



***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 The proposed revisions will 1) eliminate the currently out-of-date language and adopt the Attorney General's Model Rule for Contested Cases (53 NAC 4) by reference, and 2) Include the two statutory boards NDOT oversees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 This proposed revision will allow the two Boards to repeal their out-of-date regulations on Contested Cases, which is included in this rulemaking.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.

OCT 01 2019

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).

OCT 01 2019

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.

OCT 01 2019

# RULE & REGULATION PRELIMINARY FISCAL IMPACT STATEMENT

<b>AGENCY:</b>	Nebraska Department of Transportation		
<b>TITLE:</b>	407	<b>PREPARED BY:</b>	Erich Strack
<b>CHAPTER:</b>	2	<b>DATE PREPARED:</b>	October 1, 2019
<b>SUBJECT:</b>	Contested Cases	<b>TELEPHONE:</b>	402-479-4324

**TYPE OF FISCAL IMPACT:**

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

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

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

**IF INDETERMINABLE, EXPLAIN WHY:**

**TITLE 407, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 2**

NEBRASKA DEPARTMENT OF TRANSPORTATION  
GOVERNMENT AFFAIRS

RULES AND REGULATIONS CONCERNING  
PRACTICE AND PROCEDURE FOR CONTESTED CASES

TITLE 407 – NEBRASKA DEPARTMENT OF TRANSPORTATION - GOVERNMENT AFFAIRS OFFICE

Chapter 2 – Practice and Procedure for Contested Cases

**Table of Contents**

001 GENERAL .....	1
002 PROHIBITIONS, TO WHOM APPLICABLE .....	1
003 INTERVENTION IN A CONTESTED CASE .....	2
004 COMMENCEMENT OF A CONTESTED CASE .....	3
005 HEARING OFFICER; CRITERIA .....	4
006 PREHEARING PROCEDURES .....	5
007 CONDUCTING A CONTESTED CASE HEARING .....	8
008 DECISION AND ORDER IN A CONTESTED CASE .....	10
009 APPEALS .....	11

---

OCT 01 2019

# TITLE 407 – NEBRASKA DEPARTMENT OF TRANSPORTATION - GOVERNMENT AFFAIRS OFFICE

## Chapter 2 – Practice and Procedure for Contested Cases

001 - The Nebraska Department of Transportation adopts by reference Title 53, Chapter 4, the Nebraska Attorney General's model rule for Rules of Practice and Procedure for Contested Cases.

002 - This regulation shall govern the Nebraska Department of Transportation and the following two statutory boards for which the Department is required to provide clerical and other support:

002.01 Nebraska Board of Public Roads Classifications and Standards

002.02 Nebraska Board of Examiners for County Highway and City Street Superintendents

### 001 - GENERAL

001.01 - Scope The following rules and procedures apply to any contested case hearings required by the rules of the Nebraska Department of Transportation.

001.02 - Definitions The following definitions apply as used throughout Chapter 2 of these rules and regulations.

001.02A Department means the Nebraska Department of Transportation.

001.02B Contested case means a proceeding before the Department in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after a hearing by the Department.

001.02C Ex parte communication means 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 does 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 rulemaking proceeding; and

001.02C4 Communications to which all parties have given consent.

001.02D Hearing officer means 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 the Department that sets forth a claim and request for Department action.

OCT 01 2019

**TITLE 407 – NEBRASKA DEPARTMENT OF TRANSPORTATION - GOVERNMENT AFFAIRS OFFICE**

**Chapter 2 – Practice and Procedure for Contested Cases (Continued)**

002 PROHIBITIONS, TO WHOM APPLICABLE

~~002.01 Parties and public~~ No party in a contested case or other person outside the Department 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 a Department member or a staff member who is or may reasonably be expected to be involved in the decision-making process of the contested case.

~~002.02 Persons in decision-making roles~~ A hearing officer, a Department member or a staff member who is or may reasonably be expected to be involved in the decision-making process of the contested case shall not make or knowingly cause to be made an ex parte communication to any party in a contested case or other person outside the Department having an interest in the contested case.

