

NEBRASKA ADMINISTRATIVE CODE

TITLE 17 NEBRASKA DEPARTMENT OF AERONAUTICS



RULES AND REGULATIONS Issued April 2003

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CHAPTER 1 – PUBLIC USE AIRPORT/HELIPORT LICENSING

001 Definitions

001.01A Airport means any area that is used, or intended for use, for landing and takeoff of aircraft, and any appurtenant areas that are used, or intended for use, for airport buildings or other airport facilities or rights of way.

001.01B Displaced Threshold means a threshold that is located at a point on the runway other than at the beginning of the runway surface. The area behind the displaced threshold is available for rollout or takeoff of aircraft.

001.01C Effective Runway Length means the longest takeoff length available.

001.01D Heliport means any area that is used, or intended for use, for landing and takeoff of rotorcraft, and any appurtenant areas that are used, or intended for use, for heliport buildings or other heliport facilities or rights of way.

001.01E Public-Use means available for use by the general flying public.

001.01F Private-Use means available for use by the owner and only for use by others upon specific invitation of the owner.

001.01G Primary Runway means the runway designated by the Nebraska Department of Aeronautics as the primary runway, considering length, wind coverage, surface and other factors deemed appropriate.

001.01H Runway means a paved or unpaved area of prescribed dimension available for aircraft takeoffs and landings.

001.01I Threshold means the beginning of the runway that is available for landing.

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002 Site Application and Approval

002.01 The sponsor of a proposed public-use airport or heliport shall:

002.01A Submit a Federal Aviation Administration (FAA) Form 7480-1 "Notice of Landing Area Proposal" to the FAA;

002.01B Request a license from the Department. Include a copy of FAA Form 7480-1 and any FAA response or conditions with the request;

002.01C Request and assure an on-site inspection by a representative of the Department;

002.01D Receive approval of the site from the Nebraska Aeronautics Commission;

002.01E Meet or exceed the conditions described in the FAA Form 7480-1 response.

002.01F Obtain a license from the Department. Airports shall meet or exceed minimum standards pursuant to section 17 NAC 1-003.02 and any other safety conditions established by the Department. Heliports shall meet or exceed minimum standards pursuant to 17 NAC 1-004.01B. The license does not relieve the airport owner of responsibility for complying with local zoning regulations.

003.01 Licensing - Public Use Airports

003.01A A public-use airport shall be licensed by the Department for a period not to exceed 3 years and shall maintain or exceed the minimum standards as outlined in section 17 NAC 1-003.02 or possess a waiver pursuant to 17 NAC 1-003.02H.

003.01B Public-use airports, currently licensed and maintained in accordance with Department of Aeronautics regulations in effect December 31, 2000, may continue to be licensed by the Department until December 31, 2008, provided there are no new

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uncorrected violations.

003.01C A public-use airport certificated in accordance with Federal Aviation Regulation Part 139 shall be considered to meet these standards and shall be licensed indefinitely until such time as the airport ceases to be certificated in accordance with FAR Part 139. When the airport ceases to be certificated, the airport shall notify the Department in writing.

003.01D When a public use airport's license expires or is surrendered or revoked the airport owner must (1) file the appropriate notice with the Federal Aviation Administration changing the status of the airport from public-use, and (2) cease operation as a public-use airport.

003.02 Minimum Standards for Public Use Airports

003.02A The effective runway length of a paved primary runway shall be at least 1400 feet plus 25% of the MSL (Mean Sea Level) elevation of the site. The effective runway length of an unpaved primary runway shall be at least 1800 feet plus 25% of the MSL elevation of the site.

003.02B A paved runway shall be at least 50 feet wide. An unpaved runway shall be at least 100 feet wide.

003.02C No object shall penetrate above the primary surfaces, approach surfaces, and transitional surfaces.

003.02D Objects shall include anything fixed or mobile except aeronautical facilities whose location is fixed and necessary because of their function.

Except as otherwise noted in 003.02G below, all crops except hay shall be considered objects and their height shall be measured as the height of the crops when fully grown,

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despite the actual crop height at any specific time.

Roads and railroads are considered to be objects and the following heights shall be added to the height of the road or railroad to accommodate the height of vehicles:

- 1) Interstate Highway – 17 feet.
- 2) Public highway or road – 15 feet.
- 3) Private road – 10 feet.
- 4) Railroad – 23 feet.

