

NEBRASKA ADMINISTRATIVE CODE

TITLE 260, NEBRASKA ADMINISTRATIVE CODE, CHAPTERS 1-7

NEBRASKA NATURAL RESOURCES COMMISSION

RULES OF PRACTICE AND PROCEDURE

2012 AMENDMENT

NEBRASKA ADMINISTRATIVE CODE

LAST ISSUE DATE:

TITLE 260 – NEBRASKA NATURAL RESOURCES COMMISSION
RULES OF PRACTICE AND PROCEDURE

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Chapter 1 - GENERAL DEFINITIONS

Unless otherwise specifically defined in any Chapter of this Title, the following definitions apply:

001 Commission. The Nebraska Natural Resources Commission.

002 Department. The Department of Natural Resources.

003 Director. The Director of the Department.

004 Person. An individual, partnership, limited liability company, corporation, association, district, governmental subdivision, agency, or public or private organization of any character.

005 Support Staff. Employees of the Department who are assigned either temporarily or permanently to assist the Commission.

STATUTORY AUTHORITY: Neb. Rev. Stat. § 2-1501; § 61-204

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Chapter 2 - CONDUCT OF PUBLIC HEARINGS

001 Calling Public Hearings. The Commission may at any time on its own motion order any public hearing which the Commission is authorized, either by law or by inherent authority, to conduct and, after giving notice, conduct such hearing in the manner as hereinafter provided.

002 Notice. Notice shall be given of all public hearings held by the Commission. Except as otherwise specified by law, such notice shall be published at least once in a newspaper or newspapers of general circulation in the area or areas which are affected by the business of the hearing, and the publication shall be made at least five (5) days prior to the date of the hearing. The published notice shall contain information as to the date, time, place and purpose of the hearing. When a hearing or series of hearing sessions is for a purpose of statewide interest, notice shall be sufficient if published in a newspaper of general circulation.

003 Presiding Officer or Hearing Officer. The Chair of the Commission or his or her delegate shall serve as presiding officer over the hearing; however, the presiding officer shall, in all cases, be a member of the Commission. The presiding officer may appoint a hearing officer for the purpose of assisting in the conduct of the hearing.

004 Powers of Officer. The presiding officer or hearing officer shall, among other things, open the proceedings; enter into the record the notice given of the hearing; take the appearances; accept and assure that exhibits are properly numbered; answer questions asked or call upon other persons present to answer questions asked; and close the proceedings. The presiding officer and hearing officer have no power, acting alone, to take any action involving a final determination. The record in any hearing shall not be affected by any change of presiding officer or hearing officers during the conduct of that hearing.

005 Oath Not Required. No person shall be required to be sworn or taken an oath prior to presenting any information, which may consist of any oral or written question or statement and any document.

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006 Receipt of Information. Information at a public hearing will ordinarily be received in the following sequence: (1) Commission member and/or support staff; (2) federal agencies; (3) state agencies; (4) political subdivisions; (5) all other persons in the order as the presiding or hearing officer shall in his/her discretion choose. All persons shall be given the opportunity to be heard on matters relevant to the business and purpose of the hearing.

007 Presentation of Information. All persons presenting information at a hearing shall first state their full name and address, and declare whether they are appearing on their own behalf or on behalf of another person or organization, in which case such person or organization represented shall be named.

008 Propriety of Information. All information presented at the hearing is to be directed at the business and purpose of such hearing.

009 Support Staff Information. In addition to statements and other information presented by any other person, the Commission may, through the support staff or otherwise, secure and present such information as it may consider necessary or desirable. Information shall include a copy of notice given for the public hearing and a statement explaining the business and purpose of the hearing.

010 Record Made. A record shall be made of the hearing proceedings with the information presented being a part thereof. Such record may consist of written statements and any other documentary information along with tape recordings of oral statements or such transcripts as deemed necessary by the Commission.

011 Record Held Open. The record of public hearings may be held open at the discretion of the presiding or hearing officer for submission of any information not available or presented at the time of the hearing.

