

Legal Notice of Rulemaking
Nebraska Department of Transportation
Public Hearing
Wednesday, October 21, 2020 - 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 repealing or revising the following proposed regulations.

17 NAC 1, Public Use Airport/Heliport Licensing

- During an extensive review of all NDOT regulations, it was determined that this regulation would benefit from a revision pertaining to heliports. This includes removing the regulation language for private-use heliports, as the Division's statutory authority to register private-use heliports is questionable.

410 NAC 7, The Accommodation of Mailboxes and Newspaper Delivery Boxes and Support Posts on Highway Rights-Of-Way

- NDOT is transferring this regulation to Title 412 due to a change in ownership within the agency. Because of this action, NDOT is required by law to repeal the chapter and re-adopt the regulation as a new chapter within the new title.

412 NAC 2, The Accommodation of Mailboxes and Newspaper Delivery Boxes and Support Posts on Highway Rights-Of-Way

- NDOT is re-adopting this regulation after repealing it from 410 NAC 7 and updating it to reflect current best practices. These practices include both State and Federal changes that have been implemented since the regulation last received a substantive revision.

414 NAC 1, Nebraska Scenic Byways Program

- NDOT is updating this regulation, originally adopted in 1996, to remove portions of the rule which are no longer applicable.

428 NAC 3, Instruction Manual for Annual Reporting of One- and Six-Year Plans for Highway, Road and Street Improvements

- NDOT is proposing to repeal this regulation in its entirety. The regulation is no longer necessary due to NDOT- and Board-sponsored legislation (LB 82) passed in 2019 by the Legislature. The Legislation requires local political subdivisions to certify to the NBCS their compliance with the law rather than submit the one- and six-year plans to the NBCS for NBCS staff to review. Because of this change in law, 428 NAC 3 is obsolete and unnecessary.

428 NAC 3, Instruction Manual for Standardized System of Annual Reporting Road, Street, and Highway Programs as adopted by the Board of Public Roads Classifications and Standards and approved by the Auditor of Public Accounts

- NDOT is proposing to repeal this regulation in its entirety. The regulation is no longer necessary due to NDOT- and Board-sponsored legislation (LB 82) passed in 2019 by the Legislature. The Legislation requires local political subdivisions to certify to the NBCS their compliance with the law rather than submit the SSAR report to the NBCS for NBCS staff to review. Because of this change in law, 428 NAC 3 is obsolete and unnecessary.

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 (October 31, 2020). Pre- and post-hearing comments should be directed in writing to NDOT's External Affairs Manager, Sarah Soula, PO 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 amendments to the regulations or to comment online, visit: <https://www.nebraska.gov/nesos/rules-and-regs/regtrack/index.cgi> ("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; voice telephone (402) 479-4324; TDD telephone (402) 479-3834; fax (402) 479-3758; erich.strack@nebraska.gov. To view or pick up copies in person: 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 October 14, 2020. Notification should be submitted to Sarah Soula (see contact information above).

This notice is provided pursuant to the Administrative Procedure Act.

RULE & REGULATION PRELIMINARY FISCAL IMPACT STATEMENT

AGENCY:	Nebraska Department of Transportation		
TITLE:	412	PREPARED BY:	Erich Strack
CHAPTER:	2	DATE PREPARED:	August 20, 2020
SUBJECT:	The Accommodation of Mailboxes and Newspaper Delivery Boxes and Support Posts on Highway Rights-Of-Way	TELEPHONE:	402-479-4324

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 412, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 2

NEBRASKA DEPARTMENT OF TRANSPORTATION
ROADWAY DESIGN DIVISION

RULES AND REGULATIONS CONCERNING
THE ACCOMMODATION OF MAILBOXES AND NEWSPAPER DELIVERY BOXES
AND SUPPORT POSTS ON HIGHWAY RIGHTS-OF-WAY

TITLE 412 – NEBRASKA DEPARTMENT OF TRANSPORTATION – ROADWAY DESIGN DIVISION

Chapter 2 – The Accommodation of Mailboxes and Newspaper Delivery Boxes and Support Posts on Highway Rights-Of-Way

Table of Contents

001 General..... 1

 001.01__ Lawful Use - The placement, use, and maintenance of a Mailbox shall be considered a necessary and proper use of state highway property..... 1