Parked aircraft and vehicles are considered objects. Parking areas shall be placed so that the tallest aircraft or vehicle does not penetrate the approach, primary, and transitional surfaces.

003.02E The primary surface shall be the same elevation as the nearest point on the runway centerline and is 250 feet wide centered on the runway centerline. The primary surface includes the full length of the runway and extends 200 feet beyond each runway threshold for paved runways.

003.02F The approach surface extends outward from the primary surface and upward along a 20 to 1 slope (20 feet horizontal to 1 foot vertical) for a horizontal distance of 1,000 feet. The width of the approach slope is 250 feet at the beginning and widens out to 450 feet at the farthest point. The approach surface begins at the end of the primary surface and is longitudinally centered on the runway centerline.

003.02G Except in the case of terrain, the transitional surface extends upwards from all approach and primary surfaces at a slope of 7 to 1 (7 feet horizontal to 1 foot vertical) perpendicular to the runway centerline. In the case of terrain, the transitional surface extends upward from all approach and primary surfaces at a slope of 4 to 1 (4 feet horizontal to 1 foot vertical) perpendicular to the runway centerline. The transitional surface includes all areas that are not in the approach or primary surface. The transitional

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surface ends at a height of 50 feet above the elevation of the nearest runway centerline. Crops are not considered objects in the transitional surface.

003.02H The Department may waive the minimum standards, pursuant to 17 NAC 1-003.02A-G, when such waiver, in the opinion of the Department, does not endanger public health, safety or welfare. The airport/heliport license shall state the conditions of the waiver by reference or in full.

004 Licensing - Public Use Heliport

004.01A A public use heliport shall be licensed by the Nebraska Department of Aeronautics for a period not to exceed 3 years and shall maintain or exceed the minimum standards set forth in 17 NAC 1-004.01B.

004.01B A public use heliport shall comply with the technical information and guidelines of the Federal Aviation Administration Advisory Circular No. 150/5390-2A, "Heliport Design" dated January 20, 1994.

005 Private-Use Airport/Heliport

005.01A A private-use airport/heliport may be registered as prescribed by the Department.

005.01B Such registration is for informational purposes only, allowing the airport or heliport to be depicted on the current Nebraska State Aeronautical chart, at the request of the owner. Registration constitutes no endorsement from the Department regarding the configuration or safety of the registered airport/heliport.

005.01C A private use airport/heliport may be registered for commercial agricultural use if it is the permanent base of operation for an aerial pesticide applicator.

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005.01D Registration may be terminated if operations from the registered site conflict with the operations of any existing or proposed Public Use Airport/Heliport. Periodic re-registration is required.

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CHAPTER 2 - RENTAL OF AIRCRAFT

001.01 Any person who in the ordinary course of his/her own business rents an aircraft to another person shall deliver, prior to the use of subject aircraft, to the renter a written notice stating the nature and extent of insurance provided, if any, for the renter against loss of or damage to the hull of the aircraft or liability arising out of the ownership, maintenance, or use of the aircraft.

001.02 This notice shall contain the name of the person giving the notice, a statement of insurance coverage, if any, which covers the renter as an additional insured for liability; a statement of coverage, if any, of any passengers carried aboard the aircraft; and a statement of protection from demand, if any, from owner's insurance policy for hull damage to the aircraft; and a statement of renters liability for deductible amounts, if any, of owner's insurance policy.

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CHAPTER 3 - MARKING AND LIGHTING OF STRUCTURES

001.01 The following structures, including appurtenances, must be marked and lighted:

001.01A structures outside the corporate limits of cities and villages and more than 200 feet above ground level, and

001.01B structures within the corporate limits of cities and villages and more than 500 feet above ground level.

001.02 Marking and lighting must be in the manner prescribed in the Federal Aviation Administration Advisory Circular 70/7460-1K “Obstruction Marking and Lighting” dated April 15, 2000, including Change 1, incorporated into these regulations by reference. A copy of this advisory circular may be obtained from the Department of Aeronautics, PO Box 82088, Lincoln, Nebraska 68501. It is the duty of persons, firms, and corporations owning, maintaining, or using such structures to provide and maintain such marking and lighting.

