

NEBRASKA ADMINISTRATIVE CODE

TITLE 250, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 3

NEBRASKA DEPARTMENT OF MOTOR VEHICLES

RULES AND REGULATIONS GOVERNING DEPARTMENT OF MOTOR VEHICLES APPROVAL
OF DRIVER'S SAFETY TRAINING PROGRAMS AS PRETRIAL DIVERSION PURSUANT TO
NEB. REV. STAT. §§ 29-3601 THROUGH 29-3609.

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TITLE 250

Nebraska Department of Motor Vehicles

CHAPTER 3

CHAPTER 3 RULES AND REGULATIONS GOVERNING DEPARTMENT OF MOTOR VEHICLES APPROVAL OF DRIVER'S SAFETY TRAINING PROGRAMS AS PRETRIAL DIVERSION PURSUANT TO NEB. REV. STAT. §§ 29-3601 THROUGH 29-3609.

LAST EFFECTIVE DATE: January 13, 2003.

001 SCOPE. These rules and regulations govern Department of Motor Vehicles approval of driver's safety training programs as pretrial diversion pursuant to Neb. Rev. Stat. §§ 29-3601 through 29-3609. These rules and regulations apply to diversion programs offered to persons charged with minor traffic violations as an alternative to traditional justice proceedings for such minor traffic violations.

002 DEFINITIONS. For the purposes of these rules and regulations:

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

002.02 County attorney means a prosecuting attorney for any county or city authorized to establish pretrial diversion programs pursuant to Neb. Rev. Stat. §§ 29-104 and 29-3602.

002.03 Department means the Nebraska Department of Motor Vehicles.

002.04 Director means the Director of the Nebraska Department of Motor Vehicles or his or her designee.

002.05 Driver's Safety Training Program or program means a pretrial diversion curriculum for minor traffic violations, sometimes referred to as Safety Training Option Programs (STOP).

002.06 Instructor means any person who teaches, conducts classes, gives demonstrations, or supervises instruction of a driver's safety training program.

002.07 Jurisdiction means any county or city authorized to establish pretrial diversion programs pursuant to Neb. Rev. Stat. § 29-3602.

002.08 Minor traffic violation means infractions as provided in Neb. Rev. Stat. § 60-682 but shall not include leaving the scene of an accident, driving under the influence of alcoholic liquor or drugs, reckless driving or willful reckless driving, participating in a speed competition, operating a motor vehicle to avoid arrest, refusing a breath or blood test, driving on a suspended or revoked operator's license, speeding twenty (20) or more miles per hour over the speed limit, operating a motor vehicle without insurance or other financial responsibility in violation of the Motor Vehicle Safety Responsibility Act, any injury accident, or any violation which is classified as a misdemeanor or a felony.

002.09 Plan means the county or city attorney's plan for pretrial diversion as provided in Neb. Rev. Stat. § 39-3606 which includes a driver's safety training program for diversion of minor traffic offenses.

002.10 Provider means any organization (commercial, non-profit, public, or private) that offers a driver's safety training program.

003 REQUIREMENTS FOR A DRIVER'S SAFETY TRAINING PROGRAM CERTIFICATION: APPROVAL, DENIAL, CANCELLATION. A provider shall apply to the Department of Motor Vehicles in writing for approval of a driver's safety training program for diversion of minor traffic violations. Failure to provide the required information shall be grounds for denial of the application. The application form for program approval is found as *Attachment 1* of these rules and regulations. The application shall contain or be accompanied by all of the following information and documentation:

(Who is a provider who needs to apply for program certification? A provider may be any organization that offers a driver's safety training program. For example, a specific jurisdiction, county or city, may be the provider if that jurisdiction develops and offers its own program. The jurisdiction must then apply for certification of the program offered in that specific jurisdiction. If on the other hand, a jurisdiction, contracts with another organization, commercial, private, or non-profit, that organization is the provider that must apply for certification of the program.)

003.01 Curriculum. A written curriculum of driver's safety training designed to educate persons committing minor traffic violations and to deter future violations. The curriculum shall provide for a minimum-eight-hour ~~(8-hour) class, which may include reasonable breaks~~ four hours of instruction time, not including breaks. This subsection shall be effective as provided in Neb. Rev. Stat. § 84-906, five days after the Governor has approved the regulation. Any provider may elect to retain a currently certified eight-hour course until the next certification renewal. Any provider with a certified eight-hour program in any jurisdiction may elect to provide four-hour classes instead of eight-hour classes but shall provide the Department with documentation verifying that the city or county attorney and the applicable governing body of a city or county board as provided in Neb. Rev. Stat. § 29-3602 have approved the change to a four-hour class. Such verification must be provided to the Department not less than five working days before the four-hour class begins. The curriculum shall contain instruction including, but not limited to, the following elements:

003.01A General driver attitude improvement;

003.01B Education on alcohol and drugs and relationship and effect of alcohol or drug use to impaired driving and driving under the influence;

003.01C Occupant restraints systems and safety devices including but not limited to correct use of safety belts, child restraints, booster seats, and airbags;

003.01D Safe driving instruction, which shall include but is not limited to instruction on:

003.01D1 The Nebraska Rules of the Road including but not limited to signs, signals and markings, construction and school zones and other speeding violations, vehicle operating tasks, establishing vehicle position, lane use, parking, traffic flow tasks, and differing driving environments, and awareness of other roadway users.

003.01D2 Human functions during driving including visual scanning, detection/perception, evaluation, risk assessment, decision-making, and motor skills, and factors which affect driver performance.

003.01D3 Various causes and types of traffic accidents and crashes and methods to avoid involvement in traffic accidents and crashes.

003.01D4 Methods to minimize the impact and damage if involved in a traffic accident or crash.

