

NEBRASKA ADMINISTRATIVE CODE

TITLE 49 - DEPARTMENT OF BANKING AND FINANCE

CHAPTER 2 - RULE OF PRACTICE AND PROCEDURE FOR APPLICATION CASES

001 GENERAL.

001.01 This Rule has been promulgated pursuant to authority delegated to the Director in Section 84-909 of the APA.

001.02 The Department has determined that this Rule is in the public interest.

001.03 The definitions in 49 NAC 1.002 shall apply to the provisions of this Rule, unless otherwise specified.

002 SCOPE. This Rule shall apply to any application filed with the Department, whether or not a hearing is required, set or held, wherein a party submits any of the following:

002.01 An application for a charter to conduct a banking business in accordance with Section 8-120 if the applicant does not qualify for expedited processing under Section 8-115.01;

002.02 An application for a charter of authority to transact a trust company business in accordance with Section 8-201;

002.03 An application for a certificate to conduct a building and loan association, savings and loan association or savings bank in accordance with Sections 8-301, 8-331 and 8-372;

002.04 An application for a license to conduct an industrial loan and investment company in accordance with Section 8-403;

002.05 An application to organize a credit union in accordance with Section 21-1725.01;

002.06 An application for a license to operate an installment loan company in accordance with Section 45-1005 if the applicant does not qualify for expedited processing under Section 45-1006;

002.07 An application to conduct a delayed deposit service business pursuant to Section 45-908;

002.08 An application to establish a trust company business in a trust department of a bank in accordance with Section 8-159, unless the application is made in connection with a merger of affiliate banks;

002.09 An application of a trust company, building and loan association, savings and loan association, savings bank, or industrial loan and investment company to move the charter and main office of said financial institution to a new or different location, if outside the corporate limits of the city in which the financial institution's charter is located;

- 002.10 An application by a building and loan association, savings and loan association, or savings bank for the establishment of a branch office;
- 002.11 An application by an industrial loan and investment company for the establishment of an auxiliary office in accordance with Section 8-403.01;
- 002.12 An application by a financial institution to acquire another financial institution in a cross industry merger pursuant to Section 8-1510;
- 002.13 An application to establish a state bank for credit card operations pursuant to Section 8-1511 to 8-1513;
- 002.14 An application for a charter to conduct a banking business in accordance with Section 8-120 if the applicant qualifies for expedited processing under Section 8-115.01;
- 002.15 An application for a license to operate an installment loan company in accordance with Section 45-1005 if the applicant qualifies for expedited processing under Section 45-1006;
- 002.16 An application to acquire a bank for credit card operations pursuant to Sections 8-1511 to 8-1513;
- 002.17 An application to establish a branch of a bank in accordance with Section 8-157;
- 002.18 An application to establish a mobile branch of a bank in accordance with Section 8-157;
- 002.19 An application to establish a branch trust office of a state-chartered trust company or of a bank which has been further chartered to conduct a trust department in a bank in accordance with Section 8-234 or Section 8-2303;
- 002.20 An application for establishment of a credit union branch in accordance with Section 21-1725.01;
- 002.21 An application for the move of a main office of a bank;
- 002.22 An application for the move of a main office of a credit union;
- 002.23 An application for the move of a branch of a bank;
- 002.24 An application for the move of a branch of a credit union;
- 002.25 An application for the move of a main office of a building and loan association, savings and loan association, savings bank, or industrial loan and investment company within the corporate limits of the city in which the charter is located;
- 002.26 An application for the conversion of a national bank to a state bank;
- 002.27 An application to establish a trust company business in a trust department of a bank where the application is made in connection with a merger of affiliate banks;
- 002.28 An application for the move of an installment loan license within the same county;
- 002.29 An application for the move of a delayed deposit services business license within the same county; and

002.30 An application for the establishment or move of a branch of a delayed deposit services business license within the same county.

003 DEFINITIONS. For purposes of this Rule, the following additional definitions shall apply:

003.01 Affiliate means any entity that controls, is controlled by, or is under common control with another entity.

003.02 Applicant means the person filing the application identified in Section 002 of this Rule with the Department.

003.03 Application case or hearing means a case initiated by the filing of an application identified in Section 002 of this Rule. .

