

NEBRASKA ADMINISTRATIVE CODE

TITLE 184 - NEBRASKA DEPARTMENT OF HEALTH

CHAPTER 3 - RULES OF PRACTICE AND PROCEDURE OF THE DEPARTMENT OF HEALTH FOR  
PETITIONS FOR PROMULGATION, AMENDMENT, OR REPEAL OF REGULATIONS

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## CHAPTER 3 - RULES OF PRACTICE AND PROCEDURE OF THE DEPARTMENT OF HEALTH FOR PETITIONS FOR PROMULGATION, AMENDMENT, OR REPEAL OF REGULATIONS

001 SCOPE. These rules and regulations govern the form to be used in petitioning the Department to promulgate, amend or repeal regulations

002 DEFINITIONS. As used in these regulations the following definitions shall apply:

002.01 Argument means the oral or written statement of the petitioner 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.

002.02 Department means the Department of Health.

002.03 Director means the Director of Health.

002.04 Person means individuals, partnerships, any bodies politic, and corporations, either profit or non-profit.

002.05 Petitioner means the person filing a petition for promulgation or amendment or repeal of rules or regulations.

002.06 Rule or Regulation means any rule, regulation, or standard issued by the Department certified and filed with the Secretary of State of the State of Nebraska under the Nebraska Administrative Procedure Act, Neb. Rev. Stat. §84-901 et seq.

003 PETITIONS GENERALLY

003.01 Purpose. The petition process provides a means by which persons may request that the Department examine the propriety of issuing new regulations or amending or repealing existing regulations.

003.02 Subjects for Petitions.

003.02A A petition to amend or repeal a rule or regulation may be requested only on the applicability of existing statutes and rules and regulations.

003.02B A petition may not be requested to obtain a declaration by the Department that a statute or regulation is unconstitutional, or that a regulation of the Department is invalid.

003.02C A petition to amend or to issue new rules or regulations is appropriate only when the subject matter concerns something that the Department has authority to regulate.

003.03 Who May File. Any person may petition the Department to promulgate, amend or repeal rules or regulations. See, 002.04. The sole parties to a petition proceeding shall be the petitioner and the Department.

003.04 When A Ruling May Be Requested. A petition may be filed at any time, except that when a petition has been declined or a rulemaking proceeding initiated, a subsequent petition covering substantially the same subject matter will not be considered by the Department for a period of one hundred eighty (180) calendar days from the date of denial or initiation of rulemaking.

004 PETITION - FORM AND GENERAL FILING REQUIREMENTS

004.01 Request. A petition must meet the requirements of subsections 004.02 and 004.03 of this section.

004.02 Form.

004.02A Pleading. A petition shall be in the form of a pleading which shall contain:

004.02A1 A caption, which shall include:

004.02A1a The venue: BEFORE THE DEPARTMENT OF HEALTH, STATE OF NEBRASKA;

004.02A1b A heading specifying the subject matter of the petition; and

004.02A1c The name of the pleading, e.g., PETITION FOR AMENDMENT OF RULES AND REGULATIONS.

004.02A2 The statements required in 004.03 below.

004.02A3 The signature of the petitioner or, when represented by an attorney, the signature of the attorney.

004.02A4 The name and address of the petitioner, and when represented by an attorney, the name, address, telephone number, and bar number of the attorney.

004.02B Size and Paper. Petitions shall be made on white, letter-sized (8 1/2" x 11") paper of standard weight.

004.02C Print. Petitions shall be legibly typewritten, photostatically reproduced, printed, or handwritten. If handwritten, they must be written in ink. Only one side of a page shall contain any writing.

004.02D Attachments. Any documents attached to a petition shall be securely fastened to the pleading and shall meet the requirements of 004.02B and 004.02C for paper and print. When possible, attachments shall be on 8 1/2" x 11" paper or placed in an 8 1/2" x 11" envelope and clearly marked as an attachment to the petition.

004.03 Content. To be considered, a petition must meet the following requirements for content and substance.

004.03A Statement of Claim. The petition must:

004.03B1 Identify the statutes providing a basis for the proposed action and identify the existing regulation if amendment or repeal of a regulation is proposed;

004.03B2 State the substance of or proposed wording for any amendment or new regulation;

004.03B3 State the reason(s) why the regulation should be promulgated, amended, or repealed, including, but not limited to, the facts surrounding the need for the proposed action and how the proposed action will address or resolve the situation presented.

004.03C Argument. The petition shall state whether petitioner requests opportunity for oral or written argument on the petition.

004.03D Exhibits. Any documents pertinent to the petition that the petitioner wishes to be considered in making a ruling must be attached to the petition.

