highway.

002.05 The applicant will submit a plan or sketch showing in detail the type and the nature of the pipe or conduit, the length of the pipe or conduit, and the depth at which the pipe or conduit will be installed beneath the highway surface. The plan or sketch will set forth the number and surface type of the highway and the exact locations of the portions of the highway to be occupied with respect to land lines and civil subdivisions.

## TITLE 412 – NEBRASKA DEPARTMENT OF TRANSPORTATION – ROADWAY DESIGN DIVISION

### Chapter 3 – Utility Permits (continued)

002.06 The applicant will be required to backfill all excavated trenches in thin layers and will compact the replaced material until its density is equal to at least that of the surrounding earth. No "mounding over" of the trench will be permitted.

002.07 The Department may mandate the pipes or conduits to be installed in casings.

### ANNOTATION

Title 412  
Chapter 3

Enabling Legislation  
§39-699; 39-1335; 39-  
1359; 39-1361; 70-515;  
70-667 and 86-303.01  
Neb. Rev. Stat.

# RULE & REGULATION PRELIMINARY FISCAL IMPACT STATEMENT

<b>AGENCY:</b>	Nebraska Department of Transportation		
<b>TITLE:</b>	410	<b>PREPARED BY:</b>	
<b>CHAPTER:</b>	2	<b>DATE PREPARED:</b>	
<b>SUBJECT:</b>	Driveway and Approach Road Permits	<b>TELEPHONE:</b>	

**TYPE OF FISCAL IMPACT:**

	STATE AGENCY	POLITICAL SUBDIVISION	REGULATED PUBLIC
No Fiscal Impact	X	X	X
Increased Costs			
Decreased Costs			
Increased Revenue			
Decreased Revenue			
Indeterminable			

**PROVIDE AN ESTIMATED COST AND DESCRIPTION OF IMPACT:**

<b>State Agency</b>	
<b>Political Subdivision</b>	
<b>Regulated Public</b>	

**IF INDETERMINABLE, EXPLAIN WHY:**

~~TITLE 410, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 2~~

~~NEBRASKA DEPARTMENT OF TRANSPORTATION  
RIGHT OF WAY DIVISION~~

~~RULES AND REGULATIONS CONCERNING  
DRIVEWAY AND APPROACH ROAD PERMITS~~

## **TITLE 410 — NEBRASKA DEPARTMENT OF TRANSPORTATION — RIGHT OF WAY DIVISION**

### **Chapter 2 — Driveway and Approach Road Permits**

#### **001 PERMITS FOR THE CONSTRUCTION, USE, ALTERATION, AND RELOCATION OF DRIVEWAYS AND APPROACH ROADS ON STATE HIGHWAY RIGHTS OF WAY**

~~001.01 Definitions: As used in the Regulations applicable to the issuance of permits for the construction or use of any private driveway or commercial approach road, facility, thing, or appurtenance upon the right of way of a State Highway, unless the context otherwise requires:~~

~~001.01A Applicant: A person who makes application for or acquires a permit.~~

~~001.01B Approach Road: A commercial entrance and exit road and may be singular or plural.~~

~~001.01C Department: The Department of Transportation of the State of Nebraska acting through its authorized representatives.~~

~~001.01D Driveway: A private entrance or exit road to a home, farm, or field.~~

~~001.01E Highway: A road or street, including the entire area within the right of way and all structures thereon, which has been designated as a part of the State Highway System.~~

~~001.01F Person: An individual, firm, partnership, association, or corporation.~~

~~001.02 Any person desiring to construct a new driveway or approach road or any person desiring to relocate or alter an existing driveway or approach road shall apply for a permit to do so. No permits will be issued, even though application is made, for driveways or approach roads to private property along those areas where the Department has acquired all or portions of the rights of access.~~

~~001.03 All applications for permits shall be made on the form prepared and furnished by the Department~~

~~001.04 Applications for hard surfaced driveways and for approach roads may be made to the Department of Transportation, Box 94759, Lincoln, Nebraska 68509-4759.~~

~~001.05 All applications for driveways without hard surfacing may be made to the proper District Engineer's office as listed:~~

District 1:       302 Superior Street  
                  Lincoln, NE 68524  
                  Phone: 402.471.0850

District 2:       4425 South 108th Street  
                  Omaha, NE 68145  
                  Phone: 402.595.2534

District 3:       408 North 13th Street  
                  Norfolk, NE 68702  
                  Phone: 402.370.3470

