

NEBRASKA ADMINISTRATIVE CODE

Title 247 NEBRASKA ADMINISTRATIVE CODE, CHAPTER 2

**RULES AND REGULATIONS FOR DRIVER TRAINING SCHOOLS AND
INSTRUCTORS PURSUANT TO NEB. REV. STAT. §§ 60-4,173 THROUGH 60-4,179.**

LAST EFFECTIVE DATE: March 25, 2001.

DRAFT DATE: September 11, 2012

FINAL DATE:

NUMERICAL TABLE OF CONTENTS

<u>Subject of Title</u>	<u>Statutory Authority</u>	<u>Code Section</u>
Scope	§60-4,173 through §60-4,179	001
Definitions	§60-4,173; 60-4,114.01	002
General Requirements for a Driver Training School	§60-4,175	003
Application Requirements for Driver Training Schools	§60-4,175	004
Entry Level Student Courses of Instruction	§60-4,175	005
Remedial Student Courses of Instruction	§60-4,175	006
Driver Training Motor Vehicles	§60-4,175	007
School /Student Contracts	§60-4,175	008
Inspections and Changes to Schools	§60-4,175	009
Requirements for Instructor's License	§60-4,176	010
Fees	§60-4,177	011
Denial, Refusal to Renew, Suspension or Revocation of Driver Training School and Driver Training Instructor Licenses	§60-4,178	012
Appeal	§60-4,105; §60-4,178; §84-91; 53 NAC 4	013

APHABETICAL TABLE OF CONTENTS

<u>Subject of Title</u>	<u>Statutory Authority</u>	<u>Code Section</u>
Appeal	§60-4,105; §60-4,178; §84-917; 53 NAC 4	013
Application Requirements for Driver Training Schools	§60-4,175	004
Definitions	§60-4,173; 60-4,114.01	002
Denial, Refusal to Renew, Suspension or Revocation of Driver Training School and Driver Training Instructor Licenses	§60-4,178	012
Driver Training Motor Vehicles	§60-4,175	007
Entry Level Student Courses of Instruction	§60-4,175	005
Fees	§60-4,177	011
General Requirements for a Driver Training School	§60-4,175	003
Inspections and Changes to Schools	§60-4,175	009
Remedial Student Courses of Instruction	§60-4,175	006
Requirements for Instructor's License	§60-4,176	010
School /Student Contracts	§60-4,175	008
Scope	§60-4,173 through §60-4,179	001

NEBRASKA ADMINISTRATIVE CODE

Nebraska Department of Motor Vehicles

247 NAC 2

DRAFT DATE: September 11, 2012

LAST EFFECTIVE DATE: March 25, 2001.

RULES AND REGULATIONS FOR DRIVER TRAINING SCHOOLS AND INSTRUCTORS PURSUANT TO NEB. REV. STAT. §§ 60-4,173 THROUGH 60-4,179.

001 SCOPE. These rules and regulations apply to the following entities and individuals:

001.01 Any driver training school as defined in these rules and regulations, except those which teach a Department approved driver's safety course for a provisional operator's permit (that course is controlled by Title 247 NAC 11) or Department approved motorcycle safety education program (that course is controlled by Title 247 NAC 6); and

001.02 Any driver training instructor as defined in these rules and regulations.

002 DEFINITIONS.

002.01 Contact person means the authorized person designated to act on behalf of the school as the contact person with the Department.

002.02 Department means the Nebraska Department of Motor Vehicles.

002.03 Director means the Director of the Department of Motor Vehicles.

002.04 Driver training school means a business enterprise conducted by an individual, association, partnership, limited liability company, corporation (for profit or non profit), or a public or private educational facility which educates or trains persons to operate motor vehicles and which charges consideration or tuition for such service or materials.

002.05 Entry level course means a course administered to entry level students that consists of six hours of classroom and six hours of behind-the-wheel training, as set out in section 005.

