



**Legal Notice of Rulemaking  
Nebraska Department of Transportation  
Public Hearing**

**Tuesday, November 5, 2019, 9:00-11:00 AM  
Nebraska Department of Transportation  
Central Headquarters Bldg., Rm. 103  
1500 Hwy 2, Lincoln, Nebraska**

The Nebraska Department of Transportation (NDOT) has commenced rulemaking and will hold a public hearing concerning revisions to the following regulations:

- **407 NAC 2 - Contested Cases:** This regulation governs the Department's procedure for contested cases. NDOT is proposing to revise this existing regulation to update the language. The proposed revisions will 1) eliminate the currently out-of-date language and adopt the Attorney General's Model Rule for Contested Cases (53 NAC 4) by reference, and 2) Include the two statutory boards NDOT oversees (Nebraska Board of Examiners for County Highway and City Street Superintendents and the Nebraska Board of Public Roads Classifications and Standards). This proposed revision will allow the two Boards to repeal their out-of-date regulations on Contested Cases, which is included in this rulemaking.
- **411 NAC 1 - Manual on Uniform Traffic Control Devices:** This regulation provides for a uniform system of traffic control devices throughout Nebraska that match national standards for traffic control through the adoption of the Federal Highway Administration's (FHWA) "Manual on Uniform Traffic Control Devices" (MUTCD). The MUTCD provides traffic control guidance for all roads open to public traffic.

The MUTCD is periodically updated by FHWA. The proposed regulation changes will update Title 411 to match the current MUTCD revision.

NDOT will also be adopting an updated Nebraska Supplement to the MUTCD. Federal regulation allows state DOTs to create a supplemental manual containing state-specific sign and control device standards.

- **415 NAC 2 - Nebraska Transportation Public Assistance Program:** This regulation governs funding distribution and defines eligible recipients and sub-recipients of state and federal funds for transportation services in Nebraska.

The regulation covers NDOT, and any municipality or non-profit organization that applies and is eligible for funding assistance.

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In addition to revising the previous three regulations, NDOT is proposing to repeal the following regulations:

- **17 NAC 8 - Promotion of Aviation:** NDOT is proposing the repeal of this unnecessary regulation. NDOT is an avid promoter of aviation in the state of Nebraska. However, this regulation neither regulates nor sets any parameters for the promotion of aviation and is thus, unnecessary. The repeal of this regulation was supported by the passage of LB 190 (2019).
- **17 NAC 9 - Rental of Aircraft:** NDOT is proposing the repeal of this unnecessary regulation. NDOT's Aeronautics Division is not an expert in the liability or insurance fields and should not have a duty or need to oversee, review, or file aircraft renters' liability notices and acknowledgements. The repeal of this regulation was supported by the passage of LB 190 (2019).
- **411 NAC 2 - School Bus Loading Area Signs:** NDOT is proposing to repeal this regulation. The regulation, formerly mandated by §60-6,176, required NDOT to adopt a regulation with specifications for a single sign to be erected in school bus loading areas. That statute was repealed by LB 190 (2019) and NDOT has determined that the sign specifications can be incorporated into the Nebraska Supplement to the Federal Manual on Uniform Traffic Control Devices which is adopted pursuant to regulation 411 NAC 1 rendering this regulation unnecessary.
- **425 NAC 1 - Hearing Practice and Procedure of the Board of Examiners for County Highway and City Street Superintendents and Hearing Practice and Procedure for Contested Cases:** This regulation is being proposed for repeal. NDOT has chosen to include the Board in its update of 407 NAC 2, which is also included in this rulemaking, rendering this regulation duplicative and unnecessary.
- **428 NAC 5 - Hearing Practice and Procedure of the Board of Public Roads Classifications and Standards:** This regulation is being proposed for repeal. NDOT has chosen to include the Board in its update of 407 NAC 2, which is also included in this rulemaking, rendering this regulation duplicative and unnecessary.

Interested persons are invited to attend the public hearing. Comments and recommendations may be presented orally or in writing at the hearing. They may also be mailed, faxed, or e-mailed prior to the hearing or until the close of the public comment period (November 15, 2019). Pre-hearing and post-hearing comments should be directed in writing to NDOT's Public Involvement Manager, Sarah Soula, P.O. Box 94759, Lincoln, Nebraska 68509-4759; sarah.soula@nebraska.gov; voice telephone 402-479-4871, TDD telephone 402-479-3834, fax 402-479-3989. Comments may also be posted online through the Secretary of State's website (see below).

