NEBRASKA ADMINISTRATIVE CODE

TITLE 247, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 8

NEBRASKA DEPARTMENT OF MOTOR VEHICLES

RULES AND REGULATIONS GOVERNING THE CERTIFICATION OF THIRD-PARTY TESTERS AND THIRD-PARTY EXAMINERS FOR THE COMMERCIAL DRIVER'S LICENSE.

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TITLE 247 NEBRASKA DEPARTMENT OF MOTOR VEHICLES

CHAPTER 8 RULES AND REGULATIONS GOVERNING THE CERTIFICATION OF THIRD-PARTY TESTERS AND THIRD-PARTY EXAMINERS FOR THE COMMERCIAL DRIVER'S LICENSE.

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TITLE 247 CHAPTER 8

Nebraska Department of Motor Vehicles

APPROVAL DATE:

CHAPTER 8 RULES AND REGULATIONS GOVERNING THE CERTIFICATION OF THIRD-PARTY TESTERS AND THIRD-PARTY EXAMINERS FOR THE COMMERCIAL DRIVER'S LICENSE.

001 SCOPE.

001.01 Applicability. These rules and regulations apply to the following entities and individuals:

001.01A Any Third-Party Tester as defined in these rules and regulations;

001.01B Any Third-Party Examiner as defined in these rules and regulations; and,

001.01C Any entity or person offering a training course to qualify an individual for certification as a Third-Party Examiner.

001.02 Incorporation by Reference. The following regulations and standards are adopted, promulgated and incorporated in these rules and regulations by reference:

001.02A Title 247 NAC Chapter 16, and the federal regulations and standards incorporated therein, governing the administration of the commercial driver's license program, as amended;

001.02B The parts, subparts, and sections of Title 49 of the Code of Federal Regulations, as referenced in the Motor Vehicles Operator's License Act, pursuant to Neb.Rev.Stat. § 60-462.01; and,

001.02C Title 53 NAC Chapter 4 of the Nebraska Department of Justice, Attorney General's Model Rules.

002 DEFINITIONS.

002.01 Approved training course means a training course approved by the Department for the training of Third-Party Examiners.

002.02 Class A combination vehicle means any combination of motor vehicles and towed vehicles with a gross vehicle weight rating of more than twenty-six thousand (26,000) pounds if the gross vehicle weight rating of the vehicles being towed are in excess of ten thousand (10,000) pounds.

APPROVED
DOUGLAS J. PETERSON
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SEP 22 2016

BY _____
ASSISTANT ATTORNEY GENERAL

APPROVED

OCT 13 2016

PETE RICKETTS
GOVERNOR

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002.03 Class A testing certification means certification by the Department authorizing a Third-Party Tester or Third-Party Examiner to administer skills tests for drivers of Class A, Class B, or Class C commercial motor vehicles.

002.04 Class B heavy straight vehicle means any single commercial motor vehicle with a gross vehicle weight rating of twenty-six thousand one (26,001) pounds or more or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand (10,000) pounds.

002.05 Class B testing certification means certification by the Department authorizing a Third-Party Tester or Third-Party Examiner to administer skills tests for drivers of Class B or Class C commercial motor vehicles.

002.06 Class C small vehicle means any single commercial motor vehicle with a gross vehicle weight rating of less than twenty-six thousand one (26,001) pounds or any such commercial motor vehicle towing a vehicle with a gross vehicle weight rating not exceeding ten thousand (10,000) pounds comprising (i) motor vehicles designed to transport sixteen (16) or more passengers, including the driver; and (ii) motor vehicles used in the transportation of hazardous materials and required to be placarded pursuant to Neb.Rev.Stat. § 75-364.

002.07 Class C testing certification means certification by the Department authorizing the Third-Party Tester or Third-Party Examiner to administer skills tests for drivers of Class C small vehicles.

002.08 CDL means Commercial Driver's License as defined in § 60-480.

002.09 CLP means Commercial Learner's Permit as defined in § 60-480.

002.10 Commercial motor vehicle or CMV means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

002.10A has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more) inclusive of a towed unit or units with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds);

002.10B has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more);

002.10C is designed to transport 16 or more passengers, including the driver; or

002.10D is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Federal Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Federal Hazardous Material Regulations 49 CFR part 172, subpart F.

002.11 Conviction means an unvacated adjudication of guilt, or a determination that a

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person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

002.12 Department means the Nebraska Department of Motor Vehicles.

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

002.14 Disqualification means the withdrawal of a CDL or CLP as provided in Neb.Rev.Stat. § 60-4,131 and also the withdrawal of a CDL or CLP by administrative action as provided in Neb.Rev.Stat. §§ 60-4,167.02 or 60-4,168 through 60-4,270.

