

## TRACTOR TESTING STATUTES

- Administration:** Certain portions of these statutes are administered by the Nebraska Department of Agriculture, State Office Building, 301 Centennial Mall South, Lincoln, Nebraska 68509. Telephone: (402) 471-3422.
- Cooperating Agency:** These statutes are administered in cooperation with the University of Nebraska Board of Regents, Board of Tractor Test Engineers and the University of Nebraska Tractor Testing Laboratory, University of Nebraska, East Campus, Lincoln, Nebraska 68583. Telephone: (402) 472-2824.
- Revisions:** These statutes were last revised during the 2012 session of the Nebraska Legislature.
- Rules:** No regulations have been promulgated by this Department under these statutes.

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2-2701. Current tractor model; testing required; application; procedure; sales and use tax exemption; eligibility; temporary permit; failure to meet requirements; effect.

(1) No person shall be permitted to sell or dispose of any current tractor model of one hundred or more horsepower in the State of Nebraska without first having (a) made application for a permit and obtained a permit to sell the tractor model, (b) the model tested by the University of Nebraska onsite or offsite or by any Organization for Economic Cooperation and Development test station, and (c) the model passed upon by the board.

(2) A person may obtain a permit to sell or dispose of a current tractor model of less than one hundred horsepower by meeting the permit requirements of sections 2-2701 to 2-2711. A purchaser of a current tractor model is not eligible to claim the exemption from sales and use tax for agricultural machinery and equipment under section 77-2704.36 unless the current tractor model has been permitted for sale pursuant to sections 2-2701 to 2-2711.

(3) Each and every tractor model presented for testing shall be a stock model and shall not be equipped with any special accessory unless regularly supplied to the trade. Any tractor model not complying with this section shall not be tested under sections 2-2701 to 2-2711. Applications shall be made to the board and shall be accompanied by specifications of the tractor model required by the board and by the applicable fees specified in sections 2-2705 and 2-2705.01.

(4) If an official test application, with the required specifications and fees, is submitted to any Organization for Economic Cooperation and Development test station or to the University of Nebraska and an application for a temporary permit and the fee prescribed in section 2-2705.01 are submitted, the department, with the approval of the board, may issue a temporary permit for the sale of the tractor model specified in the official test application. The date on which the temporary permit terminates shall be fixed by the board. All temporary permits shall be conditioned upon such tractor model being tested at a mutually agreed-upon date, and the person to whom a temporary permit has been issued shall submit a tractor model for testing which conforms to the specifications filed with the official test application. Such tractor model shall be delivered for testing at the mutually agreed-upon date. Upon failure so to do, all such fees deposited by such person shall be forfeited to the University of Nebraska Tractor Test Cash Fund, except that the fee imposed in section 2-2705.01 shall be deposited in and forfeited to the Tractor Permit Cash Fund, and in addition such person shall not be issued any temporary permit for a period of five years from the date such tractor was to be delivered for testing and until such person meets the obligations required under subsection (5) of this section to the department's satisfaction.

(5) All sales of tractors upon which a temporary permit has been issued shall be made subject to the final official test and approval of the tractor model as follows:

(a) If a tractor model upon which a temporary permit has been issued was not submitted for the official test and approval on the mutually agreed-upon date, the person to whom the temporary permit was issued shall repurchase any such tractor sold in Nebraska under the temporary permit. A claim by a purchaser under this subdivision shall be brought within two years after the date of the expiration of the temporary permit; and

(b) If a tractor model upon which a temporary permit has been issued fails in the official test to meet the specifications of the tractor model which were filed with the application and fees, the person to whom the temporary permit was issued shall send a notice, as approved by the department, to any person in Nebraska who has purchased a tractor sold under the temporary permit. The person to whom the temporary permit was issued shall either modify the tractor to meet the specifications filed with the board

or remedy to the satisfaction of the purchaser any injury incurred by the purchaser which was caused by the failure of the tractor to meet the specifications claimed. Such person shall be prohibited from modifying sales literature, advertisement claims, or specifications of the tractor to avoid such notice.