003.01D5 Legal responsibilities of drivers and vehicle owners if involved in a traffic accident or crash and Financial Responsibility law for motor vehicles.

003.01D6 Information concerning the driving privilege and legal status of a driver's license.

003.02 Successful Completion Standard. The application shall include a description of standards or measurements used to determine the success or failure of persons who attend the program, an example of instruments used to make such determination, and any other standards, if any, which must be met by an individual to successfully complete the program. An attendee must score at least eighty percent (80%) on a test instrument in order to have successfully completed the program.

003.03 Uniform Fee. An application for certification of a program shall provide the following information with regard to the fee paid by an individual for participation in a program. A jurisdiction shall charge a uniform fee for participation in a driver's safety training program regardless of the traffic violation for which the applicant (individual taking the class) was cited. The fee shall be composed of the following elements:

003.03A Provider's Fee. A provider's application for certification shall state the uniform fee to be paid by the applicant for diversion of the minor traffic violation that is reasonable and appropriate to defray the provider's cost of the presentation of the program. The provider's fee may include any costs reasonable and appropriate to defray the provider's cost of presentation of the program. The application shall include an itemized breakdown of the provider's fee including cost germane to the specific program, and which adhere to

generally accepted accounting principles; and;

003.03B Fees Charged by Jurisdiction. In addition the application shall state the fee charged by a jurisdiction for an individual's participation in the program. An application for program approval shall contain an itemized breakdown of all costs necessary to present the program, which may include costs germane to the specific program in the jurisdiction and which adhere to generally accepted accounting principles. (See 004 of these regulations.)

(Fees charged by the jurisdiction may include but are not limited to such items as court costs, or other costs necessary for the jurisdiction's operation of a plan for diversion of minor traffic offenses.)

003.03C Fees Received by Jurisdiction. If the jurisdiction utilizes fees received from offering a program to pay for the costs of administering and operating such program, to promote driver safety, and to pay for the costs of administering and operating other safety and educational programs within the jurisdiction, the application shall state how such fees are utilized. An application for program approval shall contain an itemized breakdown of all costs necessary to present the program/s, which may include costs germane to the specific program and which adhere to generally accepted accounting principles. (See 004 of these regulations.)

(If the jurisdiction does not utilize the fees received to promote driver safety and pay for the costs of administering and operating other safety and educational programs, the applicant for certification does not need to provide an itemized breakdown of how such fees are utilized.)

003.04 Record Maintenance and Transmittal. The application shall include a description of the method and an example of all records, which will be kept by the provider of individuals that attend a program in the jurisdiction for which the provider seeks approval.

003.04A The application for approval shall include an explanation and description of the method the provider will employ to ensure that no individual takes any approved course more than once in any three-year (3-year) period in Nebraska from the date of citation for which the individual previously attended a program to defer a minor traffic violation.

003.04B The application for approval shall include the plan the provider will follow to ensure that no attendee who holds a commercial driver's license is allowed to participate in a program if such participation would be in non-compliance with federal law or regulation and subject the state to possible loss of federal funds.

003.04C The application shall include a description and example of the provider's plan for sharing records of individuals taking the provider's program in the jurisdiction with other similar programs. Such information shall be accessible to providers of all similar programs in other jurisdictions in Nebraska. Such information shall be electronically transmitted and available to providers of other similar programs in Nebraska within twenty-four (24) hours from an individual's registration for a provider's program.

003.05 Instructors. The application shall include a list of instructor/s and the instructors' qualifications for certification as required in these regulations.

003.05A The application may have attached application/s for certification of new instructors. If using previously certified instructor/s, the application shall list the instructor/s and the date of certification by the Department.

003.05B The application shall state that if any instructor violates the provisions of these rules and regulations, the provider agrees to remove him or her from the program immediately whenever it comes to the provider's attention and the provider shall notify the Department in writing not more than five (5) days of the provider's discovery of the violation. The Department will revoke the instructor's certification on notice from a provider.

003.06 Location and Contact Individual. The application shall include the physical and mailing address of the provider and shall specify the physical address/s where the classes will be taught. The application shall include the name, address, and phone number for an authorized contact person to respond to any inquiries about the provider's program.

003.07 Signature. The application shall be signed by an authorized representative of the provider, shall give the title of the representative, and shall be a certification that the information provided in and included with the application is true and correct.

003.08 Application Fee. The application shall be accompanied by a fee of fifty dollars (\$50.00). If the fee is paid by check that is returned unfunded, the application shall be denied. The provider shall submit a separate application for each jurisdiction in which it provides a program for diversion of minor traffic offenses.

003.09 Certification, Approval or Denial. The Department shall issue an approval or denial of the application for certification. An approved certification shall expire one (1) year from the date of issuance. If the certification is denied, the application fee shall not be returned. An application shall be denied as provided in these rules and regulations.

003.10 Cancellation. Certification of a program shall be cancelled upon the request of the provider when the program is no longer offered or if the provider fails to renew by the expiration date of certification or by agreement between the provider and the Department. Programs that are cancelled are still subject to the record keeping provisions of 008 of these regulations.

003.11 Display. The provider shall display its certificate and that of any certified instructors, or copies of such certificate/s in a prominent place at all location/s where the program is offered.

003.12 Assumption of Liability and Proof of Insurance. The provider shall agree to assume all liability for any actions related to its program activities, or activities of its instructors related to such program, and maintain insurance for all such activities. The provider shall further agree to hold the State of Nebraska and the Nebraska Department of Motor Vehicles

harmless for any losses or damages which the provider or its instructors may incur for activities related to offering a program. The provider shall provide documentation that it has secured insurance for the certification year to carry out its activities and the activities of its instructors related to the program with the application. In lieu of insurance, a provider may demonstrate that it is self-insured and that it has sufficient resources to meet any and all liability that may arise from the program activities or activities of the instructors related to the program.