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

002.16 Driving a commercial motor vehicle while under the influence of alcohol means committing any one (1) or more of the following acts in a CMV: driving a CMV while the person's alcohol concentration is 0.04 or more; driving under the influence of alcohol, as prescribed by State law; or refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of 49 CFR § 383.51 (b) or § 392.5 (a) (2).

002.17 Employer means any person, including the United States, a state, or a political subdivision of a state, which owns or leases a commercial motor vehicle or assigns employees to operate a commercial motor vehicle.

002.18 FMCSA means the Federal Motor Carrier Safety Administration.

002.19 Employee means any person who works a minimum of 30 hours per week from Monday through Sunday and is on the payroll of a Third-Party Tester, and excludes an independent contractor.

002.20 Skills test means a test by a CLP holder applying for a CDL that is required to be successfully completed prior to the issuance of a CDL.

002.21 Third Party Examiner means a person employed by a Third-Party Tester who is authorized by the Department to administer CDL skills tests specified in 49 CFR Part 383 and pursuant to Neb.Rev.Stat. § 60-4,158.

002.22 Third-Party Examiner applicant means the individual who applies to the Department to obtain or renew a Third-Party Examiner certificate.

002.23 Third-Party Tester means a person, including, but not limited to, another State, a motor carrier, a private driver training facility or other private institution, or a department, agency or instrumentality of a local government, authorized by the Department to employ

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skills test examiners to administer the CDL skills tests specified in 49 CFR Part 383 and pursuant to Neb.Rev.Stat. § 60-4,158.

002.24 **Third-Party Tester applicant** means the individual or entity making application for the purpose of acquiring or renewing a Third-Party Tester certificate.

002.25 **Training course applicant** means the sponsor of a training course making application for approval of the Training Course.

003 CERTIFICATION OF THIRD-PARTY TESTERS.

003.01 **Certificate.** A Third-Party Tester, before administering or attempting to administer skills testing, shall hold a certificate issued or renewed by the Department authorizing the Third-Party Tester to engage in skills testing for a CDL.

003.02 **Requirements for Certification.** To have a certificate issued, renewed or remain in effect, the Third-Party Tester shall demonstrate it meets the following requirements:

003.02A Be a person, including, but not limited to, another State, a motor carrier, a private driver training facility or other private institution, or a department, agency or instrumentality of a local government, authorized by the Department to employ skills test examiners to administer the CDL skills tests specified in 49 CFR Part 383 and pursuant to Neb.Rev.Stat. § 60-4,158;

003.02B Ensure that each Third-Party Examiner who conducts the driving skills test is certified in accordance with 009 of these rules and regulations;

003.02C Third-Party Testers that are not government entities are required to initiate and maintain a $25,000 bond to pay for re-testing drivers in the event that the third-party tester or one or more of its examiners is involved in fraudulent activities related to conducting skills testing for applicants for a CDL;

003.02D Designate an individual authorized to act on behalf of the third-party as the Third-Party Tester's contact person with the Department;

003.02E Continuously maintain a place of business which includes at least one (1) permanent, regularly occupied structure within the State of Nebraska;

003.02F Must only use Department certified Third-Party Examiners;

003.02G Require all Third-Party Examiners to have a nationwide criminal background check prior to certification; and,

003.02H Must require all Third-Party Examiners to attend a DMV-approved training course at a minimum of every four (4) years.

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003.03 Application for Certification. If a certificate or renewal of a certificate is desired, the Third-Party Tester shall:

003.03A Submit a completed application form, DMV 06-52, to the Department and include at a minimum, the following:

003.03A1 The legal name, current address, and telephone number of the Third-Party Tester's principal office or headquarters in Nebraska;

003.03A2 The name, title, current address, telephone number, and email address of the individual who has been designated the applicant's contact person with the Department;

003.03A3 The name, date of birth, driver's license number, email address, phone number and current home address of those full-time, payroll employees who are certified by the Department as Third-Party Examiners;

003.03A4 The address of each Nebraska location where the applicant intends to conduct the skills test and a description of the off-road facilities as well as a map and written description of the test route (not to exceed one (1) test route per Third-Party Examiner) that will be used for the on-road portion of the skills test;

003.03A5 The name, date of birth, driver's license number, email address, phone number and current home address of those employees who desire certification by the Department as Third-Party Examiners; and,

003.03A6 Signature of the applicant or his or her designated representative certifying that the information included in the application is true and accurate.

003.03B Fee. Enclose a check or money order made out to the Department of Motor Vehicles for the $100.00 fee with the completed application; and,

003.03C Agreement. Complete a Third-Party Tester Agreement with the Department.