003.04 Ex parte communication means an oral or written communication which is not on the record in an application case with respect to which reasonable notice to all parties was not given. Ex parte communication shall not include:

003.04A Communications which do not pertain to the merits of an application case;

003.04B Communications required for the disposition of ex parte matters as authorized by law;

003.04C Communications in a rulemaking proceeding;

003.04D Communications to which all parties have given consent; and

003.04E Communications between the hearing officer and the Director which occur following the close of the hearing.

003.05 Party means the applicant or any protestant.

003.06 Protestant means a person who makes a written pleading objecting to the granting of an application.

004 PROHIBITIONS AGAINST EX PARTE COMMUNICATIONS.

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

004.02 Prohibitions; to whom applicable.

004.02A Parties and public. A party in a contested case or other person outside the Department having an interest in the application case shall not make or knowingly cause to be made an ex parte communication to the hearing officer or to the Director or any Department employee who is or may reasonably be expected to be involved in the decisionmaking process of the application case.

004.02B Persons in decisionmaking roles. The hearing officer, the Director or any Department employee who is or may reasonably be expected to be involved in the decisionmaking process of the application case shall not make or knowingly cause to be made an ex parte communication to any party in an application case or other person outside the Department having an interest in the application case.

004.02C Investigators. No Department employee engaged in the investigation of an application case shall make or knowingly cause to be made an ex parte communication to a hearing officer or the Director or any Department employee who is or may reasonably be expected to be involved in the decisionmaking process of the application case.

004.03 Disclosure of contacts. The hearing officer or the Director or any Department employee who is or may reasonably be expected to be involved in the decisionmaking process of the application case who receives or who makes or knowingly causes to be made an ex parte communication set forth in Sections 004.02A through 004.02C of this Rule shall file in the record of the application case:

004.03A All such written communications.

004.03B Memoranda stating the substance of all such oral communications.

004.03C All written responses and memoranda stating the substance of all oral responses to all the ex parte communications.

004.04 Filing of notice. The disclosure required in Section 004.03 of this Rule shall be filed within two business 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.

004.04A The hearing officer or Director shall determine the method by which recipients shall respond to such notice and the time frame in which any response must be filed with the Department.

004.04B Compliance with the provisions of Section 004.03 shall not alter or correct the nature of the original communication for purposes of the definition of ex parte communication.

004.05 The prohibitions and filing requirements established by this Section shall not apply to the Director in any case for which the Director has, in writing, recused himself or herself from participation in the decisionmaking process.

## 005 APPLICATION.

005.01 An application shall be submitted on the form designated by the Department and shall contain the information requested therein. The application shall be accompanied by the proper filing fee. No application shall be considered filed until the Department has deemed it substantially complete and has accepted it for filing.

005.02 The original and the number of copies specified on each form shall be filed with the Department at its main office. When the form does not specify the number of copies, an original and two copies shall be filed.

## 006 SETTING OF HEARING.

006.01 Except as otherwise provided by statute, the Department shall automatically schedule a hearing on all applications referenced in Section 002.01 through 002.13 of this Rule. Hearings on applications referenced in Sections 002.14 through 002.30 of this Rule shall be scheduled if the Director determines the financial condition of an applicant warrants a hearing, if notice of the filing of an application has been published and substantive objections, if any, are timely filed with the Department, or if the Director otherwise determines a hearing would be appropriate.

006.02 The time and place of an application hearing will be set according to the following restrictions:

006.02A A hearing on an application for a bank charter will be set and notice given in accordance with Section 8-115.01.

006.02B A hearing on an application to organize a credit union shall be set and notice given in accordance with Section 21-1725.01.

006.02C A hearing on an application for a license to operate an installment loan company shall be set and notice given in accordance with Section 45-1006.

006.02D A hearing on an application filed pursuant to Section 8-403 or Section 8-403.01 will be set and notice given in accordance with Section 8-403.01.

006.02E A hearing on an application for a delayed deposit services business license shall be set and notice given in accordance with Section 45-907.

006.02F In the case of applications for charters, licenses or certificates filed pursuant to Sections 8-120, 8-201, 8-331, 8-372, 8-403, and 8-1510, the hearing date shall be at least 30 days after the date of the last publication of notice, and not more than ninety days after the filing of a substantially complete application, unless the applicant agrees to a later date.

