

NEBRASKA ADMINISTRATIVE CODE

TITLE 272-NEBRASKA STATE PATROL

LAST ISSUE DATE: October 3, 1989

Chapter 5 SCOPE AND DEFINITIONS

001 These Regulations shall apply to the manufacture ownership, possession, storage, sale or gift, transportation, handling, and use of explosives and blasting agents.

002 These Regulations shall not apply to:

002.01 Explosive materials while being transported in conformity with Federal Law or Regulations, nor except as may be otherwise provided in this Act, to the ownership, possession, storage, use, transportation, purchase, or sale of explosive materials by the Armed Forces of the United States, the National Guard, other reserve components of the Armed Forces of the United States.

002.02 Common, Contract, and Private carriers transporting explosive materials in the lawful, ordinary course of business. Common carriers by air, highway, railway, or water transporting explosive materials into this State or within the boundaries of this State, and contract or private carriers by motor vehicle transporting explosive materials into this State or within the boundaries of this State, and which contract or private carriers are engaged in such business pursuant to certificate or permit by whatever name issued to them by any Federal or State officer, agency, bureau, commission or department and operating within the Regulations prescribed by such Federal or State officer, agency, bureau, commission, or department shall be excepted. All transportation of explosive materials subject to the effects of these Regulations shall be in conformity with such safety regulations as contained in these Regulations.

002.03 The use of explosive materials in medicines and medicinal agents in forms prescribed by the official United States Pharmacopoeia, or the National Formulary.

002.04 The sale, transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any state or political subdivision thereof.

002.05 Small arms ammunition and components thereof.

002.06 The storage or possession of or dealing in black powder used for recreation purposes by a sportsperson.

002.07 The storage or possession of or dealing in smokeless propellants, percussion caps, primers, and other components used by a sportsperson in the reloading of small arms ammunition.

002.08 The possession of bona fide war trophies capable of exploding and innocently found explosive materials possessed under circumstances negating an intent to use the same unlawfully, but the owner thereof shall surrender such items forthwith to any nationally certified hazardous device technician or military explosive ordnance expert upon demand by law enforcement officer or fire department.

002.09 The storage in minimum amounts necessary for lawful educational purposes of explosive materials to be used in the natural science laboratories of any state accredited school system.

002.10 The Nebraska State Patrol shall have the power to grant exemption from these rules and regulations upon request in writing, when such request shows that the enforcement of the rules and regulations will cause unnecessary hardship to the petitioner, provided that said request shall not be granted where the requested modification of these rules and regulations will constitute a distinct hazard to life or adjoining property. Such petition shall state full particulars of such exemptions requested and when granted shall be attached to the notification of approval. Copies of the request shall be retained by the Nebraska State Patrol.

003 Definitions.

003.01 "Person" shall mean any individual, firm, co-partnership, corporation, association, joint stock association, and including any trustee, receiver, assignee or personal representative thereof.

003.02 "Business Enterprise" shall mean any corporation, partnership, limited liability company, company, or joint stock company.

003.02 A "Business Premises" shall mean the premises or property on which the explosive materials are manufactured, imported, stored, or distributed and shall include

the premises or property where the records pertaining to the explosives are kept if different than the premises or property where the explosives are received or stored.

003.03 "Explosive Materials" shall mean explosives, blasting agents, and detonators.

003.04 "Explosives" shall mean any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion, including but not limited to dynamite and other high explosives, black powder, pellet powder, initiating explosives, detonators, safety fuses, squibs, detonating cord, igniter cord, and ignitors, and fireworks or devices containing more than one hundred thirty milligrams of explosive composition, but shall not include permissible fireworks as defined in Section 28-1241, Neb. Rev. Stat., gasoline, kerosene, naphtha, turpentine, benzene, acetone, ethyl ether, benzol, fixed ammunition and primers for small arms, safety fuses, or matches.

003.05 "Detonator" shall mean any device containing an initiating or primary explosive that is used for initiating detonation. Excluding ignition or delay charges, a detonator may not contain more than ten grams of explosive material per unit. The term includes, but is not limited to, electric detonators of instantaneous and delay types, detonators for use with safety fuses, detonating cord delay connectors and nonelectric of instantaneous and delay types which consist of detonating cord, shock tube, or any other replacement for electric leg wires.