003.03D Surety Bond. If the Third-Party Tester is not a government entity, submit a $25,000 bond to be sufficient to pay for re-testing drivers in the event that the Third-Party Tester or one or more of its examiners is involved in fraudulent activities related to conducting skills testing for applicants for a CDL.

003.04 Pre-approval Inspection. Upon receipt of a completed application, the Department will conduct an on-site inspection of the location(s) where the third-party intends to conduct the skills test and the proposed test route(s).

003.05 Approval. The Department has thirty (30) days after receipt of a completed application for certification to determine if the applicant will be permitted to enter into a Third-Party Tester Agreement with the Department. The Department will approve or deny the application in the form of a written notice to the applicant.

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003.06 Display of Certificate. Once certified, the Third-Party Tester must display the certificate prominently in the office of the Third-Party Tester.

003.07 Term. The certification to conduct third-party testing shall be valid for two (2) years.

004 DENIAL, REFUSAL TO RENEW, SUSPENSION OR REVOCATION OF THIRD-PARTY TESTER CERTIFICATE.

004.01 Grounds. The Department may deny, refuse to renew, suspend or revoke a Third-Party Tester certificate, whether initial or renewed, for any of the following reasons:

004.01A Engaging in or attempting to engage in administration of skills testing without a certificate;

004.01B Fraud, forgery or misrepresentation in an application;

004.01C Failure to provide notice to the Department as required by 008 of these rules and regulations;

004.01D Failure to maintain or to permit examinations, inspections, or audits as required by 007 of these rules and regulations;

004.01E Failure to pay the fee as required by 006 of these rules and regulations;

004.01F Failure at any time to comply with the Motor Vehicle Operator's License Act or the rules and regulations adopted and promulgated by the Department under that Act;

004.01G Failure to comply with the terms of the Third-Party Tester Agreement;

004.01H Lack of business stability;

004.01I Fraud, forgery or falsification of any documents relating to Third-Party Examiners or the skills test;

004.01J Failure to provide the Department with the pass/fail results and scores of each applicant tested within three (3) days of the test date pursuant to 008.01B of these rules and regulations;

004.01K Failure of the skills test by a CDL driver, previously tested by the Third-Party Examiner employed the by the Third-Party Tester, on a retest by the Department conducted pursuant to 007 of these rules and regulations;

004.01L Failure of the Third-Party Examiner to conduct skills test examinations, consisting of ten (10) pre-trip vehicle inspections, ten (10) basic control skills, and ten (10) road tests, of at least ten (10) different applicants per calendar year;

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004.01M Failure to submit a schedule of CDL skills tests to the Department no later than two (2) business days prior to each test;

004.01N Failure to require all Third-Party Examiners to successfully complete a refresher training course and examination every four (4) years to maintain their CDL test examiner certification;

004.01O Any other cause adversely reflecting on the Third-Party Tester's fitness or capacity to conduct skills testing;

004.01P Failure of Third-Party Examiners to pass a nationwide criminal background check. The Department will deny any applicant whose record contains a felony conviction within the last ten (10) years or any conviction involving fraudulent activities;

004.01Q Have had no violations noted on the Third-Party Examiners' driving record for which five (5) or more points might be assessed. Additionally, the Third-Party Examiner must have no disqualifications, suspensions, or revocations on his or her driving record within the last five (5) years; and,

004.01R Third-Party Examiners have had no convictions for driving while under the influence of alcohol or drug offense in connection with motor vehicle use within the previous five (5) years.

005 RENEWALS OF THIRD-PARTY TESTER CERTIFICATES.

005.01 Expiration. A certificate will expire on the second anniversary of its effective date unless renewed.

005.02 Notice. At least one hundred twenty (120) days prior to expiration, the Department will send to the certified Third-Party Tester at its last known address, a renewal notice which states the following:

005.02A The date on which the current certificate expires;

005.02B The date by which the renewal application must be received by the Department for the renewal to be issued and mailed before the certificate expires; and,

005.02C The amount of the renewal fee.

005.03 All renewal application forms must be submitted to the Department not less than ninety (90) days prior to the time the previous certification expires. The Department will not be responsible for the timely issuance of any renewal certificate when the application is not received in the requested timeframe.

006 SCHEDULE OF FEES FOR THIRD-PARTY TESTER CERTIFICATES.

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006.01 **Amount.** For issuance or renewal of a Third-Party Tester certificate, the fee is $100.00 for each applicant for a Third-Party Tester certificate. The fee is refundable if the application is initially denied by the Department or returned due to incompleteness or deficiency. The fee covers a two-year (2-year) period beginning on the effective date of issuance or renewal thereof.