 001.02__ Applicability..... 1

 001.03 Mailbox Removal..... 1

 001.04__ Statement of Intent..... 2

002 Definitions 3

 002.01__ Department: 3

 002.02__ Mailbox:..... 3

 002.03__ Mailbox Owner:..... 3

 002.04__ Mailbox Receptacle:..... 3

 002.05__ Mailbox Support:..... 3

 002.06__ Mailbox Attachment Device: 3

 002.07__ Mailbox Turnout:..... 3

 002.08__ Traveled Way:..... 3

 002.09__ Urban Area Location:..... 3

003 Mailbox Receptacle..... 4

 003.01__ Material Provision:..... 4

 003.02__ Dimensions Standards:..... 4

 003.03__ Mailbox Owner Responsibility:..... 4

 003.04__ Mailbox Decorations or Attachments:..... 4

004 Mailbox Support..... 5

 004.01__ Material and Dimension Provision: 5

005 Mailbox Support Installation, Mailbox Receptacle Height, and Maximum Number and Grouping of Supports and Mailboxes..... 5

 005.01__ Mailbox Support Guidance..... 5

 005.02__ Mailbox Receptacle Height Guidance:..... 5

 005.03__ Spacing of Mailboxes and Supports 5

 005.04__ Maximum Number of Mailboxes 5

006 Mailbox Attachment Device 5

007 Lateral Distance to Mailbox Support..... 5

TITLE 412 – NEBRASKA DEPARTMENT OF TRANSPORTATION – ROADWAY DESIGN DIVISION

Chapter 2 – The Accommodation of Mailboxes and Newspaper Delivery Boxes and Support Posts on Highway Rights-Of-Way (Continued)

007.01 Rural Locations:.....	5
007.02 Urban Area Locations:.....	7
007.03 Construction Tolerances:.....	7
008 Longitudinal Location of New Mailboxes Near Intersecting Public Roads or Private Driveways	7
008.01 General.....	8
009 Mailbox Turnouts	8
010 Urban Area Locations	8
010.01 Effective Date	8
010.02 Curbed Highway Segments.....	8
010.03 Non-Curbed Highway Segments	8
010.04 Urban Segments.....	8

TITLE 412 – NEBRASKA DEPARTMENT OF TRANSPORTATION – ROADWAY DESIGN DIVISION

Chapter 2 – The Accommodation of Mailboxes and Newspaper Delivery Boxes and Support Posts on Highway Rights-Of-Way

001 General

001.01 Lawful Use - The placement, use, and maintenance of a Mailbox shall be considered a necessary and proper use of state highway property.

001.02 Applicability

001.02A These rules and regulations only apply to the installation of new Mailboxes on state highways completed after the effective date of the 2020 revisions of these rules and regulations.

001.02B Mailboxes existing on the date of the 2020 revisions will be allowed to remain in place so long as they were in substantial compliance with the rule and regulation in effect when such Mailbox was first installed.

001.02C The following will not be considered a new Mailbox installation:

001.02C1 Replacement of a Mailbox Receptacle or the addition of another Mailbox Receptacle on the same Mailbox Support;

001.02C2 Replacement or addition of a newspaper delivery box;

001.02C3 Repair or maintenance of any part of the Mailbox;

001.02C4 Resetting a pre-existing conforming Mailbox Support at the approximate location of the pre-existing Mailbox;

001.02C5 Replacement of a non-conforming Mailbox Support with a conforming Mailbox Support at the approximate location of the pre-existing Mailbox;

001.02C6 Replacement of a Mailbox Support with a conforming multiple Mailbox Support;_____

001.02C7 Installation of a new Mailbox next to an existing Mailbox or row of Mailboxes;

001.02C8 Other similar minor repairs, maintenance, adjustments and alterations of an existing Mailbox.

001.03 Mailbox Removal: The Department is authorized, but not required, to remove a Mailbox located on highway property under the following circumstances:

001.03A When the Mailbox does not conform to the version of these rules and regulations in effect prior to the 2020 rule revisions.

TITLE 412 – NEBRASKA DEPARTMENT OF TRANSPORTATION – ROADWAY DESIGN DIVISION

Chapter 2 – The Accommodation of Mailboxes and Newspaper Delivery Boxes and Support Posts on Highway Rights-Of-Way (Continued)

001.03B When the Department is constructing or completing a highway project in any instance when the Department determines such Mailbox should be removed.