002.06 Entry level student means a student who has either a) failed three successive drive tests from the department so that he or she may not retest for 90 days, or b) has not held a valid driver's license from this or any other U.S. state or jurisdiction within the last five years.

002.07 Instructor means any person who teaches, conducts classes, gives demonstrations or supervises practical training of persons learning to operate motor vehicles in connection with operation of a driver training school.

002.08 Remedial course means a course administered to remedial level students as set forth in section 006.

002.09 Remedial level student means a student who feels he or she needs improvement in classroom or behind the wheel skills and either a) has held a valid driver's license from an US state or jurisdiction within the past five years, or b) has completed an entry level course.

002.10 School representative means an individual applicant, partner, associate, corporate director, officer or manager of a driver training school.

003 General Requirements for a Driver Training School.

003.01. Building. The school will continuously maintain a place of business which includes at least one permanent, regularly occupied structure within the State of Nebraska. The classroom must be able to accommodate students comfortably and to ensure proper safety, including:

003.01A Textbooks and reference books relating to the proper operation of motor vehicles and traffic laws;

003.01B Ample working and testing space for enrolled students and observers; and

003.01C Ready access to restrooms.

003.02 School Names. No driver training school shall adopt, use, or conduct any business under a name that is like or deceptively similar to a name used by another driver training school. The right to use a name claimed by another driver training school will be determined by the Department on the basis of the longest history of use.

003.03 Display Credentials. Each driver training school must display the state license in a prominent place.

003.04 Insurance. Each driver training school must carry current commercial general liability insurance coverage of \$1,000,000.

004 Application Requirements for Driver Training Schools. Each original and renewal driver training school license application shall contain information consisting of:

004.01 Contact Person. The name, title, current address, electronic contact (email), and telephone number of the school's contact person;

004.02 Instructors. The name, electronic contact (email), date of birth, driver's license number and home address of all instructors;

004.03 Motor Vehicles. A schedule of motor vehicles owned or leased;

004.04 Name. The name, address, telephone number of the driver training school;

004.05 Insurance. Valid insurance certificate or insurance policy detailing the coverage for motor vehicles used in the course (as set forth in section 007.02) and current commercial general liability insurance coverage of \$1,000,000.

004.06 Signature. Signature of the school representative certifying that the information included in the application is true and accurate;

004.07 Owners. The names and addresses of all business owners;

004.08 Class Description. An overview or outline of the course or courses to be offered by the driver training school including the amount of classroom and/or behind-the-wheel time and/or a statement that the school provides entry level student training (it is not necessary to outline the entry level student course); and

004.09 Other Information. Any other information deemed necessary by the Department.

005 Entry Level Student Courses of Instruction

005.01 Entry Level Student Hours. A minimum of six hours of classroom instruction and six hours of behind-the-wheel instruction must be given to each entry level student.

005.01A Hospital Exemption. Rehabilitation hospitals which assess needs of disabled patients and train for those specific needs are exempt from the six-hour behind-the-wheel and the six-hour classroom

instruction requirements. They are expected to take whatever time is necessary to train the patient adequately.

005.02 Classroom Instruction. The offered classroom instruction must include safe driving practices in the operation of motor vehicles.

005.03 Behind-the-Wheel. Behind-the-wheel instruction must consist of actual driving practice while the motor vehicle is in motion. Instruction given while the motor vehicle is parked cannot be recorded as behind-the-wheel instruction time.

005.04 Simulator. Up to one hour of behind-the-wheel instruction may be replaced by use of a driving simulator at a proportion of four to one. (One hour of simulated driving equals 15 minutes of behind-the-wheel drive time.)

005.05 Driving Range. Up to two hours of behind-the-wheel instruction may be replaced by time on a closed course driving range at a proportion of two to one. (Two hours on a driving range equals one hour behind-the-wheel.)

005.06 Entry level student vehicles. Any driver training school that teaches entry level students must have at least one registered motor vehicle which has been equipped for driver training purposes.