004 COUNTY OR CITY ATTORNEY'S PLAN FOR A JURISDICTION. The county attorney, as provided in Neb. Rev. Stat. §§ 29-104 and 29-3604, may establish a pretrial diversion program. The county attorney shall be responsible for the plan required by Neb. Rev. Stat. § 29-3606 for pretrial diversion for minor traffic offenses in a specific jurisdiction.

004.01 A county attorney may select one (1) or more providers to offer a program in a jurisdiction, but any provider selected must be certified by the Department prior to offering a program to any individuals seeking to defer minor traffic offenses. If there are multiple providers selected by the county attorney in a jurisdiction, each provider must charge a uniform fee to all program participants in that jurisdiction. A county attorney who establishes a plan for pretrial diversion of minor traffic offenses in a jurisdiction shall provide an itemized breakdown of fees charged by a jurisdiction and fees received by a jurisdiction (see 003.03 of these regulations for details) to any provider seeking certification of a program, as follows:

004.01A An itemized breakdown of fees charged by the jurisdiction shall contain all costs necessary to the presentation of the program, which may include costs germane to the specific program and which adhere to generally accepted accounting principles.

004.01B An itemized breakdown of any fees received by the jurisdiction utilized to pay for the costs of administering and operating the program, to promote driver safety, and to pay for the costs of administering and operating other safety and educational programs within such jurisdiction, which may include costs germane to the specific program and which adhere to generally accepted accounting principles. This section only applies to jurisdictions which utilize fees received to promote driver safety or pay for other safety and educational programs.

004.02 Neb. Rev. Stat. § 29-3602 requires concurrence of the governing body of the jurisdiction. The county attorney shall be responsible for securing the concurrence of the governing body of the jurisdiction to establish a plan for diversion of minor traffic offenses.

005 ANNUAL RENEWAL. An approved certification shall expire one (1) year from the date of issuance. The provider shall apply annually for renewal of the certification by the Department as provided in this section. The application for renewal shall be accompanied by a fee of fifty dollars (\$50.00). If the fee is paid by check that is returned unfunded, the application shall be denied. A provider shall apply for renewal of the certification sixty (60) days before the expiration date of the previous year's certification. Failure to timely renew the certification shall be grounds for cancellation of the certification. Programs that are not renewed are still subject to the record keeping provisions of 008 of these regulations.

006 INSTRUCTOR CERTIFICATION; REQUIREMENTS FOR INSTRUCTORS; APPROVAL:

CANCELLATION.

006.01 Application. An application for instructor certification shall include the following information about the applicant. The application form appears as *Attachment 2* to these rules and regulations and may be accompanied by additional documents. The written application may be submitted by an individual or as part of a provider's application for certification of a program. The application shall require the name, home address, date of birth, and driver's license number of the applicant. The applicant shall:

006.01A be at least twenty-one (21) years of age; and

006.01B be of good moral character; and,

006.01C have a valid driver's license and shall:

006.01C1 have held a valid driver's license for at least two (2) years preceding the date of application; and,

006.01C2 within the last five (5) years, have no violations on his or her driving record for which five (5) or more points might be assessed as set out in Neb. Rev. Stat. § 60-4,182 or equivalent from another jurisdiction. The driving record must not have any violations for DWI or any alcohol related or drug offense, or occupant restraint or motorcycle helmet violation within the last five (5) years; and,

006.01C3 have no suspensions or revocations on his or her driving record within the last five (5) years unless the applicant provides suitable evidence that there is a mistake or error on the record.

006.01D have a high school diploma or its equivalent; and

006.01E provide description or summary of the applicant's training and/or work experience that qualifies the applicant to be an instructor. Acceptable training may include successful completion of a nationally recognized instructor development program.

006.02 Approval. If an application for instructor certification is approved the Department shall issue a certificate which shall be non-expiring so long as the certified instructor remains in compliance with these regulations.

006.03 Cancellation. An instructor's certification may be cancelled upon the instructor's request or by agreement of the instructor and the Department.

006.04 Immediate Disclosure. The application shall state that the applicant for instructor certification agrees to notify the provider immediately if he or she receives any citation or conviction for violation of any motor vehicle related law of this state or any other jurisdiction.

006.05 Non-resident of Nebraska. If the applicant for instructor certification is not a resident of Nebraska, the application for instructor certification shall include a separate notarized

waiver signed by the applicant for instructor certification document, which waives the instructor's privacy and will allow another jurisdiction to transmit the applicant's driver license record to the State of Nebraska.

006.06 Signature. The application for instructor certification shall be signed by the person who is applying for instructor certification.

007 PROVIDER'S RESPONSIBILITY TO NOTIFY THE DEPARTMENT. Each provider shall notify the Department, in writing, within the specified period of any of the following:

007.01 Name Change. Any change in the provider's authorized contact person or the provider's name, legal status, or address shall be provided to the Department in writing ten (10) days prior to its occurrence.

007.02 Instructor Change. Any addition or deletion of a certified instructor or changes in his or her driving status within ten (10) days of the date of occurrence. The provider shall notify the Department of any change in an instructor's driving status or any conviction for violation of a motor vehicle law of this state or any other jurisdiction received by any instructor the next working day, whenever it comes to the attention of the provider.

007.03 Program Closure. If a program ceases to operate, the provider shall notify the Department ten (10) days prior to the date operation ceases. The provider shall arrange for retention of program records as required by the regulations and shall notify the Department of those arrangements and how the department's inspectors or auditors may gain access to such records.

007.04 Insurance Cancellation or Change. If the provider's insurance for program activities is cancelled or altered by the insurer, or if the provider changes insurance carriers, the provider shall notify the Department within ten (10) working days.