006.02G In all proceedings for which there does not exist a statute or specific rule, setting forth procedure for publication, setting and notice of hearing, the procedure followed for hearing, notice and publication will be in accordance with Section 8-115.01.

006.03 Notwithstanding Sections 006.01 to 006.06 of this Rule, 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.

006.03A 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.

006.03B 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 to the proceedings or their attorneys.

006.03C Any party requesting a continuance may be required to submit affidavits in support of such requests.

006.03D Only under exceptional circumstances will requests for continuance of a hearing be considered unless submitted at least seven days prior to the hearing date.

007 PROTEST IN AN APPLICATION HEARING OR CASE.

007.01 Except for good cause shown, any person wishing to appear at and participate in an application hearing as a protesting party shall file a written protest with the Director 30 days prior to the date of hearing, unless the law or Department Rules provide otherwise, and shall show service of a copy of the written protest upon the applicant or its attorney. For purposes of this Section, good cause shall have the same meaning as is set forth in Section 006.03A of this Rule.

007.02 All protests shall be subscribed and verified and shall include a statement binding the protestant to pay his, her or its proportionate share of the costs of the hearing under Section 011.06 of this Rule.

008 HEARING OFFICER; CRITERIA.

008.01 The Director may delegate to a hearing officer the functions of conducting a prehearing conference and/or a hearing and submitting a recommended decision to the Director.

008.02 A person who has served as investigator, prosecutor, or advocate in an application 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 Section 008.04 of this Rule.

008.03 A person who is subject to the authority, direction, or discretion of a person who has served as investigator, prosecutor, or advocate in an application 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 Section 008.04 of this Rule.

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

008.05 A person may serve as hearing officer at successive stages of the same application case.

009 PREHEARING PROCEDURES.

009.01 In the case of an application for a charter, certificate or license filed pursuant to Sections 8-120, 8-201, 8-331, 8-372, 8-403, or 21-1725.01, for which a protest has been filed, a prehearing conference will be held at the Department's main office at least seven days prior to the date of the hearing, unless all parties agree to waive the prehearing conference. In all other application hearings, the Director or a hearing officer designated to conduct a hearing may determine whether a prehearing conference will be conducted. If a prehearing conference is not held, the Director or the hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

009.02 If a prehearing conference is conducted:

009.02A The hearing officer shall promptly notify the Department of the determination that a prehearing conference will be conducted. The Director may assign another hearing officer for the prehearing conference.

009.02B 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 protests in the matter. The Department shall give notice to other persons entitled to notice.

009.02C The notice referred to in Section 009.02B of this Rule shall include the following:

009.02C1 The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

009.02C2 The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the Department;

009.02C3 The name of the proceeding, and a general description of the subject matter;

009.02C4 A statement of the time, place, and nature of the prehearing conference;

009.02C5 A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

009.02C6 The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference;

009.02C7 A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of the application case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the APA; and

009.02C8 Any other matters that the hearing officer considers desirable to expedite the proceedings.

009.03 The hearing officer shall conduct a prehearing conference, as may be appropriate, to deal with such matters as 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. All parties must lay foundation for all their exhibits, except rebuttal exhibits; all objections to the admissibility other than relevancy, must be made; and an outline or synopsis of the evidence relative to each of the items required for the relevant application set forth in Title 49, Chapter 3 of the Nebraska Administrative Code must be submitted.

009.03A The hearing officer may issue a prehearing order incorporating the matters determined at the prehearing conference.

009.03B The hearing officer may, if there is not sufficient time for adequate written notice to the parties prior to the hearing, provide oral notice to the parties at the close of the pre-hearing conference of the matters determined at the pre-

hearing conference. Such oral notice shall be made on the record, if the pre-hearing conference is recorded.

009.04 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 the entire proceeding while it is taking place.

## 010 DISCOVERY IN APPLICATION CASES

010.01 Except as provided in Section 010.03 of this Rule, at least ten days prior to the date of the hearing or at the time of the pre-hearing conference, whichever is earlier, all parties to the proceeding, including applicant, proponents, and protestants, shall file with the Director or hearing officer a list of all witnesses who will appear to testify at the hearing. This list shall include all relevant information on witnesses' background, along with the witnesses' qualifications to testify. Each party shall serve such a list on the Department and on each other party to the proceeding or its attorneys.

