

NEBRASKA ADMINISTRATIVE CODE

LAST APPROVED DATE: JULY 16, 1985

TITLE 163 - NEBRASKA GAME AND PARKS COMMISSION

CHAPTER 1 - ADMINISTRATION

001 Regulations governing consumption of alcoholic beverages on all areas under its jurisdiction. Under the provisions of section 53-186, R.R.S. 1999, the Game and Parks Commission hereby authorizes, on lands under its jurisdiction, the consumption of alcoholic beverages in assigned, rented or leased Commission-owned structures used as temporary or permanent residences, or in privately-owned structures permanently situated on such lands used as temporary or permanent residences.

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LAST APPROVED DATE: February 5, 1999

TITLE 163 - NEBRASKA GAME AND PARKS COMMISSION

CHAPTER 1 - ADMINISTRATION

002 Rules of practice and procedure for the conduct of public hearings. Under the provisions of sections 84-901 to 84-920, R.R.S. 1999, the following rules and regulations are adopted and promulgated by the Nebraska Game and Parks Commission to govern the practice and procedure for the conduct of public hearings before said Commission, unless otherwise provided by law.

002.01 Public hearings prior to the adoption of regulations or adjudication of other matters requiring a public hearing within the purview of the Commission shall be conducted in the following manner.

002.01A The Commission may at any time on its own motion order any public hearing which the Commission is authorized, either by law or by inherent authority, to conduct and, after giving notice, conduct such hearing in the manner as hereinafter provided. Other meetings may be held as provided in section 37-104, R.R.S. 1998.

002.01B Notice shall be given of all public hearings held by the Commission. Such notice shall be published at least once in a newspaper or newspapers of general circulation in the state. The publication shall be made at least 30 days prior to the date of the hearing. The published notice shall contain information as to the date, time, place and purpose of the hearing.

002.01C The Chairman of the Commission or their designee shall serve as presiding officer over the hearing; however, the presiding officer shall, in all cases, be a member of the Commission.

002.01D The presiding officer shall among other things, open the proceedings; enter into the record

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the notice given of the hearing, take appearances; accept and see that exhibits are properly numbered; answer questions asked or call upon other persons present to answer questions asked; and close the proceedings. The record in any hearing shall not be affected by any change of presiding officer during the conduct of that hearing.

002.01E All testimony shall be under oath or affirmation unless the Commission shall consider such to be unnecessary. Evidence may consist of any oral or written question, statement or testimony and any document.

002.01F Evidence at a public hearing will ordinarily be received in the following sequence: (1) Commission members and staff; (2) federal agencies; (3) other state agencies; (4) political subdivision; (5) all other persons in the order as the presiding officer shall at their discretion choose unless the Commission shall vote, in view of the nature of the matter being heard, to alter this sequence as may be necessary. All persons shall be given the opportunity to be heard on matters relevant to the business and purpose of the hearing.

002.01G Each person presenting evidence at a hearing shall first state their full name and address, and declare whether they are appearing on their own behalf or on behalf of another person or organization, and if they are representing another, such person or organization represented shall be named.

002.01H All evidence presented at the hearing is to be directed at the business and purpose of such hearing. Any evidence not directed at the business and purpose of the hearing, or which is cumulative or repetitive, shall, at the request of the presiding officer, be terminated and excluded from the record. Unless otherwise required by law, strict legal rules of evidence shall not be adhered to, and the presiding officer may admit as evidence any testimony or material which a prudent and reasonable person would consider in the conduct of the important affairs of their business or personal life. Cross examination of any witness may be permitted by the presiding officer.

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002.01I In addition to statements and evidence presented by any other person, the Commission may, through, the Commission staff or otherwise, secure and present such statements and evidence as it may consider necessary or desirable. Evidence shall include a copy of notice given for the public hearing and a statement explaining the business and purpose of the hearing.

002.01J A record shall be made of the hearing proceedings, with the evidence presented being a part thereof. Such record may consist of written statements and any other documentary evidence with tape recordings of oral evidence or transcripts as deemed necessary by the Commission.

002.01K The record of public hearings may be held open at the discretion of the presiding officer for submission of any evidence not available or presented at the time of the hearing. At the designated time the hearing shall be closed by the presiding officer after the inclusion of any evidence submitted and accepted.

002.01L All hearings before the Game and Parks Commission shall be held at regular or special meetings of the Game and Parks Commission as defined in section 37-104, R.R.S. 1998. A quorum of the Game and Parks Commission as defined in the above listed statute shall constitute a quorum for the conduct of a public hearing and no public hearings shall be held in the absence of such a quorum.

002.01M When necessary, members of the Game and Parks Commission may testify or present information at any public hearing before said Commission.

002.01N The Commission may, in regular or special meeting following the closing of a public hearing, decide contested questions, adopt regulations, or take such other action as is appropriate by the usual method of a majority vote of a quorum of the Commission.

002.02 Subpoenas requiring the attendance of witnesses will be issued by Secretary of the Commission on written application of any party, or on order of the Commission. The subpoena shall be served in the manner provided by

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law. Any witness who is summoned and responds thereto is entitled to the same fee as is paid for like services in the District Courts of Nebraska, such fee to be paid by the party at whose instance the witness's testimony is to be taken.

002.03 The Chairman and the Secretary have, by joint agreement, the authority, when the Commission is not in session, to postpone or delay a hearing for good cause shown in writing as to why the hearing should not be held on date set.

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LAST APPROVED DATE: February 5, 1999

TITLE 163 - NEBRASKA GAME AND PARKS COMMISSION

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003 Regulations governing, permitting and prohibiting the conduct of religious services on all areas under the ownership and control of the Game and Parks Commission. Under the authority of, and in compliance with section 37-104, R.R.S. 1998, and other applicable statutes, the following regulations are prescribed by the Game and Parks Commission of the State of Nebraska, and are effective until revoked or amended.

003.01 The following specific forms of public use relating to the conduct of religious services and associated matters on all areas under the ownership and control of the Game and Parks Commission are permitted:

003.01A The conduct of private religious services or instruction for organized groups occupying group camp sites by proper permit, such services to be confined to the area designated by the Commission.

003.01B The conduct of private services by families or family groups in conjunction with participation in routine recreational activities such as picnicking and occupation of overnight facilities, at the site of such activity.

003.01C The conduct of special occasion services, such as Easter Sunrise Services, by special permit, provided that such services shall be open to the general public; held at such site as designated by the Commission, and that the clergy of all religious denominations, sects or beliefs represented in the local community shall have opportunity to participate. Under no circumstances shall such services be denominational or sectarian in nature nor shall any person be barred from attendance or participation by reason of race, creed or color.

003.01D The posting of schedules of religious services of churches or synagogues in the local community, provided, that such posting be conducted

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at locations designated by the Commission and further provided that the clergy of all such churches or synagogues be afforded equal opportunity and space.

003.02 The following specific forms of public use relating to the conduct of religious services and associated matters on all areas under the ownership and control of the Game and Parks Commission are prohibited:

003.02A The conduct of any permitted religious activity so as to unreasonably disturb non-participating persons in the vicinity of the activity.

003.02B The conduct of public religious services on either a regularly scheduled or impromptu basis.

003.02C The installation or display of religious symbols, writings or signs except on a temporary basis in connection with permitted services.

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LAST APPROVED DATE: February 5, 1999

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004 Petitioning for Rulemaking.

004.01 These rules and regulations governing petitioning for rulemaking before the Nebraska Game and Parks Commission are adopted under authority of the Administrative Procedure Act, sections 84-901 through 84-920, R.R.S. 1999. These rules and regulations are effective following enactment by the Game and Parks Commission, approval by the Attorney General and Governor and when five days have elapsed since filing with the Secretary of State.

004.01A Rule Making Petition.

004.01B Petition. Any person may petition the Commission requesting the promulgation, amendment, or repeal of a rule or regulation.

004.01C Form. The petition shall:

004.01C1 Be clearly designated as a petition for a rules change;

004.01C2 In the case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety;

004.01C3 In the case of a petition for the repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by Commission rule number;

004.01C4 Describe the reason for the rules change.

004.01C5 Include an address and telephone where the petitioner can be reached during regular work hours; and

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004.01C6 Be signed by:

004.01C6a The petitioner or their attorney in which case the attorney shall also state their address and telephone number;

004.01C6b A duly authorized officer of the petitioner, if petitioner is a corporation or other legal entity.

004.02 Petition Consideration and Disposition

004.02A Within sixty (60) days after submission of a petition, the Commission shall:

004.02A1 Deny the petition in writing, stating its reasons therefor;

004.02A2 Initiate rulemaking or regulation making proceedings in accordance with the Administrative Procedure Act;

004.02A3 If otherwise lawful, adopt a rule or regulation.

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LAST APPROVED DATE: May 22, 1992

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005 Rules relating to administration of the Trail Development Assistance Act. Under provisions of sections 37-1001 through 37-1015, R.R.S., 2004, the following rules and regulations shall govern the procedures for administration of the Trail Development Assistance Act.

005.01 - Definitions

005.01A Grantee or Applicant or Sponsor -- shall mean any natural resources district, political subdivision, other public agency, or private non-profit organization whose primary purpose is the purchase, development or maintenance of a recreational trail.

005.01B Trail Development Assistance Fund -- shall mean the fund created for the acquisition, development or maintenance of recreational trails pursuant to 37-1001 through 37-1015, R.R.S., 2004.

005.01C Commission -- shall mean the Nebraska Game and Parks Commission, headquarters located at 2200 North 33rd Street, PO Box 30370, Lincoln NE 68503-0370.

005.01D Director -- shall mean the Game and Parks Commission appointed Secretary, who will act as its Director and Chief Conservation Officer and be in charge of its activities.

005.02 Application -- Any natural resources district, political subdivision, other public agency or private nonprofit organization whose primary purpose is the purchase, development or maintenance of a recreational trail or any combination thereof may apply to the Commission for funding to assist in the purchase, development and maintenance of a recreational trail.

005.02A Grantee Action -- Any project submitted to the Commission for review and consideration for funding must first be reviewed and approved by a majority of the applicant's governing board or council. In the event of a joint application

pursuant to the Intergovernmental Cooperation Act, or otherwise, a majority vote of each board in favor of the project will be necessary.

005.02B Application Deadline -- The deadline for receipt of the grant application and the supporting documents in acceptable form shall be by the close of business on the 1st day of October for staff review. Applications shall be accepted by the Commission not more than annually. All applications will be reviewed by the Commission staff for eligibility to ensure they are consistent with program policy and grant purposes. In the event that no funding is provided in any year the deadline will be extended to the following year or at a time as directed by the Commission.

005.02C Preparation of the Application -- Grant applications shall provide sufficient detail as to scope, project execution by the sponsor and any other matters as directed by the application instructions. Any grant application that is incomplete by the grant application deadline shall not be considered for funding by the Commission in a funding cycle. An eligible applicant may submit only one application in a funding cycle.

005.02D Joint Applications -- Joint grant applications are permitted. One designated entity must serve as the principle point of contact for administration of the grant application. If a joint grant application is made through the Interlocal Cooperation Act, a signed copy of this agreement between joint applicants must be provided as a part of the application and supporting documents.

005.02E Commission Action -- The Director or their designee of the Commission will submit a project list and present recommendations of funding priority to the Commission following rating and ranking of all eligible projects by the staff. The Commission may approve, modify or disapprove an application for any project on the list. The Commission may change the order of the list and may fund up to fifty percent of a project. Any reasons for change or disapproval of any recommended project or funding level shall be included in the motion for change.

005.02F Commitment of Funds -- The Commission need not commit all funds available during a funding cycle. The Commission may reserve unexpended or repaid funds for the next funding cycle or for anticipated future project needs and any other contingencies. Project costs that exceed a currently funded grant may not be eligible for assistance in a subsequent funding cycle.

005.02G Retention of Applications -- Applications that are not funded shall be retained on file at the Commission office until the next round of available funding. The original application shall be returned upon written request by the sponsor. The sponsor may resubmit the returned application for funding during a new grant cycle. Prior to the Commission's reconsideration of an application in the next funding cycle, the sponsor shall be required to review the application to update costs, scope or any other matters affecting the application. The deadline for renewal of any application shall be on the same date as for new applications.