To view or download the proposed changes to the regulations or to comment online, visit: [www.sos.state.ne.us/rules-and-regs/regtrack](http://www.sos.state.ne.us/rules-and-regs/regtrack) ("Agency": Transportation). To obtain a free paper copy of the proposed changes, the Proposed Regulation Policy Pre-Review Checklists, or the Fiscal Impact Statements, contact NDOT's Government Affairs Office, PO Box 94759, Lincoln, Nebraska 68509-4759; [erich.strack@nebraska.gov](mailto:erich.strack@nebraska.gov); voice telephone 402-479-4324, TDD telephone 402-479-3834, fax 402-479-3758. Copies may be viewed or picked up in person at the NDOT Director's Office, 1500 Highway 2, Lincoln, NE.

NDOT will make every reasonable accommodation to provide an accessible meeting facility for all persons. Appropriate provisions for the hearing and visually challenged or persons with limited English proficiency (LEP) will be made if NDOT is notified by October 29, 2019. Notification should be submitted to Sarah Soula, Public Involvement Manager (see contact information above).

This notice is provided pursuant to the Administrative Procedure Act.

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# RULE & REGULATION PRELIMINARY FISCAL IMPACT STATEMENT

<b>AGENCY:</b>	Nebraska Department of Transportation		
<b>TITLE:</b>	415	<b>PREPARED BY:</b>	Erich Strack
<b>CHAPTER:</b>	2	<b>DATE PREPARED:</b>	September 30, 2019
<b>SUBJECT:</b>	Nebraska Public Transportation Assistance Program	<b>TELEPHONE:</b>	402-479-4324

**TYPE OF FISCAL IMPACT:**

	STATE AGENCY	POLITICAL SUBDIVISION	REGULATED PUBLIC
No Fiscal Impact	X		
Increased Costs			
Decreased Costs			
Increased Revenue			
Decreased Revenue			
Indeterminable		X	X

**PROVIDE AN ESTIMATED COST AND DESCRIPTION OF IMPACT:**

<b>State Agency</b>	
<b>Political Subdivision</b>	Unknown
<b>Regulated Public</b>	

**IF INDETERMINABLE, EXPLAIN WHY:** LB 977 (2016) allows for capital acquisition to be a reimbursable expense. This could result in an increase in aid for some entities while possibly decreasing the amount of aid available to the large urban recipients.

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**TITLE 415, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 2**

NEBRASKA DEPARTMENT OF TRANSPORTATION  
~~ROADS~~  
~~INTERMODAL PLANNING~~LOCAL ASSISTANCE DIVISION

RULES AND REGULATIONS CONCERNING  
NEBRASKA PUBLIC TRANSPORTATION ASSISTANCE PROGRAM

**TITLE 415 – NEBRASKA DEPARTMENT OF TRANSPORTATION –~~INTERMODAL PLANNING~~ LOCAL ASSISTANCE DIVISION**

**Chapter 2 – Nebraska Public Transportation Assistance Program**

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**TITLE 415 – NEBRASKA DEPARTMENT OF TRANSPORTATION – INTERMODAL PLANNING LOCAL ASSISTANCE DIVISION**

**Chapter 2 – Nebraska Public Transportation Assistance Program**

001 13-1201 THROUGH 13-1212 NEB. REV. STAT., REFERRED TO AS THE NEBRASKA PUBLIC TRANSPORTATION ACT, AS AMENDED, IS BY THIS REFERENCE, MADE A PART OF THIS RULE.

002 DEFINITIONS: As used herein:

002.01 RECIPIENT: An eligible applicant whose application has been approved and has entered into an agreement with the State under this program.

002.02 PROJECT: A recipient's Public Transportation System.

002.03 CAPITAL ACQUISITIONS Eligible costs for investments in the purchase, replacement, and rebuilding of buses and other vehicles used for public transportation. Rebuild is a capital expense associated with rolling stock that occurs at or near the end of a unit's useful life, and which results in an extended useful life for the unit.

The department shall submit an annual report to the chairperson of the Appropriations Committee of the Legislature on or before December 1 of each year regarding funds requested by each applicant for eligible capital acquisition and operating costs in the current fiscal year. The report shall be submitted electronically and include the requests and grants awarded for handicapped vans, and handicapped accessible fixed route bus systems.

002.043 ELIGIBLE OPERATING AND CAPITAL ACQUISITION COSTS:

002.043A FACTORS AFFECTING ELIGIBILITY COSTS: To be eligible under the subsidy program, costs must meet the following general criteria:

002.043A1 Be necessary and reasonable for proper and efficient administration of the transportation program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of local governments unless totally applicable to the project.