001.03C When a new mailbox has been installed after the effective date of the 2020 rule revisions when such new Mailbox does not meet the requirements of these revised rules.

001.03D The Department, in its sole discretion, retains the right to remove one or more mailboxes and reinstall them at a conforming location when the Department has given notice to the Mailbox Owner that the mailbox needs to be removed and reinstalled in conformance with these rules and the mailbox owner has failed to remove it within a reasonable time.

001.04 Statement of Intent

001.04A These regulations are intended to promote general uniformity for the installation of Mailboxes. The standards set out below are based on multiple considerations including, but not limited to, uniformity, the efficiency of mail delivery and retrieval, and the overall operation of the highway facility.

001.04B However, because of the inherent imprecision of installation and measurement, the strict application of the dimensions set out in these standards to a particular installation may be inappropriate. Measurements may vary as a result of the measurement method used and the inherent discretion required in selecting the appropriate beginning and end points of the feature being measured. Further, the dimensions set forth below are intended to identify the typical Mailbox installation. Precise compliance with the typical Mailbox installation provisions does not necessarily enhance the efficiency of mail delivery and retrieval, grandfathering of existing mailbox installations that conformed to the prior version of these rules or the overall safety of the highway facility.

001.04C Absent bad faith, a failure to meet these provisions should not be viewed as improper, as a violation of these provisions, or as evidence of negligence, in and of itself. Therefore, these rules should not be interpreted as requiring strict compliance at each location because such precision was not intended.

001.04D This statement of intent is not intended to limit or affect any remedy available to the Department by law.

TITLE 412 – NEBRASKA DEPARTMENT OF TRANSPORTATION – ROADWAY DESIGN DIVISION

Chapter 2 – The Accommodation of Mailboxes and Newspaper Delivery Boxes and Support Posts on Highway Rights-Of-Way (Continued)

001.05 The Department is authorized, but is not required, when completing a highway construction or maintenance project, to remove and relocate Mailboxes to the extent deemed appropriate by the Department, as a part of such project.

001.06 Interstate Highways and Freeways: Mailboxes will not be allowed on a any highway included as part of the National System of Interstate and Defense Highways, or b any Department designated freeway.

002 Definitions

002.01 Department: The Nebraska Department of Transportation, and its employees and representatives.

002.02 Mailbox: A structure conforming to these rules placed along a highway for use by the United States Postal Service (USPS) to deliver mail to a Mailbox Owner. Unless the context otherwise requires, a Mailbox includes the following components: Mailbox Receptacle, Mailbox Support, and Mailbox Attachment Device.

002.03 Mailbox Owner: The postal customer, whether a person, persons or an entity, to whom mail is delivered to a specific Mailbox by the USPS.

002.04 Mailbox Receptacle: The enclosed part of a Mailbox where mail is placed as a part of the delivery and retrieval of mail.

002.05 Mailbox Support: A post or other approved support device affixed to the ground and connecting to the Mailbox Attachment Device.

002.06 Mailbox Attachment Device: The hardware or device used to attach a Mailbox Receptacle to the Mailbox Support.

002.07 Mailbox Turnout: The area outside the Traveled Way, including when applicable the surfaced highway shoulder, provided for use by a vehicle delivering or collecting mail from a Mailbox.

002.08 Traveled Way: The traveled way, or traffic lane, is the portion of the roadway for the movement of vehicles exclusive of shoulders and Mailbox Turnouts. The outside edge of the traveled way, as used in this rule and regulation, may not be located at the same place as the painted white line along the outside edge of the Traveled Way.

002.09 Urban Area Location: A low speed posted 45 miles per hour and lower only urban segment of a state highway. An Urban Area Location is usually in or near the corporate limits of a city or village and typically includes residential, commercial or industrial development fronting along one or both sides of the highway. The speed limit

TITLE 412 – NEBRASKA DEPARTMENT OF TRANSPORTATION – ROADWAY DESIGN DIVISION

Chapter 2 – The Accommodation of Mailboxes and Newspaper Delivery Boxes and Support Posts on Highway Rights-Of-Way (Continued)

of the Urban Area Location is usually lower than the speed limit of the adjoining rural segment of such highway.

003 Mailbox Receptacle

003.01 Material Provision: The Mailbox Receptacle shall be constructed of light weight sheet metal or durable thin gauge plastic, and should also conform to any applicable non-contradictory dimension or material requirements of the U.S. Postal Service.