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CHAPTER 4 - TRANSMISSION LINES

001 Upon the filing of an application for permission to construct or alter any overhead wire, cable or pipeline as provided in Neb. Rev. Statute § 75-713, the Department of Aeronautics shall review the application and transmit its approval or disapproval to the Public Service Commission.

002 The requirement which must be met by an applicant to obtain approval is as follows:

002.01 The wire, cable, or pipeline must not be an obstruction as defined in Federal Aviation Regulations (FAR) Part 77 "Objects Affecting Navigable Airspace" published January 1975, and

002.02 The wire, cable, or pipeline must not violate any local zoning regulations or the local zoning board must agree to waive the local regulation.

003 When a proposed structure is near an airport, the Department may require the applicant to furnish an FAA determination in regards to FAR Part 77. An FAA determination can be obtained by submitting a FAA Form 7460-1 to the appropriate FAA office.

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CHAPTER 5 – PETITIONING FOR RULEMAKING

001 Rule Making Petition.

001.01 Petition. Any person may petition the Nebraska Department of Aeronautics requesting the promulgation, amendment, or repeal of a rule or regulation.

001.02 Form. The petition shall:

002.02A. Be clearly designated as a petition for a rules change;

002.02B. In the case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety;

002.02C. 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 agency rule number;

002.02D. Describe the reason for the rules change

002.02E. Include an address and telephone where the petitioner can be reached during regular work hours; and

002.02F. Be signed by:

002.02F(1). The petitioner or his or her attorney in which case the attorney shall also state his or her address and telephone number;

002.02F(2). A duly authorized officer of the petitioner, if petitioner is a corporation or other legal entity.

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002 Petition Consideration and Disposition.

002.01. Within sixty (60) days after submission of a petition, the agency shall either:

002.01A. Deny the petition in writing, stating the reason therefor; or

002.01B. Initiate rulemaking or regulation making proceedings in accordance with the Administrative Procedure Act; or

002.01C. If otherwise lawful, adopt a rule or regulation.

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CHAPTER 6 - PROCEDURES GOVERNING DECLARATORY ORDERS

001 General Information.

001.01 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 Nebraska Department of Aeronautics.

002 Definitions. As used in this chapter:

002.01 Agency shall mean the State of Nebraska, Department of Aeronautics.

002.02 Agency director shall mean the director of the agency.

002.03 Argument shall mean the oral statement of the petitioner or any other party which explains his or her 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.

002.04 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.

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

002.06 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.

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002.07 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 agency's issuance of a binding declaratory order.

002.08 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.

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

002.10 Petition shall mean the document filed in accordance with section 003 of this chapter to initiate a declaratory order proceeding.

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

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

003 Petition for Declaratory Order.

003.01 Generally. A request for a declaratory order must be made by a petition that meets the requirements of section 003.

003.02 Who May File. Any person may petition the agency 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 agency.

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003.03 When Orders Appropriate. A declaratory order may be requested on the applicability of a statute, rule, regulation, or order enforced by the agency. "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:

003.03A. A declaratory order may be requested only on the applicability of existing statutes and rules and regulations.

003.03B. 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.

003.03C. A declaratory order is not a mechanism for review or appeal of a decision made by the agency in a contested case.

003.03D. A declaratory order may not be requested to obtain a declaration by the agency that a statute or regulation is unconstitutional or that a regulation of the agency is invalid.

003.03E. A declaratory order may not be issued by the agency 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.

003.04 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:

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003.04A. A caption, which shall include:

003.04A1. The venue: BEFORE THE DEPARTMENT OF AERONAUTICS, STATE OF NEBRASKA;

003.04A2. A heading specifying the subject matter and the name of the petitioner; and

003.04A3. The name of the pleading: PETITION FOR DECLARATORY ORDER.

003.04B. The statements required in subsection 003.05 of this chapter.

003.04C. The signature of the petitioner, or when represented by an attorney, the signature of the attorney.

003.04D. The name and address of the petitioner, and when represented by an attorney, the name, address, telephone number, and bar number of the attorney.

003.04E Size and Paper. The petition shall be made on white, letter-sized (8-1/2" x 11") paper.

003.04F 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.

003.04G Attachments. Any documents attached to a petition shall be securely fastened to the pleading and shall meet the requirements of 003.04E and 003.04F and, when possible, be reproduced on 8-1/2" x 11" paper or placed in an 9" x 12" envelope and clearly marked as an attachment to the petition.