003.06 "Destructive devices" shall mean:

003.06A Any explosive, incendiary, or poison gas, bomb, grenade, rocket having a propellant charge of more than four ounces, missile having an explosive or incendiary charge of more than one-quarter ounce, mine, booby trap, molotov cocktail, bottle bomb, or vessel or container intentionally caused to rupture or mechanically explode by expanding pressure from any gas, acid, dry ice, or other chemical mixture, or any similar device, the primary or common purpose of which is to explode and to be used as a weapon against any person or property; or

003.06B Any combination of parts either designed or intended for use in converting any device into a destructive device as defined in Section 003.06A and from which a destructive device may be readily assembled. The term destructive device shall not include any device which is neither designed nor redesigned for use as a weapon to be used against persons or property; any device, although originally designed for use as a weapon, which is redesigned for use as signaling, pyrotechnic, line throwing, safety, or

similar device; surplus ordinance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of Section 4684 (2), 4685, or 4686 of Title 10 of the United States Code; or any other device which the Nebraska State Patrol finds is not likely to be used as a weapon or is an antique; or any other device possessed under circumstances negating an intent that the device be used as a weapon against any person or property.

003.07 "Federal Permittee" shall mean any lawful user of explosive material who has obtained a federal user permit under the provisions of Chapter 40, Title 18, United States Code.

003.08 "Federal Licensee" shall mean any importer, manufacturer, or dealer in explosive materials who has obtained a federal importers, manufacturers, or dealers license under the provisions of Chapter 40, Title 18, United State Code.

003.09 "Smokeless Propellants" shall mean solid propellants commonly called smokeless powders in the trade and used in small arms ammunition.

003.10 Classification of explosives as described by the Department of Transportation (DOT) shows all explosives as Class 1 with the divisions as follows:

003.10A "Division 1.1 and Division 1.2" Possessing detonating or otherwise maximum hazard; such as dynamite, nitroglycerin, picric acid, lead azide, fulminate or mercury, black powder, blasting caps, and detonating primers.

003.10B "Division 1.3" Possessing flammable hazard, such as propellant explosives (including some smokeless propellants), photographic flash powders, and some special fireworks.

003.10C "Division 1.4" Includes certain types of manufactured articles which contain Class A or Class B explosives, or both, as components but in restricted quantities.

003.10D "Division 1.5" "Blasting Agent" shall mean material designed for blasting which has been tested in accordance with the requirements of Federal Hazardous Material Regulations, 49 Code of Federal Regulations (C.F.R.) part 173, subpart C (U.S. Department of Transportation) and found to be so insensitive that there is very little probability of accidental initiation or of transition from deflagration to detonation.

Division 1.5 consists of very insensitive explosives. This division is comprised of substances which have mass explosion hazard but are so insensitive that there is very little probability of initiation or transition from burning to detonation under normal conditions of transport.

003.10E "Division 1.6" Consists of extremely insensitive articles which do not have mass explosive hazard. This division is comprised of articles which contain only extremely insensitive detonating substances and which demonstrate a negligible probability of accidental initiation or propagation.

003.10F "Forbidden or Not Acceptable Explosives" shall mean explosives which are forbidden or not acceptable for transportation by common carriers by rail freight, rail express, highway, or water in accordance with the regulations of the DOT.

003.10G Certain chemicals and certain fuel materials may have explosive characteristics which are not specifically classified by the DOT and are not readily classified for coverage in the Code. Authoritative information should be obtained for such unclassified materials and action commensurate with their hazards, location, isolation and safeguards, should be taken.

003.10H No material may be offered for transportation as a blasting agent unless it has been examined, classed, and approved in accordance with 49 C.F.R. (U.S. Department of Transportation).

Note 1: A material containing no ingredients, other than prilled ammonium nitrate and fuel oil (blasting agent), need only be subjected to the cap sensitivity test of 49 Code of Federal Regulations which requires that the materials will not detonate when initiated by a No. 8 test blasting cap.

Note 2: A No. 8 test blasting cap is one containing 0.40 to 0.45 grams of pentaerythrite tetranitrate (PETN) base charge pressed into an aluminum shell with bottom thickness not to exceed 0.03 inch to a specific gravity of not less than 1.4 grams per cubic centimeter and primed with standard weight of primer, in accordance with the manufacturer's specifications. This cap is defined

003.11 "Explosive-Actuated Power Devices" shall mean any tool or special mechanized device

which is actuated by explosives, but not to include propellant-actuated power devices. Examples of explosive-actuated power devices are jet tappers and jet perforators.

003.12 "Highway" shall mean any public street, public alley, or public road.