003.01a Locking Mechanism: A Mailbox Receptacle may include a light weight locking mechanism so long as the Mailbox Receptacle meets the material and dimension standards set out in Section 003.

003.02 Dimensions Standards:

003.02a Mailbox: The dimensions of the Mailbox Receptacle should be no greater than the following: width - 11 inches; height - 14 inches; and depth - 25 inches. If the Mailbox Receptacle includes an integrated newspaper delivery box, the same dimensions apply except the height of the combined box should be no greater than approximately 25 inches.

003.02b Newspaper Delivery Box: A Newspaper Delivery Box may be placed on a Mailbox Support or integrated with a Mailbox Receptacle in accordance with these rules. A separate Newspaper Delivery Box shall be of light weight sheet metal or durable thin gauge plastic construction of maximum dimensions not to exceed the following: width - 8 inches; height 8 inches and depth - 21 inches.

003.03 Mailbox Owner Responsibility: The Mailbox Owner is solely responsible for the Mailbox Receptacle and newspaper delivery box, including but not limited to providing, installing, securing, inspecting, replacing, adjusting, repairing, using and maintaining the Mailbox Receptacle and any separate or attached Newspaper Delivery Box.

003.04 Mailbox Decorations or Attachments: The Mailbox Owner should not place or allow the placement of attachments or decorations on the Mailbox Receptacle or Mailbox Support in a way that:

003.04A materially obstructs the visibility of vehicles entering or exiting the highway,

003.04B Adds material weight, or

003.04C Would cause the Mailbox to significantly exceed the maximum Mailbox dimensions set out above.

TITLE 412 – NEBRASKA DEPARTMENT OF TRANSPORTATION – ROADWAY DESIGN DIVISION

Chapter 2 – The Accommodation of Mailboxes and Newspaper Delivery Boxes and Support Posts on Highway Rights-Of-Way (Continued)

004 Mailbox Support

004.01 Material and Dimension Provision: State will provide a mailbox support to be used on State highways. Mailbox supports will be supplied by State upon request. A Mailbox Support provided by the State shall be deemed to be conforming to these rules. The Mailbox Owner will be solely responsible for injury, damage, cost and liability arising out of any modifications to the State-provided Mailbox Support.

004.02 A cantilever or swing-away Mailbox Support may be installed with prior approval of the Nebraska Department of Transportation.

005 Mailbox Support Installation, Mailbox Receptacle Height, and Maximum Number and Grouping of Supports and Mailboxes

005.01 Mailbox Support Guidance: The Mailbox Support should be installed at a depth sufficient to adequately secure the Mailbox Support in the ground. The Mailbox Support may be installed in concrete, no higher than ground level, when site conditions include concrete or other hard surfacing at the location where the Mailbox Support is to be installed.

005.02 Mailbox Receptacle Height Guidance: The Mailbox Owner is responsible for meeting any applicable Mailbox Receptacle height requirements of the United States Postal Service. The height to the bottom of the Mailbox Receptacle should be approximately between 39 and 48 inches above ground level, subject to installation tolerances and specific site conditions.

005.03 Spacing of Mailboxes and Supports: The space between Mailbox Supports should be approximately equivalent to the height 005.02 of the respective Mailbox Supports.

005.04 Maximum Number of Mailboxes: There should be no more than a group of ten Mailbox Receptacles at any new Mailbox location at a driveway or intersection.

006 Mailbox Attachment Device - State will provide a Mailbox Attachment Device to be used on State highways. Mailbox Attachment Devices will be supplied by State upon request. A Mailbox Attachment Device provided by the State shall be deemed to be conforming to these rules. The Mailbox Receptacle should be firmly attached to the Mailbox Support, using the Mailbox Attachment Device. Any separate Newspaper Delivery Box should be properly attached to the Mailbox Support. The Mailbox Owner is responsible for installing, inspecting, repairing, replacing and tightening these connections when necessary.