006 Remedial Student Courses of Instruction. Each driver training school will assess the needs of remedial level students. The school is expected to take whatever time is necessary to train the student adequately.

007 Driver Training Motor Vehicles.

007.01 Vehicle registration. All motor vehicle used in driver training must be registered and insured. The driver training school shall obtain and retain photocopies of the motor vehicle's registration and proof of insurance if it does not own the vehicle itself. The original registration and insurance will be carried in the vehicle when training students.

007.01A Entry level course. All motor vehicles used for entry level courses, except vehicles used by non-profit corporations, must be registered in the school's name.

007.01B Non Profit Corporation and Remedial Student Vehicles. A non-profit corporation is not required to own or register the motor vehicle used in driver training in its name. A school that teaches remedial courses only is not required to own or register a motor vehicle for driver training in its name.

007.02 Insurance. All motor vehicles used in driver training will be covered by liability insurance in amounts not less than set forth in Neb. Rev. Stat. § 60-509.

007.03 Dual Brakes. Any motor vehicle registered in the school's name pursuant to 007.01A shall be equipped with a dual braking device.

007.03A Vehicle exceptions. Trucks, motorcycles and motor vehicles being used pursuant to 007.05 of these rules and regulations are exempt.

007.03B School exceptions. Vehicles used for remedial training are exempt.

007.04 Identified as Driver School. Any motor vehicle being used for entry level student driver training shall be readily identified as a driver training motor vehicle.

007.05 Disabled Student Motor Vehicles. A student who requires adaptive equipment to operate a motor vehicle may use a personal motor vehicle during training. The vehicle is exempt from the requirements for dual brakes found at 007.03.

008 School/Student Contracts. All written contracts or agreements by or between a driver training school and a student must contain the following:

008.01 A statement indicating the agreed contract price, skills to be learned, and terms of payment;

008.02 A statement indicating the specific time and date when instruction is to start; and

008.03 The driver's license or permit number held by the student.

008.04 Entry Level. For entry level students only, a statement indicating that the student is to receive at least six (6) hours of classroom instruction and six (6) hours of behind-the-wheel instruction.

008.05 Remedial Level Class Description. For remedial students, the contract will provide the student with a written overview or outline of the course or courses to be offered, including the amount of classroom and/or behind-the-wheel time.

008.06 The driver training school shall not include a statement in any of its contracts or advertising to the effect that a state license is guaranteed.

009 Inspections and Changes to Schools.

009.01 Name Change. The school must notify the Department in writing of any change in the school's name, legal status or address ten days prior to its date of occurrence.

009.02 Instructor Changes. The school must notify the Department in writing of any addition or deletion of approved instructors or changes in their driving statuses within ten days of date of occurrence.

009.03 School Closes. If the school ceases operation in Nebraska, the school shall notify the Department in writing ten days prior to its date of occurrence.

009.04 Insurance Change. If the school's insurance as required by these rules and regulations is canceled or altered by the insurance company, the school shall notify the Department in writing within ten working days of its date of occurrence.

009.05 Inspection of School Facilities.

009.05A Random Inspections. The Department may conduct random inspections of all of the school's facilities and motor vehicles. The school shall exhibit all records, instructional aids and other objects which are necessary to the Department's investigation.

009.05B Written Evaluation. The Department may, at the Department's discretion, prepare a written report of the results of each inspection or examination. A copy of the report may be provided to the school.

010 REQUIREMENTS FOR INSTRUCTOR'S LICENSE.

010.01 Requirements for Applicant for Instructor's License. An applicant for an instructor's license will:

010.01A Valid Driver's License. Have held a valid license from his state of residence for a period of at least two consecutive years immediately preceding the date of application. Licensing lapses due to failure to renew before a license's expiration date shall not be cause for denial. The license must be representative of the motor vehicle class taught (i.e., CDL license for CDL training);

010.01B High School Diploma. Have a high school diploma or its equivalent;

010.01C Clean Driving Record. Have no violation noted on his or her driving record for which five or more points might be assessed as set out in Neb. Rev. Stat. § 60-4,182 for the prior five years. This includes probation or other situations in which no points were actually assessed for the violation. Additionally, the instructor must have no suspensions or revocations on his or her driving record within the last five years, including no convictions for DWI or any related alcohol or drug offense in connection with motor vehicle use; and

010.01D Moral. Be of good moral character and at least 21 years old.