STATUTORY AUTHORITY: Neb. Rev. Stat. § 2-3210; § 84-907

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Chapter 3 - THE OFFICE OF THE NEBRASKA NATURAL RESOURCES COMMISSION

001 Location. The office of the Commission is located in Lincoln, Nebraska, at 301 Centennial Mall South on the 4th floor of the Nebraska State Office Building.

002 Mailing Address. The mailing address of the Commission is:

Nebraska Natural Resources Commission
P.O. Box 94676
Lincoln, Nebraska 68509-4676

003 Official Hours. The official hours of the Commission are from 8:00 A.M. to 5:00 P.M., Monday through Friday, except legal holidays.

STATUTORY AUTHORITY: Neb. Rev. Stat. § 2-1501; §§ 61-204 to 61-206

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Chapter 4 - FILING REQUIREMENTS

The following filing requirements apply unless more specific requirements are stated in statute or within the Commission's Rules.

001 Method. Pleadings, documents and correspondence required to be filed with the Commission shall be properly filed in accordance with these rules when they are:

001.01 Delivered to the office of the Commission. Delivery is defined as:

001.01A Personal delivery by required date; or

001.01B Mailed to and received by the Commission by the required date; or

001.01C Telefaxed to and received by the Commission by the required date, and the original signed document filed in the Commission within five days of the receipt of the telefax; or

001.01D Electronically scanned and electronically mailed to and received by the Commission by the required date, and the original signed document filed in the Commission within five days of the receipt of the electronic mail. Electronic filings shall be sent to DNR.legalfile@Nebraska.gov.

001.01E Accompanied by proper fees. When the filing of a pleading or the performing of an act is required by a certain date which falls during nonofficial hours [as described in Chapter 3 of these rules] the date for filing or performing shall be extended to the next succeeding date which falls within official hours.

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002 Form. Pleadings filed with the Commission shall be in the following form:

002.01 Size and Paper. The pleading shall be made on white, letter-sized (8-1/2 x 11 inch) paper;

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

002.03 Margins. The first page of the pleading shall have a top or bottom margin of not less than 2 inches for the stamp of the Department; and

002.04 Attachment. Any documents attached to a pleading shall be securely fastened to the pleading and shall meet the requirements of 002.01 and 002.02 and, when possible, be reproduced on 8-1/2 x 11 inch paper or placed in an 9 x 12 inch envelope and clearly marked as an attachment to the petition.

002.05 Copies. One copy of all pleadings, documents and correspondence is required unless otherwise ordered by the Commission or Hearing Officer.

STATUTORY AUTHORITY: Neb. Rev. Stat. § 2-1501; § 61-204; § 84-909

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Chapter 5 - PROCEEDINGS

Definitions: The following definitions shall apply:

001 Proceeding shall mean the form and manner of conducting business before the Commission. Types of proceedings include:

001.01 Informal proceeding shall mean any business conducted other than through a formal proceeding.

001.02 Formal proceedings shall include, but not be limited to, business conducted under the provisions of:

001.02A Chapter 6 of these rules, Petitioning for Rulemaking;

001.02B Chapter 7 of these rules, Declaratory Orders;

001.02C Chapter 2 of these rules, Public Hearings;

001.02D Any application or petition filed pursuant to the Commission's jurisdiction.

002 Informal Proceedings. The Commission may accept informal requests for actions by the Commission unless there is a formal proceeding before the Commission on the same matter. The Commission may investigate such requests and depending upon the facts determined, may proceed either in an informal or formal manner, at the discretion of the Commission.

003 Formal Proceedings. The Commission will take formal action on:

003.01 Any application or petition filed pursuant to 001.02.

STATUTORY AUTHORITY: Neb. Rev. Stat. § 2-1501; § 84-909

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Chapter 6 - PETITIONING FOR RULE MAKING

Definitions: Rule Making Petition.

001 Petition. Any person may petition the Commission requesting the promulgation, amendment, or repeal of a rule.

001.01 Form. The petition shall:

001.02 Be clearly designated as a petition for a rules change;

001.02A In the case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety;

001.02B In the case of a petition for the repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by Commission rule number;

001.02C Describe the reason for the rule change;

001.02D Include an address and telephone where the petitioner can be reached during regular work hours; and

001.02E Be signed by:

001.02E (1) The petitioner or his or her attorney in which case the attorney shall also state his or her address and telephone number;

001.02E (2) A duly authorized officer of the petitioner, if petitioner is a corporation or other legal entity.