007.05 Curriculum Change. If there is any change in the curriculum, or locations of the program, the provider shall notify the Department not less than ten (10) days prior to the change.

008 REQUIRED RECORD KEEPING AND TRANSMISSION OF RECORDS. Each certified provider shall keep the following records at the authorized contact person location. These records shall be open to inspection by the Department's auditors. Such records shall be maintained for a period of not less than three (3) years from the date of the individual's attendance at a program in the jurisdiction for individual's records and three (3) years from the date of annual certification for other program records. Such records may be computerized but required certificates and copies of final examinations shall be readily accessible or stored in a digitized format.

008.01 List of Instructors. All instructors who have taught or are teaching certified programs, and a copy of the driving record abstract of each instructor updated annually.

008.02 Instructor Certification. Copy of the certification of each instructor teaching and who has taught certified programs for the provider.

008.03 Attendance Records. Record of every individual who has attended the provider's program, including the name, address, date of birth, and driver's license number of individuals who successfully completed the program and individuals who did not, and the time and place of the individual's attendance of the program, the charge sought to be diverted, and a record of the result of a final examination or equivalent for each attendee.

008.04 Curriculum Approval. Copy of the current curriculum for the program and copy of the Department's certification.

008.05 Insurance. Documentation of the provider's current insurance for program related activities, and instructors' program related activities.

008.06 Records of attendees at driver's safety training programs shall not be considered public records as defined in Neb. Rev. Stat. § 84-712.01.

008.07 Transmission of Attendance Records. Other than transmission of attendance records as required by these rules and regulations and compliance with audits, providers shall strive to keep individual records confidential.

008.07A A provider shall keep documentation of each transmission of a report of each attendee at the provider's programs to all other similar programs in the state designed to ensure that no individual takes an approved program course more than once within any three-year (3-year) period in Nebraska.

008.07B The records listed in 008.03 shall be transmitted electronically and made available to all other providers in the State of Nebraska through a data base which shall be established by the various providers in the State of Nebraska. The data base developed by the providers shall be approved by the Department, and shall be easily accessible to all certified providers.

009 INSPECTIONS.

009.01 Audits and Inspections. The Department may conduct random inspections and audits of the provider's approved program at the location of the provider's program and/or the location of the provider's authorized contact person. A provider shall upon demand produce all records, instructional aides, and facilities to the Department's auditors that are necessary to the inspection and audit. The Department will provide three (3) working days notice for an audit.

009.02 Results. The Department shall prepare written report of the results of each inspection and audit. A copy of the report shall be provided to the program provider.

010 PROHIBITED PRACTICES. Under any circumstances, a provider shall not:

010.01 Allow any individual to attend a driver's safety training program, if the individual holds a commercial driver's license as provided in the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) as amended by the Motor Carrier Safety Improvement Act of 1999 (MCSIA), and federal regulations issued pursuant to such acts found in 49 CFR Parts 350, 383, 384 and

390.

(49 CFR § 384.226 Prohibition on masking convictions. The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.)

010.02 Allow any individual to attend a driver's safety training program, if the individual seeks to divert any offense other than a minor traffic offense as defined in these rules and regulations.

010.03 Allow any individual to attend a driver's safety training program without first checking the provider's own records and the records of other providers in Nebraska to determine if the individual has previously attended a driver's safety training program within a three-year (3-year) period prior to the date of the driver's citation for which the driver previously attended a program. The provider shall not allow the individual to attend if he or she has previously attended a driver's safety training program within the three-year (3-year) period.

010.04 A provider shall not conduct any diversion programs for minor traffic violations outside of programs approved by these rules and regulations and shall report any unapproved programs to the Department immediately.

010.05 Violations shall be reported to the Attorney General of the State of Nebraska.

011 DENIALS, REFUSAL TO RENEW, OR REVOCATION OF CERTIFICATION OF A DRIVER'S SAFETY TRAINING PROGRAM. Whenever it comes to the attention of the Department that the provider is not in compliance with these regulations, the Department will deny certification or renewal, or revoke a program's certification for any of the following:

011.01 Engaging in or attempting to engage in administration of a program without a certificate;

011.02 Fraud, forgery, or misrepresentation in an application;

011.03 Failure to provide notice to the Department as required by these rules and regulations;

011.04 Failure to permit on-site inspections or audits or produce records as required by these rules and regulations;

011.05 Failure to pay the fee as required by these rules and regulations;

011.06 Failure at any time to comply with the Motor Vehicle Operator's License Act or the rules and regulations adopted and promulgated by the Department under that Act;

011.07 Lack of business stability;

011.08 Corruption, bribery, fraud, forgery, or falsification of any documents relating to the school, program attendees, instructors, test score sheets;

011.09 Employing an instructor who has a conviction for driving a motor vehicle under the influence within the previous five (5) years of the date of application;

011.10 Employing an instructor who has a suspended or revoked driver's license within the previous five (5) years of the date of application, or who has a five-point (5-point) or more driving violation, or who does not meet the requirements of 006 of these regulations;

011.11 Failure to share records of program attendees with other approved providers in a timely fashion as required by 008 and 003.05;

011.12 Allowing any individual to attend an approved program more than once in a three-year (3-year) period in Nebraska;

011.13 Failure to provide certified instructors;

011.14 Discontinuation of a certified program in a specific jurisdiction by a jurisdiction's county attorney and/or decision not to end a program in that jurisdiction, and/ or a decision by the governing body of a jurisdiction to withdraw its concurrence;

011.15 Allowing an individual holding a commercial driver's license to participate in a program in violation of federal law as provided in Neb. Rev. Stat. § 29-3608;