005.02H Rating System Not Used -- During a funding cycle when the total eligible grant requests are less than the available allotment, the project selection rating criteria need not be utilized, but it may be used at the discretion of the staff to determine the merits of the projects.

005.02I Application Withdrawal or Project Cancellation -- An application may be unilaterally withdrawn by the sponsor at any time prior to or after the application being considered by the Commission. If the project is cancelled by the sponsor after the funds have been allocated the sponsor must refund unused grant funds allocated by the Commission. Funds that have already been expended shall, if necessary, be recovered according to existing state law.

005.03 Project Selection Criteria -- In the event that the total grant requests exceed the available allotment in any year, the Commission staff shall establish and implement project selection criteria. The Commission staff may verify the contents of the application and may visit the trail site. The Commission shall evaluate each application primarily on the basis of whether the

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predicted use of the trail justifies trails purchase, construction and maintenance costs including, but not limited to, the following criteria:

005.03A Meets the primary purpose of the Trails Development Assistance Act which encourages the saving of potential railroad rights-of-way for interim use as public recreation trails (10 points).

005.03B Need in terms of the population to be served and existing trails in the area (15 points).

005.03C Compatibility with local, area-wide, regional or statewide plans (15 points).

005.03D Quality of the site (25 points).

005.03E Benefits of multiple uses and recreational opportunities (20 points).

005.03F Economic benefits to the local area (10 points).

005.03G Special facilities for the handicapped (5 points).

005.03H Trail right-of-way maintenance necessary for public safety (5 points).

005.04 Project Agreement -- After the Commission has approved funding for a recreational trail project, the Commission and the applicant shall execute a project agreement. The agreement will establish a framework for accomplishing the project. Execution of the agreement by the Commission constitutes its approval of the project. Trail projects are governed by any applicable provision of State statutes in effect at the time of execution of the agreement and any statute or amendment to any statutes subsequent to the execution of the agreement. Any amendment to the agreement must be formally agreed to by both the Commission staff and the grant recipient.

005.04A Agreement Framework -- The major points of the agreement are as follows: The project agreement shall specify the grantee's obligations including the rules and regulations applicable to the conduct of a project under the Act and any special terms and conditions to the project

established by the Commission. The agreement will specify the overall funding level approved and shall contain an estimated budget for eligible work items. The agreement shall also specify the project period (2 years), what is to be done and how the project will be accomplished, the sponsors responsibilities for project planning, design, land acquisition, contracting, procurement, inspections, documentation, accounting, auditing and project close-out and other similar matters.

005.04B Project Agreement Amendments -- Project agreements for which grants have been approved may be amended to increase or decrease project scope, decrease grant amount or to increase grant amount, if funds are available. Amendments to increase the grant amount must be recommended by the Director or their designated staff and approved by the Commission. Any grant increase will be limited to 50% of the original grant amount. Amendments to the project time period (1 year maximum) may be approved by Commission staff. A project amendment which involves a change in purpose or scope also must be approved by the Commission.

005.05 Grantee Performance -- Grant recipients are expected to commence and complete projects in a timely, expeditious and workmanlike manner. A project period commensurate with the work to be accomplished will be established and included in the project agreement. Failure to initiate the project in a reasonable time period or to complete the project in a timely or workmanlike manner may be cause for termination of the grant, return of unused grant funds at the time of termination, cancellation of the grant by the Commission or require remedial action on the part of the grant sponsor. Such action by the Commission shall be conducted at a public meeting. The sponsor may appeal the decision of the preceding actions by the Commission as provided by the Administrative Procedure Act (Chapter 84, Article 9).

005.06 Appraisal Reports -- Appraisal reports for acquisition projects must be reviewed and approved or disapproved in writing by the Commission staff. Appraisals are to be conducted using standards provided by the Commission staff. All appraisals must be conducted and reported by a Nebraska licensed appraiser. Such appraisals will be prepared following Commission

approval of the project and when directed by Commission staff.

005.07 Pre-Agreement Costs -- Pre-approval (pre-agreement) costs incurred by consultants, architects, engineers or landscape architects related to the preparation of the grant application and supporting documents for submission to the Commission will be eligible at a later time if, and when, a project is approved for funding. Such costs may include, but are not limited to, the preparation of site plans, plat maps, cost estimates, the application and other information required of the application instructions or deemed necessary by Commission staff. Such costs should be reasonable and commensurate with the anticipated cost on the judgement of the Commission staff.

005.08 Project Eligibility and Public Use -- The recreational trails program is restricted to the acquisition, construction, maintenance and improvement of recreational trails open for public use. All trails funded under the recreational trails program must be formally dedicated for public use upon project completion. A private trail project or a project for exclusive private purposes is not eligible for funding under this program.

005.09 Eligible Project Costs

005.09A Land -- Land acquisition costs include, but are not limited to, appraisal costs, abstracts, prorated taxes, deed tax stamps, recording fees and any necessary surveys and required fencing. Land may be acquired by lease, easement or fee simple. The grantee or a designee of the grantee, is solely responsible for the performance of all land negotiation and acquisition activities in accord with applicable state laws.

005.09B Fencing -- Whenever abandoned railroad right-of-way trails are developed pursuant to the Trail Development Assistance Act, boundary fences shall be constructed and maintained as required for railroads in section 37-1012, R.R.S. 2004. Such fences shall be deemed to be manifestly designed to exclude intruders for the purposes of subdivision (1)(c) of section 28-521, R.R.S.1995. Such costs shall be allowed unless such construction and maintenance is waived in writing by the affected

adjoining property owners.

005.09C Cultural Surveys -- A cultural survey will be required on project lands, and costs related to conducting a resources survey may be eligible for matching assistance. Such survey will be conducted by State Historic Preservation Office personnel pursuant to procedures established by the Nebraska State Historical Society.

005.09D Development Cost -- Eligible development costs are limited to: trail surfacing; resurfacing; rehabilitation; modernization; upgrading and reconstruction; initial trail construction including grading, drainage, paving, erosion control, bridge and culvert repair, new bridges and culverts, intersection improvements including required traffic signalization that is an integral part of a project; construction or improvement of rest areas, information centers, waysides, permanent interpretive displays, lighting, restrooms, including utilities, trail signs, landscaping, parking areas, walkways; utility relocation costs necessary for trail construction or improvement if the utility is not located on public right-of-way; storm drainage and storm sewer costs to the extent needed for draining the trail; design engineering and construction inspection costs directly associated with the project and other costs that may be deemed appropriate by the Commission staff. None of the aforementioned costs may be incurred prior to execution of the of the project agreement, except the costs allowed and noted in section 005.07 (Pre-Agreement Costs) of these rules.

005.09E Advance Eligibility for Land Acquisition -
- If there is an extreme urgency involving land acquisition, a potential applicant may formally request from the Commission a written waiver of retroactivity which, if granted, will permit the applicant to acquire the land immediately without jeopardizing the project's eligibility for funding should the application be approved subsequent to later Commission approval. Granting of the waiver shall not imply or guarantee that a subsequent application which includes the acquisition costs will be approved and funded. The request for the advance eligibility waiver must include a

justification statement regarding the urgency of the acquisition, a description of the land to be acquired, a county map showing its location and a site plan showing the proposed trail. The advance eligibility waiver must be requested and approved prior to the applicant's acquisition of the land in question. The term remaining on the waiver will be one year from the date the waiver is granted. The land must be acquired pursuant to state law in order for the costs to be eligible for later funding. Assurance of Compliance with state laws will be required of the potential sponsor.

005.09F Administrative Costs -- Administrative costs for the administration of the Trail Development Assistance Fund incurred by the Commission shall not exceed five percent (5%) of the appropriation authorized by the Legislature.

005.10 Ineligible Costs -- Any of the eligible costs enumerated in 005.09 that are incurred prior to Commission approval of the grant by the Commission will be deemed ineligible for matching assistance.

005.11 Matching Funds -- Matching funds shall be from sources other than from the Trail Development Assistance Fund. Matching funds shall not include other grants from State agencies or the provision of in-kind labor services.

005.11A The value of land may be an eligible matching contribution provided: (1) The land was donated after the Commission's review and approval of the project; (2) The value of the land is based on an appraisal that will be subject to review and approval by Commission staff following project approval by the Commission; (3) The donation is in compliance with 005.09E of these regulations.

005.11B Matching funds from the Trail Development Assistance Fund may not be dispersed in excess of 50% of the total project costs. Grantees may expend more than their share if necessary to complete the grant project.

005.11C Disbursement of matching funds from the Trail Development Assistance Fund shall be made to a qualified applicant as a lump sum grant. Qualified applicants that have met all applicant

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requirements and who have received grant approval by the Commission shall receive their disbursement by the January 1 following receipt of the application.

005.11D Private, nonprofit organization applicants must certify at the time of application that sufficient matching funds, land (donated), letter of credit or other acceptable financial instrument are available from private sources to cover the private share of the project.

005.12 Eminent Domain -- The Trail Development Assistance Act shall not be construed to limit the power of eminent domain by political subdivisions or agencies of the State of Nebraska. Nonprofit applicants may not exercise the power of eminent domain.

005.13 Sign Placement -- Owners or operators of a trail developed pursuant to the Trail Development Assistance Act shall, at appropriate entry points, place signs warning that departures from the boundaries of the trail as marked by fences or otherwise may result in prosecution for trespassing. Such signs are eligible for assistance from the Trail Development Fund.

005.14 Audits and Record Keeping -- The Commission or State Auditors may audit all project costs and records incurred for compliance with the project agreement, including costs and records that are part of the matching contribution. Grant recipients shall keep adequate records relating to the project administration and all records shall be retained in accordance with state laws.

005.15 Non-Compliance -- The Commission may revoke funding commitments, seek repayment of funds granted, or both actions if:

005.15A The terms of the project agreement have not been, nor are anticipated to be, fulfilled.

005.15B The Commission finds that the application contained inaccuracies, omissions, errors or misrepresentations.

005.15C The time schedule for project completion was misrepresented or has not been maintained.

005.15D Any property, real or personal, acquired

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or developed with Trail Development Assistance Funds passes or diverts from control of the grantee, prior to project expiration or prior to expiration of the time limit of the Act or are used for purposes other than the approved project purpose, unlawful or otherwise.

005.15E The sponsor may appeal the decision of the preceding actions by the Commission as provided by the Administrative Procedure Act (Chapter 84, Article 9).

005.16 Value of Remitted Funds -- Remitted funds for either personal or acquired property remitted pursuant to 005.15A through 005.15D will be remitted in the amount of the original purchase price of the property or at a value pursuant to current State Law.

005.17 Fund Disposal -- Any returned funds resulting from repayment by the grantee shall be deposited in the Trail Development Assistance Fund account from which they were originally apportioned, or as pursuant to State Law in the event the program should lapse or terminate.

005.18 Time Period of Remitted Funds -- The grantee shall have a period of two years after notification by the Commission Director in which to remit unlawfully used funds.

005.19 Land Disposal -- Whenever the Commission and a grantee mutually agree that land acquired or developed with Trail Development Assistance Funds are no longer of value for the program purposes, or that the grantee can show good cause why the land should no longer be used in accord with the approved project purpose; the land may be disposed of with the Commission's approval and the proceeds therefrom shall be returned to the State Trail Development Assistance Fund account or in an account as directed by State Law. Land to be disposed that was acquired by non-profit organizations will be first offered to the original seller for repurchase.

005.20 Ineligibility -- Whenever the Director or their designee determines at any time that a grantee is in violation of the provisions of the aforementioned rules, the grantee shall be ineligible for further assistance for subsequent projects until the matter has been resolved to the satisfaction of the Director or their designee and the Commissioners.

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005.20A No real property, leased property, easements, rights-of-way or other property interests which are owned, controlled, managed or maintained by the Commission on the effective date of this act may be the subject of a grant application under the Trail Development Assistance Act.

005.21 Annual Reporting -- Grantees shall report on the status of all project activity no later than one year from the date of project approval. The report shall include work completed or land acquired to date, anticipated problems or other pertinent matters.

005.22 Conflict of Interest -- Any Commission employee, the Director or Commission member who sits on any board of a potential grantee that will be submitting a grant application for assistance under the Trail Development Assistance Program will be prohibited from participating in discussion on and shall not vote on a particular project for funding consideration.