2-2701.01. Terms, defined. For purposes of sections 2-2701 to 2-2711, unless the context otherwise requires:

(1) Board means the University of Nebraska Board of Tractor Test Engineers which shall consist of three engineers under the control of the university;

(2) Current tractor model means any model included in the manufacturer's annual price list of tractors being offered for sale by its dealers or distributors;

(3) Department means the Department of Agriculture;

(4) Director means the Director of Agriculture or his or her authorized representative;

(5) Person means bodies politic and corporate, societies, communities, the public generally, individuals, partnerships, limited liability companies, joint-stock companies, and associations; and

(6) Tractor means a traction machine designed and advertised primarily to supply power to agricultural implements and farmstead equipment. An agricultural tractor propels itself and provides a force in the direction of travel and may provide mechanical, hydraulic, and electrical power and control to enable attached soil-engaging and other agricultural implements to perform their intended function.

2-2701.02. Sales permit; information required; notice to purchaser; liability for damages. (1) Any person who applies for a permit to sell a tractor model in the state shall provide to the department at the time of application information on the availability and accessibility of service and replacement parts for such tractor model. Such information shall include the names and addresses of any regional service, parts, or supply dealers, instructions on how to order parts and supplies, and any limitations as to the availability and accessibility of service and replacement parts. Any person who fails to provide the information required in this section shall not be issued a sales permit for the tractor model. The information received by the department pursuant to this section shall be public information.

(2) Any person who initially sells to the ultimate consumer a current tractor model for which a sales permit has been issued after April 17, 1986, shall provide to the purchaser written notice that the information required in subsection (1) of this section has been filed with and is available at the department. Any remedy for failure to comply with this subsection shall be as provided in subsection (3) of this section.

(3) Any person who provides to the department information required in subsection (1) of this section which is inaccurate at the time of application shall be liable for damages to any injured purchaser of the tractor for which a sales permit has been issued, and any person who fails to provide the notice required in subsection (2) of this section shall be liable for damages to the person who purchased such tractor from such person. For purposes of this section, damages may include, but shall not be limited to, loss of profits, the additional cost of shipment of parts, and the additional cost of obtaining parts or services from another provider. In any action brought under this section, the court may award reasonable attorney's fees to the prevailing party.

2-2702. Board of Regents of the University of Nebraska; powers and duties.

(1)(a) The Board of Regents of the University of Nebraska shall adopt and promulgate rules and regulations setting forth codes for the official testing of tractors.

(b) The Board of Regents of the University of Nebraska shall adopt procedures for the official testing of agricultural tractors as prescribed by the Organization for Economic Cooperation and Development.

(c) The Board of Regents of the University of Nebraska shall also adopt and promulgate rules and regulations for the testing of tractors as published by the Society of Automotive Engineers and the American Society of Agricultural Engineers.

(2) In addition to the powers and duties prescribed in sections 2-2701 to 2-2711, the University of Nebraska shall have the power to:

(a) Authorize the use of the Nebraska Tractor Testing Laboratory facilities to conduct Organization for Economic Cooperation and Development testing;

(b) Cooperate with the United States Department of Commerce when planning and conducting Organization for Economic Cooperation and Development testing;

(c) Conduct offsite tractor tests; and

(d) Submit and certify tractor test results to the federal government.

2-2703. Tractor model test results; board; duties. After a tractor model has been duly tested by the University of Nebraska or by any Organization for Economic Cooperation and Development test station, the board shall submit the results of such test to the department. Prior to the issuance of a permanent sales permit by the department to any person for the sale of a tractor model, the board shall compare the test results with the manufacturer's representations as to power, fuel, and other ratings of the tractor model. If any such representations are found to be false, the board shall recommend that the department deny a permit for the sale of such tractor model. Any representation which a person makes with regard to the performance of its tractor at other than the customarily used power outlets shall be subject to test at the option of the board.

2-2703.01. Supplemental sale permit; issuance; testing; when required. Upon application by any person and payment of the fee required in section 2-2705.01, the board may recommend to the department that a supplemental permit be issued to such person for the sale of a new tractor model based upon the official test results of a previous tractor model. The specifications and performance representations of the new tractor model shall be compared to the official test results of the previous tractor model, and if there are no substantial changes in specifications, performance representations, and the capacity of the new tractor model to meet such specifications and representations of performance, the board shall recommend to the department the issuance of a supplemental permit. The board may require further testing of the new tractor model upon which a permit is sought and may require the person making application to provide for reimbursement for the cost of such tests pursuant to section 2-2705. If further testing is performed, the board shall certify the results of such tests and forward them to the department.