011.16 Allowing any individual to attend a program for violation other than minor traffic violations as defined in Neb. Rev. Stat. § 29-3605; or

011.17 Good cause shown.

012 DENIAL, REFUSAL TO RENEW, OR REVOCATION OF CERTIFICATION OF AN INSTRUCTOR'S CERTIFICATE. Whenever it comes to the attention of the Department that an instructor is not in compliance with these regulations, the Department will deny certification or renewal, or revoke an instructor's certification for any of the following:

012.01 No longer meets the requirements for certification;

012.02 Has an accumulation of five (5) or more points as provided in Neb. Rev. Stat. § 60-4,182 within the last five (5) years;

012.03 Has any convictions for violations for DWI, or for any drug or alcohol related offense, or for occupant restraint, or for motorcycle helmet violation within the last five (5) years;

012.04 Has engaged in corruption, bribery, fraud, forgery or falsification of driver's safety training program records of any kind;

012.05 Has knowingly allowed a driver to attend an approved program more than once in a

three-year (3-year) period in Nebraska;

012.06 Has knowingly allowed a driver holding a commercial driver's license to participate in a program in violation of federal law; or

012.07 Good cause shown.

013 APPEAL.

013.01 Notice. Instructors or providers shall be notified of any denial, refusal to renew, or revocation in writing.

013.02 Request for Hearing. Upon written notice of revocation, or denial of issuance of a new or renewed certificate, the provider or instructor may request a hearing. A request for hearing shall be in writing and must be postmarked or received by the Department within thirty (30) days of the date of issuance of the written notice.

013.03 Stay. Upon receipt of a written request for stay and good cause shown by the provider or instructor, the Director may, at his or her discretion, stay an administrative order denying, or revoking the certificate of any provider or instructor pending completion of an investigation or administrative hearing on the matter.

013.04 Administrative Procedures Act. Hearings shall conform to the Administrative Procedures Act.

014 NOTICE; HEARING REQUEST; PROCEDURE.

014.01 Notice. Upon revocation or denial of the issuance of a new or a renewal of certificate, the Director of the Department shall notify such provider or instructor in writing.

014.01A Address. Written notice shall be sent by certified mail to the party's last-known address as shown in the records of the Department; and

014.01B Request for Hearing. The notice shall state that the party may request a hearing by submitting a written request for a hearing to the Department which must be postmarked or received within thirty (30) days of the date of issuance of the notice.

014.02 Notice of Date of Hearing. Upon receipt of a written request for a hearing, the Director will set a hearing date at a time and location designated by the Director, and notify the party. Written notice of the hearing shall be sent by certified mail, to the party's last-known address as shown in the records of the Department at least fifteen (15) days prior to the hearing.

014.03 Pleadings. Pleading shall include any written document filed in a proceeding before the agency, including the request for hearing. Any pleading shall contain a heading specifying the name of the agency and the title or nature of the pleading, shall state material factual allegations and shall state concisely the action the agency is being requested to take. The pleading shall contain the name and address of the petitioner and shall be signed by the party

filing the pleading, or when represented by an attorney, the signature of that attorney.

014.03A Attorneys shall also include their address, telephone number and bar number.

014.03B The initial petition or request for hearing shall also contain the name and address of the person or entity requesting the hearing.

014.03C All pleadings shall be made on letter sized (8 1/2 x 11 inches) white paper, and shall be legibly typewritten, photo statically reproduced, printed or handwritten. If handwritten, the pleading must be in ink.

014.03D All pleadings shall be filed with the Department at 301 Centennial Mall South, 1st Floor, in Lincoln, Nebraska, during regular business hours, or by mail to the Legal Division, Department of Motor Vehicles, P.O. 94789, Lincoln, NE 68509, or by facsimile transmission to the Department. Any filing which arrives outside of the normal business hours of the Department shall be deemed received the next business day.

014.04 Parties to a Hearing. The parties to a hearing shall be the Department and the person or entity notified of impending denial of certification or renewal, or revocation.

014.05 Hearing Officer. The hearing shall be conducted by the Director or his or her designated hearing officer, who will open the proceedings; enter into the record the notice of hearing; rule on the admissibility of exhibits, take appearances, act on pleadings not previously filed; hear evidence as provided for in these rules and regulations, rule on motions and objections, issue subpoenas, order briefs; cross-examine any witnesses and close the proceedings. Hearing officers shall provide a recommended order to the Director.

014.06 Continuances. Continuances may be granted at the discretion of the Director for good cause shown, or on his or her own motion. A party may request a continuance in the following manner:

014.06A Any party who desires a continuance shall file a written request with the Department stating in detail the reasons why such continuance is necessary.

014.06B Requests for continuance shall be received by the Department no later than five (5) days prior to hearing.

014.07 Official Record. The Department shall prepare an official record in all hearings in the form of a tape recording. If a court reporter is provided for the hearing, the court reporter's record shall be the official record of the hearing. A court reporter will not be provided except as provided in 013.11 of these regulations the Administrative Procedure Act, Neb. Rev. Stat. § 24-914.

014.08 Representation by Counsel. Either party may be represented at the hearing by counsel admitted to the practice of law in the State of Nebraska.

014.09 Summary Revocation. The Department may summarily revoke the certificate of a program or instructor, provided that the Department finds that the public safety requires

emergency action and incorporates in its written notice of revocation, findings to that effect.

014.10 Teleconference Hearings. The hearing officer may conduct the hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and if technically feasible, to see the entire proceeding while it is taking place.

014.11 Informal Disposition. Informal disposition may also be made of any contested case by stipulation, or agreed settlement, consent order, or default.

014.12 Reinstatement of Certification. The Director may summarily reinstate the certificate of a provider or of an instructor if the provider or instructor provides proof of compliance with these rules and regulations.