010.02 Except as provided in Section 010.03 of this Rule, at least ten days prior to the date of the hearing or at the time of the pre-hearing conference, whichever is earlier, each party to the proceeding shall file with the Director or hearing officer a copy of each exhibit to be introduced at the hearing. A copy of each exhibit shall also, at least ten days prior to the date of the hearing, be served on each other party to the proceeding, or its attorneys. The foundation for each exhibit must accompany the exhibit in compliance with Section 011.02C of this Rule. Rebuttal exhibits are limited to those solely in rebuttal to testimony or exhibits introduced at the hearing which were not required to be submitted or produced until offered.

010.03 The Director may accept the late filing of materials enumerated under this Section for good cause shown. For purposes of this Section, good cause shall have the same meaning as is set forth in Section 006.03A of this Rule.

010.04 If a continuance of the hearing is granted under Section 006.03 of this Rule, the time schedule for submitting material under this Section shall be set by the hearing officer.

010.05 When a filing or submission date falls on a weekend or legal holiday, the date for such filing or submission shall be the next business day.

010.06 A document submitted by facsimile transmission shall not be sufficient to satisfy the requirements of this Section, unless previously authorized by the hearing officer.

010.07 The hearing officer or a designee, at the request of any party, or the Department, or upon the hearing officer's own motion, may issue subpoenas, discovery orders, and protective orders in accordance with the Nebraska 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 of Lancaster County, Nebraska.

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

010.08A 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;

010.08B State the reasons supporting the motion;



010.08C 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

010.08D Be filed with the Department. The moving party must serve copies of all such motions to all parties to the application case.

010.09 Other than is provided in Section 010.08D of this Rule, discovery materials need not be filed with the Department.

## 011 HEARING.

011.01 Order.

011.01A Evidence will be received in the following order:

011.01A1 The Department shall offer into evidence as exhibits copies of the application, notice of hearing, proof of publication of the notice of hearing, proof of payment of the application fee and all protests or other correspondence received pertaining to the application. Said exhibits shall not be offered to prove the truth of any statement contained therein.

011.01A2 Applicant.

011.01A3 Protestants.

011.01A4 Rebuttal by Applicant.

011.01A5 Rebuttal by Protestants.

011.01B A party to the hearing will be allowed to:

011.01B1 Make an opening statement;

011.01B2 Present evidence and argument thereto;

011.01B3 Cross examine witnesses;

011.01B4 Present rebuttal evidence;

011.01B5 Make relevant motions concerning the conduct of the proceedings or the introduction of evidence; and

011.01B6 Make a closing statement.

011.01C A person who has not filed a pleading in accordance with Sections 005 or 007 of this Rule will be given a reasonable period of time to make a statement at the public hearing. The hearing officer shall determine when statements by any such person may be made during the hearing. Such person shall not have any of the authority allowed a party under this Rule. Such person is subject to examination by the parties to the hearing, the Director, representatives of the Department, and the hearing officer.

011.01D The Director or hearing officer may establish time restrictions for the presentation of evidence upon the motion of any party or upon his or her own order.

## 011.02 Evidence.

011.02A In application cases, the Director 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 cumulative or repetitious evidence.

011.02B Any party to an application hearing before the Department may request that the parties be bound by the rules of evidence applicable in district court by delivering to the Department at least three days prior to the holding of the hearing a written request therefore. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services.

011.02C Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.

011.02C1 The foundation for exhibits, including an application submitted pursuant to this Rule shall be supported orally or in writing. Any party desiring to lay foundation to an exhibit by oral testimony shall give written notice to the Department and all other parties at the time the exhibit is submitted pursuant to Section 010.02 of this Rule. An application submitted pursuant to this Rule will be considered as substantive evidence.

011.02C2 Parties shall furnish accurate copies of all documentary evidence offered at the hearing to the Official Reporter, to the Director or hearing officer, and to all parties to the proceeding.

011.02C3 When documents are numerous, such as bank records or negotiable instruments, the Director or hearing officer may refuse to receive in evidence more than a limited number alleged and appearing to be representative. The party will be required to abstract in orderly fashion the relevant data from these documents, affording other parties reasonable opportunity to examine both the documents and the abstract, and thereupon offer the abstract in evidence in exhibit form.