NEBRASKA ADMINISTRATIVE CODE

Last Approved Date: December 4, 2020

Title 163 - Nebraska Game and Parks Commission

Chapter 1 - Administration Regulations

006 Rules relating to establishing fees for licenses and permits and deployed military permits

The following regulations are prescribed by the Game and Parks Commission, State of Nebraska in accordance with Neb. Rev. Stat. §§ 37-327, 37-405, 37-406, 37-407, 37-409, 37-413, 37-415, 37-416, 37-420, 37-421, 37-421.01, 37-426, 37-427, 37-429, 37-431, 37-438, 37-440, 37-447, 37-449, 37-450, 37-451, 37-455, 37-455.01, 37-457, 37-458, 37-462, 37-465, 37-473, 37-478, 37-479, 37-483, 37-484, 37-491, 37-497, 37-4,104, 37-4,105, 37-4,106, 37-4,108, 37-4,111, 37-1212, 37-1214, 37-1217, 37-1227. For purposes of these regulations, unless context otherwise requires, the definitions found in Chapter 37, sections 202 through 247 of the Game Law, are used. These regulations are effective with the 2021 permit year beginning July 1, 2021 until further change.

006.01 The following fees are hereby established.

<u>Permit Name</u>	<u>Fees</u>
Hunting Permit:	
Resident	\$15.00
Nonresident	\$106.00
Nonresident Youth (<16 years old)	\$15.00
Nonresident unlimited 2-day	\$73.00
Fishing Permit:	
*Resident Fish	\$20.00
*Nonresident Fish	\$66.00
Resident 1-day	\$7.00
Nonresident 1-day	\$11.50
*Resident 3-Day	\$13.00
*Nonresident 3-Day	\$19.00
Resident Disabled Fishing Permit	\$5.00
Nonrefundable Paddlefish Application	\$7.00
Resident Paddlefish Permit	\$23.00
Resident Paddlefish Preference Point	\$10.00
Nonresident Paddlefish Permit	\$47.00
Nonresident Paddlefish Preference Point	\$20.00
*Requires concurrent purchase of Aquatic Habitat Stamp	

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Combination Hunting & Fishing Permits:	
*Resident Combination Hunt & Fish	\$34.00
*Nonresident Combination Hunt & Fish	\$159.00
Resident Deployed Military Hunt & Fish & Furharvest & All State Stamps	\$5.00
Resident Combination Hunt & Fish & Furharvest & All State Stamps (Veteran >/=64 years old)	\$5.00
Resident Combination Hunt & Fish & Furharvest & All State Stamps (>/=69 years old)	\$5.00
*Requires concurrent purchase of Aquatic Habitat Stamp	
Replacement Permits:	
Deer, Antelope, Elk, Turkey, Mountain Lion and Paddlefish. (All others free)	\$5.00
Stamps:	
Aquatic Habitat Stamp	\$15.00
Habitat Stamp	\$25.00
Nebraska Migratory Waterfowl Stamp	\$10.00
Lifetime Permits and Stamps:	
Resident Hunt (0-15 years old)	\$257.00
Resident Hunt (16-45 years old)	\$352.00
Resident Hunt (>/= 46 years old)	\$257.00
*Resident Fish (0-15 years old)	\$313.00
*Resident Fish (16-45 years old)	\$407.00
*Resident Fish (>/=46 years old)	\$313.00
*Resident Fish/Hunt (0-15 years old)	\$556.00
*Resident Fish/Hunt (16-45 years old)	\$705.00
*Resident Fish/Hunt (>/=46 years old)	\$556.00
Resident Fur Harvest (0-15 years old)	\$218.00
Resident Fur Harvest (16-45 years old)	\$299.00
Resident Fur Harvest (>/= 46 years old)	\$218.00
Nonresident Hunt (0-16 years old)	\$870.00
Nonresident Hunt (>/= 17 years old)	\$1392.00
*Nonresident Fish (0-16 years old)	\$626.00
*Nonresident Fish (>/= 17 years old)	\$1003.00
*Nonresident Fish/Hunt (0-16 years old)	\$1357.00
*Nonresident Fish/Hunt (>/= 17 years old)	\$2088.00
Habitat Stamp	\$500.00
Nebraska Migratory Waterfowl Stamp	\$200.00
Aquatic Habitat Stamp	\$300.00
Resident Disabled Veteran Fish/Hunt/Furharvest	Fee Exempt
*Requires concurrent purchase of Aquatic Habitat Stamp	

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Multi-year Permits and Stamps:	
Resident 3-year Hunt ¹	\$42.00
Resident 5-year Hunt ²	\$61.00
Resident 3-year Fish ³	\$56.00
Resident 5-year Fish ⁴	\$82.00
Resident 3-year Fish/Hunt ^{1,3}	\$93.00
Resident 5-year Fish/Hunt ^{2,4}	\$141.00
Nonresident 3-year Hunt ¹	\$290.00
Nonresident 5-year Hunt ²	\$437.00
Nonresident 3-year Fish ³	\$182.00
Nonresident 5-year Fish ⁴	\$276.00
Nonresident 3-year Fish/Hunt ^{1,3}	\$436.00
Nonresident 5-year Fish/Hunt ^{2,4}	\$656.00
3-Year Habitat Stamp ¹	\$63.50
5-Year Habitat Stamp ²	\$94.00
3-Year Aquatic Habitat Stamp ³	\$31.50
5-Year Aquatic Habitat Stamp ⁴	\$47.00
3-year Nebraska Migratory Waterfowl Stamp ⁵	\$15.00
5-year Nebraska Migratory Waterfowl Stamp ⁶	\$23.00
¹ 3-year Hunt or Fish/Hunt must be purchased in conjunction with 3-year Habitat Stamp	
² 5-year Hunt or Fish/Hunt must be purchased in conjunction with 5-year Habitat Stamp	
³ 3-year Fish or Fish/Hunt must be purchased in conjunction with 3-year Aquatic Habitat Stamp	
⁴ 5-year Fish or Fish/Hunt must be purchased in conjunction with 5-year Aquatic Habitat Stamp	
⁵ 3-year Nebraska Migratory Waterfowl Stamp can only be purchased with 3-year Hunt or Fish/Hunt	
⁶ 5-year Nebraska Migratory Waterfowl Stamp can only be purchased with 5-year Hunt or Fish/Hunt	
Permit Agent Fees:	
All hunting, fishing and fur harvest permits except:	
Resident Combination Hunt & Fish & Furharvest (Veteran >=64 years old), Resident Combination Hunt & Fish & Furharvest (>=69 years old), Deployed Military Permits and Resident Disabled Veteran Fish/Hunt/Furharvest Lifetime	
Nebraska Game and Parks Commission	\$3.00
Non Nebraska Game and Parks Commission Issuing Agents	\$3.00
Electronically Issued Park Entry Permit Issue Fee	\$1.00

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(for each Annual and Duplicate Annual Sold On-Line)	
Fur Harvest Permit:	
Resident	\$15.00
Nonresident (up to 1,000 furs)	\$224.00
Additional 100 furs	\$15.00
Fur Buyers Permit:	
Resident	\$112.00
Nonresident	\$560.00
Deer Permit:	
Nonrefundable Application Fee (for Draw Units)	\$7.00
Resident	\$34.00
Resident Deer Preference Point	\$15.00
Resident Youth	\$5.00
Resident Deployed Military (same as previous purchase)	\$5.00
Resident Statewide Buck Only (Whitetail Only)	\$85.00
Resident Statewide Buck Only (Any Deer)	\$170.00
Resident Restricted Statewide Buck Only (Any Deer)	\$125.00
Resident Special Antlerless Only	\$11.00
Nonresident	\$282.00
Nonresident Deer Preference Point	\$50.00
Nonresident Youth	\$5.00
Nonresident Statewide Buck Only (Whitetail Only)	\$704.00
Nonresident Statewide Buck Only (Any Deer)	\$935.00
Nonresident Restricted Statewide Buck Only (Any Deer)	\$695.00
Nonresident Season Choice Antlerless Only	\$79.00
Nonresident Special Antlerless Only	\$79.00
Resident Landowner	\$17.00
Special Season Resident Landowner	\$5.00
Nonresident Landowner	\$141.00
Special Season Nonresident Landowner	\$5.00
Antelope:	
Resident	\$34.00
Resident Antelope Preference Point	\$15.00
Resident Youth	\$5.00
Resident Deployed Military (same as previous purchase)	\$5.00
Nonresident	\$198.00
Nonresident Antelope Preference Point	\$50.00
Nonresident Youth	\$5.00
Resident Landowner	\$17.00
Nonresident Landowner	\$99.00

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Application Fee	\$6.00
Bighorn Sheep Application Fee	\$29.00
Resident Deployed Military Bighorn Sheep Permit	\$5.00
Mountain Lion Application Fee	\$15.00
Elk Permit:	
Application	\$10.00
Resident	\$176.00
Resident Elk Preference/Bonus Point	\$15.00
Nonresident	\$529.00
Nonresident Elk Preference/Bonus Point	\$50.00
Resident Deployed Military (same as previous purchase)	\$5.00
Resident Landowner	\$35.00
Nonresident Landowner	\$529.00
Turkey Permit:	
Resident	\$27.00
Resident Youth	\$5.00
Resident Deployed Military (same as previous purchase)	\$5.00
Nonresident	\$125.00
Nonresident Youth	\$5.00
Resident Landowner	\$13.50
Nonresident Landowner	\$62.50
Commission Awarded Lottery Permits:	
Nonrefundable application fee for single species	\$10.00
Nonrefundable application fee for multi species	
ELK, ANTELOPE, DEER and TURKEY:	
Resident single entry	\$25.00
Resident/Nonresident multiple entry	\$10.00
ANTELOPE, DEER and TURKEY:	
Resident single entry	\$10.00
Resident/Nonresident multiple entry	\$10.00
Expired Permits and Stamps:	
Expired permit Administratively adjustable not to exceed	\$25.00
Expired stamp Administratively adjustable not to exceed	\$25.00

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Miscellaneous Permits:	
Resident Depredation Permit	\$5.00
Hunting Coyotes From Aircraft	\$8.50
Raptors Permit:	
Resident (Age 12 to 17 years old)	\$20.00
Resident (Age 18 years and older)	\$54.00
Resident Captive Propagation	\$271.00
Nonresident Raptor Collecting Permit	\$236.00
Captive Wildlife Permit	\$30.00
Captive Wildlife Auction Permit	\$65.00
Controlled Shooting Area Permit	\$176.00
Nonresident Controlled Shooting Area Hunting Permit	\$15.00
Taxidermist Permit	\$8.50
Bait Vendor Permit:	
Resident	\$37.00
Nonresident	\$230.00
Commercial Seining Vendor Permit:	
Resident (500' Seine, 500' Trammel net, 10 Hoop nets)	\$98.00
Resident (Additional Seine)	\$29.00
Resident (Additional Hoop)	\$3.50
Nonresident (same as Resident)	\$195.50
Nonresident (Additional Seine)	\$60.00
Nonresident (Additional Hoop)	\$7.00
Nonresident Fish Dealer Permit	\$75.00
Aquaculturist Permit	\$75.00
Commercial Put & Take Fishery Permit	\$75.00
Apprentice Hunter Education Exemption Certificate	\$5.00
Boat Registration: (3-year fee)	
Class I	\$28.00
Class II	\$51.00
Class III	\$72.50

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Class IV	\$120.00
Boat Dealer Registration	\$46.00
Duplicate Registration	\$5.00
County Issuance Fee on each	\$4.00
Aquatic Invasive Species Fees	
Nonresident Stamp (annual)	\$15.00
Nonresident Issue Fee	\$3.00

006.02 Resident Deployed Military Permits

The following regulations are prescribed by the Game and Parks Commission, State of Nebraska in accordance with 37-421.01.

006.02A Purpose

A Nebraska resident who was issued a valid big game permit (to include antelope, deer, elk, mountain sheep and wild turkey) and who was deployed out of the state with a branch of the United States military shall, upon returning to the state, be entitled to receive, on a one-time basis, a big game permit for a fee of \$5.00. Eligible residents may elect to receive a refund of big game permit fees in lieu of receiving a \$5.00 permit. Additionally, a Nebraska resident who is or has been deployed out of the state with a branch of the United States military within the last twelve months shall be entitled to receive an annual combination fishing, hunting, and furharvesting permit, habitat stamp, aquatic stamp and Nebraska migratory waterfowl stamp on a one-time basis upon returning to the state for a fee of \$5.00.