006.02 **Refunds.** No portion of the fee will be refunded if the certificate is suspended or revoked during the two-year (2-year) period or if the Third-Party Tester otherwise discontinues activity within the State during any portion of the two-year (2-year) period.

007 RECORDS, INSPECTIONS, AND RETESTING.

007.01 **Records.** Any Third-Party Tester shall keep the following records at its principal place of business as follows:

007.01A A copy of the Department certificate authorizing the Third-Party Tester to administer a CDL skills testing program for the classes and types of commercial motor vehicles listed.

007.01B A copy of the current Third-Party Tester agreement with the Department.

007.01C A copy of the Third-Party Tester's Department approved road test routes.

007.01D **Third-Party Examiner Record.** Retain, at each approved testing location, a record of each Third-Party Examiner in the employ of each Third-Party Tester at that location. Each record shall be maintained a minimum of two (2) years after the date the Third-Party Examiner leaves the employment of the Third-Party Tester. Each record shall include:

007.01D1 A valid "Examiner Identification Card" (including name and residential address) indicating that the Examiner has been certified by the Department;

007.01D2 A copy of the Third-Party Examiner's current driving record, which must be updated annually;

007.01D3 Evidence that the Third-Party Examiner is an employee of the Third-Party Tester; and,

007.01D4 A copy of the Third-Party Examiner's training record as outlined in 49 CFR 383.75.

007.01E **Driver Records.** Retain, at each approved testing location, a record of each driver for whom the Third-Party Tester conducts a skills test, whether or not the driver passes or fails the test. Each such record shall be retained for the current year plus the two (2) previous calendar years from the date of the test and shall include:

007.01E1 The complete full name and address of the driver;

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007.01E2 The driver's license number and the name of the state or jurisdiction that issued the CLP held by the driver at the time of the test;

007.01E3 The test score sheet(s) showing the type of vehicle tested for and the results of the skills test;

007.01E4 The name and identification number of the Third-Party Examiner conducting the skills test;

007.01E5 The license plate number of the commercial motor vehicle(s) used to conduct the testing, what type of braking system the vehicle had, transmission type and coupling system, if appropriate; and

007.01E6 A copy of the signed Notification of Driving Skills Examination form.

007.02 Random Examinations, Inspections, and Audits. The FMCSA, its representative(s) and the Department may conduct random examinations, inspections, and audits of Third-Party Testers with or without prior notice of the following:

007.02A The Department will conduct audits overtly and covertly at least every two (2) years to focus on extremely high or low pass rates for Third-Party Testers granted the training and skills testing exception under 49 CFR § 383.75 (a)(7).

007.02B On-Site Inspections. At least once every two (2) years, the Department will conduct on-site inspections of Third-Party Testers.

007.02C Observe Testing. At least once every two (2) years, a representative of the Department shall take the tests actually administered by the Third-Party Tester as if the representative were a test applicant, or retest a sample of drivers who were examined by the Third-Party Tester to compare pass/fail results.

007.02D Sample Retests. The Department may retest a sample of CDL holders who were examined by the Third-Party Tester as follows:

007.02D1 The drivers to be retested in this sample shall be selected by the Department from a list of drivers required to be kept by the Third-Party Tester in 007.01E of these rules and regulations. Sample drivers will be notified of the retesting by the Department by mail at least three (3) weeks prior to the retesting date. If the retesting date is not convenient for the sample driver, a one-time continuance will be granted. In the case of a continuance, the rescheduled retest date must occur within two (2) weeks of the original retest date. Retesting will take place at the Third-Party Tester location. Drivers who fail to show up for this retesting shall have their CDL cancelled by the Department;

007.02D2 It shall be the responsibility of the Third-Party Tester to provide the appropriate vehicle for these retests;

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007.02D3 Simple failure of the sample retest conducted by the Department representative shall not prejudice a CDL already issued to that driver; and,

007.02D4 If the driver fails the retest, the auditor may require that the driver be recalled and reexamined at a Department CDL driver licensing location. Failure of the skills retest at the Department location shall result in the cancellation of the CDL and constitutes grounds for suspension or revocation of the Third-Party Tester's certification.

007.03 A Third-Party Examiner for a Third-Party Tester that is also a Driver Training School is prohibited from administering skills tests to an applicant who was skills-trained by that Third-Party Examiner.

007.04 The Department will prepare a written review of the results of each inspection and audit and a copy will be provided to the Third-Party Tester.