## **TITLE 410 — NEBRASKA DEPARTMENT OF TRANSPORTATION — RIGHT OF WAY DIVISION**

### **Chapter 3 — Sign Permits (continued)**

District 4: 211 North Tilden Street  
Grand Island, NE 68802  
Phone: 308.385.6265

District 5: 140375 Rundell Road  
Gering, NE 69341  
Phone: 308.436.6587

District 6: 1321 North Jeffers Street  
North Platte, NE 69103  
Phone: 308.535.8031

District 7: 619 Auditorium Drive  
McCook, NE 69001  
Phone: 308.345.8490

District 8: 736 East 4th Street  
Ainsworth, NE 69210  
Phone: 402.387.2471

001.06 ~~The approval by the Department of an application for the construction of a driveway or approach road will constitute the permit for such work. The application may be approved as submitted or may be changed by the Department to conform to certain engineering and maintenance practices. If an application is denied, it will be returned to the applicant without approval.~~

001.07 ~~In addition to the conditions set forth on the application and permit form, the Department shall make a drawing of all driveways and approach roads having hard surface and all approach roads having gravel or crushed rock surface. These drawings and all the conditions set forth thereon shall be attached to and constitute a part of the permit.~~

001.08 ~~Any alteration, relocation, or construction of a driveway or an approach road must be done in accordance with the provisions of the permit. The applicant will be required to furnish a certified check to the Department as a guarantee of his faithful compliance with the conditions and provisions of the permit and the payment to the Department for any expense incurred by it in connection with the operations of the applicant on the State Highway right of way. The amount of the check will be determined after the receipt of the application and will be based upon the extent of the proposed work on the highway right of way.~~

001.09 ~~Each driveway and approach road shall be constructed in such a manner that the drainage and side ditches of the highway are not altered. The applicant shall provide, at his own expense, approved drainage structures beneath or shallow gutters across the driveway or approach road in line with the normal side ditches.~~

001.10 ~~Whenever the highway, on which a driveway or approach road has been constructed, is altered By the Department, the Department will restore all existing driveways and approach roads or revise them to conform to the change in the highway.~~

001.11 ~~All approach roads to one business establishment shall be physically separated from each other. The method of separation shall be designated by the Department on the permit.~~

## **TITLE 410 — NEBRASKA DEPARTMENT OF TRANSPORTATION — RIGHT OF WAY DIVISION**

### **Chapter 3 — Sign Permits (continued)**

~~001.12~~ Any person Possessing a driveway or approach road connecting with a State Highway before September 18, 1955, and does not have a permit for such driveway or approach road, who makes a request for any improvement whatsoever to be made by the State to such driveway or approach road must make his entire driveway or approach road conform to the standards set out by the Department for similar driveways or approach roads, maintained under permits, before such requested improvement shall be made.

#### **ANNOTATION**

~~Title 410  
Chapter 2~~

~~Enabling Legislation  
§39-699; 39-1332; 39-  
1333 and 39-1361  
Neb. Rev. Stat.~~



# RULE & REGULATION PRELIMINARY FISCAL IMPACT STATEMENT

<b>AGENCY:</b>	Nebraska Department of Transportation		
<b>TITLE:</b>	412	<b>PREPARED BY:</b>	
<b>CHAPTER:</b>	1	<b>DATE PREPARED:</b>	
<b>SUBJECT:</b>	Driveway and Approach Road Permits	<b>TELEPHONE:</b>	

**TYPE OF FISCAL IMPACT:**

	STATE AGENCY	POLITICAL SUBDIVISION	REGULATED PUBLIC
No Fiscal Impact	X	X	X
Increased Costs			
Decreased Costs			
Increased Revenue			
Decreased Revenue			
Indeterminable			

**PROVIDE AN ESTIMATED COST AND DESCRIPTION OF IMPACT:**

<b>State Agency</b>	
<b>Political Subdivision</b>	
<b>Regulated Public</b>	

**IF INDETERMINABLE, EXPLAIN WHY:**

**AUG 02 2019**

**TITLE 412, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 1**

**NEBRASKA DEPARTMENT OF TRANSPORTATION**  
**ROADWAY DESIGN DIVISION**

**RULES AND REGULATIONS CONCERNING**  
**DRIVEWAY AND APPROACH ROAD PERMITS**

## TITLE 412 – NEBRASKA DEPARTMENT OF TRANSPORTATION – ROADWAY DESIGN DIVISION

### Chapter 1 – Driveway and Approach Road Permits

#### 001 PERMITS FOR THE CONSTRUCTION, USE, ALTERATION, AND RELOCATION OF DRIVEWAYS AND APPROACH ROADS ON STATE HIGHWAY RIGHTS OF WAY

001.01 Definitions: The following definitions apply unless the context otherwise requires:

001.01A Applicant: A person who makes application for or acquires a permit.