011.02C4 Relevant portions of books, papers or documents shall be plainly designated and distinguished from all irrelevant portions before the relevant material may be offered into evidence. Where the irrelevant material in the book, paper or document is voluminous so as to encumber the record, the book, paper or document may be marked for identification and the relevant material read into the record. Upon direction of the Director or hearing officer, a true copy of the relevant matter may be received as an exhibit, provided that copies are delivered to all parties of record and provided all parties of record are afforded an opportunity to examine the book, paper or document and to offer in evidence in like manner other portions thereof, if found to be material and relevant.

011.02C5 All of the exhibits introduced in evidence shall be confined to a maximum size of 8 1/2 inches x 11 inches or be placed upon paper which may be folded to such size.

011.02C5(1) Enlarged charts of exhibits may be utilized at the hearing but the exhibit to be made a part of the record shall be of such size as heretofore stated.

011.02C6 Exhibits may be sealed upon a determination by the Director or hearing officer that the exhibits contain information which is confidential in nature and which, if made public, could harm any person.

011.02D All evidence including records and documents in the possession of the Department of which it desires to avail itself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case.

011.02D1 The Director or any person or persons designated by the Director may make such investigations as deemed necessary to assist in the determination of matters pending before the Department. Any finding or exhibits resulting from such investigation which the Director uses in making a decision shall be included and become a part of the evidence of such matter.

011.02D2 Any party desiring to introduce into evidence any part or parts of official files of the Department shall obtain certified copies thereof from the Department in advance of the hearing.

011.02E 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.

011.02F The Department shall give effect to the rules of privilege recognized by law.

011.02G The Department may take administrative notice of cognizable facts and in addition may take administrative notice of general, technical, or scientific facts within its specialized knowledge and its rules adopted and promulgated pursuant to the APA.

011.02G1 Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.

011.02G2 Parties shall be afforded an opportunity to contest facts so noticed.

011.02G3 The record shall contain a written record of every fact or item administratively noticed.

011.02H The Department may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

011.02I Parties to any proceeding may agree upon any facts involved in the controversy, either by written stipulation entered into the record as an exhibit, or by oral agreement stated on the record; provided, that the Department shall not be irrevocably bound by such stipulation.

011.02J During any proceedings, the Director or hearing officer may request any party to furnish and serve designated late filed exhibits. Such exhibits shall be filed within such time as specified by the Director or hearing officer.

011.02K Any party may appear in his/her own behalf at the hearing. An individual may appear on behalf of a party only if he or she:

011.02K1 Is an officer, director, or shareholder of a party which is the applicant in an application case to which no protest has been filed;

011.02K2 Is admitted to practice law before the Nebraska Supreme Court; or

011.02K3 Is admitted to and engaged in the practice of law in the courts of record of another state, the District of Columbia, or a territory of the United States, and has associated with and is appearing with an attorney who is a resident of Nebraska, duly and regularly admitted to practice in the courts of record of this state, and upon whom service may be had in all matters connected with the action with the same force and effect as if personally made on such foreign attorney within this state, upon the filing of an appropriate pro hac vice motion with the Department.

011.02L The Director, hearing officer, or any person designated by the hearing officer shall administer an oath to all witnesses providing testimony in an administrative case prior to their testimony.

011.02L1 Every party to a contested case shall have the right to cross-examine each witness who testifies at a hearing. Where it appears that the cross-examination by one party will protect the rights of all parties similarly situated, the hearing officer may limit cross-examination to one party on either side of an issue.

011.02L2 A subpoena requiring the attendance of a witness shall be issued by the Director or hearing officer, on good cause shown, for the purpose of taking evidence or compelling the production of any papers, books, accounts, and documents which are relevant and material to the hearing.

011.02L2(a) A party directed to produce accounts, books, documents, or papers shall furnish and deliver the same at the time and place to the person specified in the subpoena.

011.02L2(b) A subpoena issued pursuant to this Rule may be served in any manner permitted by law including service by certified or registered mail, return receipt requested.

011.02L2(c) In the case of disobedience of a subpoena, the Director may invoke the aid of the applicable District Court in requiring the attendance and testimony of witnesses and in the production of accounts, books, documents, or papers.

011.02L2(d) Charges for serving a subpoena are to be paid prior to the date set for hearing by the party at whose instance the subpoena is issued.

011.02L3 Any witness who is subpoenaed and who responds thereto is entitled to the same fee as is paid for like service in the District Courts of Nebraska. Such fee is to be paid by the party at whose instance the witness's testimony is to be taken.