006.02B Process:

Big Game Permits: Eligible Nebraska residents, upon application, must provide the Commission, at its Headquarters, district or Omaha offices, the original valid permit (or duplicate) purchased and a copy of their official deployment orders verifying they were deployed out of state for the entire established season for which the valid permit was issued.

Annual Combination Permits: Eligible Nebraska residents, upon application, must provide the Commission, at its Headquarters, district or Omaha offices, a copy of their official deployment orders verifying the resident was deployed out of state within the past twelve months.

006.02B1 Discounted permits will be issued on a one-time basis to eligible residents and must be requested for the first established season following their return to the state. Discounted permit fees cover the permit only, any required stamps must be purchased in addition to the discounted permit.

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006.02B2 Annual hunt and fish permits will be issued year-round. In the case of big game permits, applications will not be processed until the first “buy” application period of that permit type; permits will be issued through the end of the affected season.

006.02B3 Refunds for big game permit fees, in lieu of discounted permits, shall be issued by state warrant and require 3-4 weeks for processing. Eligible residents must complete an official request for refund form as provided by the Commission. The refunded amount will not include fees paid for stamps.

NEBRASKA ADMINISTRATIVE CODE

LAST APPROVED DATE - May 22, 1996

Title 163 -- NEBRASKA GAME AND PARKS COMMISSION

Chapter 1 - ADMINISTRATION

007 Procedures For Negotiated Rulemaking. These rules and regulations governing procedures for negotiated rulemaking before the Game and Parks Commission are adopted under authority of the Administrative Procedure Act and the Negotiated Rulemaking Act, sections 84-901 through 84-932, R.R.S. 1999. These rules and regulations are effective following enactment by the Game and Parks Commission, approval by the Attorney General and Governor and when five days have elapsed since filing with the Secretary of State.

007.01 Negotiated Rulemaking Generally. The purpose of these regulations is to establish a framework for the conduct of negotiated rulemaking consistent with the Administrative Procedure Act and the Negotiated Rulemaking Act. The negotiated rulemaking process can be used by the Commission, whenever appropriate, to resolve controversial issues prior to the commencement of formal rulemaking. Negotiated rulemaking is not a substitute for the requirements of the Administrative Procedure Act, but may be used as a supplemental procedure to permit the direct participation of affected interests in the development of new rules or the amendment or repeal of existing rules. The negotiated rulemaking process also does not preclude other Commission efforts or processes designed to reach consensus with affected or interested persons concerning the content of rules or regulations. A consensus agreement on a proposed rule reached by a Negotiated Rulemaking Committee may be modified by the Commission as a result of a subsequent formal rulemaking process.

007.02 Definitions. For purposes of this Chapter of these procedural rules:

007.02A APA shall mean the Administrative Procedure Act, *Neb. Rev. Stat.* sections 84-901 through 84-920, R.R.S. 1999.

007.02B Agency shall mean the Game and Parks Commission, its Director and staff.

007.02C Commission shall mean the eight Commissioners as defined in 37-101, R.R.S. 2004.

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007.02D Commission Director shall mean the secretary as defined in 37-106, R.R.S. 2004.

007.02E Consensus shall mean unanimous concurrence among the interests represented on a Negotiated Rulemaking Committee unless the committee agrees upon another specified definition.

007.02F Convenor shall mean a person who impartially assists the Commission in determining whether establishment of a Negotiated Rulemaking Committee is feasible and appropriate for a particular rulemaking procedure.

007.02G Facilitator shall mean a person who impartially aids in the discussion and negotiations among the members of a Negotiated Rulemaking Committee to develop a proposed rule. A facilitator shall not have decision making authority.

007.02H Interest shall mean, with respect to an issue or matter, multiple parties that have a similar point of view or that are likely to be affected in a similar manner.

007.02I Negotiated rulemaking shall mean rulemaking through the use of a Negotiated Rulemaking Committee.

007.02J Negotiated Rulemaking Committee or Committee shall mean an advisory committee established to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule.

007.02K Person shall mean an individual, partnership, limited liability company, corporation, association, governmental subdivision, Agency, or public or private organization of any character.

007.02L Rule or regulation shall mean any rule, regulation, or standard issued by the Commission, including the amendment or repeal thereof whether with or without prior hearing and designed to implement, interpret, or make specific the law enforced or administered by it or governing its organization or procedure, but not including rules

and regulations concerning the internal management of the Commission not affecting private rights, private interests, or procedures available to the public, and for the purpose of the APA, every rule and regulation which shall prescribe a penalty shall be presumed to have general applicability or to affect private rights and interests.

007.03 Establishment of a Negotiated Rulemaking Committee; Criteria. The Agency may establish a Negotiated Rulemaking Committee to negotiate and develop a proposed rule if the Commission determines that the use of the negotiated rulemaking procedure is in the public interest. In making that determination, the Commission shall consider whether:

007.03A There is a need for the rule.

007.03B There are a limited number of identifiable interests that will be significantly affected by the rule.

007.03C There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who:

007.03C1 Can adequately represent the interests identified; and

007.03C2 Are willing to negotiate in good faith to reach a consensus on the proposed rule.

007.03D There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time.

007.03E The negotiated rulemaking procedure will not unreasonably delay the notice of proposed formal rulemaking and the issuance of the final rule pursuant to the APA.

007.03F The Agency has adequate resources and is willing to commit those resources, including technical assistance, to the committee.

007.03G The Commission, to the maximum extent possible consistent with the legal obligations of the Commission, will use the consensus of the

committee as the basis of the rule proposed by the Commission in the formal rulemaking process of the APA.

007.04 Convenors; Selection; Duties. The Agency, at its discretion, may use the services of a convenor.

007.04A The Agency may employ or contract for an organization or an individual to serve as a convenor, or may use the services of a state employee to act as a convenor. A convenor shall not have a financial or other interest that would preclude him or her from serving in an impartial and independent manner. The Agency shall determine whether a person under consideration as a convenor has such an interest. A person disqualified under this criterion shall be dropped from further consideration.

007.04B The convenor may assist the Agency and Commission in making the determination of need for a negotiated rulemaking process discussed in section 007.03 above. The convenor may also assist the Agency and Commission in:

007.04B1 Identifying persons who will be significantly affected by a proposed rule.

007.04B2 Conducting discussions with affected persons on the issues of concern and ascertaining whether the establishment of a Negotiated Rulemaking Committee is feasible and appropriate for the particular rulemaking.

007.04C The convenor shall report findings and make recommendations to the Commission. Upon request of the Commission, the convenor shall ascertain the names of persons who are willing and qualified to represent the interests that will be significantly affected by the proposed rule. That report by the convenor and any recommendations of the convenor shall be public records and made available to the public for review upon request.

007.05 Petitions For The Use Of A Negotiated Rulemaking Committee. Any person may petition the Commission to request the use of a Negotiated Rulemaking Committee in the development or revision of a rule, as provided below.

007.05A A negotiated rulemaking process may be requested on any topic appropriate for a rule or regulation by the Commission.

007.05A1 A negotiated rulemaking process may be requested only to develop or revise rules which carry out statutes that are within the authority of the Commission to implement.

007.05A2 A negotiated rulemaking process may not be requested to develop a rule or regulation to vary or change the specific terms of a statute.

007.05A3 A negotiated rulemaking process may not be requested to negotiate a rule on a matter which is not within the definition of a rule or regulation as set forth in subsection 007.02L above.

007.05B A request for the use of a negotiated rulemaking procedure shall be made by a petition that meets the requirements of form set out in this subsection. In the event that it does not, the Commission may refuse to accept it.

007.05B1 A petition may be in the form of a pleading that contains a caption, heading, and name as set forth on Attachment 1, which is attached to these rules and made a part of them by reference.

007.05B2 A petition may also be made in the form of a letter so long as the letter contains all of the information required by these regulations and is clearly delineated as a petition for negotiated rulemaking.

007.05B3 All petitions must be on white, letter sized paper (8½ by 11) of standard weight.

007.05B4 Petitions must be legible, and may be typewritten, photostatically reproduced, printed, or handwritten. If handwritten, petitions must be in ink. Only one side of a page of a petition shall contain any writing.

007.05B5 Any documents that are intended to

accompany a petition shall be securely fastened, clearly marked as attachments to the petition, and meet the other requirements of this Section as to size, print and legibility.

007.05C A petition for a negotiated rulemaking procedure shall meet the following requirements for content and substance. In the event that it does not, the Commission may refuse to accept it.

007.05C1 The petition must identify the general subject matter about which the negotiated rulemaking procedure is requested, including the statutes or legislative bill(s) which provide authority for the desired regulation, and, if amendments to existing regulations are sought, identification of the regulations by title, chapter and name.

007.05C2 The petition must identify the specific issue(s) proposed for inclusion in the negotiated rulemaking process.

007.05C3 The petition must discuss the facts surrounding each problem or issue proposed for inclusion in the negotiated rulemaking process.

007.05C4 The petition must discuss why a negotiated rulemaking process is in the public interest, including information on each of the criteria set out in subsections 007.03A through 007.03E above. The petition may also include information on the criteria included in subsections 007.03F and 007.03G above, to the extent such information is available to the petitioner. The petitioner may also submit such other information as may assist the Commission in making a decision.

007.05C5 The petition must identify persons who will be significantly affected by any rule which might result from the proposed negotiated rulemaking process, to the extent known by the petitioner. The petitioner may also suggest the names of persons who are willing and qualified to represent the interests that will be significantly affected by the negotiated rulemaking process and the

proposed rule.

007.05D A petition for a negotiated rulemaking process shall be filed with the Commission. Filing may be made by personal delivery during regular office hours of 8:00 a.m. to 5:00 p.m. or by mail at P. O. Box 30370 2200 North 33rd St., Lincoln, NE 68503-0370.

007.05E Upon the filing of a petition for a negotiated rulemaking procedure, the Commission Director may designate an Agency employee or use the services of a convenor to recommend to the Commission whether a negotiated rulemaking process should be initiated.

007.05F With sixty (60) days after submission of a petition for a negotiated rule making procedure, the Commission shall:

007.05F1 Deny the petition in writing, stating the reason(s) for denial; or

007.05F2 Initiate the negotiated rulemaking process as provided in these rules.

007.05G The decision of the Commission with respect to a petition for a negotiated rule making procedure may be made in the form of a pleading or a letter clearly designated as the decision on the petition. The petitioner shall be served with a copy of the Commission's final decision by certified mail, return receipt requested.

007.05H A decision by the Commission with respect to a petition for a negotiated rulemaking procedure is not subject to judicial review, although nothing herein shall bar a judicial review if such is otherwise provided by law.

007.06 Notice of a Negotiated Rulemaking Committee; Comment; Applications for Membership. If the Commission decides to go forward with the establishment of a Negotiated Rulemaking Committee, the Agency shall proceed with the following process.

007.06A The Agency shall give notice to the Secretary of State, publish notice in a newspaper having general circulation in the state, and, as

appropriate, publish notice in other newspapers and publications. The notice shall include:

007.06A1 An announcement that the Commission intends to establish a Negotiated Rulemaking Committee to negotiate and develop a proposed rule.

007.06A2 A description of the subject and scope of the rule to be developed and the issues to be considered.

007.06A3 A list of interests likely to be significantly affected by the proposed rule.

007.06A4 A list of the persons proposed to represent the affected interests and the Agency.

007.06A5 A proposed schedule for completing the work of the committee.

007.06A6 An explanation of how a person may apply for or nominate another person for membership on the committee.

007.06B Persons interested in making comments upon the formation of a particular proposed Negotiated Rulemaking Committee shall have thirty (30) days from the date of publication of the notice concerning that committee to do so. Such comments shall be in writing, and shall either be personally delivered to the Agency during its regular office hours of 8:00 a.m. to 5:00 p.m., Monday through Friday or mailed to the Agency at its business office at P. O. Box 30370 2200 North 33rd Street, Lincoln, NE 68503-0370.

