CHAPTER 1 - PRACTICE AND PROCEDURE

002 CONTESTED CASES

002.01 Notices of formal hearings conducted under the provisions of the Nebraska Liquor Control Act and the Rules and Regulations of the Nebraska Liquor Control Commission shall contain the following:

002.01A The date and time of the hearing;

002.01B The place of the hearing;

002.01C The nature of the proceeding; and

002.01D The issues involved, if they can be fully stated at the time. If the issues cannot be fully stated at the time of the notice, and amended notice containing the issues involved shall be issued as soon as the issues can be fully stated.

002.02 Continuances agreed and consented to by all parties to a hearing shall be allowed for a period of the time not to exceed 30 days. Any continuances of a hearing beyond the 30 days shall be accepted or denied by the Commission.

002.03 The Commission may order two or more proceedings, which are legally or factually related, to be heard and considered together on a consolidated record unless any party thereto makes a showing sufficient to satisfy the Commission that prejudice would result therefrom.

002.04 The Commission may procure waiver of any notice required by this rule from all parties to a proceedings and hold the hearing as soon as necessary. In the event the Commission declares an emergency exists, the Commission may, upon written notice to the parties, waive any or all of the requirements of this rule and set a matter for hearing as soon as the Commission determines that it is required by the public interest.

002.05 In all proceedings wherein the Commission has authority to subpoena witnesses, a subpoena requiring the attendance of a witness will be issued by the Commission on written application of any party, or on the order of the Commission. Subpoenas for the production of accounts, books, documents, <u>electronic records, and associated data storage devices and media, video tapes or digital video storage devices,</u> or papers are required and the facts expected to be proved thereby. All parties directed to produce accounts, books, documents, or papers shall furnish and deliver the same at the time and to the place specified in the subpoena. A subpoena issued pursuant to this rule shall be served in a manner permitted by law which shall include service by certified mail, return receipt requested. In the case of disobedience to a subpoena, the Commission may invoke the aid of any court of this state in requiring the attendance and testimony of the witnesses and the production of accounts, books, documents, <u>electronic records, and associated data</u>

storage devices and media, video tapes or digital video storage devices, or papers. Any charges for service of a subpoena are to be paid prior to the date set for hearing by the parties at whose instance the subpoena is issued.

002.06 Any witness who is summoned and who responds thereto is entitled to the same fees and expenses as is paid for like service in the District Court for the county wherein such hearing is held. Mileage for officers and fees for service of documents served by Order of the Commission, when served by law enforcement officers, shall be equal to those established by law in similar cases for charges in the District Court of said county.

002.07 The taking of depositions and proceedings before the Commission shall be in the manner prescribed by law for taking depositions in civil actions in the District Courts for the State of Nebraska.

002.08 Formal hearings held before the Commission shall conform to the requirements of Chapter 84, Section 914, R.R.S., Nebraska, as amended, unless otherwise provided for by this rule.

002.09 The Commission, when it deems it necessary in the enforcement of the laws of Nebraska and Rules and Regulations of the Commission, may cite a licensee before it for a formal hearing. The citations shall be in writing and definitely state the charges or complaints the licensee is called upon to answer. The charges or complaint that the licensee is called upon to answer may be amended at the time of the hearing provided the amended charges or complaint is agreed to by the licensee called upon to answer. The Commission may authorize certain law enforcement officers to issue citations to licensees.

002.10 If it is found by the Commission that any licensee is violating any provisions of the Nebraska Liquor Control Act or the Rules and Regulations of the Commission promulgated thereunder, or is failing to observe in good faith the purposes of said act, the license of such licensee may be suspended, cancelled or revoked by the Commission.

002.11 The licensee may appear in person and by counsel, and produce such witnesses and evidence as the licensee deems necessary in the protection of the licensee's interest.

002.12 Upon the suspension, cancellation or revocation of any license, the local governing body shall be notified of such suspension, cancellation or revocation and said licensee shall be prohibited from operation under such license during such period of time.

002.13 All orders or decisions of the Commission and rehearings or appeals of such orders or decisions of the Commission shall conform to the requirements of Chapter 53, Section 1, 116, R.R.S., Nebraska, as amended. All orders and decisions of the Commission assessing penalties, fixing the time of hearings or rehearings, or pertaining to motions filed with respect to the same, shall become effective as such when recorded in the records of the Commission.

002.14 The Commission may employ a hearing officer who shall assist the Commission with the review of any issue or matter which the Commission deems proper in order to carry out the provisions of the Nebraska Liquor Control Act and who shall perform such other duties as the Commission may prescribe, provided, any issue or matter reviewed by a hearing officer involving a contested case shall conform to the requirements of 237-LCC1-002, and provided further, if a hearing is conducted by a hearing officer, the hearing officer shall submit a report of the findings made by such hearing officer along with a recommendation of order or decision to the Commission within 20 days of the date of such hearing, and a copy of the report and recommendation of the hearing officer shall be forwarded to all parties requesting the same, and provided further, any recommendation of order or decision made to the Commission by a hearing officer will not be considered an order or decision of the Commission unless accepted and affirmed by the Commission, and the Commission may further reverse, adopt, modify, supplement, amend or reject the recommendation of order or decision by the hearing officer, in whole or in part, and provided further, upon its motion or motion by any party to a hearing held before a hearing officer, the Commission shall allow a rehearing before the Commission of any issue or matter reviewed by a hearing officer. The written motion by an outside party shall be in writing and must be made within 20 days of the date of the Commission's decision and shall include the reasons why a rehearing should take place.

002.15 Any hearing conducted by a hearing officer shall require the department to prepare an official record of the hearing, including all testimony recorded mechanically or stenographically, and all exhibits introduced. The department is not required to transcribe such record except pursuant to an appeal, except that, upon written request and receipt of a reasonable fee for transcribing such record, the department may transcribe the record or allow for its transcription by the persons requesting.