010.02 Application for Instructor's License. Each original and renewal instructor's license application shall contain information consisting of:

010.02A Basic Information. The name, current address, electronic contact (email), and telephone number of the applicant;

010.02B Identifying Information. Date of birth and social security number of the applicant.

010.02C Driver Information. The driver's license state and number, and the name of the school to employ the applicant.

010.02D Signature. Signature of the applicant certifying that the information included in the application is true and accurate; and signature of an authorized agent of the driver training school.

010.02E Other Information. Any other information deemed necessary by the Department.

010.03 Approval. The Department will notify instructors when they have been approved.

010.04 Agent. For purposes of these rules and regulations, each instructor employed by or associated with any school shall be deemed an agent of the school and the school shall share responsibility for all acts performed by the instructor which are within the scope of his or her employment, and which occur during the course of his or her employment.

011 FEES.

011.01 Expiration. All licenses will expire on the last day of June in the year following issuance and may be renewed upon application to the Department.

011.02 Fee. Each application for a new or renewal school license shall be accompanied by a fee of fifty dollars (\$50.00). Each application for a new or renewal instructor's license shall be accompanied by a fee of ten dollars (\$10.00). No license fee shall be refunded in the event that the license is rejected, suspended, or revoked.

012 DENIAL, REFUSAL TO RENEW, SUSPENSION OR REVOCATION OF DRIVER TRAINING SCHOOL AND DRIVER TRAINING INSTRUCTOR LICENSES.

The Department will deny, refuse to renew, suspend or revoke the license of any driver training school or instructor, for any of the following reasons:

012.01 Failure to provide notice to the Department as required by 009 of these rules and regulations;

012.02 Failure to permit or failure of on-site inspections as required by 009.05 of these rules and regulations;

012.03 Failure to pay the fee as required by 011.02 of these rules and regulations;

012.04 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;

012.05 Lack of business stability;

012.06 Fraud, forgery or falsification of any documents relating to the schools or their instructors;

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

012.08 Employing an instructor who has a suspended or revoked driver's license within the previous five years of the date of application, or who has a five point or more driving violation within the previous five years;

012.09 Fraud, forgery or misrepresentation in an application;

012.10 Failure to teach to the student the proper operation of the appropriate motor vehicle.

013 APPEAL.

013.01 Hearing. Upon suspension, revocation, cancellation or denial of the issuance of an instructor or school license, the Director shall notify the school in writing and, upon written request, shall afford the school a hearing.

013.02 Stay. Upon receipt of a written request, and upon good showing by the instructor or school, the Director may stay the administrative order pending an administrative hearing on the matter.

013.03 Administrative Procedure Act. Any action taken by the Department to cancel, suspend, revoke or refuse to issue or renew a license shall comply with the Administrative Procedure Act.

013.04 Adoption of Attorney General's Model Rules. All hearings will be held in conformance with Title 53 Nebraska Administrative Code, Chapter 4 of the Nebraska Department of Justice, also known as the Attorney General's Model Rules, incorporated herein by reference and attached to these regulations.