008 NOTIFICATION.

008.01 **Required Notice.** The Third-Party Tester must notify the Department within the specified period of time of the following by secure electronic means:

008.01A Provide the Department with a two day advance notice of skills test appointments scheduled pursuant to these rules and regulations;

008.01B The pass/fail results and scores of all applicants administered skills testing by the Third-Party Examiners employed by the Third-Party Tester. This information must be sent electronically to the Department's third-party testing database within three (3) days of the date of testing;

008.01C Any change in the Third-Party Tester's name, legal status or address within ten (10) days of its date of occurrence;

008.01D Any change in the Third-Party Examiners employed by the Third-Party Tester or their driving status within ten (10) days of its date of occurrence;

008.01E If the Third-Party Tester ceases business operations in Nebraska, the Third-Party Tester shall notify the Department ten (10) days prior to its date of occurrence; and,

008.01F If the Third-Party Tester's insurance as required by the Third-Party Tester Agreement is cancelled or altered by the insurance company, the Third-Party Tester shall notify the Department within five (5) days of its date of occurrence. In addition, the Third-Party Tester shall give the Department not less than thirty (30) days notice before cancellation or alteration of required insurance.

008.02 **Failure to Notify.** Failure to give timely notice to the Department as required

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constitutes grounds for revocation or suspension of the Third-Party Tester's certificate.

009 THIRD-PARTY EXAMINER CERTIFICATION.

009.01 Certificate. An individual, before engaging in or attempting to engage in, third-party examination, shall hold a certificate issued or renewed by the Department authorizing the individual to be a Third-Party Examiner for that class of commercial motor vehicle.

009.02 Requirements for Certification. Applicants for Third-Party Examiner certificates must comply with the following:

009.02A Meet the same qualifications and training standards as State examiners, to the extent necessary to conduct skills test in compliance with 49 CFR Part 383, Subparts G and H;

009.02B Be an employee of a Third-Party Tester requesting initial certification or renewal of certification as a Third-Party Examiner;

009.02C Have had no violations noted on his or her driving record for which five (5) or more points might be assessed. Additionally, the Third-Party Examiner must have no disqualifications, suspensions, or revocations on his or her driving record within the last five (5) years;

009.02D Have had no convictions for driving while under the influence of alcohol or drug offense in connection with motor vehicle use within the previous five (5) years;

009.02E Possess a valid Nebraska license or valid license from their state of residence;

009.02F Be at least twenty-one (21) years of age;

009.02G Have a high school diploma or its equivalent;

009.02H Agree to conduct skills test examinations, consisting of ten (10) pre-trip vehicle inspections, ten (10) basic control skills, and ten (10) road tests, of at least ten (10) different applicants per calendar year or, at the discretion of the Department, must either take the refresher training specified in 49 CFR § 384.228 or have a State examiner ride along to observe the third party examiner fully administer at least one skills test;

009.02I Provide the Department with a two (2) day advance notice of skills test appointments scheduled pursuant to 008.01A of these rules and regulations;

009.02J Provide the Department with the pass/fail results and scores of each applicant tested within three (3) days of the test date pursuant to 008.01B of these rules and regulations;

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009.02K Must attend a training course and examination at a minimum of every four (4) years; and,

009.02L Must pass a nationwide criminal background check. The Department will deny any applicant whose record contains a felony conviction within the last 10 (ten) years or any conviction involving fraudulent activities.

009.03 Application for Certification. To have a Third-Party Examiner certificate issued, renewed or remain in effect, the individual shall:

009.03A Submit a completed application, DMV 06-59, and include as a minimum, the following:

009.03A1 The individual's name, title, current home address, telephone number, email address, date of birth, driver's license number and state of issuance;

009.03A2 The name, address and telephone number of the individual's employer;

009.03A3 The name, title, current address, telephone number, and e-mail address of the individual who has been designated the employer's contact person with the Department;

009.03A4 Education (high school diploma or equivalent); and,

009.03A5 Signature of the applicant and date.

009.04 Approval. The Department has thirty (30) days after receipt of an application for certification to deny or approve the application in the form of a written notice. Once certified, the Third-Party Examiner must display the certificate prominently in the office of the Third-Party Tester. The certification to conduct Third-Party Testing shall be valid for two (2) years.

010 RENEWALS OF THIRD-PARTY EXAMINER CERTIFICATES.

010.01 Expiration. A Third-Party Examiner Certificate will expire on the second anniversary of its effective date unless renewed.

010.02 Notice. At least sixty (60) days prior to expiration, the Department will send to the certified Third-Party Examiner at his or her last known address, a renewal notice which states the following:

010.02A The date on which the current certificate expires; and,

010.02B The date by which the renewal application must be received by the Department for the renewal to be issued and mailed before the certificate expires.