002.043A2 Be authorized or not prohibited under State or local laws or regulations.

002.043A3 Be consistent with policies, regulations, and procedures that apply uniformly to federally assisted, State assisted and other activities of the unit of government of which the contractor is a part.

002.043A4 Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

002.043A5 Not be allocable to, or included as a cost of, any other federally or State financed program in either the current or prior period.

002.043A6 Not include depreciation or capital costs.

002.043A7 Be net of all applicable credits.

~~002.03B ALLOCABLE COSTS: A cost is allocable to a particular cost objective to the extent of benefits received by such objective.~~

~~Any cost allocable to a particular cost objective may not be shifted to other subsidy programs to overcome fund deficiencies, avoid restrictions imposed by law or agreements, or for other~~

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**Chapter 2 – Nebraska Public Transportation Assistance Program (Continued)**

~~reasons:~~

~~Where an allocation of joint cost will ultimately result in charges to a transportation program, an allocation plan will be required as prescribed in the "Manual of Accounting Instructions for the Nebraska Public Transportation Assistance Program" hereinafter referred to as the "Accounting Manual."~~

~~002.03C APPLICABLE CREDITS: Applicable credits are those receipts or reduction of expenditure type transactions which offset or reduce expense items allocable to this subsidy program as direct or indirect costs. Examples of such transactions are: purchase discounts, rebates or allowances; recoveries or indemnities on losses; sale of publications, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.~~

~~Applicable credits may also arise when federal or State funds are received or are available from sources other than the subsidy program involved to finance operations of the contractor.~~

002.054 OPERATING REVENUE: Revenue generated from the operation of the system and includes passenger charges, such as fares or subscription charges, from rent or lease of vehicles, from rent or lease of vehicle space for advertising, gifts, or contributions, but shall not include taxes or cost reimbursements such as insurance damage payments.

002.065 FEDERAL OPERATING FUNDSSUBSIDIES: Non-Department of Transportation Federal funds available to offset operating loss; such funds are to be considered as revenue. The Department of Transportation Roads will advise recipients of applicable federal funding programs and will determine the extent to which recipients attempted to secure such funding to offset operating costs.

002.076 ELIGIBLE OPERATING DEFICIT: The amount of eligible costs incurred in the operation of a public transportation system which exceeds the total amount of operating revenue and reportable federal funding.

003 COORDINATION OF PLANS WITH CARRIERS: All eligible applicants shall be encouraged to coordinate their public transportation plans with all private and other public carriers operating within common boundaries to avoid duplication of service. Utilization of existing private carriers should be given consideration when establishing a public transportation system. ~~Applicants establishing a new public transportation system shall comply with the policies stated in the brochure entitled "Requirements of Applicants Establishing Public Transportation Projects."~~

004 REDUCED FARES

004.01 City bus systems, operating over regularly-scheduled routes and receiving State funds under this program, must offer a reduced fare not to exceed one-half of the rates generally applicable to other persons at peak hours per one-way trip for persons who are elderly or handicapped. This provision does not apply to special transportation systems, such as portal-to-portal escorted service designed to serve the elderly or handicapped, or to bus systems not operating over regularly-scheduled routes. Nor does this provision prohibit a city bus system from offering a reduced fare to groups in addition to the elderly and handicapped or from offering this reduced fare at less than the stated reduced rate. The recipient may designate certain peak periods during which reduced fares shall not apply.

004.02 The recipient shall be responsible for determining the disability criteria by which a handicapped person will be eligible for the reduced fare. In determining this eligibility, recipients may expand upon the definitions of handicapped as set forth in the legislation but may not make their disability criteria more strict. ~~For the purpose of providing a measure of uniformity to the program, the disability criteria proposed~~



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**Chapter 2 – Nebraska Public Transportation Assistance Program (Continued)**

~~by the recipient shall be approved by the Department of Roads prior to adoption.~~

004.03 Certification of persons as being elderly or handicapped and eligible for the reduced fare shall be the responsibility of the recipient. The recipient may delegate part or all of this responsibility to another agency(ies), professional(s), or adopt any combination of these or other methods of certification that best meets the individual circumstances of the recipient and still fulfills the requirements of law, the approved criteria, and this Rule and Regulation.

**005 APPORTIONMENT AND MATCH REQUIREMENTS**

005.01 The State subsidy to a recipient shall not exceed fifty percent of the eligible operating deficit.

005.02 Should funds be insufficient to fully fund all proposed projects at the fifty percent funding level, a determination will be made as to which projects, and to what extent, shall be funded. Apportionment will be made on a priority basis subject to the requirements and restrictions set forth in the legislation. Priority criteria shall include but not be limited to the following:

005.02A Proposed projects best suited to serve the needs of the elderly and handicapped.