2-2705. Tractor model tests; fees; University of Nebraska Tractor Test Cash Fund; created; use; investment. Application to the board for the testing of a tractor model by the University of Nebraska shall be accompanied by the fee prescribed in section 2-2705.01 and such fee as is prescribed by the Board of Regents of the University of Nebraska as a partial reimbursement for making the application.

Fees collected for the testing of tractors by the Nebraska Tractor Testing Laboratory shall be credited to the University of Nebraska Tractor Test Cash Fund, which fund is hereby created. The fund shall be used by the Nebraska Tractor Testing Laboratory to defray the expenses of testing tractors. Any accrued interest shall also be credited to the fund, except that the cash carryover of such fund from one biennium to the next biennium shall not exceed, by more than fifteen percent, the total cash fund expenditures for the average of the five preceding years. Any amount in excess of such fifteen percent shall be forwarded to the University of Nebraska. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

The Board of Regents of the University of Nebraska may establish and change from time to time as it determines advisable a schedule of fees for such tractor tests, except that such fee schedule shall not include the application fee prescribed in section 2-2705.01.

2-2705.01. Application fee; Tractor Permit Cash Fund; created; use; investment.

There is hereby imposed a fee of fifty dollars for each application for any permit made to the board pursuant to sections 2-2701 to 2-2711. Such fee shall be in addition to the fees provided for in section 2-2705 and shall be paid to the department. All fees collected by the department pursuant to this section shall be remitted to the State Treasurer for credit to the Tractor Permit Cash Fund, which fund is hereby created. The fund shall be used by the department to defray the expenses of administering sections 2-2701 to 2-2711. Any money in the fund available for investment shall be invested by the state investment officer pursuant to the Nebraska Capital Expansion Act and the Nebraska State Funds Investment Act.

2-2706. Tractor model; failure to meet specifications; retesting permitted; effect on sale of other models; permit specify model. The failure of any tractor model to meet the specifications and representations made by the applicant shall not prevent the applicant from placing on the market other tractor models that do comply with the permit requirements of sections 2-2701 to 2-2711. Any tractor model that fails in the official test to meet the applicant's own specifications and representations may be retested upon submission of a new test application and the fees prescribed in sections 2-2705 and 2-2705.01. Each and every permit issued under sections 2-2701 to 2-2711 shall specify the model or models included in such permit to sell.

2-2707. Tractor model tests; report; publication; public record. The report of the official test required by section 2-2701 shall be published by the board and made available in the Biological Systems Engineering Department of the University of Nebraska and in such other places as may be designated by the board. All information pertaining to the official testing of a tractor shall be public record and available for inspection during normal business hours.

2-2708. Tractor model tests results; improper use; penalty. No person shall use the results of such tests in such manner as would cause it to appear that the University of Nebraska or the department intended to recommend the use of any given tractor model in preference to any other model. For any violation of this section the department may suspend any permit issued to that person or deny such person the right of obtaining future permits to sell tractors in the state.

2-2709. Tractor model testing order; discrimination prohibited; exception. Except when a temporary permit has been issued pursuant to subsection (4) of section 2-2701, tractors shall be tested by the board in the order in which they are presented for such tests, and no discrimination shall be made for or against any person in any manner whatsoever. Complaints alleging a violation of this section shall be heard by the department.

2-2710. Sales without permit; penalty; limitation on claim. Any person selling a current tractor model of one hundred or more horsepower for use in the State of Nebraska without a permit issued by the department for such tractor model shall be required to repurchase any such tractor model sold in Nebraska for which a permit has not been issued. A claim by a purchaser under this section shall be brought within two years from the date of purchase.

2-2711. Department; enforcement; rules and regulations. The department shall have full authority to enforce sections 2-2701 to 2-2711 both by denial of a permit to sell tractors in the state and by injunctive relief in the district court having jurisdiction. The department shall adopt and promulgate rules and regulations as are necessary to enforce the intent and purposes of such sections.

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