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

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003.05A. The name and address of the petitioner;

003.05B. 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.

003.05C. The statute, rule, regulation, or order upon which the petitioner seeks issuance of a declaratory order;

003.05D. A detailed statement of all of the material facts and specific circumstances which apply to petitioner's request for issuance of a declaratory order;

003.05E. All propositions of law or contentions asserted by the petitioner;

003.05F. A demand for the relief to which the petitioner alleges entitlement. The petition shall state the petitioner's position as to how the agency should rule and why the agency should rule in the manner requested; and

003.05G. Any documents pertinent to the petition that the petitioner wishes to be considered by the agency.

003.06. 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.

003.07 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 003.04, 003.05, and 003.06 of this chapter are satisfied.

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003.08 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.

004 Submission and Service of Declaratory Order Petition.

004.01. The original petition for declaratory order shall be filed with the agency director by mail or in person during the agency's normal business hours.

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

004.03. 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 agency.

005 Disposition of the Petition.

005.01 Generally. Upon the filing of a petition, the agency director may consider the petition, refer the petition to an appropriate licensing or governing board, or delegate the matter to a designated hearing officer, board, or agency employee to consider the petition and recommend a decision to the agency director. In reviewing the petition, the agency may, in its discretion, do one or more of the following:

005.01A. Require that additional information be submitted before the petition will be further considered;

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005.01B. 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;

005.01C. 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;

005.01D. Consider the petition and any attachments without oral presentation.

005.02. Within thirty (30) days after the petition is filed, the agency shall, in writing:

005.02A. Issue an order declaring the applicability of the statute, regulation, rule, or order in question to the specified circumstances; or

005.02B. 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

005.02C. Set the matter for specified proceedings as set forth in subsection 005.01 of this Chapter; or

005.02D. Decline to issue a declaratory ruling, stating the reasons for the agency's decision.

005.03. Notwithstanding section 005.02 of this rule, the agency 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 009 of this Chapter. The agency shall notify the petitioner and, if applicable, any intervenor or necessary party in writing when the agency determines not to issue a declaratory order.

006 Intervention in Declaratory Order Proceeding.

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

006.01A. A petition for intervention must be submitted in writing to the agency. Copies must be mailed to all parties to the proceeding.

006.01B. The contents of the petition must be as specified in 006.02.

006.01C. The agency must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

006.02 Contents of Petition. The petition for intervention shall be submitted to the agency, in writing, on 8 1/2" x 11" white paper, and shall include each of the following:

006.02A. The statute, regulation, rule, or order that may apply to or effect the person, property, entity, or facts at issue in the matter;

006.02B. A statement of facts sufficient to show the intervenor's interest;

006.02C. 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;

006.02D. All propositions of law or contentions asserted by the intervenor; and

006.02E. A statement of the specific relief requested by the intervenor.

006.03. The agency may, at its discretion, invite any person or entity to file a petition for intervention.

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006.04. The agency shall grant a petition for intervention if the requirements of § 006.01 and § 006.02 are satisfied.

006.05. The agency 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.

006.06. The agency's decision to grant or deny a petition for intervention shall be in writing and served upon all parties.

007 Declaratory Order Proceedings.

007.01 Oral Argument, When. Oral argument shall be had only on specific order of the agency. A petitioner, intervenor, necessary party, or the agency may submit a motion for oral argument to the agency director. 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.

007.02 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 agency. The hearing officer or agency representative shall be in control of the proceeding and shall:

007.02A. Identify the proceeding and introduce himself or herself and identify each party for the record;

007.02B. Hear the oral argument of the petitioner, intervenor, or necessary parties;

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007.02C. Close the proceedings.

007.03. At the declaratory order proceeding, agency staff shall have the right to present oral argument.

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

007.05. The parties and 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.

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

008 Issuance of Declaratory Order.

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

008.02. The declaratory order shall be in writing and shall include the following:

008.02A. The names of all parties to the proceeding upon which the order is based;

008.02B. The facts upon which the order is based;

008.02C. The statute, regulation, rule, or order at issue in the matter;

008.02D. The agency's conclusion as to the applicability of the statute, regulation, rule, or order to the facts;

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008.02E. The agency's conclusion as to the legal effect or result of applying the statute, regulation, rule, or order to the facts; and

008.02F. The reasons relied upon by the agency to support its conclusions.