007 Lateral Distance to Mailbox Support

007.01 Rural Locations:

TITLE 412 – NEBRASKA DEPARTMENT OF TRANSPORTATION – ROADWAY DESIGN DIVISION

Chapter 2 – The Accommodation of Mailboxes and Newspaper Delivery Boxes and Support Posts on Highway Rights-Of-Way (Continued)

007.01A Highway with a Non-Surfaced Shoulder: When installing a new Mailbox on a highway with a non-surfaced shoulder, a Mailbox Owner should install the Mailbox Support no closer than approximately seven feet from the outside edge of the pavement surfacing, or at the outside of the edge of the non-surfaced shoulder, whichever is further from the highway centerline (See Figure 1). For highways that include an eight-foot non-surfaced shoulder at the new Mailbox location, the Mailbox Support should be installed one foot outside of the non-surfaced shoulder (See Figure 2). For gravel surfaced state highways, the Mailbox should be placed one foot outside of the shoulder (See Figure 3).

Figure 1

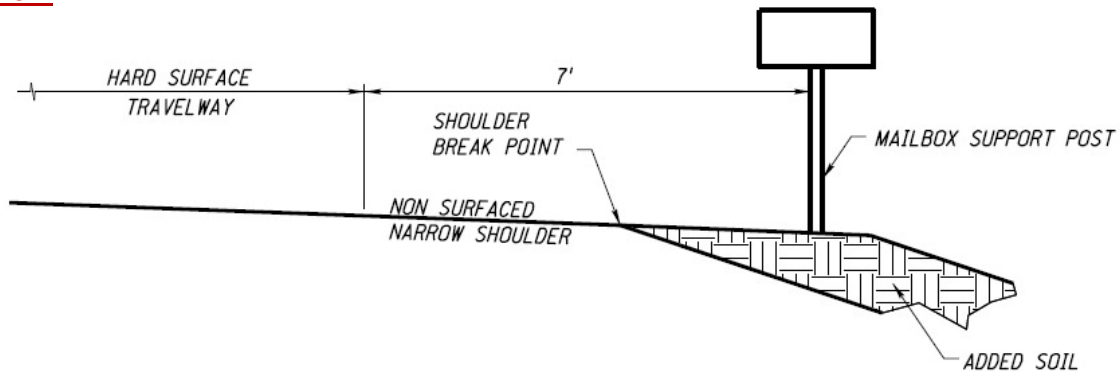


Figure 2

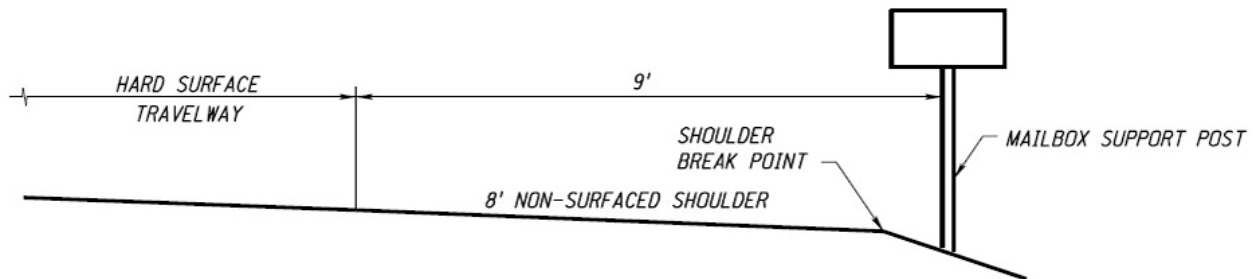
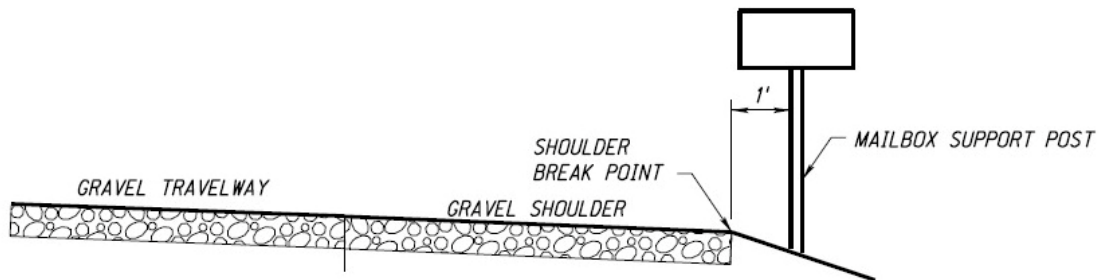


Figure 3

TITLE 412 – NEBRASKA DEPARTMENT OF TRANSPORTATION – ROADWAY DESIGN DIVISION

Chapter 2 – The Accommodation of Mailboxes and Newspaper Delivery Boxes and Support Posts on Highway Rights-Of-Way (Continued)



007.01B Highway with a Surfaced Shoulder: When installing a new Mailbox on a highway with a surfaced shoulder, a Mailbox Owner should install the Mailbox Support no closer than approximately five feet from the outside edge of the surfaced shoulder, however, the placement location need not exceed approximately twenty-one feet from the inside edge of the outside lane.