TITLE 53 NAC 4

NUMERICAL TABLE OF CONTENTS

<u>Subject or Title</u>	<u>Statutory Authority</u>	<u>Code Section</u>
Scope and Definitions	Neb. Rev. Stat. § 84-901 LB 446, LB 414	Section 001
Ex parte Communications	LB 446, LB 414	Section 002
Intervention	LB 446	Section 003
Commencement of Contested Case	Neb. Rev. Stat. § 84-913	Section 004
Hearing Officer	Neb. Rev. Stat. § 84-914 LB 446	Section 005
Prehearing Matters	Neb. Rev. Stat. §§ 84-913 84-914, LB 446	Section 006
Hearing of Contested Case	Neb. Rev. Stat. §§ 84-913 84-914, LB 446, LB 414	Section 007
Decision and Order	Neb. Rev. Stat. § 84-915	Section 008
Appeal	Neb. Rev. Stat. § 84-917	Section 009

FILED
SECRETARY OF STATE
SEP 27 94 01 07 28

NEBRASKA ADMINISTRATIVE CODE

TITLE 53-NEBRASKA DEPARTMENT OF JUSTICE

Chapter 4-Rules of Practice and Procedure for Hearings in Contested Cases Before An Agency.

001. General.

001.01. Application of Model Rules. Pursuant to Neb. Laws 1994, LB 446, the Attorney General shall promulgate model rules of procedure appropriate for use by as many agencies as possible. For rules of procedure adopted on or after August 1, 1994, each agency shall adopt as many of the model rules as is practicable under the circumstances. Agencies may adopt regulations which vary from the model rules; however, any agency adopting a rule of procedure that differs from the model rule shall include in the agency's explanatory statement the reasons why the relevant portions of the Attorney General's model rules are impracticable under the circumstances.

001.02. Definitions. The following definitions shall apply as used throughout Chapter 4 of these rules and regulations.

001.02A. Agency shall mean each board, commission, department, officer, division, or other administrative office or unit of the state government authorized by law to make rules and regulations, except the Adjutant General's office as provided in Chapter 55 of the Nebraska Revised Statutes, the courts including the Nebraska Workers' Compensation Court, the Commission of Industrial Relations, the Legislature and the Secretary of State with respect to the duties imposed by the Administrative Procedure Act.

001.02B. Contested case shall mean 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.

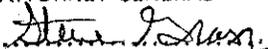
APPROVED 1

SEP 27 1994


BENJAMIN NELSON
GOVERNOR

W

APPROVED
DON STENBERG
ATTORNEY GENERAL

BY 
Assistant Attorney General

DATE 7-25-94

001.02C. Ex parte communication shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Ex parte communication shall not include:

001.02C1. Communications which do not pertain to the merits of a contested case;

001.02C2. Communications required for the disposition of ex parte matters as authorized by law;

001.02C3. Communications in a ratemaking or rulemaking proceeding; and

001.02C4. Communications to which all parties have given consent.

001.02D. Hearing officer shall mean the person or persons conducting a hearing, contested case, or other proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title designation.

001.02E. Party means the person by or against whom a contested case is brought or a person allowed to intervene in a contested case.

001.02F. Petition means the initial document filed by or with an agency that sets forth a claim and request for agency action.

002. Prohibitions against ex parte communications.

002.01. Prohibitions; when applicable. The prohibitions found in this section shall apply beginning at the time notice for hearing is given. An agency may designate an earlier time, but such earlier time shall be required to be set forth in the agency's rules of procedure.

SEP 27 1994

002.02. Prohibitions; to whom applicable.

002.02A. Parties and public. No party in a contested case or other person outside the agency having an interest in the contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer or to an agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case.

002.02B. Persons in decisionmaking roles. No hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case shall make or knowingly cause to be made an ex parte communication to any party in a contested case or other person outside the agency having an interest in the contested case.

002.02C. Investigators. No agency head or employee engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case.

002.03. Disclosure of contacts. The hearing officer or agency head or employee who is or may reasonably be expected to be involved in the decisionmaking process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication set forth in subsections 002.02A through 002.02C shall file in the record of the contested case:

002.03A. All such written communications;

002.03B. Memoranda stating the substance of all such oral communications; and

002.03C. All written responses and memoranda stating the substance of all oral responses to all the ex parte communications.

002.03D. The filing shall be made within two working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

002.03E. Filing and notice of filing provided under subsection 002.03D shall not be considered on the record and reasonable notice for purposes of the definition of ex parte communication.