~~002.03 Investigators~~ A Department member or a staff member engaged in the investigation or enforcement of a contested case shall not make or knowingly cause to be made an ex parte communication to a hearing officer or a Department member or a staff member who is or may reasonably be expected to be involved in the decision-making process of the contested case.

~~002.03A Disclosure of contacts~~ The hearing officer or a Department member or a staff member 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 set forth in subsections 001.02C1 through 001.02C3 shall file in the record of the contested case:

~~002.03A1~~ All such written communications;

~~002.03A2~~ Memoranda stating the substance of all such oral communications; and

~~002.03A3~~ All written responses and memoranda stating the substance of all oral responses to all the ex parte communications.

~~002.03A4~~ 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.

~~002.03A5~~ Filing and notice of filing provided under subsection 001.02C4 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 intervener under any provision of law; and

OCT 01 2019



## TITLE 407 – NEBRASKA DEPARTMENT OF TRANSPORTATION - GOVERNMENT AFFAIRS OFFICE

### Chapter 2 – Practice and Procedure for Contested Cases (Continued)

~~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.

~~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 Department. The petition is the initial document filed by or with the Department that sets forth a claim and request for Department 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 the Department. Any pleading filed in a contested case shall meet the following requirements:

~~004.04A~~ The pleading shall contain a heading specifying "Nebraska Department of Transportation" and

**TITLE 407 – NEBRASKA DEPARTMENT OF TRANSPORTATION - GOVERNMENT AFFAIRS OFFICE**

**Chapter 2 – Practice and Procedure for Contested Cases (Continued)**

~~the title or nature of the pleading, shall state material factual allegations and state concisely the action the Department 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.~~

~~004.04A3 All pleadings shall be made on white, letter-sized (8 1/2x11) 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 Department at its official office, 1500 Highway 2, P.O. Box 94759, Lincoln, Nebraska 68509. Filing may be accomplished by personal delivery or mail and will be received during regular office hours of the Department office.~~

~~004.06 The Department 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 Department. 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 Department 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 Department.~~

~~004.08 Unless state law provides that a hearing is not required, a hearing date shall be set by the Department 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 Department 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 Department.~~

~~004.09 In computing time prescribed or allowed by any of the Department's 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 The chairperson of the Department, the acting chairperson, or a duly authorized member of the Department, may delegate to a hearing officer other than himself or herself the functions of conducting a prehearing conference and/or a hearing and submitting a recommended decision to the Department.~~

~~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 001.05D.~~

OCT 01 2019

## TITLE 407 – NEBRASKA DEPARTMENT OF TRANSPORTATION - GOVERNMENT AFFAIRS OFFICE

### Chapter 2 – Practice and Procedure for Contested Cases (Continued)

~~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 001.05D.

~~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 Department'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 Department of the determination that a prehearing conference will be conducted. The Department 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 Department shall give notice to other persons entitled to notice.

~~006.01A3~~ The notice referred to in subsection 001.06A1b shall include the following:

~~006.01A3a~~ The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

~~006.01A3b~~ The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the Department;

~~006.01A3c~~ The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

~~006.01A3d~~ A statement of the time, place, and nature of the prehearing conference;

~~006.01A3e~~ A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

**TITLE 407 – NEBRASKA DEPARTMENT OF TRANSPORTATION - GOVERNMENT AFFAIRS OFFICE**

**Chapter 2 – Practice and Procedure for Contested Cases (Continued)**

~~006.01A3f~~ The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference;

~~006.01A3g~~ 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

~~006.01A3h~~ Any other matters that the hearing officer considers desirable to expedite the proceedings.

~~006.02~~ 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.

~~006.03~~ 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.

~~006.04~~ Discovery in contested cases.

~~006.04A~~ 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.