015 INTERVENTION.

015.01 Petitions for Intervention. Petitions for Intervention must comply with the following requirements:

015.01A Form. The petition must:

015.01A1 be in a legible form showing the caption, Before the Director of the Department of Motor Vehicles, and entitled as Petition for Intervention;

015.01A2 specify intervenor's legal rights, duties, privileges, immunities, or other legal interests justifying their participation in any proceeding in which intervention is sought;

015.01A3 state the names of the interested parties likely to be affected by the intervenor's petition;

015.01A4 state sufficient facts upon which the Director or hearing officer can rely to render a well-reasoned decision; and

015.01A5 be subscribed by the intervenor or by a duly authorized officer of the intervenor, if the intervenor is a corporation, organization, other legal entity, or the attorney for the intervenor. The petition must include the attorney's name, bar number, address and telephone number.

015.01B Filing Petition. The petition must be filed with the Department, with copies of the Petition for Intervention received by all parties named in the notice of hearing, at least five (5) days before a hearing.

015.01C Consideration of a Petition. Petitions for Intervention will ordinarily be considered solely on the face of the petition and without hearing.

015.02 Mandatory Vs. Discretionary Intervention. There shall be mandatory and discretionary intervention as set forth below:

015.02A **Mandatory Intervention.** The Director shall grant a Petition for Intervention if all of the following occurs:

015.02A1 The petition is submitted in writing to the Director, with copies mailed to all parties named in the notice of the hearing, at least five (5) days before the hearing;

015.02A2 The petition states facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under the provision of law; and

015.02A3 The Director or hearing officer determines that the interest of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

015.02B **Discretionary Intervention.** The Director or hearing officer may grant a Petition for Intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

015.03 **Conditions and Privileges of Intervention.**

015.03A **Conditions.** When granting a Petition for Intervention, the Director or hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time intervention is allowed, or at any subsequent time. Conditions may include: Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition; limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and requiring two (2) or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in a proceeding.

015.03B **Privileges.** Unless the order granting a Petition for Intervention limits an intervenor's participation with condition, intervenors will be permitted to participate in any proceeding as if they were an original party.

015.04 **Orders.** The Director or hearing officer shall issue an order granting or denying each pending Petition for Intervention at least twenty-four (24) hours before a hearing. The order shall specify any conditions imposed on the intervenor's participation, and shall state the reasons for the decision. The Director or hearing officer may modify an order granting or denying a Petition for Intervention at any time, and the order of modification shall state the reasons for modification.

015.05 **Appeal.** Appeals of any order granting, denying, or modifying a Petition for Intervention or imposing limitations on an intervenor by condition shall be made in accordance with the Administrative Procedure Act.

016 EVIDENCE.

016.01 Admissible Evidence. Any evidence shall be deemed admissible in a hearing that would be admissible in civil proceedings under the laws of the State of Nebraska. In addition, the hearing officer may, within his or her discretion, admit evidence possessing probative value in any form commonly accepted by reasonably prudent men in the conduct of their affairs.

016.01A Secondary Evidence. Pursuant to the foregoing provision, secondary evidence or copies of documents may be admitted.

016.01B Privileged Evidence. In all such hearings, effect shall be given to the rules of privilege recognized by the District Courts of the State of Nebraska.

016.01C Incompetent or Irrelevant Evidence; Exceptions. Incompetent, irrelevant, cumulative, or immaterial evidence may be excluded. Where proper objection is made to the admission of any evidence, the party making the objection shall be deemed to have taken exception to any adverse ruling and formal exceptions are not necessary.

016.02 Records of Department. Records and documents in the possession of the Department may be received in evidence in the form in which the same are kept, and without certification. The records and documents shall be afforded in evidence and made a part of the record in the case.

016.03 Cross-examination. Each party shall have a right of cross-examination of all witnesses who testify.

016.04 Official Notice. In the conduct of a hearing, the hearing officer may take official notice of such facts as would be so noticed by the District Courts of Nebraska, and may take notice of general technical or scientific facts within the specialized knowledge of the Department and Rules and Regulations promulgated by agencies of the State of Nebraska.

016.04A Notice of Technical or Scientific Facts. Parties to the proceedings shall be notified before or during the hearing of specialized technical or scientific facts to be so noticed, and opportunity afforded to contest such noticed facts.

016.05 Informal Hearings/Rules of Evidence. Hearings shall be conducted informally unless a party makes a written request that the rules of evidence be applied in the conduct of the hearing. The written request for the application of the rules of evidence shall comply with Neb. Rev. Stat. § 84-914 and shall be received by the Department at least three (3) days before the holding of the hearing. In its request the party requesting the rules of evidence shall agree to be liable for payment of the costs incurred thereby, including the cost of a court reporting service which the requesting party shall procure for the hearing.

017 CALCULATION OF TIME. In computing time, days will be computed by excluding the day of the act or event and including the last day of the period. If the last day of the period falls on a Saturday, Sunday, or State holiday, the period shall include the next working day. If documents are faxed to the Department outside of business hours, the date of receipt shall be the next business

day.

018 DECISIONS AND FINAL ORDERS.

018.01 Written Order Required, Contents. Where a decision or order is rendered by the Director adverse to any party in the proceedings, the order shall be in writing or set forth in the record, and accompanied by findings of fact and conclusions of law.

018.02 Decision and Transmittal. The Director's order shall be delivered to the party requesting the hearing by certified mail at the last known address of the party in the records of the Department. A copy will be sent to his or her attorney of record.

019 APPEALS AFTER HEARING. Any party aggrieved by a final decision or order of the Director, made pursuant to these rules and the applicable statute, may appeal such decision or order in the manner provided in the Administrative Procedure Act for contested cases as provided in Neb. Rev. Stat. § 84-917.