003. Intervention in a contested case.

003.01. Intervention in a contested case shall be allowed when the following requirements are met:

003.01A. A petition for intervention must be submitted in writing to the hearing officer or designee at least five days before the hearing. Copies must be mailed by the petitioner for intervention to all parties named in the hearing officer's notice of the hearing;

003.01B. The petition must state 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 any provision of law; and

003.01C. The hearing officer or designee must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

003.02. The hearing officer or designee 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.

SEP 27 1994

003.03. If a petitioner qualifies for intervention, the hearing officer or designee may impose conditions upon the intervenor's participation in the proceedings, either at the time that intervention is granted or at any subsequent time. Those conditions may include:

003.03A. Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

003.03B. 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

003.03C. Requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

003.04. The hearing officer or designee, at least 24 hours before the hearing, shall issue an order granting or denying each pending petition for intervention, specifying any conditions and briefly stating the reasons for the order.

003.04A. The hearing officer or designee may modify the order at any time, stating the reasons for the modification.

003.04B. The hearing officer or designee shall promptly give notice of an order granting, denying, or modifying intervention to the petitioner for intervention and to all parties.

004. Commencement of a contested case.

004.01. The contested case begins with the filing of a petition and request for hearing, if applicable, with the agency. The petition is the initial document filed by or with an agency that sets forth a claim and request for agency action.

004.02. The parties to a contested case shall be the petitioner or person by whom a contested case is brought and the respondent or person against whom a contested case is brought.

004.03. A party may appear on his or her own behalf in a contested case proceeding or may be represented by an attorney or other representative as permitted by law.

004.04. The pleadings in a contested case may include a petition, answer, reply, notice, motion, stipulation, objection or order or other formal written document filed in a proceeding before an agency. Any pleading filed in a contested case shall meet the following requirements:

004.04A. The 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 state concisely the action the agency is being requested to take, 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.

004.04A1. Attorneys shall also include their address, telephone number and bar number.

004.04A2. The initial petition shall also contain the name and address of the respondent.

004.04B. All pleadings shall be made on white, letter-sized (8½ x 11) paper and shall be legibly typewritten, photostatically reproduced, printed or handwritten. If handwritten, a pleading must be written in ink.

004.05. All pleadings shall be filed with the agency at its official office. Filing may be accomplished by personal delivery or mail and will be received during regular office hours of the agency.

SEP 27 1994

004.06. The agency shall serve a copy of the petition on each respondent listed in the petition personally or by first-class or certified mail. Written proof of such service shall be filed with the agency. Each respondent who chooses to file a responsive pleading must do so within 20 days from the date of personal service or the date of agency mailing of the petition.

004.07. All pleadings subsequent to the initial petition shall be served by the party filing such pleading upon all attorneys of record or other representatives of record and upon all unrepresented parties. Service shall be made personally or by first-class or certified mail. Written proof of such service shall be filed with the agency.

004.08. Unless state law provides that a hearing is not required, a hearing date shall be set by the agency in accordance with statutory requirements. A written notice of the time and place of hearing and the name of the hearing officer, if known, shall be served by the agency upon all attorneys of record or other representatives of record and upon all unrepresented parties. The notice must include a proof of such service and will be filed with the agency.

004.09. In computing time prescribed or allowed by chapter 4 of these rules and regulations or by any applicable statute in which the method of computing time is not specifically provided, 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.

005. Hearing officer; criteria.

005.01. An agency may be authorized by law to delegate to a hearing officer other than the agency head or governing board the functions of conducting a prehearing conference and/or a hearing and submitting a recommended decision to the agency.

SEP 27 1994

005.02. A person who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection 005.04.

005.03. A person who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or advise a hearing officer in the same proceeding except as provided in subsection 005.04.

005.04. If all parties consent, a person who has served as, or who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may assist a hearing officer in the preparation of orders.