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010.03 Submission Date. Renewal application forms must be submitted to the Department at least thirty (30) days prior to the time the previous certification expires. The Department will not be responsible for the timely issuance of any renewal certificate when the application is not received in the requested manner.

011 DENIAL, REFUSAL TO RENEW, SUSPENSION OR REVOCATION OF THIRD-PARTY EXAMINER CERTIFICATE.

011.01 Grounds. The Department may deny, refuse to renew, suspend or revoke a Third-Party Examiner certificate, whether initial or renewed, for any of the following reasons:

011.01A Engaging in or attempting to engage in skills testing without a certificate;

011.01B Fraud, forgery or misrepresentation in an application;

011.01C Failure to provide the Department with a two (2) day advance notice of skills test appointments scheduled pursuant to 008.01A of these rules and regulations;

011.01D Failure to provide the Department with the pass/fail results and scores of each applicant tested within three (3) days of the test date pursuant to 008.01B of these rules and regulations;

011.01E Failure at any time to comply with the Motor Vehicle Operator's License Act or the rules and regulations adopted and promulgated by the Department under that Act;

011.01F During the prior five (5) years, the Third-Party Examiner must have no violations noted on his or her driving record for which five (5) or more points might be assessed. Additionally, the Third-Party Examiner must have no disqualifications, suspensions or revocations on his or her driving record within the last five (5) years;

011.01G Have had no convictions for driving while under the influence of alcohol or drug offense in connection with motor vehicle use within the previous five (5) years;

011.01H Immoral or dishonorable conduct evidencing unfitness or lack of proficiency to act as a Third-Party Examiner;

011.01I Fraud, forgery or misrepresentation in completion of any documents relating to the skills test;

011.01J Failure to complete training review courses or additional training as required by the Department;

011.01K Failure to conduct skills test examinations, consisting of ten (10) pre-trip vehicle inspections, ten (10) basic control skills, and ten (10) road tests, of at least ten (10) different applicants per calendar year;

011.01L Failure to attend a refresher training course and examination at a minimum of

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every four (4) years;

011.01M Failure to pass a nationwide criminal background check. The Department will deny any applicant whose record contains a felony conviction within the last ten (10) years or any conviction involving fraudulent activities; and,

011.01N Any other cause adversely reflecting on the Third-Party Examiner's fitness or capacity to administer skills testing.

012 TRAINING REQUIREMENTS FOR THIRD-PARTY EXAMINERS.

012.01 Initial Training Course. To have a Third-Party Examiner certificate issued, the Third-Party Examiner applicant shall submit a completed application (DMV 06-59) within sixty (60) days of completing the initial training course. If the application is not submitted prior to the deadline, the Department may require the applicant to retake the initial training course before proceeding with the application process.

012.01A Third-Party Examiners who have had their Third-Party Examiner certificates suspended or revoked will be required to retake the initial training course before proceeding with the application process.

012.02 Retraining or Additional Training. Must attend a refresher training course and pass examinations, as determined by the Department, at a minimum of every four (4) years.

012.03 Notification. The Department shall notify Third-Party Examiners of any retraining or additional training requirements in writing or by e-mail to the last known address or e-mail address of the Third-Party Examiner, as well as the date by which retraining or additional requirements must be completed to maintain certification as a Third-Party Examiner.

013 TRAINING COURSE APPROVAL.

013.01 Approval Requirements. All Third-Party Examiner training or review courses, including lectures, seminars, course materials and other instructional programs, must be reviewed and approved by the Department before they are approved. Applicants for course approval must comply with the following:

013.01A The application and curriculum described in 013.05 of these rules and regulations must be submitted at least thirty (30) days prior to the date on which the course is to be given;

013.01B Courses must be taught by individuals with education or experience that is appropriate for the subject matter presented;

013.01C The sponsor must ensure that an individual attends all course presentations and passes examinations with a score of at least eighty percent (80%) for successful

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course completion; and,

013.01D All Third-Party Examiners must meet the same qualification and training standards as State examiners, to the extent necessary to conduct skills test in compliance with 49 CFR Part 383, Subparts G and H.

013.01E The sponsor must provide a training site to accommodate students comfortably, adequately, and safely, including:

013.01E1 A comfortable, air conditioned, controlled lighting classroom with ample working and testing space for twelve (12) students and several observers;

013.01E2 Ready access to restrooms, refreshment, and eating facilities; and,

013.01E3 A computer lab to administer all written examinations proctored by an employee of the sponsor.

013.01F All training sites must be approved by the Department.