020 CONTINUATION OF PRETRIAL DIVERSION PROGRAMS IN EXISTENCE ON DECEMBER 31, 2002. If a jurisdiction has a pretrial diversion program for minor traffic offenses in existence on December 31, 2002, such program may continue in operation until June 30, 2003. Not later than March 15, 2003, any provider who has a pretrial diversion program for minor traffic offenses in existence in any jurisdiction in this state shall submit an application for certification of a program to the Department consistent with these rules and regulations for every jurisdiction in which the provider intends to offer a program. Any provider continuing to operate a program in any jurisdiction pursuant to this section who does not submit an application for certification consistent with these rules and regulations by March 15, 2003 shall cease operation after March 15, 2003.

Attachments 1 and 2

APPLICATION FOR PROGRAM CERTIFICATION APPROVAL

Failure to provide all the required information shall be grounds for denial of the application.

See reverse side for a complete list of ALL information and documentation required to be provided in and included with this application form.

Please print or type all information provided.

NAME OF PROVIDER: _____
 INITIAL Certification JURISDICTION: _____ DATE: _____
 RENEWAL Certification NOTE: If seeking certification for a program in more than one jurisdiction, provide a separate application for each jurisdiction.

- Curriculum.** Accompanies this application. The curriculum must include ALL of the elements listed on the reverse side under Item 1.
- Successful Completion Standard.** Standards or measurements as described under Item 2 on the reverse side accompany this application.
- Uniform Fee.** a) **Provider's Fee (uniform fee):** \$ _____ (itemized breakdown of the provider's fee as required in Item 3a accompanies this application); b) **Fees Charged by Jurisdiction:** Itemized breakdown of ALL costs accompanies this application; and c) **Fees Received by Jurisdiction:** Itemized breakdown of ALL costs accompanies this application.
 YES NO "Fees Received by Jurisdiction" is/is not used to support other safety or educational programs.
- Record Maintenance and Transmittal.** Accompanies this application as required under Item 4 on the reverse side.
- Instructors.** **New Instructors:** Application for Instructor Certification Application form/s accompany this application. **Previously Certified Instructor/s:** Complete information below, or a list with this information accompanies this application.

NOTE: If any instructor violates the provisions of Title 250 NAC 3, the provider agrees to remove him or her from the program immediately whenever it comes to the provider's attention and the provider shall notify the Department of Motor Vehicles writing in not more than five (5) days. The Department will revoke the instructor's certification on notice from a provider.

Previously Certified Instructor's Name

DMV Certification Date

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

- Location and Contact Individual.** Physical address/s where the classes will be taught accompanies this application.

Provider's Name and Physical Address:

Provider's Name and Mailing Address:

_____	_____
_____	_____
_____	_____

Name and Address of Authorized Contact Person (to respond to any inquiries about the provider's program):

7. Signature. I, _____
Signature of Authorized Representative of Provider

_____, certify that the
Title of Authorized Representative of Provider

information provided in and included with the application is true and correct. I agree as Authorized Representative of the Provider to assume all liability for any actions related to its program activities, or activities of its instructors related to such program, and maintain insurance for all such activities. I further agree to hold the State of Nebraska and the Nebraska Department of Motor Vehicles harmless for any losses or damages which the provider or its instructors may incur for activities related to offering a program.

- Application Fee.** \$50.00 fee accompanies this application. THE PROVIDER SHALL SUBMIT A SEPARATE APPLICATION FOR EACH JURISDICTION IN WHICH IT PROVIDES A PROGRAM FOR DIVERSION OF MINOR TRAFFIC OFFENSES. NOTE: If the fee is paid by check that is returned unfunded, the application shall be denied.

Check Returned Unfunded; Date: _____

- Certification, Approval or Denial.**

APPROVED (with expiration one year from the issuance date). ISSUANCE DATE: _____

DENIED. If the certification is denied as provided in Title 250 NAC 3, the application fee shall NOT be returned. DENIAL DATE: _____

- Cancellation.** Certification of a program shall be cancelled upon the request of the provider when the program is no longer offered or if the provider fails to renew by the expiration date of certification or by agreement between the provider and the Department of Motor Vehicles. CANCELLATION DATE: _____

- Display.** The provider shall display its certificate and that of any certified instructors, or copies of such certificate/s in a prominent place at all location/s where the program is offered.

- Assumption of Liability and Proof of Insurance.** Documentation that insurance has been secured for the certification year to carry out activities and the activities of your instructors related to the program accompanies this application. In lieu of insurance, demonstrate that you are self-insured and have sufficient resources to meet any and all liability that may arise from the program activities or activities of the instructors related to the program accompany this application.

Please return this form and ALL required documentation to:

Department of Motor Vehicles

NOTE: The application on the reverse side shall contain or be accompanied by ALL of the following required information and documentation.