007.06C Persons interested in applying for membership on a particular proposed Negotiated Rulemaking Committee or in nominating other persons for such membership shall have thirty (30) days from the date of publication of the notice concerning that committee to do so. Persons making application for membership or nominations for membership shall do so on Attachment 2 which is attached to these regulations and made a part of these regulations by reference, and which shall be provided by the Agency. Persons making application

for membership or nominations for membership may also do so by letter, so long as the letter contains all of the information set out in Attachment 2 and is clearly delineated as an application or nomination for membership on a specific Negotiated Rulemaking Committee.

007.07 Establishment of a Negotiated Rulemaking Committee; Procedure. After publication of notice and termination of the comment and membership application period, the Commission will consider the comments and membership applications for a particular Negotiated Rulemaking Committee and determine whether such a committee can adequately represent the interests of the persons that will be significantly affected by a proposed rule, and whether such a committee is feasible and appropriate in the particular rulemaking. In making the final determination as to creation of a Negotiated Rulemaking Committee, the Commission may use the services of a convenor as set out in Section 007.04 above. In making the final determination as to creation of a Negotiated Rulemaking Committee, the Commission will apply the criteria set out in 007.03 above.

007.07A If, after such a determination, the Commission decides that a negotiated rulemaking procedure is feasible, it shall establish a Negotiated Rulemaking Committee as provided in these regulations. The committee will negotiate issues and develop proposed rules for use by the Commission in formal rulemaking.

007.07B If, after such a determination, the Commission decides not to establish a Negotiated Rulemaking Committee, the Agency shall:

007.07B1 Notify the persons who commented on, applied for membership on or nominated persons for membership on the particular Negotiated Rulemaking Committee of the reasons for the decision not to establish such a committee.

007.07B2 Publish notice of the decision not to establish the particular Negotiated Rulemaking Committee in a newspaper having general circulation in the state, and, as appropriate, in other newspapers and publications.

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007.07 Negotiated Rulemaking Committee; Membership. All members of a Negotiated Rulemaking Committee shall participate in the deliberations of the committee with the same rights and responsibilities as other members.

007.07A Members of a Negotiated Rulemaking Committee may include:

007.07A1 A person designated by the Director to represent the Agency. This person shall be authorized to fully represent the Commission in the discussions and negotiations of the committee.

007.08A2 Persons selected by the Commission as willing and qualified to represent the interests that will be significantly affected by the proposed rule.

007.08A3 Persons contacted and recruited by the Negotiated Rulemaking Committee itself by consensus as essential to the success of the negotiated rulemaking process.

007.08A4 Persons selected by the Negotiated Rulemaking Committee by consensus upon committee review of a petition for membership or nomination as set out in subsection 007.08B below.

007.08B Persons who will be significantly affected by a proposed rule and who believe that their interests will not be adequately represented by any person on a Negotiated Rulemaking Committee may petition for or nominate another person for membership on the Negotiated Rulemaking Committee.

007.08B1 Each petition or nomination for committee membership shall be in writing and be submitted to the Negotiated Rulemaking Committee by delivering or mailing the same to the Commission. All such petitions or nominations shall include:

007.08B1a Identification of the applicable negotiated rulemaking proceeding.

007.08B1b The name of the petitioner or

nominee, and a description of the interests the person represents.

007.08B1c Evidence that the petitioner or nominee is authorized to represent parties related to the interests the person proposes to represent.

007.08B1d A written commitment that the petitioner or nominee will actively participate in good faith in the development of the rule under consideration.

007.08B1e An explanation of reasons that the persons already on the Negotiated Rulemaking Committee do not adequately represent the interests of the person submitting the petition or nomination.

007.08C Persons wishing to file such a petition for membership or nomination to a Negotiated Rulemaking Committee may use the form attached hereto as Attachment 3. Attachment 3 is made a part of these regulations by reference. Persons wishing to file such a petition for membership or nomination to a Negotiated Rulemaking Committee may also do so by letter, provided that the letter contains the information set forth above.

007.08D Upon receiving a petition for membership on or nomination to a particular Negotiated Rulemaking Committee, the committee in question shall decide, by consensus at its next meeting, whether or not to expand its membership.

007.09 Negotiated Rulemaking Committee; Operation. A Negotiated Rulemaking Committee established under these rules shall consider the matter proposed by the Commission for consideration and shall attempt to reach consensus concerning a proposed rule and any other matter the committee determines is relevant to the proposed rule.

007.09A A Negotiated Rulemaking Committee may adopt procedures or ground rules for the operation of the committee consistent with these rules and the pertinent Nebraska statutes.

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007.09B The Agency shall provide appropriate administrative support to a Negotiated Rulemaking Committee including technical assistance and support.

007.09C The person representing the Agency on a Negotiated Rulemaking Committee shall participate in the deliberations of the committee with the same rights and responsibilities as other members of the committee and shall be authorized to fully represent the Agency in the discussions and negotiations of the committee.

007.09D If a negotiated rule making committee achieves consensus on a proposed rule at the conclusion of the negotiations, the committee shall transmit to the Commission a report containing the proposed rule.

007.09E If a Negotiated Rulemaking Committee does not reach a consensus on the proposed rule, the committee shall transmit to the Commission a report specifying areas in which the committee reached consensus and the issues that remain unresolved. The committee may include in the report any other information, recommendations, or materials that the committee considers appropriate. Any member of the committee may include as an addendum to the report additional information, recommendations or materials.

007.10 Facilitators; Selection; Duties. A facilitator shall be selected to assist a Negotiated Rulemaking Committee with its duties.

007.10A The Agency may nominate a person to serve as a facilitator for the negotiations of a Negotiated Rulemaking Committee, subject to the approval of the committee by consensus. If the committee does not approve the Agency's nomination for facilitator, the Agency shall submit a substitute nomination. If the Committee does not approve the substitute nomination of the Agency for facilitator, the Committee shall select, by consensus, a person to serve as facilitator.

007.10B The Agency may employ or contract for an organization or an individual to serve as a facilitator for a Negotiated Rulemaking Committee

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or the Agency may use the services of a state employee to act as a facilitator. A person designated by the Agency to represent it on a Negotiated Rulemaking Committee with respect to substantive issues may not serve as the facilitator. A facilitator shall not have a financial or other interest that would preclude him or her from serving in an impartial and independent manner. The Agency shall determine whether a person under consideration for facilitator has such an interest. A person disqualified under this criterion shall be dropped from further consideration.

007.10C A facilitator approved or selected by a committee shall:

007.10C1 Preside at the meetings of the committee in an impartial manner.

007.10C2 Impartially assist members in conducting discussions and negotiations and achieving consensus.

007.10C3 Manage the keeping of minutes and records.

007.11 Negotiated Rulemaking Committee; Expenses. Members of a Negotiated Rulemaking Committee shall be responsible for their own expenses of participation. However, the Commission may pay for a committee member's actual and necessary expenses incurred in serving on the committee as provided in sections 81-1174, R.R.S. 2003 87-1175 through 81-1177, R.R.S. 1999 and a reasonable per diem rate of compensation if:

007.11A The committee member certifies a lack of adequate financial resources to participate on the committee using the form at Attachment 4 which is attached to these regulations and made a part of them by reference; and,

007.11B The Commission determines that the committee member's participation is necessary to assure an adequate representation of the interests of the members.

007.12 Grants or Gifts. The Commission may accept grants or gifts from any source to fund a negotiated

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rulemaking process if:

007.12A Information on the name of the person giving the grant or gift and the amount of the grant or gift is available to the public.

007.12B The grant or gift is given to and accepted by the Commission without placing any condition on the membership of a committee or the outcome of the negotiated rulemaking process.

007.12C There is a consensus among the members of the Negotiated Rulemaking Committee that the acceptance of the grant or gift will not diminish the integrity of the negotiated rulemaking process.

007.13 Negotiated Rulemaking Committee; Termination. A Negotiated Rulemaking Committee shall terminate upon the adoption of the final rule under consideration by the Commission pursuant to the APA, unless the Commission, after consulting the committee, or the committee itself specifies an earlier termination date.

007.14 Negotiated Rulemaking Procedure; Judicial Review. Any action of the Commission relating to establishing, assisting or terminating a Negotiated Rulemaking Committee under the Negotiated Rulemaking Act shall not be subject to judicial review, except that nothing in this Section shall bar judicial review if such judicial review is otherwise provided by law.

following interests:

C. There is a reasonable likelihood that a Negotiated Rulemaking Committee can be convened with a balanced representation of people (1) who can adequately represent the interests identified above and (2) are willing to negotiate in good faith to reach a consensus on the proposed rule, as shown by the following:

D. There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time because:

E. The use of this procedure will not unreasonably delay formal rulemaking and issuance of a final rule because:

F. [Optional for response by Petitioner] The Game and Parks Commission should commit its resources, including technical assistance, to such a committee because:

G. [Optional for response by Petitioner] The Game and Parks Commission should, to the maximum extent possible consistent with its legal obligations, use a consensus of such a committee as the basis for a rule to be adopted under the Administrative Procedure Act because:

6. The following persons will be significantly affected by any rule which might result from the negotiated rulemaking procedure which is the subject of this Petition [identify such persons by name and address where possible]:

7. The following persons may be willing and qualified to represent the interests that will be significantly affected by any rule which might result from the negotiated rulemaking procedure which is the subject of this Petition [identify such persons by name and address where possible]:

8. Petitioner offers the following additional information for use by this Commission in consideration of this request [if any]:

9. Petitioner has attached the following documents in support of this request [list all documents attached]:

Dated this _____ day of _____, 2____.

Signature of Petitioner

List Petitioner's name [typed or printed]
List Petitioner's full mailing address
List Petitioner's telephone number [including
area code]

BEFORE THE Game and Parks Commission
STATE OF NEBRASKA

In the Matter of the Negotiated)
Rulemaking Committee for) Application/Nomination
[Insert name of the proposed) for membership
Negotiated Rulemaking Committee],) on the committee.
163 NAC _____)

APPLICATION FOR MEMBERSHIP
(complete if applicable)

1. The undersigned person (the applicant) hereby applies for membership on the above-referenced Negotiated Rulemaking Committee proposed by this Commission.

Name of applicant (typed or printed)

Full address of applicant

Applicant's telephone number
(including area code)

2. The applicant represents the following identifiable interest which will be significantly affected by the proposed administrative rule to be considered by the above-referenced negotiating rulemaking committee:

3. The applicant is authorized to represent parties related to the interest listed above because:

4. The applicant can adequately represent the parties and interest listed above because:

5. In support of their application, the applicant has attached the following documents to this petition (list all attachments):

6. By signing this application, the applicant hereby certifies that they will represent the interest identified above to the best of their ability in the negotiation process, and that the applicant is willing to actively negotiate in good faith to reach a consensus on the proposed rule to be considered by the above-referenced Negotiated Rulemaking Committee.

Signature of Applicant

Date

NOMINATION FOR MEMBERSHIP
(complete if applicable)

1. The undersigned person (the nominating party) hereby nominates the following person (the nominee) for membership on the above-referenced Negotiated Rulemaking Committee proposed by this Commission.

Name of nominee (typed or printed)

Full address of nominee

Nominee's telephone number
(including area code)

2. The nominee represents the following identifiable interest which will be significantly affected by the proposed administrative rule to be considered by the above-referenced Negotiated Rulemaking Committee:

3. The nominee is authorized to represent parties related to the interest listed above because:

4. The nominee can adequately represent the interest and parties listed above because:

5. In support of the nomination of the nominee, the nominating party has attached the following documents to this petition (list attachments):

6. The nominating party believes that the nominee will represent the interest identified above to the best of their ability and that the nominee is willing to negotiate in good faith to reach a consensus on the proposed rule to be considered by the above-referenced negotiated rule making committee because:

Signature of Nominating Party

Date _____

Name of nominating party
(printed or typed)

Full address of nominating party

Telephone number of nominating party
(include area code)

BEFORE THE Game and Parks Commission
STATE OF NEBRASKA

In the Matter of the Negotiated) Application/Nomination
Rulemaking Committee for) for membership
[Insert name of the proposed) on the committee
Negotiated Rulemaking Committee],) (interest inadequately
163 NAC ____ .) represented)

APPLICATION FOR MEMBERSHIP
(complete if applicable)

1. The undersigned person (the applicant) hereby applies for membership on the above-referenced Negotiated Rulemaking Committee.