003.13 "Inhabited Buildings" shall mean a building or structure regularly used in whole or part as a place of human habitation. The term "inhabited building" shall also mean any church, school, store, railway passenger station, airport terminal for passengers, and any other building or structure where people are accustomed to congregate or assemble, but excluding any building or structure occupied in connection with the manufacture, transportation, storage and use of explosives.

003.14 "Magazine" shall mean any building or structure, other than an explosive manufacturing building, approved for the storage of explosives.

003.15 "Motor Vehicle" shall mean any self-propelled vehicle, truck, truck-tractor, semi-trailer, or full trailer used for the transportation of freight over public highways.

003.16 "Propellant-Actuated Power Devices" shall mean any tool or special mechanized device or gas generator system which is actuated by a smokeless propellant or which releases and directs work through a smokeless propellant charge.

003.17 "Public Conveyance" shall mean any railroad car, street, car, ferry, cab, bus, airplane or other vehicle which is carrying passengers for hire.

003.18 "Railway" shall mean any steam, electric, diesel or other railroad or railway which carries passengers for hire.

003.19 "Singular and Plural" words used in the singular number shall include the plural and in the plural the singular.

003.20 "Small Arms Ammunition" shall mean any shotgun, rifle, pistol or revolver cartridge, and cartridge for propellant-actuated power devices and industrial guns. Military-type ammunition containing explosive bursting charges, spotting or pyrotechnic projectiles is excluded from this definition.

003.21 "Small Arms Ammunition Primers" shall mean small percussion-sensitive explosive charges, encased in a cup, used to ignite propellant powder.

003.22. "Smokeless Propellants" are solid propellants, commonly called smokeless powders in the trade, used in small arms ammunition, cannon, rockets, propellant-actuated power devices, and other similar propellants.

003.23 "Special Industrial Explosives Devices" shall mean explosive-actuated power devices and propellant-actuated power devices.

003.24 "Special Industrial Explosives Materials" shall mean shaped materials and sheet forms and various other extrusions, pellets and packages of high explosives, which include dynamite, TNT, PETN, RDX, and other similar compounds used for high-energy-rate forming, expanding and shaping in metal fabrication., and for dismemberment and quick reduction of scrap metal.

003.25 "User" is a person who has qualified to hold a Nebraska State Patrol issued permit to use explosive materials.

003.26 "Factory Building" shall mean any building or other structure (except magazines) containing explosives, in which the manufacture of explosives, or any processing involving explosives is carried on, and any building where explosives are used as a component part or ingredient in the manufacture of any article or device. This definition does not include private residences or shop buildings where the hand loading of small arms ammunition is being carried on.

003.27 "Authorized, Approved., or Approval". The term "authorized", " approved", or "approval" shall mean authorized, approved, or approval by the Nebraska State Patrol.

003.28 "Nebraska State Patrol" shall mean the Nebraska State Patrol Colonel, Lieutenant Colonel, or designated subordinate officers.

003.29 "Operator" means the person, firm, or body corporate in immediate possession and control of any operation where explosives are used or handled.

003.30 "Authority Having Jurisdiction" shall mean the Nebraska State Patrol.

003.31 "Magazine Distance" shall mean the minimum distance permitted between any two storage magazines which is expected to prevent a propagation of an explosion from one magazine to another from blasts.

003.32 "Approved Storage Facility" shall mean a place where explosives are stored consisting of one or more approved magazines, conforming to the requirements of Title 272 and covered by a permit issued by the Nebraska State Patrol.

003.33 "Artificial Barricade" shall mean an man-made mound or revetted wall of earth of a minimum thickness of three feet, or any other approved barricade that offers equivalent protection as defined in the appropriate table for the explosive being stored.

003.34 "Barricade" shall mean the effective screening of a magazine containing explosive materials from other magazines, a building, a railway, or a highway, either by a natural barricade or by artificial barricade. To be properly barricaded, a straight line from the top of any sidewall of the magazine containing explosive materials to the eave line of any other building or magazine, or to a point 12 feet above the center of a railroad, or a highway, will pass through the natural or artificial barricade.

003.35 "Hardwood" shall mean oak, maple, ash, hickory, or similar hard wood, free from knots, spaces, or similar defects. This can be an exterior, construction grade, laminated plywood material that is made from hardwood.

003.36 "Permittee" shall mean any user of explosives for any lawful purpose, who has obtained a permit as required by Title 272.