005.05. A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist or advise a hearing officer in the same proceeding.

005.06. A person may serve as hearing officer at successive stages of the same contested case.

006. Prehearing Procedures.

006.01. Prehearing conferences and orders. A hearing officer designated to conduct a hearing may determine, subject to the agency's rules and regulations, whether a prehearing conference will be conducted. If a prehearing conference is not held, a hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

006.01A. If a prehearing conference is conducted:

006.01A1. The hearing officer shall promptly notify the agency of the determination that a prehearing conference will be conducted. The

agency may assign another hearing officer for the prehearing conference; and

006.01A2. The hearing officer for the prehearing conference shall set the time and place of the conference and give reasonable written notice to all parties and to all persons who have filed written petitions to intervene in the matter. The agency shall give notice to other persons entitled to notice.

006.01A3. The notice referred to in subsection 006.01A2 shall include the following:

006.01A3(a). The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

006.01A3(b). The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the agency;

006.01A3(c). The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

006.01A3(d). A statement of the time, place, and nature of the prehearing conference;

006.01A3(e). A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

006.01A3(f). The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference;

006.01A3(g). A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act; and

006.01A3(h). Any other matters that the hearing officer considers desirable to expedite the proceedings.

006.01B. The hearing officer shall conduct a prehearing conference, as may be appropriate, to deal with such matter as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross-examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross-examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

006.01C. The hearing officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

006.02. Discovery in contested cases.

006.02A. The hearing officer or a designee, at the request of any party or upon the hearing officer's own motion, may issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

006.02B. Any prehearing motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion shall:

006.02B1. Quote the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition;

006.02B2. State the reasons supporting the motion;

006.02B3. Be accompanied by a statement setting forth the steps or efforts made by the moving party or his or her counsel to resolve by agreement the issues raised and that agreement has not been achieved; and

006.02B4. Be filed with the agency. The moving party must serve copies of all such motions to all parties to the contested case.

006.02C. Other than is provided in subsection 006.02B4 above, discovery materials need not be filed with the agency.

006.03. Continuances. The hearing officer may, in his or her discretion, grant extensions of time or continuances of hearings upon the hearing officer's own motion or at the timely request of any party for good cause shown. A party must file a written motion for continuance which states in detail the reasons why a

continuance is necessary and serve a copy of the motion on all other parties.

006.03A. Good cause. Good cause for an extension of time or continuance may include, but is not limited to, the following:

006.03A1. Illness of the party, legal counsel or witness;

006.03A2. A change in legal representation; or

006.03A3. Settlement negotiations are underway.

006.04. Amendments.

006.04A. A petition may be amended at any time before an answer is filed or is due if notice is given to the respondent or his or her attorney. In all other cases, a petitioner must request permission to amend from the hearing officer.

006.04B. A hearing officer may also allow, in his or her discretion, the filing of supplemental pleadings alleging facts material to the case occurring after the original pleadings were filed. A hearing officer may also permit amendment of pleadings where a mistake appears or where amendment does not materially change a claim or defense.

006.05. Informal Disposition. Unless otherwise precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

007. Conducting a contested case hearing.

007.01. Order. At the discretion of the hearing officer, the hearing may be conducted in the following order:

007.01A. The hearing is called to order by the hearing officer. Any preliminary motions, stipulations or agreed orders are entertained.

007.01B. Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

007.01C. Presentation of evidence.

007.01C1. Evidence will be received in the following order:

007.01C1(a). Evidence is presented by the petitioner;

007.01C1(b). Evidence is presented by the respondent;

007.01C1(c). Rebuttal evidence is presented by the petitioner; and

007.01C1(d). Surrebuttal evidence is presented by the respondent.

007.01C2. With regard to each witness who testifies, the following examination may be conducted:

007.01C2(a). Direct examination conducted by the party who calls the witness;

007.01C2(b). Cross-examination by the opposing party;

007.01C2(c). Redirect examination by the party who called the witness; and

007.01C2(d). Recross-examination by the opposing party.