1. **Curriculum.** A written curriculum of driver's safety training (*minimum four eight-hour class*) designed to educate persons committing minor traffic violations and to deter future violations which shall contain instruction including, but not limited to, the following elements:
 - a. general driver attitude improvement;
 - b. education on alcohol and drugs and relationship and effect of alcohol or drug use to impaired driving and driving under the influence;
 - c. occupant restraints systems and safety devices including but not limited to correct use of safety belts, child restraints, booster seats and airbags;
 - d. safe driving instruction which shall include but is not limited to:
 - 1) instruction on the Nebraska Rules of the Road (*include: signs, signals and markings, construction and school zones and other speeding violations, vehicle operating tasks, establishing vehicle position, lane use, parking, traffic flow tasks, and differing driving environments, and awareness of other roadway users*);
 - 2) human functions during driving (*include: visual scanning, detection/perception, evaluation, risk assessment, decision-making and motor skills, and factors which affect driver performance*);
 - 3) various causes and types of traffic accidents and crashes and methods to avoid involvement in traffic accidents and crashes;
 - 4) methods to minimize the impact and damage if involved in a traffic accident or crash;
 - 5) legal responsibilities of drivers and vehicle owners if involved in a traffic accident or crash and Financial Responsibility law for motor vehicles; and
 - 6) information concerning the driving privilege and legal status of a driver's license.
2. **Successful Completion Standard.** Describe standards or measurements used to determine the success or failure of persons who attend the program, an example of instruments used to make such determination, and any other standards, if any, which must be met by an individual to successfully complete the program. *An attendee must score at least eighty percent (80%) on a test instrument in order to have successfully completed the program.*
3. **Uniform Fee.** An application for certification of a program shall provide the following information with regard to the fee paid by an individual for participation in a program. A jurisdiction shall charge a uniform fee for participation in a driver's safety training program regardless of the traffic violation for which the applicant (individual taking the class) was cited. The fee shall be composed of the following elements:
 - a. **Provider's Fee.** A provider's application for certification shall state the uniform fee to be paid by the applicant for diversion of the minor traffic violation that is reasonable and appropriate to defray the provider's cost of the presentation of the program. The provider's fee may include any costs reasonable and appropriate to defray the provider's cost of presentation of the program. The application shall include an itemized breakdown of the provider's fee including cost germane to the specific program, and which adhere to generally accepted accounting principles; and;
 - b. **Fees Charged by Jurisdiction.** In addition the application shall state the fee charged by a jurisdiction for an individual's participation in the program. An application for program approval shall contain an itemized breakdown of ALL costs necessary to present the program, which may include costs germane to the specific program in the jurisdiction and which adhere to generally accepted accounting principles.
 - c. **Fees Received by Jurisdiction.** If the jurisdiction utilizes fees received from offering a program to pay for the costs of administering and operating such program, to promote driver safety, and to pay for the costs of administering and operating other safety and educational programs with the jurisdiction, the application shall state how such fees are utilized. An application for program approval shall contain an itemized breakdown of all costs necessary to present the program, which may include costs germane to the specific program and which adhere to generally accepted accounting principles.
4. **Record Maintenance and Transmittal.** The application shall include a description of the method and an example of all records which will be kept by the provider of individuals that attend a program in the jurisdiction for which the provider seeks approval.
 - a. The application for approval shall include an explanation and description of the method the provider will employ to ensure that no individual takes any approved course more than once in any three-year (3-year) period in Nebraska from the date of citation for which the individual previously attended a program to defer a minor traffic violation.
 - b. The application for approval shall include the plan the provider will follow to ensure that no attendee who holds a commercial driver's license is allowed to participate in a program if such participation would be in non-compliance with federal law or regulation and subject the state to possible loss of federal funds.
 - c. The application shall include a description and example of the provider's plan for sharing records of individuals taking the provider's program in the jurisdiction with other similar programs. Such information shall be accessible to providers of all similar programs in other jurisdictions in Nebraska. Such information shall be electronically transmitted and available to providers of other similar programs in Nebraska within twenty-four (24) hours from the conclusion of an individual attendance at a provider's program.
5. **Instructors.** The application shall include a list of instructor/s and the instructors' qualifications for certification as required in Title 250 NAC 3.
 - a. The application may have attached application/s for certification of new instructors. If using previously certified instructor/s, the application shall list the instructor/s and the date of certification by the Department.
 - b. The application shall state that if any instructor violates the provisions of Title 250 NAC 3, the provider agrees to remove him or her from the program immediately whenever it comes to the provider's attention and the provider shall notify the Department in writing in not more than five (5) days of the provider's discovery of the violation. The Department will revoke the instructor's certification on notice from a provider.
6. **Location and Contact Individual.** The application shall include the physical and mailing address of the provider and shall specify the physical address/s where the classes will be taught. The application shall include the name, address, and phone number for an authorized contact person to respond to any inquiries about the provider's program.
7. **Signature.** The application shall be signed by an authorized representative of the provider, shall give the title of the representative, and shall be a certification that the information provided in and included with the application is true and correct.
8. **Application Fee.** The application shall be accompanied by a fee of fifty dollars (\$50.00). If the fee is paid by check that is returned unfunded, the application shall be denied. The provider shall submit a separate application for each jurisdiction in which it provides a program for diversion of minor traffic offenses.
9. **Certification, Approval or Denial.** The Department shall issue an approval or denial of the application for certification. An approved certification shall expire one (1) year from the date of issuance. If the certification is denied, the application fee shall not be returned. An application shall be denied as provided in Title 250 NAC 3.
10. **Cancellation.** Certification of a program shall be cancelled upon the request of the provider when the program is no longer offered or if the provider fails to renew by the expiration date of certification or by agreement between the provider and the Department of Motor Vehicles. Programs that are cancelled are still subject to the record keeping provisions of 007 in Title 250 NAC 3.
11. **Display.** The provider shall display its certificate and that of any certified instructors, or copies of such certificate/s in a prominent place at all location/s where the program is offered.
12. **Assumption of Liability and Proof of Insurance.** The provider shall agree to assume all liability for any actions related to its program activities, or activities of its instructors related to such program, and maintain insurance for all such activities. The provider shall further agree to hold the State of Nebraska and the Nebraska Department of Motor Vehicles harmless for any losses or damages which the provider or its instructors may incur for activities related to offering a program. The provider shall provide documentation that it has secured insurance for the certification year to carry out its activities and the activities of its instructors related to the program with the application. In lieu of insurance, a provider may demonstrate that it is self-insured and that it has sufficient resources to meet any and all liability that may arise from the program activities or activities of the instructors related to the program.