005.02B Proposed projects with federal funding participation.

005.02C Proposed projects which provide a service to the elderly and handicapped not otherwise available.

005.02D Commitment of local agencies to support the project.

005.02E Proposed projects which most adequately serve transportation needs in a given region.

005.02F Proposed projects which show the most coordination of effort with other services.

In such case where an application receives no funding, or only partial funding, and unappointed money later becomes available, applications will be reconsidered for funding or increased funding.

~~005.03 Each Nebraska Public Transportation Assistance Program Project application, which is accepted for subsidy, shall be approved for a maximum of two years's duration. Reapplication must be made to prior to July 1 of each odd-numbered year. All state funding is subject to appropriation by the Nebraska Legislature, which may be renewed the first day of July of the grant award year, if funds should be appropriated to this program by the Legislature.~~

005.04 If, at any time, the total funds appropriated for the program are obligated in their entirety, no additional projects will be approved for that fiscal year or until additional funds become available.

005.035 The recipient agency must provide the remainder of the funds to offset the deficit incurred in the provision of transportation. This local match, at a minimum, will equal the amount of State funds.

Local-matching funds may include: local revenues, funds apportioned to local subdivisions by the State Treasurer and revenues generated by activities and programs other than transportation. It shall not include operating revenues or federal monies. Recipients may be required to provide assurance of the provision of local-matching funds.

**006 APPLICATION PROCEDURE**

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**TITLE 415 – NEBRASKA DEPARTMENT OF TRANSPORTATION – INTERMODAL PLANNING LOCAL ASSISTANCE DIVISION**

**Chapter 2 – Nebraska Public Transportation Assistance Program (Continued)**

006.01 Eligible applicants wanting financial assistance should file an “Application for the Nebraska Public Transportation Assistance Program.” To ensure consideration for allocation of funding under this program, the completed forms will have to be received in adequate time prior to the start of the fiscal year, (July 1<sup>st</sup> of the grant award year), to allow for processing and agreement execution. Application forms will be ~~provided available through an online portal system maintained~~ by the Department of Transportation, ~~Local Assistance Roads Rail and Public Transportation Division.~~

006.02 To complete the application, the applicant will need to assess the anticipated eligible operating costs and revenues, federal funding and sources of local-matching funds, ~~as defined in the “Accounting Manual,” and complete the appropriate application and budget forms. Line items include:~~

006.02A Personnel costs including, but not limited to, job titles, salaries, taxes, and fringe benefits.

006.02B Administrative costs including, but not limited to, travel, communication, printing and advertising.

006.02C Special service costs covering service outside that which is supplied by the staff, examples include legal, professional or audit services.

006.02D Building space and utilities costs covering rent and utilities but excluding actual purchase of building space or property.

006.02E Maintenance parts and supplies costs.

006.02F Fuel and lubrication costs.

006.02G Other costs which include items which otherwise fit into no previous category.

006.02H Operating revenue.

006.02I Federal contributions which includes all federal monies used to offset the costs of operations except revenue-sharing money, which should be listed under local-matching revenue.

006.02J Local matching revenue which includes all funds and their sources to be used as match for this Nebraska Public Transportation Assistance Program.

006.03 A recipient’s allocation will be based upon the total amount of anticipated operating deficit, so it is imperative to have reasonable estimates to effectively appropriate State funds.

006.04 Applications must be filed as determined by the Nebraska Department of Transportation for the distribution of public transit assistance funds every other each fiscal year that State funds are appropriated to be considered for allocation.

006.05 Nothing herein shall be interpreted to prohibit participation by private or public transportation companies in this program through contractual arrangement with an eligible applicant.

006.06 Eligible applicants can apply for capital acquisition of vehicles approved and procured by the Department of Transportation through a state contract. The vehicle will be maintained per the Department of Transportation’s requirements as outlined in the most recent Department of Transportation’s State Management Plan and the Department of Transportation’s Program Management Manual for Vehicles.

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**Chapter 2 – Nebraska Public Transportation Assistance Program (Continued)**

**007 REQUIREMENTS OF RECIPIENTS**

007.01 OPERATING ASSISTANCE AGREEMENT REQUIREMENTS: Each applicant, upon acceptance as a recipient under the Nebraska Public Transportation Assistance Program, will be required to enter into an agreement with the State. The agreement will contain but not be limited to the following items and stipulations:

007.01A Agreement periods will not exceed ~~two~~ years in length.