Name of applicant (typed or printed)

Full address of applicant

Applicant's telephone number
(including area code)

2. The applicant represents the following identifiable interest which will be significantly affected by the proposed administrative rule being considered by the above-referenced negotiating rulemaking committee:

3. The applicant is authorized to represent parties related to the interest listed above because:

4. The applicant can adequately represent the parties and interest listed above because:

5. Reasons that persons already serving on the above-referenced negotiated rule making committee do not adequately represent the interest listed in paragraph 2 above include:

6. In support of the application, the applicant has attached the following documents to this petition (list all attachments):

7. By signing this application, the applicant hereby certifies that they will represent the interest identified above to the best of their ability in the negotiation process, and that they are willing to actively negotiate in good faith to reach a consensus on the proposed rule being considered by the above-referenced Negotiated Rulemaking Committee.

Signature of Applicant

Date

NOMINATION FOR MEMBERSHIP
(complete if applicable)

1. The undersigned person (the nominating party) hereby nominates the following person (the nominee) for membership on the above-referenced Negotiated Rulemaking Committee.

Name of nominee (typed or printed)

Full address of nominee

Nominee's telephone number
(including area code)

2. The nominee represents the following identifiable interest which will be significantly affected by the proposed administrative rule being considered by the above-referenced Negotiated Rulemaking Committee:

3. The nominee is authorized to represent parties related to the interest listed above because:

4. The nominee can adequately represent the interest listed above because:

5. Reasons that persons already serving on the above-referenced negotiated rule making committee do not adequately represent the interest listed in paragraph 2 above include:

6. In support of the nomination of the nominee, the nominating party has attached the following documents to this petition (list all attachments):

7. The nominating party believes that the nominee will represent the interest identified above to the best of their ability and that the nominee is willing to actively negotiate in good faith to reach a consensus on the proposed rule to be considered by the above-referenced negotiated rule making committee because:

Signature of Nominating Party

Date _____

Name of nominating party
(printed or typed)

Full address of nominating party

Telephone number of nominating party
(include area code)

BEFORE THE Game and Parks Commission
STATE OF NEBRASKA

In the matter of the Negotiated) Certification of
Rulemaking Committee for) Financial
[Insert name of the proposed) Need
Negotiated Rulemaking Committee],)
163 NAC ____.

STATE OF NEBRASKA)
) ss.
COUNTY OF _____)

COMES NOW the undersigned, being first duly sworn, and hereby states and certifies as follows:

1. I am a member of the above-referenced Negotiated Rulemaking Committee created by the Game and Parks Commission.

2. In connection with my duties on that committee, I represent [insert the name of the appropriate identified interest].

3. In connection with my duties on that committee, I have incurred or will incur expenses and/or other costs.

4. I certify that I have a lack of adequate financial resources to serve on the above-referenced Negotiated Rulemaking Committee, and that I need financial assistance from this Commission in order to serve.

Signature of Affiant

Subscribed and sworn to before me this _____ day of _____, 2_____.

Notary Public

NEBRASKA ADMINISTRATIVE CODE

LAST APPROVED DATE: May 22, 1996

TITLE 163 - NEBRASKA GAME AND PARKS COMMISSION

CHAPTER 1 - ADMINISTRATION

008 Regulations and procedures governing declaratory orders.

008.01 These rules and regulations governing declaratory orders issued by the Game and Parks Commission are adopted under authority of the Administrative Procedure Act, sections 84-901 through 84-920, R.R.S. 1999. These rules and regulations are effective following enactment by the Game and Parks Commission, approval by the Attorney General and Governor and when five days have elapsed since filing with the Secretary of State.

008.01A Scope of this Chapter. This Chapter pertains solely to the procedures to be used by any person or entity seeking issuance of a declaratory order by the Commission.

008.01B Related Regulations In addition to this Chapter, related regulations pertaining to administrative procedures before the Commission are: 163 NAC Chapter 1, Procedures for Negotiated Rulemaking, 163 NAC Chapter 1, Petitioning for Rulemaking, and 163 NAC Chapter 1, Rules of Practice and Procedure for Hearings in Contested Cases Before the Commission.

008.02 Definitions As Used In This Chapter:

008.02A Agency shall mean the Game and Parks Commission, its Director and the staff.

008.02B Commission shall mean the eight Commissioners as defined in 81-801, R.R.S. 2004.

008.02C Commission Director shall mean the secretary as defined in 37-106, R.R.S. 2004.

008.02D Argument shall mean the oral statement of the petitioner or any other party which explains their view of the facts and issue to be decided, the law applicable to the question presented, and

the reasoning that connects the facts and law.

008.02E Contested case shall mean a proceeding before the Agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after hearing before the Agency.

008.02F Declaratory order proceeding shall mean a proceeding initiated by a petitioner seeking issuance of a binding order by the Commission as to the applicability of specified circumstances to a statute, rule, regulation, or order within the primary jurisdiction of the Commission.

008.02G Hearing officer shall mean the person or persons conducting a declaratory order proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title.

008.02H Intervenor(s) shall mean persons, political subdivisions, corporations, organizations, or other entities who have or claim to have any interest, legal right, duty, privilege, or immunity, which would be directly affected by the Commission's issuance of a binding declaratory order.

008.02I Necessary party shall mean a person who or an entity which has a specific interest in the applicability of the statute, rule, regulation, or order, as distinguished from a general interest such as may be the concern of the public at large. A necessary party is one which is or would be adversely affected in a legally cognizable way by the uncertainty sought to be resolved.

008.02J Parties shall mean persons, political subdivisions, corporations, organizations, or other entities subject to the jurisdiction of the Commission who are involved in a declaratory order proceeding according to the procedures set forth in this chapter.

008.02K Petition shall mean the document filed in accordance with Section 008.03 of this chapter to initiate a declaratory order proceeding.

008.02 Petitioner(s) shall mean a party or parties who have filed a petition with the Agency seeking issuance of a declaratory order.

008.02M Pleading shall mean any written petition, answer, or motion used in any declaratory order proceeding before the Agency as set forth in this chapter.

008.03 Petition For Declaratory Order

008.03A Generally. A request for a declaratory order must be made by a petition that meets the requirements of Section 008.03.

008.03B Who May File. Any person may petition the Commission for issuance of a declaratory order as to the applicability to specified circumstances of a statute, rule, regulation, or order which is within the primary jurisdiction of the Commission.

008.03C When Orders Appropriate. A declaratory order may be requested on the applicability of a statute, rule, regulation, or order enforced by the Commission. "Applicability" refers to the appropriateness of the relation of the law to the person, property, or state of facts, or its relevance under the circumstances given. It may include such questions as whether the law applies at all, to whom it applies, when it applies, how it applies, or which law applies. Considerations as to whether issuance of a declaratory order is appropriate include:

008.03C1 A declaratory order may be requested only on the applicability of existing statutes and rules and regulations.

008.03C2 A declaratory order may be requested to obtain a determination of proposed conduct, not to obtain a determination of the effect of conduct that has already occurred.

008.03C3 A declaratory order is not a mechanism for review or appeal of a decision made by the Commission in a contested case.

008.03C4 A declaratory order may not be requested to obtain a declaration by the

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Commission that a statute or regulation is unconstitutional or that a regulation of the Commission is invalid.

008.03C5 A declaratory order may not be issued by the Commission that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

008.03D Form of Petition A petition for declaratory order shall be in the form of either a pleading or letter which shall contain each of the following:

008.03D1 A caption, which shall include:

008.03D1a The venue: BEFORE THE GAME AND PARKS COMMISSION, STATE OF NEBRASKA;

008.03D1b A heading specifying the subject matter and the name of the petitioner; and

008.03D1c The name of the pleading: PETITION FOR DECLARATORY ORDER.

008.03D2 The statements required in subsection 008.03E of this chapter.

008.03D3 The signature of the petitioner, or when represented by an attorney, the signature of the attorney.

008.03D4 The name and address of the petitioner, and when represented by an attorney, the name, address, telephone number, and bar number of the attorney.

008.03D5 Size and Paper. The petition shall be made on white, letter-sized (8-1/2" x 11") paper.

008.03D6 Print. The petition shall be legibly typewritten, photostatically reproduced, printed, or handwritten. If handwritten, the petition must be written in ink. Only one side of a page shall contain

any writing.

008.03D7 Attachments. Any documents attached to a petition shall be securely fastened to the pleading and shall meet the requirements of 008.03D5 and 008.03D6 and, when possible, be reproduced on 8-1/2" x 11" paper or placed in an 8-1/2" x 11" envelope and clearly marked as an attachment to the petition.

008.03E Contents of Petition. To be considered, the petition shall include the following:

008.03E1 The name and address of the petitioner;

008.03E2 The name and address of all persons or entities, known to the petitioner, who may have a specific interest in the applicability of the statute, rule, regulation, or order or who may be adversely affected by the issue sought to be resolved by the petitioner.

008.03E3 The statute, rule, regulation, or order upon which the petitioner seeks issuance of a declaratory order;

008.03E4 A detailed statement of all of the material facts and specific circumstances which apply to petitioner's request for issuance of a declaratory order;

008.03E5 All propositions of law or contentions asserted by the petitioner;

008.03E6 A demand for the relief to which the petitioner alleges entitlement. The petition shall state the petitioner's position as to how the Commission should rule and why the Commission should rule in the manner requested; and

008.03E7 Any documents pertinent to the petition that the petitioner wishes to be considered by the Commission.

008.03F The petition shall be subscribed and verified by the petitioner. If the petitioner is a corporation, political subdivision, or other

entity, then the petition shall be subscribed and verified by a duly authorized agent of the petitioning entity.

008.03G Sample Petition. The petitioner may use the sample form of a petition which is attached as "Appendix A" and incorporated within this chapter. The petitioner may also prepare a reasonable facsimile of "Appendix A" so long as the requirements of subsections 008.03D, 008.03E, and 008.03F of this chapter are satisfied.

008.03H Written Consents. The petitioner shall also attach to the petition any written consents obtained from any necessary party that the petition may be determined by use of a declaratory order proceeding.

008.04 Submission And Service Of Declaratory Order Petition.

008.04A The original petition for declaratory order shall be filed with the Commission by mail to the Agency or in person during the Agency's normal business hours of 8:00 a.m. to 5:00 p.m., Monday through Friday at P. O. Box 30370, 2200 North 33rd Street, Lincoln, NE 68503-0370.

008.04B The petition shall be deemed as filed when it is actually received by the Agency. The Agency shall date stamp all petitions upon receipt.

008.04C At the same time the petition is filed with the Agency, the petitioner shall serve a copy of the petition, by certified mail, return receipt requested, on all necessary parties, including all persons, political subdivisions, corporations, organizations, or other entities who are known to have or claim any interest, legal right, duty, privilege, or immunity which would be directly affected by issuance of a declaratory order in this matter by the Commission.

008.05 Disposition Of The Petition.

008.05A Generally. Upon the filing of a petition, the Director may consider the petition, or delegate the matter to a designated hearing officer, to consider the petition and recommend a decision to

the Commission. In reviewing the petition, the Director or designated hearing officer may, in their discretion, do one or more of the following:

008.05A1 Require that additional information be submitted before the petition will be further considered;

008.05A2 Require a petitioner to provide notice to persons or entities who may be necessary parties and other persons that a request for a declaratory order has been filed with the Agency;

008.05A3 Recommend to the Commission that it schedule a date, time, and location at which the petitioner and any other parties to the proceeding may make an oral presentation on the petition;

008.05A4 Consider the petition and any attachments without oral presentation and recommend a decision to the Commission.

008.05B Within thirty (30) days after the petition is filed, the Commission shall, in writing:

008.05B1 Issue an order declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

008.05B2 Agree to issue an order by a specified time declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

008.05B3 Set the matter for specified proceedings as set forth in subsection 008.05A of this Chapter; or

008.05B4 Decline to issue a declaratory ruling, stating the reasons for the Commission's decision.

008.05C Notwithstanding Section 008.05B of this rule, the Commission may determine at any time that it will not issue a declaratory order if issuance of an order under the circumstances would

be contrary to any provisions of Section 008.09 of this Chapter. The Commission shall notify the petitioner and, if applicable, any intervenor or necessary party in writing when the Commission determines not to issue a declaratory order.