004.04 Sample Petition. A petitioner may use sample forms of petition approved by the Department, copies of which are attached as Attachments A, B and C to these regulations and made a part of these regulations by reference. A petitioner may also prepare his or her own petition, so long as it is a reasonable facsimile in form and meets the requirements of subsections 004.02 and 004.03.

004.05 Filing. A petition shall be filed in the office of the Director. Filing may be accomplished by personal delivery or by mail. Filings will be received during regular office hours of the Department. Office hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding state holidays. The mailing address for the Department is Department of Health, Third Floor, 301 Centennial Mall South, Lincoln, Nebraska 68509.

004.06 Number of Copies. In addition to the original petition, two (2) copies shall be delivered to the Department for Department use.

004.07 Reception of Petition. The Department shall stamp all petitions and other filings relating to the petition as "RECEIVED" and with the date of filing. Filings received after regular office hours shall be stamped as received the following work day.



004.08 Request for Receipt. Request may be made for a receipt for any filing made. Request may be made by letter or verbally. The request must be accompanied by an extra copy of the document for stamping and return, and if return is to be by mail, a stamped, self-addressed envelope.

004.09 Brief. A petitioner may submit a written argument, or brief, in support of the petition at time of filing without leave of the Department. The Department may grant opportunity to submit a brief after filing upon application of the petitioner. If granted, the petitioner shall submit the brief according to the date set by the Department. A brief must meet the requirements of 004.02 in form.

## 005 CONSIDERATION AND DISPOSITION OF PETITIONS

005.01 Process Generally. Upon the filing of the petition the Director will designate him/herself or a Department representative to make the final decision on the petition. The Director may also assign an employee or hearing officer to consider the petition and recommend a decision to the Director.

005.01A Upon the filing of a petition, the Department may, in its discretion do one or more of the following:

005.01A1 Require that additional information be submitted before the petition will be considered.

005.01A2 Schedule a date, time and location at which the petitioner may make an oral presentation on the petition before a ruling is made.

005.01A3 Consider the petition and other materials submitted without oral presentation.

005.01B In disposing of a petition, the Department may:

005.01B1 Deny the petition;

005.01B2 Initiate rulemaking proceedings; or

005.01B3 If otherwise lawful, adopt a rule or regulation.

005.02 By Whom Made. The Director or a Department representative may render a decision on the petition. Either may call upon staff of the Department to provide technical or legal advice as needed to make a determination.

005.03 Additional Information. If, upon review of the petition, additional information is determined by the Department to be needed to consider the petition, the Department shall notify the petitioner of the nature of the information to be submitted. The request may be made in writing or verbally, but if made verbally, must be reduced to writing and signed by the person making the request. The request shall be made within ten (10) days of the date of filing of the petition. The petitioner shall have five (5) days from the verbal request or date of mailing of the request, whichever applies, in which to submit the requested information. The information must be given in writing and be signed by the petitioner. The request and response will be made part of the official record of the proceeding.

005.04 Oral Presentation (Argument), When. Oral argument shall be had only on specific order of the Department. Request may be made in the petition. The Department may grant oral argument if it determines argument would be helpful to its consideration of the petition. If opportunity for oral argument is granted, argument shall be scheduled to be held not more than thirty (30) days after filing of the petition. Petitioner, or, when represented, petitioner's attorney, shall be served with a notice of the date, time and place for oral argument not less than five (5) days in advance of the scheduled date. Service shall be made by certified mail, return receipt requested.

005.05 Oral Presentation, Procedure. Oral presentation will be made before the representative of the Department authorized to render a decision or before a hearing officer designated by the Director.

005.05A The Department representative or hearing officer shall:

005.05A1 Identify the proceeding and introduce himself or herself;

005.05A2 Ask the petitioner or petitioner's representative to identify himself/herself for the record;

005.05A3 Hear the argument of the petitioner; and

005.05A4 Close the proceedings.

005.05B The Department representative or hearing officer conducting the proceeding may ask questions during or after petitioner's presentation.

005.05C Oral presentation shall not exceed forty-five (45) minutes in duration unless additional time is granted by the Department representative or hearing officer.

005.05D The petitioner may make oral presentation on his or her own behalf or be represented by an attorney.

005.05E A court reporter may be present to record the presentation.

005.06 Decision, When. The Department shall act on a petition within sixty (60) days.

005.07 Decision, Form. The decision will be made in the form of a pleading as set forth in 004.02.

005.08 Decision, Content. The decision may consist of a direction to initiate rulemaking proceedings or a total or partial denial. The decision shall contain the reasons for the ruling.