007.01B Agreements must state the maximum amount of subsidy and the maximum percent of eligible operating deficits which will be subsidized.

007.01C Applicant must agree to provide local-matching funds and to credit the State with its proportionate share of any refund of previously-claimed eligible operating deficit.

007.01D Applicant must agree to use competitive bidding procedures when purchasing eligible equipment.

007.01E Applicants must agree to include these same contract stipulations when subcontracting for service.

~~007.01F Applicants must agree to maintain records as per the "Accounting Manual."~~

~~007.01FG Applicants must agree to submit reports as required by the State.~~

~~007.01GH Subsidy payments will be made not more than once every month.~~

~~007.01HI Applicants must agree to allow audit of equipment and records.~~

~~007.01I Conditions under which the State may terminate the agreement.~~

~~007.01JK Provisions for changing the agreement.~~

~~007.01KL Prohibition of conflict of interest.~~

~~007.01LM Applicant must agree to hold the State harmless for damage claims.~~

~~007.01MN Applicant must agree to maintain third-party liability insurance or, if permitted by law, maintain a self-insured program.~~

**007.02 CAPITAL ACQUISITION AGREEMENT REQUIREMENTS**

007.02A Applicant must adhere to the applicable grant requirements as outlined in 7.1.

007.02B Vehicle must be used in the provision of transportation for the public in the service area defined by the applicant.

007.02C Applicant must submit local match payment to the Nebraska Department of Transportation prior to the vehicle being turned over to the applicant.

007.02D Applicant must agree to request prior approval from the Nebraska Department of Transportation before altering the vehicle.

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**Chapter 2 – Nebraska Public Transportation Assistance Program (Continued)**

007.02E Title of the vehicle must be in the name of the Applicant unless the Nebraska Department of Transportation permits transfer of title.

007.02F Applicant shall have and maintain a scheduled vehicle maintenance program in a format approve by the Nebraska Department of Transportation.- The vehicle will be maintained with cleanliness, a high level of repair, be mechanically sound and operate safely.

007.02G Applicant may not execute any transfer of title, lease, lien pledge, mortgage, encumbrance, contract, grant anticipation note, alienation or other obligation that in any way affects the Federal interest in the vehicle.

007.02H If vehicle is withdrawn from transportation service, the Applicant will immediately notify the Nebraska Department of Transportation. Vehicle will then be disposed of in a manner determined by the Nebraska Department of Transportation.

007.02I Applicant will not dispose of the vehicle without prior approval of the Nebraska Department of Transportation. Vehicle will be disposed of following the guidelines in the most recent approved State Management Plan.

**007.032 REIMBURSEMENT AND REPORTING REQUIREMENTS**

007.032A Subsidy payments will be made on a reimbursement basis, not more than once every month.

007.032B Request for subsidy payment and data reporting will be made by submitting, each month, the necessary reimbursement request forms via the Nebraska Department of Transportation's online portal system, which will be completed with sufficient detail to assure the State that the requested subsidy is justified.

**007.04 PETITION FOR DENIAL OF FUNDS**

007.04A Any public purpose organization proposing to provide public transportation denied financial assistance may submit a petition to the Nebraska Department of Transportation requesting the department to reclassify the proposed service area as not being adequately served by existing services.

007.04B The petition will bear the signatures of at least fifty registered voters residing in the proposed service area.

007.04C Upon receipt of the petition, the Nebraska Department of Transportation will hold a public hearing in the proposed service area and will determine whether the proposed service area is already adequately served.

007.04D The public hearing will be conducted by the Hearing Officer or designee pursuant to the Administrative Procedure Act. The Hearing Officer or designee will promptly give notice of an order granting, denying or modifying intervention to the petitioner and to all parties. the Nebraska Department of Transportation will not be required to conduct a reevaluation hearing for an area more frequently than once a year.

**007.053 ACCOUNTING AND AUDITING REQUIREMENTS**

007.053A Records concerning costs which will be claimed for reimbursement must be kept in conformance with the guidelines contained in most current "Award Management Requirements" circular as published by the Federal Transit Administration, the "Accounting Manual."

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**Chapter 2 – Nebraska Public Transportation Assistance Program (Continued)**

007.053B In order to properly account for eligible reimbursements under the program, cash basis or accrual basis accounting is acceptable as long as such system is consistent throughout each agreement period.

**Annotation**

Title 415  
Chapter 2

**Enabling Legislation  
§39-102 and 13-1201  
through 13-1212  
Neb. Rev. Stat.**

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