008.06 Intervention In Declaratory Order Proceeding.

008.06A Intervention by any person or entity in a declaratory order proceeding shall be allowed when the following requirements are met:

008.06A1 A petition for intervention must be submitted in writing to the Commission or its designated hearing officer. Copies must be mailed to all parties to the proceeding.

008.06A2 The contents of the petition must be as specified in 008.06B.

008.06A3 The Commission or designated hearing officer must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

008.06B Contents of Petition. The petition for intervention shall be submitted to the Commission or designated hearing officer, in writing, on 8 ½" x 11" white paper, and shall include each of the following:

008.06B1 The statute, regulation, rule, or order that may apply to or effect the person, property, entity, or facts at issue in the matter;

008.06B2 A statement of facts sufficient to show the intervenor's interest;

008.06B3 A statement of facts which demonstrate that the intervenor's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the intervenor may intervene pursuant to a provision of law;

008.06B4 All propositions of law or

contentions asserted by the intervenor; and

008.06B5 A statement of the specific relief requested by the intervenor.

008.06C The Commission or designated hearing officer may, at their discretion, invite any person or entity to file a petition for intervention.

008.06D The Commission or designated hearing officer shall grant a petition for intervention if the requirements of Section 008.06A and Section 008.06B are satisfied.

008.06E The Commission or designated hearing officer shall deny a petition for intervention upon determining that the interests of justice or the orderly and prompt conduct of the proceedings would be impaired by allowing the intervention.

008.06F The Commission's or its designated hearing officer's decision to grant or deny a petition for intervention shall be in writing and served upon all parties.

008.07 Declaratory Order Proceedings.

008.07A Oral Argument, When. Oral argument shall be had only on specific order of the Commission. A petitioner, intervenor, necessary party, or the Director or Agency staff, may submit a motion for oral argument to the Commission. If opportunity for oral argument is granted, then argument shall be scheduled to be conducted not more than forty-five (45) days after filing of the petition. Petitioner and all other parties or, when represented, their attorneys, shall be served by the Agency with a notice of the date, time, and location for oral argument. The Agency shall provide each of the parties with notice of the proceeding not less than seven (7) days in advance of the scheduled date. Service shall be made by certified mail, return receipt requested.

008.07B Oral Argument, Procedure. Oral argument will be made before a hearing officer or before any representative of the Agency who is authorized to render or to recommend a decision to the Commission. The hearing officer or Agency

representative shall be in control of the proceeding and shall:

008.07B1 Identify the proceeding and introduce himself or herself and identify each party for the record;

008.07B2 Hear the oral argument of the petitioner, intervenor, or necessary parties;

008.07B3 Close the proceedings.

008.07C At the declaratory order proceeding, the Director or Agency staff shall have the right to present oral argument.

008.07D The hearing officer or representative may impose reasonable time limits on the amount of time allocated to each party for oral argument.

008.07E The parties and Director or Agency staff may file briefs in support of their respective positions. The hearing officer may fix the time and order of filing briefs and may direct that briefs be submitted prior to the date of oral argument.

008.07F The oral argument may be conducted either in person or by telephone conference call.

008.08 Issuance Of Declaratory Order.

008.08A The Commission shall issue its declaratory order within sixty (60) days of the date on which the petition was filed.

008.08B The declaratory order shall be in writing and shall include the following:

008.08B1 The names of all parties to the proceeding upon which the order is based;

008.08B2 The facts upon which the order is based;

008.08B3 The statute, regulation, rule, or order at issue in the matter;

008.08B4 The Commission's conclusion as to

the applicability of the statute, regulation, rule, or order to the facts;

008.08B5 The Commission's conclusion as to the legal effect or result of applying the statute, regulation, rule, or order to the facts; and

008.08B6 The reasons relied upon by the Commission to support its conclusions.

008.08C A copy of the declaratory order shall be served upon each party by certified mail, return receipt requested.

008.08D Effect of Declaratory Order. A declaratory order shall have the same status and binding effect as any other order issued in a contested case.

008.08E No Response within 60 Days. If the Commission has not issued a declaratory order within sixty (60) days after the petition has been filed, then the petition shall be deemed to have been denied by the Commission.

008.09 Circumstances Under Which Commission Will Not Issue Declaratory Orders.

008.09A Grounds upon which the Commission shall refuse to issue a declaratory order include, but are not limited to, the following:

008.09A1 The petition requests a declaratory order on a matter that is outside the scope of authority of the Commission;

008.09A2 The petition requests review or appeal of a decision made by the Commission in a contested case;

008.09A3 The petition requests a declaratory order on the effect of past conduct;

008.09A4 An investigation for purposes of a formal adjudication, a contested case, or a petition to issue, amend, or repeal regulations is pending before the Commission

involving the petitioner on substantially the same or similar facts or issues raised in the petition;

008.09A5 The petition seeks a declaration that a statute or rule or regulation is unconstitutional or invalid;

008.09A6 The issue raised in the petition has been settled by a change in circumstances or other means so as to render moot the need for a declaratory order;

008.09A7 An order would substantially prejudice the rights of a person or entity who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding;

008.09A8 An order would not resolve the controversy or uncertainty; or

008.09A9 The question posed or facts presented are insufficiently specific, overly broad, or are otherwise inappropriate as a basis upon which to decide the matter.

008.09B Grounds upon which the Commission may determine to refuse to issue a declaratory order include, but are not limited to, the following:

008.09B1 Refusal is necessary to assure adequate allocation of Agency resources are available for issuing rulings on petitions raising questions of greater urgency or significance;

008.09B2 The question presented is of such complexity that the Commission has had insufficient opportunity or resources to develop a fully matured ruling;

008.09B3 The petitioner fails to submit any additional information requested by the Commission, its Director or other designated hearing officer or submits such information after the date established.

008.10 Appeal Of Declaratory Order. Appeal of

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Declaratory Order is subject to review in the manner provided for review of contested cases by the Administrative Procedure Act, section 84-901 - 84-920, R.R.S. 1999. Specific procedures for appeal are set forth in section 84-917, R.R.S. 1999.

NEBRASKA ADMINISTRATIVE CODE

LAST APPROVED DATE: May 22, 1996

TITLE 163 - NEBRASKA GAME AND PARKS COMMISSION

CHAPTER 1 - ADMINISTRATION

009 Rules of practice and procedure for hearings in contested cases.

009.01 These rules and regulations governing practice and procedure for hearings in contested cases before the Game and Parks Commission are adopted under authority of the Administrative Procedure Act, sections 84-901 through 84-920, R.R.S. 1999. These rules and regulations are effective following enactment by the Game and Parks Commission, approval by Attorney General and Governor and when five days have elapsed since filing with the Secretary of State.

009.01A Definitions The following definitions shall apply as used throughout these rules and regulations.

009.01A1 Agency shall mean the Game and Parks Commission, its Director and the staff.

009.01A2 Commission shall mean the eight Commissioners as defined in section 37-101, R.R.S., 2004.

009.01A3 Commission Director shall mean the Secretary as defined in section 37-106, R.R.S., 2004.

009.01A4 Contested case shall mean a proceeding before the Commission in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after a Commission hearing.

009.01A5 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:

009.01A5a Communications which do not pertain to the merits of a contested case;

009.01A5b Communications required for the disposition of ex parte matters as authorized by law;

009.01A5e Communications in a rate-making or rulemaking proceeding; and

009.01A5d Communications to which all parties have given consent.

009.01B 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. When appropriate, hearing officer shall include the Commissioners, the Director if authority to conduct a hearing is delegated to him or her, or other hearing officer selected by the Commission.

009.01C Party means the person by or against whom a contested case is brought or a person allowed to intervene in a contested case.

009.01D Petition means the initial document filed by or with the Commission that sets forth a claim and request for Commission action.

009.02 Prohibitions Against Ex parte Communications.

009.02A Prohibitions; when applicable. The prohibitions found in this Section shall apply beginning at the time notice for hearing is given.

009.02B Prohibitions; to whom applicable.

009.02B1 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 the Commissioners, the Director

or Agency employee who is or may reasonably be expected to be involved in the decision making process of the contested case.

009.02B2 Persons in decision making roles. No hearing officer or Commissioners or Agency employee who is or may reasonably be expected to be involved in the decision making 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.

009.02B3 Investigators. The Director or Agency employee 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 Commissioner or Agency employee who is or may reasonably be expected to be involved in the decision making process of the contested case.

009.02C Disclosure of contacts. The hearing officer or Commissioners or Agency 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 set forth in subsections 009.02B1 through 009.02B3 shall file in the record of the contested case:

009.02C1 All such written communications;

009.02C2 Memoranda stating the substance of all such oral communications; and

009.02C3 All written responses and memoranda stating the substance of all oral responses to all the ex parte communications.

009.02C4 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.

009.02C5 Filing and notice of filing provided under subsection 009.02C4 shall not be considered

on the record and reasonable notice for purposes of the definition of ex parte communication.

009.03 Intervention in a contested case

009.03A Intervention in a contested case shall be allowed when the following requirements are met:

009.03A1 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;

009.03A2 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

009.03A3 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.

009.03B 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.

009.03C 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:

009.03C1 Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

009.03C2 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

009.03C3 Requiring two or more intervenors to combine their presentation of evidence and argument, cross-examination, discovery, and other participation in the proceedings.

009.03D 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.

009.03D1 The hearing officer or designee may modify the order at any time, stating the reasons for the modification.

009.03D2 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.

009.04 Commencement of a contested case.

009.04A The contested case begins with the filing of a petition and request for hearing, if applicable, with the Commission. The petition is the initial document filed by or with the Commission that sets forth a claim and request for Agency action.

009.04B 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.

009.04C A party may appear on their own behalf in a contested case proceeding or may be represented by an attorney or other representative as permitted by law.

009.04D 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 Commission. Any pleading filed in a contested case

shall meet the following requirements:

009.04D1 The pleading shall contain a heading specifying the Commission and the title or nature of the pleading, shall state material factual allegations and state concisely the action the Commission 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.

009.04D1a Attorneys shall also include their address, telephone number and bar number.

009.04D1b The initial petition shall also contain the name and address of the respondent.

009.04D2 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.

009.04E All pleadings shall be filed with the Commission at P. O Box 30370, 2200 North 33rd St., Lincoln, NE 68503-0370. Filing may be accomplished by personal delivery or mail to the Director and will be received during regular office hours of 8:00 a.m. to 5:00 p.m., Monday through Friday.

009.04F 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 Commission. 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.

009.04G 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 Commission.

009.04H Unless state law provides that a hearing is not required, a hearing date shall be set by the Commission 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 Commission.

009.04I In computing time prescribed or allowed by 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.

009.05 Hearing officer; criteria.

009.05A The Commission may delegate to its Director or a hearing officer other than the Commissioners, the functions of conducting a prehearing conference and/or a hearing and submitting a recommended decision to the Commission.

009.05B 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 009.05D.

009.05C 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 009.05D.

009.05D 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.

009.05E 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.

009.05F A person may serve as hearing officer at successive stages of the same contested case.

009.06 Prehearing Procedures.

009.06A Prehearing conferences and orders. A hearing officer designated to conduct a hearing may determine, subject to the Commission'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.

009.06A1 If a prehearing conference is conducted:

009.06A1a The hearing officer shall promptly notify the Commission of the determination that a prehearing conference will be conducted. The Commission may assign another hearing officer for the prehearing conference; and

009.06A1b 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.

009.06A1c The notice referred to in

subsection 009.06A1b shall include the following:

009.06A1c(1) The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

009.06A1c(2) The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the Agency;

009.06A1c(3) The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

009.06A1c(4) A statement of the time, place, and nature of the prehearing conference;

009.06A1c(5) A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

009.06A1c(6) The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference;

009.06A1c(7) 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

009.06A1c(8) Any other matters that the hearing officer considers desirable to expedite the proceedings.

009.06A2 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.

009.06A3 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.

009.06B Discovery in contested cases.

009.06B1 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.

009.06B2 Any prehearing motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion shall:

009.06B2a 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;

009.06B2b State the reasons supporting the motion;

009.06B2c Be accompanied by a statement setting forth the steps or efforts made by the moving party or their counsel to resolve by agreement the issues raised and that agreement has not been achieved; and

009.06B2d Be filed with the Commission. The moving party must serve copies of all such motions to all parties to the contested case.

009.06B3 Other than is provided in subsection 009.06B2d above, materials need not be filed with the Commission.