004 Permit - Application. Application for a permit shall be made to the Nebraska State Patrol on forms prescribed and provided by the Nebraska State Patrol and shall contain such information as the Nebraska State Patrol may require.

004.1 First time applicants shall file along with their application verification that the applicant has filed for a check of his or her criminal history. Applications, fees and instructions may be obtained by contacting the Nebraska State Patrol Headquarters, Lincoln, Nebraska. The applicant shall be fingerprinted and the fingerprints submitted to the Nebraska State Patrol for a criminal history check. These fingerprints may be taken at police or sheriff agencies other than the Nebraska State Patrol. If no disqualifying record is located at the state level, the fingerprints shall be forwarded by the Patrol to the Identification Division of the Federal Bureau

of Investigation for a national criminal history record check.

004.2 The application shall not be issued unless the applicant has demonstrated and certified in writing that he or she is familiar with all published laws of this state and published local ordinances relating to the use of explosive materials applicable at the place or places he or she intends to use such explosive materials.

004.3 The applicant shall have demonstrated that he or she has adequate knowledge, training, and experience in the use of explosive materials of the class and type for which he or she seeks a users permit and has passed a qualifying examination or test, as prescribed by the Nebraska State Patrol, concerning the use of explosive materials and the pertaining laws and the rules and regulations concerning the use of explosives in the State of Nebraska. The applicant shall have a test score of 80% or better on the test to be issued a permit. An applicant who fails this test but has no other disqualifying criteria may retake the test after 7 days unless the waiting period is waived by the Nebraska State Patrol.

005 Permits and Permit Fees. Permits shall be obtained from the Nebraska State Patrol for the following:

005.01 Permits to Store Explosive Materials. This permit authorizes the holder thereof, whether the holder be an individual, A partnership, a company, a corporation, or any other business enterprise, to store explosive materials in the amounts and types designated by the permit. Such storage must be in conformity with the rules and regulations for storage promulgated by the Nebraska State Patrol.

005.02 A Permit for the Purchase of Explosive Materials by a Business Enterprise. This permit authorizes a business enterprise (whether it be a corporation, partnership, association, limited liability company or a company) which is in possession of a storage permit to purchase such explosive materials as it is authorized to store. The permit to purchase explosives which is possessed by a business enterprise which is not in possession of a storage permit authorizes such permittee to purchase explosive materials for such blasting operations as may legitimately occur to that business enterprise; provided, however, that the explosives purchased and provided further, that upon any purchase of the explosives, the business enterprise have at least one employee possessing a valid use permit issued under this section.

005.03 A Permit to Use Explosive Materials. This permit is issued to those individuals who, by their training and special understanding in the use of explosives and the detonation thereof demonstrate to the Nebraska State Patrol that they are competent to handle such explosive

materials, detonate them, and do, in fact, have a legitimate requirement to be engaged in such activities.

005.04 An applicant qualified for any Nebraska State Patrol issued explosive permits as provided in Section 28-1232 Neb. Rev. Statutes shall pay the following fees to the Nebraska State Patrol:

005.04A Storage of Explosives Materials. Fee - \$50 each per year.

005.04B Use of Explosive Materials. Fee - \$10 each per year.

005.04C Purchase of Explosive Materials by a Business Enterprise. Fee - \$10 each per year.

005.04D Storage for Display Fireworks. No permit is required by the Nebraska State Patrol for the temporary storage for display fireworks. Display fireworks are classified as low explosive. Temporary storage is defined as storage for no more than 14 days prior to the scheduled display or use of these special fireworks. Display fireworks are such fireworks as defined in Nebraska Statute 28-1241.

005.04D1 Storage of display fireworks for longer than 14 days shall require explosive use and storage permits from the Nebraska State Patrol.

005.04E2 Display fireworks users shall comply with the rules and regulations of the federal Bureau of Alcohol Tobacco and Firearms (ATF), Nebraska State Fire Marshal or any local authority having jurisdiction.

005.04D3 The regulations for the storage of low explosives require that any such storage facility be fire resistant, weather resistant and theft resistant. Storage in a residence or dwelling is not allowed.

005.04D4 Acceptable for temporary storage of packaged display fireworks received prior to a scheduled display would be any facility approved by the ATF, provided that the facility contains no source of flame i.e., pilot lights or exposed heaters, and is kept locked, or any explosive magazine. Magazines must be located at least 75 feet from any inhabited building, passenger railway or public highway.

005.05 The correct fee must accompany the application for a permit to the Nebraska State Patrol, Lincoln, Nebraska. A check or money order for the fee shall be made payable to the Nebraska State Patrol.