~~006.04B~~ Any prehearing motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion shall:

~~006.04B1~~ 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;

~~006.04B2~~ State the reasons supporting the motion;

~~006.04B3~~ 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

~~006.04B4~~ Be filed with the Department. The moving party must serve copies of all such motions to all parties to the contested case.

# TITLE 407 – NEBRASKA DEPARTMENT OF TRANSPORTATION - GOVERNMENT AFFAIRS OFFICE

## Chapter 2 – Practice and Procedure for Contested Cases (Continued)

~~006.04C~~ Other than as provided in subsection 001.06B2d above, discovery materials need not be filed with the Department.

~~006.05~~ Continuances The hearing officer may, in his or her own 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.

~~006.05A~~ Good cause Good cause for an extension of time or continuance may include, but is not limited to, the following:

~~006.05A1~~ Illness of the party, legal counsel or witness;

~~006.05A2~~ A change in legal representation; or

~~006.05A3~~ Settlement negotiations are underway.

### 006.06 Amendments

~~006.06A~~ 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.

~~006.06B~~ 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.

~~006.07~~ 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:

OCT 01 2019

TITLE 407 – NEBRASKA DEPARTMENT OF TRANSPORTATION - GOVERNMENT AFFAIRS OFFICE

Chapter 2 – Practice and Procedure for Contested Cases (Continued)

~~007.01C1a~~ Evidence is presented by the petitioner;

~~007.01C1b~~ Evidence is presented by the respondent;

~~007.01C1c~~ Rebuttal evidence is presented by the petitioner; and

~~007.01C1d~~ Surrebuttal evidence is presented by the respondent.

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

~~007.01C2a~~ Direct examination conducted by the party who calls the witness;

~~007.01C2b~~ Cross-examination by the opposing party;

~~007.01C2c~~ Redirect examination by the party who called the witness; and

~~007.01C2d~~ 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 the Department or the 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 the Department, from which a decision may be appealed to the courts of this state, may request that the Department be bound by the rules of evidence applicable in district court by delivering to the Department 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 Department 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 or issue subpoenas 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.

OCT 01 2019

## TITLE 407 – NEBRASKA DEPARTMENT OF TRANSPORTATION - GOVERNMENT AFFAIRS OFFICE

### Chapter 2 – Practice and Procedure for Contested Cases (Continued)

~~007.02F~~ The Department shall give effect to the rules of privilege recognized by law.

~~007.02G~~ The Department 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 the Department.

~~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~~ The Department 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 Department 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 Department upon request and tender of the cost of preparation.

~~007.04B~~ The Department 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 Department 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 Department pertaining to the contested case;

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

~~007.04C4~~ The final order.

~~007.04D~~ As provided in Section 001.02C of these rules and regulations, the hearing officer or a Department member, or a staff member who is or may reasonably be expected to be involved in the decision making

**TITLE 407 -- NEBRASKA DEPARTMENT OF TRANSPORTATION - GOVERNMENT AFFAIRS OFFICE**

**Chapter 2 -- Practice and Procedure for Contested Cases (Continued)**

~~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 Department record shall constitute the exclusive basis for Department action in contested cases under the act and for judicial review thereof.~~

~~007.04F 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 the Department 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 Nebraska Department of Transportation" and the 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 Department as a result of the facts found and the legal conclusions arising therefrom.~~

~~008.03 Parties to the proceedings may 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 Administrative Procedure Act or to resort to such other means of review as may be provided by law.~~

~~009.02 Parties desiring to appeal a Department decision must file a petition for review in the district court of the county where the Department action is taken within thirty days after the service of the final decision by the~~

OCT 01 2019



**TITLE 407 – NEBRASKA DEPARTMENT OF TRANSPORTATION - GOVERNMENT AFFAIRS OFFICE**

**Chapter 2 – Practice and Procedure for Contested Cases (Continued)**

~~Department. 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 process for taking an appeal.~~

**Annotation**

**Title 407  
Chapter 2**

**Enabling Legislation  
84-901 and 84-913  
through 84-919917  
Neb. Rev. Stat.**

**OCT 01 2019**