013.01G The sponsor must provide the following equipment to be used in training:

013.01G1 Viewgraph projection equipment and screen; chalk boards or other marking boards; and,

013.01G2 Striping equipment, pavement paint, tape measures, string chalk, and traffic cones for laying out the basic control skills test.

013.02 Documentation of Course Completion. The sponsor must document an individual's successful completion of a course in a numbered certificate approved by the Department, to be given to the individual no later than fifteen (15) days following the date of the final examination. The certificate shall state the following:

013.02A The student's name;

013.02B The dates that the course was attended;

013.02C That the student successfully completed the training and passed the final examination including all final test segment scores; and,

013.02D The class(es) of vehicle(s) for which the student was trained to examine.

013.03 List to Department. The sponsor must submit the information specified in 013.02 to the Department by secure electronic means containing a list of students completing each training course with their certificate numbers and signed by the administrator of the course. The list shall be submitted no later than fifteen (15) days after the date of the final examination.

013.04 Correspondence. No correspondence courses will be approved by the

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Department.

013.05 Application for Approval. To apply for approval of a Third-Party Examiner training or review course, the sponsor shall submit the original of a completed application, DMV Form 06-77, and provide the following:

013.05A The sponsor's name, address and phone number;

013.05B The title of the course;

013.05C The class(es) of vehicle(s) for which the training is intended;

013.05D Whether the course is initial, review or additional training;

013.05E The location(s) at which the training is intended to take place;

013.05F The dates or time period over which the training will be presented and the frequency with which it will be offered:

013.05G A list of the individuals who will present the course, including their experience, education and other qualifications;

013.05H The maximum number of students to be enrolled in each presentation of the training;

013.05I The proposed charge for the training;

013.05J A list of all course materials, including, but not limited to, handouts, student manuals, instructor notebooks;

013.05K A training schedule showing daily assignments for each instructional group, location of instruction and required vehicles;

013.05L A copy of the road test route used for training and which incorporates all required characteristics for CDL road testing; and,

013.05M The signature of the administrator of the sponsor making application.

013.06 Approval. Within thirty (30) days of receipt of a complete application, the Department will approve or deny the application in the form of a written notice to the applicant.

013.07 Reapproval. Once approval for a Third-Party Examiner training course has been granted, the Department need not reapprove a course for each occasion it is administered, but will make an annual determination of whether or not to extend training course approval. The sponsor of an approved course shall submit the following information to the Department annually on the anniversary of course approval:

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013.07A Any updates to course materials;

013.07B A summary of any alterations or modifications to previously submitted information; and,

013.07C A report to include the frequency with which the course was given and the numbers attending.

013.08 Denial, Suspension or Revocation of Approval. The Department may deny, suspend, or revoke approval of a Third-Party Examiner training course for failure to meet the requirements of the Motor Vehicle Operator's License Act or the provisions of these rules and regulations.

014 INCOMPLETE OR DEFICIENT APPLICATIONS.

014.01 Notice. If an application is deficient or incomplete, the Department will notify the applicant of the information necessary to complete the application and retain the application submitted pending receipt of the additional information.

014.02 Time to Correct Deficient or Incomplete Applications. The applicant has fifteen (15) days after notification by the Department to provide the information necessary to complete the application. If the Department has not received the information within fifteen (15) days, the application will be returned to the applicant.

015 APPEAL.

015.01 Hearing. Upon suspension, revocation, cancellation or denial of the issuance of a certificate for a Third-Party Tester or Third-Party Examiner, the Director shall notify in writing and, upon written request, shall afford the Third-Party Tester or Third-Party Examiner a hearing.

015.02 Stay. Upon receipt of a written request, and upon good showing by the Third-Party Tester or Third-Party Examiner, the Director may stay the administrative order pending an administrative hearing on the matter.

015.03 Administrative Procedure Act. Any action taken by the Department to cancel, suspend, revoke or refuse to issue or renew a certification for a Third-Party Tester or Third-Party Examiner shall comply with the Administrative Procedure Act.

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

APPROVED
DOUGLAS J. PETERSON
ATTORNEY GENERAL

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BY _____
ASSISTANT ATTORNEY GENERAL

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PETE RICKETTS
GOVERNOR

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TITLE 53 NAC 4

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TITLE 53-NEBRASKA DEPARTMENT OF JUSTICE

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

001. General.

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

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

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

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

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BY ..... Assistant Attorney General
DATE 7-25-94

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

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

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

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

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

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

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

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

002. Prohibitions against ex parte communications.

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

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002.02. Prohibitions; to whom applicable.