005.06 Permits issued under these regulations shall be dated and numbered and will be valid for dates, calendar year, or period as provided in Section 28-1229 Neb. Rev. Stat., after date of issue, unless sooner revoked or suspended. Application for renewal of permits shall be made to the Nebraska State Patrol on or before November 1, prior to the renewal date of said permit to avoid possible lapse of said permit.

005.07 Where application for an explosives permit is made in the name of a corporation or company, the application shall also include the name of the person who will be responsible for compliance with the provisions of Sections 28-1213 to 28-1239 Neb. Rev. Stat., and any Regulations promulgated thereunder by the Nebraska State Patrol.

006 Permit Restrictions

006.01 No explosive or blasting agent shall be sold, given, or delivered, to any person who does not display a valid permit issued by the Nebraska State Patrol authorizing the storage or use of such explosive materials, or in the case of a business enterprise, a permit to purchase such explosive materials or a federal license or a permit.

006.02 No permit shall be assigned or in any way transferred.

006.03 No permit holder shall manufacture, sell, store, transport, or use explosives or blasting agents except in compliance with the regulations promulgated by the Nebraska State Patrol and as per provisions of Sections 28-1213 to 28-1239 Neb. Rev. Stat.

006.04 No person shall have any explosives or blasting agents in his or her possession or control without a permit required by Section 28-1229 Neb. Rev. Stat. except for authorized exceptions.

006.05 The Nebraska State Patrol shall not issue a permit to store or use explosive materials to any person who:

006.05A Is under twenty-one years of age;

006.05B Has been convicted in any court of a felony;

006.05C Is charged with a felony;

006.05D Is a fugitive from justice;

006.05E Is an unlawful user of marijuana, or any depressant, stimulant, or narcotic drug;

006.05F Has been admitted as a patient or inmate in a public or private institution for the treatment of mental or emotional disease or disorder within (5) years preceding the date of application; or

006.05G Has no reasonable, educational, industrial, commercial, agricultural, recreational, or other legitimate need for a permit to store or use explosive materials. Recreational use shall be defined as the use of explosives for public display.

006.05H Has been convicted in any court of a misdemeanor crime of domestic violence? This includes any misdemeanor conviction involving the use or attempted use of physical force committed by current or former spouse, parent, or guardians of the victim or by a person with the similar relationship with the victim .

006.05I Is subject to a court order restraining the applicant from harassing, stalking, or threatening an intimate partner or child of such partner? An intimate partner shall be defined as the spouse of the person, a former spouse of the person, and individual who is a parent of a child of the person, and individual who cohabits or has cohabited with the person.

006.05J Is an alien illegally in the United States.

006.05K Has violated any provision of Nebraska State Statutes 28-1213 through 28-1239 or of 18 U.S.C. chapter 40 or the rules and regulations of the Nebraska State Patrol;

006.06L Whenever the Nebraska State Patrol denies an application for a permit or the renewal thereof, the Nebraska State Patrol shall, within twenty days of such denial, give notice thereof and the reasons therefor in writing to the applicant,

personally or by mail, to the address given in the application. The notice of denial shall also advise the applicant of his or her right to appeal. Such denial may be appealed to the Nebraska State Patrol within ten business days of receipt of notification of denial.

007 Use of Explosives in Water. It shall be unlawful to explode or cause to be exploded for any purpose any explosive or destructive device in any lake, river, stream, pond, bay, bayou, or other waters of this state without first obtaining from the Game and Parks Commission an order permitting it to be done, except that this shall not apply when, to safeguard public or private property from damage by ice gorges. Nebraska Rev Stat. 37-515.

008 Posting of, Carrying of, and Presentation of Permits.

008.01 Permits to Store. A permit, or copy of the permit, to store shall be posted at each storage site.

008.02 Permit to Use. A person possessing a permit to use explosives shall have that permit on his or her person at any time he or she is engaged in or directing any blasting operation.

008.03 Permit to Purchase by a Business Enterprise. A permit to purchase explosives by a business enterprise shall be kept under lock and key at the business headquarters of the permittee. The permit shall be presented to any dealer or any other person from whom explosives are to be purchased. The actual purchase shall be made by an officer or other person having control of the affairs of the business enterprise or by the licensed user employed by the business enterprise. After the purchase the permit shall be returned to the business enterprise files and kept under lock and key.

Legal Citation: Title 272, Ch. 5, Nebraska State Patrol.