007.01D. After the evidence is presented, each party may have opportunity to make a closing

argument. Closing arguments shall be made in the same order as the presentation of evidence. The hearing officer may request that the parties submit briefs in lieu of closing arguments.

007.02. Evidence.

007.02A. In contested cases an agency or hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

007.02B. Any party to a formal hearing before an agency, from which a decision may be appealed to the courts of this state, may request that the agency be bound by the rules of evidence applicable in district court by delivering to the agency at least three days prior to the holding of the hearing a written request therefore. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing.

007.02C. Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.

007.02D. All evidence including records and documents in the possession of the agency of which it desires to avail itself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case.

007.02E. A hearing officer or designee may administer oaths and issue subpoenas in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and

SEP 27 1994

orders issued under this subsection may be enforced by the district court.

007.02F. An agency shall give effect to the rules of privilege recognized by law.

007.02G. An agency may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by such agency.

007.02G1. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.

007.02G2. Parties shall be afforded an opportunity to contest facts so noticed.

007.02G3. The record shall contain a written record of everything officially noticed.

007.02H. An agency may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

007.03. Conducting the hearing by electronic means. The hearing officer may conduct all or part of 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.

007.04. Official record.

007.04A. The agency shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purpose of rehearing or appeal, in which event the transcript and record shall be furnished by the agency upon request and tender of the cost of preparation.

007.04B. An agency shall maintain an official record of each contested case under the Administrative Procedure Act for at least four years following the date of the final order.

007.04C. The agency record shall consist only of the following:

007.04C1. Notices of all proceedings;

007.04C2. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the agency pertaining to the contested case;

007.04C3. The record of the hearing before the agency, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the agency during the proceeding, and all proffers of proof and objections and rulings thereon; and

007.04C4. The final order.

007.04D. As provided in 53 NAC 4 Section 002.03 the hearing officer or agency head, or employee who is or may reasonably be expected to be involved in the decision making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication as set forth in that subsection shall make the appropriate filings which shall be included in the official record of the contested case.

007.04E. Except to the extent that the Administrative Procedure Act or another statute provides otherwise, the agency record shall constitute the exclusive basis for agency action in contested cases under the act and for judicial review thereof.

SEP 27 1994

007.05. Costs. All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered.

008. Decision and order in a contested case.

008.01. Every decision and order adverse to a party to the proceeding, rendered by an agency in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.

008.02. The decision and order should include:

008.02A. The name of the agency and name of the proceeding;

008.02B. The time and place of the hearing;

008.02C. The names of all parties or their attorneys who entered an appearance at the hearing;

008.02D. The findings of fact consisting of a concise statement of the conclusions upon each contested issue of fact;

008.02E. The conclusions of law consisting of the applications of the controlling law to the facts found and the legal results arising therefrom; and

008.02F. The order consisting of the action taken by the agency as a result of the facts found and the legal conclusions arising therefrom.

008.03. Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record.

009. Appeals.

009.01. Any person aggrieved by a final decision in a contested case is entitled to judicial review under the

W
FILED
SECRETARY OF STATE
SEP 27 94 01 07 28

Administrative Procedure Act or to resort to such other means of review as may be provided by law.

009.02. Parties desiring to appeal an agency decision must file a petition for review in the district court of the county where the agency action is taken within thirty days after the service of the final decision by the agency. The thirty day period for appeal commences to run from the date of mailing of the notice of order and decision to the parties or their attorneys of record. Service of the petition and summons must be made in accordance with Nebraska law.

009.03. Unless otherwise provided by statute, the procedures of Neb. Rev. Stat. § 84-917 govern the procedure for taking an appeal.

APPROVED

18

SEP 27 1994

E. Benjamin Nelson
E. BENJAMIN NELSON
GOVERNOR *W*

APPROVED
DON STENBERG
ATTORNEY GENERAL

BY *Steve T. Stasz*
Assistant Attorney General
DATE *7-25-94*