011.02L4 Sequestration of witnesses shall not be permitted in application cases.

011.03 Post hearing submissions.

011.03A Submission of briefs may be required, or permitted at the request of a party, by the Director or the hearing officer. The time in which briefs shall be filed and the number of copies required will be fixed at the close of the hearing by the Director or the hearing officer. Briefs submitted to the Department shall be on white paper, 8 ½ x 11 inches, with margins of at least 1 inch on all sides, and shall be double spaced. No brief shall be longer than 25 pages. The Department will not consider any portion of the brief which exceeds the page limitation.

011.03B The hearing officer may request the parties to submit proposed findings of fact and conclusions of law in lieu of, or in addition to, briefs pursuant to Section 011.03A of this Rule. The hearing officer shall establish the time schedule for such filing and any other restrictions that he or she deems appropriate under the circumstances.

011.04 Conducting the hearing by electronic means. The Director or 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 the entire proceeding while it is taking place.

011.05 Official record.

011.05A The Department shall prepare an official record, which shall include testimony and exhibits, in each application case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purpose of rehearing or appeal, in which event the transcript and record shall be furnished by the Department upon request and tender of the cost of preparation.

011.05B The Department shall maintain an official record of each application case under the APA for at least four years following the date of the final order.

011.05C The Department record shall consist only of the following:

011.05C1 Notices of all proceedings;

011.05C2 The application, and any protest, pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Department pertaining to the application case;

011.05C3 The record of the hearing before the Department, including all exhibits and evidence introduced during such hearing, a statement of matters administratively noticed by the Director or hearing officer during the proceeding, and all proffers of proof and objections and rulings thereon; and

011.05C4 The final order.

011.05D As provided in Section 004.03 of this Rule, the hearing officer or Director, or Department employee who is or may reasonably be expected to be involved in the decision making process of the application case who receives or who makes or knowingly causes to be made an ex parte communication as set forth

in that Section shall make the appropriate filings which shall be included in the official record of the application case.

011.05E Except to the extent that the APA or another statute provides otherwise, the Department record shall constitute the exclusive basis for Department action in application cases pursuant to this Rule and for judicial review thereof.

011.05F In proceedings where a record is not required by law, any party may request and obtain an official record of the proceedings, provided said request is in writing and delivered to the Director at least five days prior to the date of hearing. The cost of preparing the official record shall be born by the parties requesting its preparation.

011.06 The costs of the hearing, including, but not limited to, court reporter fees, fees for the Director's time, and fees and expenses of the hearing officer, shall be apportioned by the Department between the parties based upon their proportionate involvement in the hearing, unless a party has requested the rules of evidence under Section 011.02B of this Rule.

## 012 DECISION AND ORDER.

012.01 Every decision and order rendered by the Department in an application case shall be in writing or stated in the record and, if in writing, shall be accompanied by findings of fact and conclusions of law.

012.02 The decision and order should include:

012.02A The name of the Department and name of the proceeding;

012.02B The time and place of the hearing;

012.02C The names of all parties and their attorneys who entered an appearance at the hearing;

012.02D The findings of fact consisting of a concise statement of the conclusions upon each contested issue of fact;

012.02E The conclusions of law consisting of the applications of the controlling law to the facts found and the legal results arising therefrom, including specific conclusions regarding the requirements of the specific application as set forth in 49 NAC 3 (Proof Requirements for Granting of Applications); and

012.02F The order consisting of the action taken by the Department as a result of the facts found and the legal conclusions arising therefrom.

012.03 The Department may impose conditions precedent in any order issued in an application case.

012.04 Parties to the proceeding shall be notified of the decision and order by mailing a copy of the decision and order and accompanying findings and conclusions to each party or its attorney of record.

012.05 For good cause, the Director may, by order, delegate the final decision making authority in an application case to an appropriate Department employee.

013 APPEALS.

013.01 Any person aggrieved by a final decision in an application case is entitled to judicial review under the APA or to resort to such other means of review as may be provided by law.

013.02 Parties desiring to appeal a Department decision must file a petition for review in the District Court of Lancaster County, Nebraska, within 30 days after the service of the final decision by the Department. The 30-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.

013.03 The APA governs the procedure for taking an appeal.