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

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

008.05 No Response within 60 Days. If the agency 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 agency.

009 Circumstances Under Which Agency will not Issue Declaratory Orders.

009.01. Grounds upon which the agency shall refuse to issue a declaratory order include, but are not limited to, the following:

009.01A. The petition requests a declaratory order on a matter that is outside the scope of authority of the agency;

009.01B. The petition requests review or appeal of a decision made by the agency in a contested case;

009.01C. The petition requests a declaratory order on the effect of past conduct;

009.01D. An investigation for purposes of a formal adjudication, a contested case, or a petition to issue, amend, or repeal regulations is pending before the agency

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

009.01E. The petition seeks a declaration that a statute or rule or regulation is unconstitutional or invalid;

009.01F. 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;

009.01G. 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;

009.01H. An order would not resolve the controversy or uncertainty; or

009.01I. The question posed or facts presented are insufficiently specific, overly broad, or are otherwise inappropriate as a basis upon which to decide the matter.

009.02. Grounds upon which the agency may determine to refuse to issue a declaratory order include, but are not limited to, the following:

009.02A. Refusal is necessary to assure adequate allocation of agency resources are available for issuing rulings on petitions raising questions of greater urgency or significance;

009.02B. The question presented is of such complexity that the agency has had insufficient opportunity or resources to develop a fully matured ruling;

009.02C. The petitioner fails to submit any additional information requested by the agency or submits such information after the date established by the agency;

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010 Appeal.

010.01 A declaratory order is subject to review in the manner provided for review of contested cases by the Administrative Procedure Act, Neb. Rev. Stat. § 84-901 - § 84-920. Specific procedures for appeal are set forth in Neb. Rev. Stat. § 84-917.

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SUBSCRIBED and sworn to before me on this ____ day of
_____, 20__.

NOTARY SEAL

[Notary signature]

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CHAPTER 7 - PRACTICE AND PROCEDURE FOR HEARINGS IN CONTESTED CASES

001 Definitions. The following definitions shall apply as used throughout Chapter 7 of these rules and regulations.

001.01 Agency shall mean the State of Nebraska, Department of Aeronautics.

001.02 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 an agency hearing.

001.03 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:

001.03A. Communications which do not pertain to the merits of a contested case;

001.03B. Communications required for the disposition of ex parte matters as authorized by law;

001.03C. Communications in a rate making or rulemaking proceeding; and

001.03D. Communications to which all parties have given consent.

001.04 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.

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

001.06 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. The agency may designate an earlier time, but such earlier time shall be required to be set forth in the agency's rules of procedure.

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 decision making process of the contested case.

002.02B Persons in decision making roles. No 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 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

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or may reasonably be expected to be involved in the decision making 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 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 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

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:

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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.

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

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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 the agency that sets forth a claim and request for agency action.

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

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

004.04. The pleadings in a contested case may include a petition, answer, reply, notice, motion, stipulation, objection or order or other formal written document filed in a

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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.

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.

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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 7 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. The 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.

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

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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.

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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 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;

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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;

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.

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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.

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.

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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 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.

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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.

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007 Conducting a contested case hearing.

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

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

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

007.01C Presentation of evidence.

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

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;

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

007.02 Evidence.

007.02A. In contested cases the 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 the 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.

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

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

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

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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.

007.04B. The 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

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007.04C4. The final order.

007.04D. As provided in 17 NAC 7 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.

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 the 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;

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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.

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009 Appeals.

009.01. Any person aggrieved by a final decision in a contested case is entitled to judicial review under the Administrative Procedure Act or to resort to such other means of review as may be provided by law.

009.02. Parties desiring to appeal the 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.

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CHAPTER 8 – NEBRASKA AERONAUTICS COMMISSION

001 Funding the Promotion of Aviation

001.01. Definition

For the purposes of the Nebraska Aeronautics Commission funding decisions as authorized by Neb. Rev. Stat. §3-104, the term “promotion of aviation” is defined as follows:

001.01A. Any activity which enhances or encourages the use and growth of aviation in the state of Nebraska.

001.02. Exceptions.

Explicitly excluded from the definition of “promotion of aviation” are the following activities:

001.02A. Funding for the promotion or support of air service in any specific community or region of Nebraska; and

001.02B. Funding to support privately-owned businesses.