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002 Petition Consideration and Disposition.

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

002.01A Deny the petition in writing, stating its reasons therefor;

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

STATUTORY AUTHORITY: Neb. Rev. Stat. § 2-1501; § 84-907.08

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Chapter 7 - PETITIONING FOR DECLARATORY ORDERS

Definitions: Declaratory Orders.

001 General Information.

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

002 Definitions. As used in this chapter:

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

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

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

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

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

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

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

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

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

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

003 Petition for Declaratory Order.

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

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

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

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

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

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

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

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

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

003.04A A caption, which shall include:

003.04A1 The venue: STATE OF NEBRASKA, NEBRASKA NATURAL RESOURCES COMMISSION;

003.04A2 A heading specifying the subject matter; and

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

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

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

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

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

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

003.04G Attachments. Any documents attached to a petition shall be securely fastened to the pleading and shall meet the requirements of 003.04E and 003.04F and, when possible, be reproduced on 8-1/2 x 11 inch paper or placed in a 8 ½ x 12 inch envelope and clearly marked as an attachment to the petition.

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

003.05A The name and address of the petitioner;

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

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

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

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

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

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

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

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

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

004 Submission and Service of Declaratory Order Petition.

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

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

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

005 Disposition of the Petition.

005.01 Generally. Upon the filing of a petition, the Commission may consider the petition or delegate the matter to a designated hearing officer to consider the petition and recommend a decision to the Commission. In reviewing the petition, the Commission may, in its discretion, do one or more of the following:

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

005.01B Require a petitioner to provide notice to persons or entities who may be necessary parties and other persons that a

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request for a declaratory order has been filed with the Commission;

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

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

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

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

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

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

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

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

006 Intervention in Declaratory Order Proceeding.

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

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

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

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

006.02 Contents of Petition. The petition for intervention shall be submitted to the agency, in writing, on 8 ½ x 11 inch white paper, and shall include each of the following:

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

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

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

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

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

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

006.04 The Commission shall grant a petition for intervention if the requirements of Rule 006.01 and Rule 006.02 of this Chapter are satisfied.

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

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

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007 Declaratory Order Proceedings.

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

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

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

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

007.02C Close the proceedings.

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

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

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

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

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008 Issuance of Declaratory Order.

008.01 The Commission shall issue its declaratory order within sixty (60) days of the date on which the petition was filed unless otherwise provided for in section 005 of this chapter.

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

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

008.02B The facts upon which the order is based;

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

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

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

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

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

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

008.05 No Response within 60 Days. If the Commission has not issued a declaratory order within sixty (60) days after the petition has been filed, then the petition shall be deemed to have been denied by the Commission unless otherwise ordered pursuant to section 005 of this chapter.

009 Circumstances Under Which Commission will not Issue Declaratory Orders.

009.01 Grounds upon which the Commission shall refuse to issue a declaratory order includes, but is not limited to, the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STATUTORY AUTHORITY: Neb. Rev. Stat. § 2-1501; § 84-912.0

Appendix "A"

STATE OF NEBRASKA
NEBRASKA NATURAL RESOURCES COMMISSION

In the Matter of)
) PETITION FOR
) DECLARATORY ORDER
)

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

DATED on this ____ day of _____, 20 __. _____
Signature of Petitioner (Required)

Petitioner's Name Printed or Typed
(Required)

Petitioner's Full Mailing Address
(Required)

City, State, Zip Code (Required)

Petitioner's Telephone Number -With
Area Code (Required)

Petitioner's Email Address
(Required if Available)

Appendix "A" Cont.

VERIFICATION

STATE OF)
) ss.
COUNTY OF)

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

Petitioner's Signature

SUBSCRIBED and sworn to before me on this ____ day of _____, 20 __.

Notary Signature

NOTARY SEAL