001.01B Approach Road: A commercial entrance and exit road and may be singular or plural.

001.01C Department: The Department of Transportation of the State of Nebraska acting through its authorized representatives.

001.01D Driveway: A private entrance or exit road to a home, farm, or field.

001.01E Highway: A road or street, including the entire area within the right of way and all structures thereon, which has been designated as a part of the State Highway System.

001.01F Person: An individual, firm, partnership, association, or corporation.

001.02 Any person desiring to construct a new driveway or approach road or any person desiring to relocate or alter an existing driveway or approach road will apply for a permit to do so. No permits will be issued, even though application is made, for driveways or approach roads to private property along those areas where the Department has acquired all or portions of the rights of access.

001.03 All applications for permits will be made on the form prepared and furnished by the Department

001.04 Applications for hard surfaced driveways and for approach roads may be made to the Department of Transportation, Box 94759, Lincoln, Nebraska 68509-4759.

001.05 All applications for driveways without hard surfacing may be made to the proper District Engineer's office as listed:

District 1:       302 Superior Street  
                    Lincoln, NE 68521  
                    Phone: 402.471.0850

District 2:       4425 South 108th Street  
                    Omaha, NE 68145  
                    Phone: 402.595.2534

District 3:       408 North 13th Street  
                    Norfolk, NE 68702  
                    Phone: 402.370.3470

District 4:       211 North Tilden Street  
                    Grand Island, NE 68802  
                    Phone: 308.385.6265

## TITLE 412 – NEBRASKA DEPARTMENT OF TRANSPORTATION – ROADWAY DESIGN DIVISION

### Chapter 1 – Driveway and Approach Road Permits (continued)

District 5:      140375 Rundell Road  
Gering, NE 69341  
Phone: 308.436.6587

District 6:      1321 North Jeffers Street  
North Platte, NE 69103  
Phone: 308.535.8031

District 7:      619 Auditorium Drive  
McCook, NE 69001  
Phone: 308.345.8490

District 8:      736 East 4th Street  
Ainsworth, NE 69210  
Phone: 402.387.2471

001.06 The approval by the Department of an application for the construction of a driveway or approach road will constitute the permit for such work. The application may be approved as submitted or may be changed by the Department to conform to certain engineering and maintenance practices. If an application is denied, it will be returned to the applicant without approval.

001.07 In addition to the conditions set forth on the application and permit form, the Department will make a drawing of all driveways and approach roads having hard surface and all approach roads having gravel or crushed rock surface. These drawings and all the conditions set forth thereon will be attached to and constitute a part of the permit.

001.08 Any alteration, relocation, or construction of a driveway or an approach road must be done in accordance with the provisions of the permit. The applicant will be required to furnish a certified check to the Department as a guarantee of his faithful compliance with the conditions and provisions of the permit and the payment to the Department for any expense incurred by it in connection with the operations of the applicant on the State Highway right of way. The amount of the check will be determined after the receipt of the application and will be based upon the extent of the proposed work on the highway right of way.

001.09 Each driveway and approach road will be constructed in such a manner that the drainage and side ditches of the highway are not altered. The applicant will provide, at their own expense, approved drainage structures beneath or shallow gutters across the driveway or approach road in line with the normal side ditches.

001.10 Whenever the highway, on which a driveway or approach road has been constructed, is altered by the Department, the Department will restore all existing driveways and approach roads or revise them to conform to the change in the highway.

001.11 All approach roads to one business establishment will be physically separated from each other. The method of separation will be designated by the Department on the permit.

001.12 Any person Possessing a driveway or approach road connecting with a State Highway before September 18, 1955, and does not have a permit for such driveway or approach road, who makes a

**TITLE 412 – NEBRASKA DEPARTMENT OF TRANSPORTATION – ROADWAY DESIGN DIVISION**

**Chapter 1 – Driveway and Approach Road Permits (continued)**

request for any improvement whatsoever to be made by the State to such driveway or approach road must make his entire driveway or approach road conform to the standards set out by the Department for similar driveways or approach roads, maintained under permits, before such requested improvement are made.

**ANNOTATION**

**Title 412**  
**Chapter 1**

**Enabling Legislation**  
**§39-699; 39-1332; 39-**  
**1333 and 39-1361**  
**Neb. Rev. Stat.**