007.01C A Mailbox Owner need not meet the lateral location provisions of i or ii above for a new Mailbox when a Mailbox Owner is installing a Mailbox next to an existing Mailbox or a series of Mailboxes.

007.01D In the event that a new Mailbox installation does not meet the dimensions set out above but the approximate distance from the outside edge of the traveled lane to the face of the Mailbox exceeds six feet, such installation shall not be considered nonconforming.

007.02 Urban Area Locations: When installing a new Mailbox on a highway in an Urban Area Location, the Mailbox Owner should install the Mailbox Support a within approximately six inches behind the highway curb at a location where a curb is present or b one foot outside of the existing shoulder, whichever is applicable.

007.03 Construction Tolerances: The measurement of features along the roadside environment cannot be completed with the accuracy that may be implied from these Mailbox lateral location provisions because of Mailbox installation methods, highway paint striping operations, and inconsistency in measurement methods. Absent bad faith, a nominal failure to meet these standards should not be viewed as improper, as a violation of these standards, or as evidence of negligence, in and of itself. These standards should not be interpreted as requiring strict compliance at any particular Mailbox location because such precision was not intended.

008 Longitudinal Location of New Mailboxes Near Intersecting Public Roads or Private Driveways

TITLE 412 – NEBRASKA DEPARTMENT OF TRANSPORTATION – ROADWAY DESIGN DIVISION

Chapter 2 – The Accommodation of Mailboxes and Newspaper Delivery Boxes and Support Posts on Highway Rights-Of-Way (Continued)

008.01 General - There are no requirements for the longitudinal location of either existing or new mailboxes under this rule and regulation. ¹

009 Mailbox Turnouts

Mailbox Turnouts should be hard surfaced or when approved by the Department in advance, may be surfaced with millings, crushed rock, crushed concrete, gravel, or other similar materials.

010 Urban Area Locations

010.01 Effective Date: The Urban Area Location provisions of this section apply to any Mailbox installed at a new location after the effective date of the 2020 revisions of this Regulation.

010.02 Curbed Highway Segments: A Mailbox in an Urban Area Location that meets the requirements of Sections 003, 004, 005, 006 and 008 of these Rules and Regulations may be installed or placed so that the front face of the Mailbox Receptacle is no closer than approximately six 6 inches behind the roadside face of the curb on any highway segment that includes a highway curb at or outside of the outside edge of the Traveled Way.

010.03 Non-Curbed Highway Segments: A Mailbox in an Urban Area Location that meets the requirements of Sections 003, 004, 005 and 006 of these Rules and Regulations may be installed or placed so that the front of the Mailbox Receptacle is no closer than approximately six 6 inches behind the outside edge of the highway pavement for non-curbed segments.

010.04 Urban Segments: For Urban segments Area Locations with speeds above 45 miles per hour, there should be a minimum six foot hard-surfaced shoulder or an eight foot Mailbox Turnout.

¹ Section 008 is the result of a detailed review and decision based on existing law, existing highway conditions, the Roadside Design Guide suggestions, the AASHTO Green Book, other States' provisions, costs, engineering judgment, mail delivery and pickup considerations, and operational performance information. It is the judgment of the drafters that based on a consideration of all current information, having no express longitudinal location provisions is in the overall best interest of the Department, the State of Nebraska, Nebraska citizens and the traveling public. Motorists must recognize and meet their duty to use reasonable care to protect themselves and others when in the vicinity of mailboxes including while mail is being delivered or picked-up along the State Highway System.

TITLE 412 – NEBRASKA DEPARTMENT OF TRANSPORTATION – ROADWAY DESIGN DIVISION

Chapter 2 – The Accommodation of Mailboxes and Newspaper Delivery Boxes and Support Posts on Highway Rights-Of-Way (Continued)

ANNOTATION

Title 412
Chapter 2

Enabling Legislation
§39-699
Neb. Rev. Stat.