009.06C Continuances. The hearing officer may, in their 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.

009.06C1 Good cause. Good cause for an extension of time or continuance may include, but is not limited to, the following:

009.06C1a Illness of the party, legal counsel or witness;

009.06C1b A change in legal representation; or

009.06C1c Settlement negotiations are underway.

009.06D Amendments.

009.06D1 A petition may be amended at any time before an answer is filed or is due if

notice is given to the respondent or their attorney. In all other cases, a petitioner must request permission to amend from the hearing officer.

009.06D2 A hearing officer may also allow, at their 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.

009.06E Informal Disposition. Unless otherwise precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

009.07 Conducting a contested case hearing.

009.07A Order. At the discretion of the hearing officer, the hearing may be conducted in the following order:

009.07A1 The hearing is called to order by the hearing officer. Any preliminary motions, stipulations or agreed orders are entertained.

009.07A2 Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

009.07A3 Presentation of evidence.

009.07A3a Evidence will be received in the following order:

009.07A3a(1) Evidence is presented by the petitioner;

009.07A3a(2) Evidence is presented by the respondent;

009.07A3a(3) Rebuttal evidence is presented by the petitioner; and

009.07A3a(4) Surrebuttal evidence

is presented by the respondent.

009.07A3b With regard to each witness who testifies, the following examination may be conducted:

009.07A3b(1) Direct examination conducted by the party who calls the witness;

009.07A3b(2) Cross-examination by the opposing party;

009.07A3b(3) Redirect examination by the party who called the witness; and

009.07A3b(4) Recross-examination by the opposing party.

009.07A4 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.

009.07B Evidence.

009.07B1 In contested cases the Commissioners or other 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.

009.07B2 Any party to a formal hearing before the Commission, from which a decision may be appealed to the courts of this state, may request that the Commission be bound by the rules of evidence applicable in district court by delivering to the Commission 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.

009.07B3 Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.

009.07B4 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.

009.07B5 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 orders issued under this subsection may be enforced by the district court.

009.07B6 The Commission or other hearing officer shall give effect to the rules of privilege recognized by law.

009.07B7 The Commission or other hearing officer 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 Commission.

009.07B7a Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.

009.07B7b Parties shall be afforded an opportunity to contest facts so noticed.

009.07B7c The record shall contain a written record of everything officially noticed.

009.07B8 The Commission or other hearing officer may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

009.07C 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.

009.07D Official Record.

009.07D1 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.

009.07D2 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.

009.07D3 The official record shall consist only of the following:

009.07D3a Notices of all proceedings;

009.07D3b Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Commission pertaining to the contested case;

009.07D3c The record of the hearing before the Commission or other hearing officer, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the Commission or other hearing officer during the proceeding, and all proffers of proof and objections and

rulings thereon; and

009.7D3d The final order.

009.07D4 As provided in 163 NAC 1 Section 009.02C the Commission, its Director or any other hearing officer or Agency employee, 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.

009.07D5 Except to the extent that the Administrative Procedure Act or another statute provides otherwise, the Commission record shall constitute the exclusive basis for Commission action in contested cases under the act and for judicial review thereof.

009.07E Costs. All costs of a formal hearing shall be paid by the party or parties against whom a final decision is rendered.

009.08 Decision and order in a contested case.

009.08A If a hearing officer other than the Commission, conducts the hearing, the hearing officer will submit recommended findings of fact and conclusions of law to the Commission, and the final decision and order. The Commission shall also receive a tape-recording or written transcript of the hearing as well as copies of all exhibits.

009.08B Every decision and order adverse to a party to the proceeding, rendered by the Commission 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.

009.08C The decision and order should include:

009.08C1 The name of the Commission and name of the proceeding;

009.08C2 The time and place of the hearing;

009.08C3 The names of all parties or their attorneys who entered an appearance at the hearing;

009.08C4 The findings of fact consisting of a concise statement of the conclusions upon each contested issue of fact;

009.08C5 The conclusions of law consisting of the applications of the controlling law to the facts found and the legal results arising therefrom; and

009.08C6 The order consisting of the action taken by the Commission as a result of the facts found and the legal conclusions arising therefrom.

009.08D 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 their attorney of record.

009.09 Appeals

009.09A 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.

009.09B Parties desiring to appeal the Commission decision must file a petition for review in the district court of the county where the Commission action is taken within thirty days after the service of the final decision by the Commission. 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.

009.09C Unless otherwise provided by statute, the procedures of section 84-917, R.R.S. 1999 govern the procedure for taking an appeal.

NEBRASKA ADMINISTRATIVE CODE

LAST APPROVED DATE: November 30, 2004

TITLE 163 - NEBRASKA GAME AND PARKS COMMISSION

CHAPTER 1 - ADMINISTRATION

010 Rules Of Practice And Procedure Governing any Person or Corporation Serving as an Authorized Permit Agent

010.01 These rules and regulations governing practice and procedure for any person or corporation serving as an authorized permit agent are adopted under authority of 37-408, R.R.S., 2004. These rules and regulations are effective following enactment by the Game and Parks Commission, approval by the Attorney General and Governor and when five days have elapsed since filing with the Secretary of State.

010.01A Definitions. The following definition shall apply as used throughout these rules and regulations. Authorized Permit Agent shall mean any person, firm or corporation designated by the Commission as an agent to sell permits and stamps.

010.01B Duties and Responsibilities of Authorized Permit Agents. Each authorized permit agent shall comply with conditions and stipulations as prescribed by the Commission including, but not limited to the following:

010.01B1 Upon request, surrender to the Commission all permits, stamps, associated records and remit to the Commission funds for all permits and stamps not already accounted for.

010.01B2 Inspection and audit of all permits, stamps and associated records at any reasonable time.

010.01B3 Remittance of all funds collected from the sale of hunting, fishing, park permits and stamps, less issuing fees, to the Commission during any given month on or before the 10th day of the following month with a report of the number and kinds of permits and

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stamps sold.

010.01B4 On or before the 10th day of January, return all permit and stamp books from the previous year with a final accounting of both sold and unsold permits and stamps and remit any remaining permit and stamp fees due for that period to the Commission.

010.01C Failure to comply with Section 010 shall be cause to terminate appointment as an authorized permit agent.

NEBRASKA ADMINISTRATIVE CODE

LAST APPROVED DATE: October 26, 2000

TITLE 163 - NEBRASKA GAME AND PARKS COMMISSION

CHAPTER 1 - ADMINISTRATION

011 Rules Pertaining to Record-Keeping Procedures for The Game Law Investigation Cash Fund.

011.01 These rules and regulations governing record-keeping procedures for The Game Law Investigation Cash Fund are adopted under authority of section 37-327.01, R.R.S., 2004. These rules and regulations are effective following enactment by the Game and Parks Commission, approval by the Attorney General and Governor and when five days have elapsed since filing with the Secretary of State.

011.01A Record keeping procedures for expenditures, disbursements, and transfers of cash from the Game Law Investigation Cash Fund.

011.01A1 The Budget and Fiscal Division shall request transfer of funds from the Game Law Investigation Cash Fund to the indicated fund officer in the Law Enforcement Division upon written request from the Administrator of the Law Enforcement Division or, in his absence, the Assistant Administrator of the Law Enforcement Division.

011.01A2 Funds received by the Law Enforcement Division from the Game Law Investigation Cash Fund will be deposited in readily-available commercial accounts or held in cash, if needed, for short periods of time.

011.01A3 All funds expended shall be tracked by identification numbers which will allow the accounting of all amounts distributed to agents and informants or for other purposes, purpose of the expenditure, and the results procured from such transactions.

011.01A4 The recorded purpose of expenditures shall include: (a) salaries and any expenses of all agents and informants; (b) front money

for wildlife purchases; (c) type of wildlife and amount purchased; (d) amount of front money recovered.

011.01A5 The Law Enforcement Division shall adopt policies establishing the format of the detailed confidential and summary records for all expenditures from the fund and all recoveries or additions to the fund generated while funds are under the control of the division such as recovered front money through subsequent investigatory sales, interest earned on ready funds, etc.

011.01B Reporting procedures for expenditures, disbursements and transfers of cash from the Game Law Investigation Cash Fund.

011.01B1 The Budget and Fiscal Division shall prepare a summary of all Game Law Investigation Cash Fund money transferred to the Law Enforcement Division for each fiscal year by August 1st of each year for the previous fiscal year including the date, amount and recipient of each such transfer. Said report will be provided to the Board of Commissioners, Director, Assistant Director and the Administrator of the Law Enforcement Division.

011.01B2 The Law Enforcement Division shall prepare a summary report of all receipts of funds from the Game Law Investigation Cash Fund, any interest or other income to those funds while under division control, and all expenditures or disbursements of such funds in sufficient detail to provide an accurate summary of activity generated by and results realized from fund expenditures while protecting the identity of informants and agents. Said report shall be completed by August 15th each year for the previous fiscal year and shall be provided to the Board of Commissioners, Director and the Assistant Director.

011.01B3 The Budget and Fiscal Division and Law Enforcement Division summary reports shall be combined by the Budget and Fiscal Division

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for the Commission and delivered to the Clerk of the Legislature by September 15th of each year for the previous fiscal year including all information as required in section 37-327.01, R.R.S. 2004.

011.01B4 A copy of the summary report sent to the Clerk of the Legislature shall be provided to any member of the Legislature by the Budget and Fiscal Division upon request to the Secretary of the Commission.

NEBRASKA ADMINISTRATIVE CODE

LAST APPROVED DATE: December 2, 2011

TITLE 163 - NEBRASKA GAME AND PARKS COMMISSION

CHAPTER 1 - ADMINISTRATION

012 Procedures for reviewing the suspension or revocation of a privilege or permit to hunt, fish or harvest fur imposed by any jurisdiction other than Nebraska.

The following regulations are prescribed by the Game and Parks Commission, State of Nebraska in accordance with Neb. Rev. Stat. 37-106, 37-202 through 37-247, 37-614 through 37-618. These regulations are effective following enactment by the Commission, approval by the Attorney General and Governor, and when five days have elapsed since filing with the Secretary of State.

012.01 Application for review of a suspension or revocation of a privilege or permit to hunt, fish or harvest fur imposed by any jurisdiction other than Nebraska.

012.01A An applicant seeking review of suspension or revocation of a privilege or permit to hunt, fish or harvest fur imposed by any jurisdiction other than Nebraska and thereby also imposed in Nebraska as provided in 37-618(1) and (2) must submit an application on the form prescribed by the Commission including all information requested therein if the applicant wishes to be eligible to purchase a permit to hunt, fish or harvest fur in Nebraska.

012.01B An application that does not provide all requested information may be rejected automatically.

012.02 Application for review of a suspension or

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revocation of a hunting or fur harvesting privilege or permit by any jurisdiction other than Nebraska will be reviewed within fifteen (15) working days of receipt of the application by the Administrator or Assistant Administrator of the Law Enforcement Division, and the Administrator of the Wildlife Division to determine if the offense for which the privilege or permit is suspended or revoked is an offense under the Game Law or would constitute grounds for suspension or revocation under Sections 37-614 through 37-617 and to determine if further review is necessary or appropriate and to provide the Secretary of the Commission with a written report of that determination along with all of the documentation submitted by the applicant and any other information considered in reaching that determination.

012.03 The Secretary, or their designee, may either confirm the suspension or revocation in Nebraska or conduct an administrative review hearing prior to a final decision. If an administrative review hearing is held, the Secretary may require an appearance by the applicant, and may request additional information from the jurisdiction that revoked or suspended the applicant's privilege or permit to hunt, fish or harvest fur.

012.03A The Secretary, or their designee, may provide the applicant an opportunity to appear at an administrative hearing prior to a final determination. Upon the hearing to determine the eligibility of the applicant to purchase a permit, the Secretary of the Commission, or any designated representative of the Commission, may administer oaths and the

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Commission may require the attendance of witnesses and the production of relevant records. The Secretary may allow other Commission staff at the hearing.

012.04 The Secretary shall either confirm the suspension or revocation in Nebraska or reinstate the privilege or affirm the eligibility of the person to purchase a permit in Nebraska.

012.04A The applicant shall be notified, in writing, within ten (10) working days of the decision regarding the application.

012.04B The decision of the Secretary shall be final.