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

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

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

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

002.03A. All such written communications;

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

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

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

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

003. Intervention in a contested case.

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

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

003.01B. The petition must state facts demonstrating that the petitioner's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the petitioner qualifies as an intervenor under any provision of law; and

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

003.02. The hearing officer or designee may grant a petition for intervention at any time upon determining that the intervention sought is in the interests of justice and will not impair the orderly and prompt conduct of the proceedings.

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

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

003.03B. Limiting the intervenor's use of discovery, cross-examination, and other procedures so as to promote the orderly and prompt conduct of the proceedings; and

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

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

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

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

004. Commencement of a contested case.

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

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

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

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

004.04A. The pleading shall contain a heading specifying the name of the agency and the title or nature of the pleading, shall state material factual allegations and state concisely the action the agency is being requested to take, shall contain the name and address of the petitioner, and shall be signed by the party filing the pleading, or when represented by an attorney, the signature of that attorney.

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

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

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

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

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

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

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

004.09. In computing time prescribed or allowed by chapter 4 of these rules and regulations or by any applicable statute in which the method of computing time is not specifically provided, days will be computed by excluding the day of the act or event and including the last day of the period. If the last day of the period falls on a Saturday, Sunday, or state holiday, the period shall include the next working day.

005. Hearing officer; criteria.

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

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

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

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

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

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

006. Prehearing Procedures.

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

006.01A. If a prehearing conference is conducted:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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006.02. Discovery in contested cases.

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

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

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

006.02B2. State the reasons supporting the motion;

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

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

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

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

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

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

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

006.03A2. A change in legal representation; or

006.03A3. Settlement negotiations are underway.

006.04. Amendments.

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

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

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

007. Conducting a contested case hearing.

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

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

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

007.01C. Presentation of evidence.

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

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

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

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

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

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

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

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

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

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

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

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

007.02. Evidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

007.04. Official record.

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

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

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

007.04C1. Notices of all proceedings;

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

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

007.04C4. The final order.

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

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

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

008. Decision and order in a contested case.

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

008.02. The decision and order should include:

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

008.02B. The time and place of the hearing;

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

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

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

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

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

009. Appeals.

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

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

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

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

APPROVED

SEP 27 1994

E. BENJAMIN NELSON
GOVERNOR

APPROVED
DON STENBERG
ATTORNEY GENERAL
BY Steve Grasz
Assistant Attorney General
DATE 7-25-94

Pete Ricketts
Governor

STATE OF NEBRASKA

Governor's Policy Research Office
Lauren L. Kintner, Director
P.O. Box 94601 • Lincoln, Nebraska 68509-4601
Phone (402) 471-2414 • Fax (402) 471-2528

October 13, 2016

Rhonda Lahm, Director
NE Department of Motor Vehicles
301 Centennial Mall South
Lincoln, NE 68509

RE: Title 247 NAC 8 — Rules and Regulations for Governing the Certification of Third-Party Testers and Third-Party Examiners for the Commercial Driver's License pursuant to Neb. Rev. Stat. §60-4,158 and 60-462.01

Dear Mrs. Lahm:

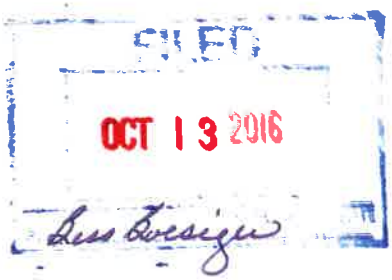
On October 13, 2016, the Governor approved the above-referenced regulations. The Governor's Policy Research Office filed the regulations with the Secretary of State's Office on October 13, 2016.

Sincerely,

Barb Damewood
Administrative Assistant

cc: Policy Advisor
GPRO Files

CERTIFICATE OF ADOPTION



STATE OF NEBRASKA)
)
COUNTY OF LANCASTER)

I, Rhonda Lahm, Director of the Department of Motor Vehicles of the State of Nebraska, hereby certify that the attached are true and correct regulations of the Department of Motor Vehicles, Title 247, Nebraska Administrative Code, Chapter 8; Rules and Regulations for Governing the Certification of Third-Party Testers and Third-Party Examiners for the Commercial Driver's License pursuant to Neb. Rev. Stat. §§ 60-4,158 and 60-462.01 and 49 CFR Parts 383 and 384 of the Federal Motor Carrier Safety Administration regulations. These are amended regulations and were subject to a public hearing on November 16, 2015, after having given notification of publication in a newspaper having general circulation in the State of Nebraska, and after review by the Office of the Attorney General, and are adopted and re-submitted by me as Director of the Department on this date.

Dated this 24th day of August, 2016.

Rhonda K. Lahm

Rhonda Lahm
Director
Department of Motor Vehicles
State of Nebraska