

NEBRASKA ADMINISTRATIVE CODE

TITLE 251, NEBRASKA ADMINISTRATIVE CODE, CHAPTER 2

NEBRASKA DEPARTMENT OF MOTOR VEHICLES

**RULES AND REGULATIONS GOVERNING NOTICE AND HEARING FOR AGENCY
CONTESTED CASES PURSUANT TO THE INTERNATIONAL REGISTRATION
PLAN, NEB. REV. STAT. 60-305.02 THROUGH 60-305.17, AND THE
ADMINISTRATIVE PROCEDURES ACT, NEB. REV. STAT. 84-913
THROUGH 84-920.**

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TITLE 251 NEBRASKA DEPARTMENT OF MOTOR VEHICLES

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001 GENERAL.

001.01 Scope. These rules and regulations govern practice and procedure before the Department of Motor Vehicles of the State of Nebraska pursuant to the International Registration Plan, Neb. Rev. Stat. 60-305.02 through 60-305.17, and the Administrative Procedures Act, Neb. Rev. Stat. 84-913 through 84-920.

001.02 Definitions. The following definitions shall apply as used through these rules and regulations. Terms and conditions found in the International Registration Plan shall also be applicable under these rules and regulations pursuant to Neb. Rev. Stat. 60-305.09.

001.02A Appellant means any person who wishes to dispute the claim or deficiency determination of the Department for liability under the International Registration Plan.

001.02B Apportionable vehicle means any vehicle used or intended for use in two (2) or more member jurisdictions that allocate or proportionally register vehicles and used for the transportation of persons for hire or designed, used, or maintained primarily for the transportation of property. Apportionable vehicle does not include any recreational vehicle, vehicle displaying restricted plates, city pickup and delivery vehicle, bus used in the transportation of chartered parties, or government-owned vehicle. Such vehicle shall either (a) be a power unit having two (2) axles and a gross vehicle weight or registered gross vehicle weight in excess of twenty-six thousand (26,000) pounds, (b) be a power unit having three (3) or more axles, regardless of weight, or (c) be used in combination when the weight of such combination exceeds twenty-six thousand (26,000) pounds gross vehicle weight. Vehicles or combinations of vehicles having a gross vehicle weight of twenty-six thousand (26,000) pounds or less and two-axle (2-axle) vehicle and buses used in the transportation of chartered parties may be proportionally registered at the option of the registrant.

001.02C Audit or Motor Carrier audit means the review of the records of any person registered pursuant to the methods established by the International Registration Plan to determine registration fees for any owner operating a fleet of vehicles in interstate commerce and the physical examination of a Motor Carrier's operational records including source documentation to verify fleet mileage and accuracy of a registrant's record keeping system.

001.02D Base jurisdiction means for purposes of fleet registration, the jurisdiction where the registrant has an established place of business, where mileage is accrued by the fleet and where operational records of such fleet are maintained or can be made available as provided by the IRP.

001.02E Cancellation means the voluntary surrender of a registrant's registration by the registrant.

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

after an agency hearing.

001.02G **Deficiency determination** means a finding by audit that the registrant has not paid sufficient fees to cover obligations to a jurisdiction pursuant to the International Registration Plan.

001.02H **Department** means the Nebraska Department of Motor Vehicles and the Division of Motor Carrier Services of the Department of Motor Vehicles.

001.02I **Director** means the Director of the Nebraska Department of Motor Vehicles or his or her designee and includes the Motor Carrier Services Division of the Nebraska Department of Motor Vehicles.

001.0J **Division** shall mean the Division of Motor Carrier Services of the Department of Motor Vehicles.

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

001.02K1 Communications which do not pertain to the merits of the case;

001.02K2 Communications required for the disposition of ex parte matters as authorized by law;

001.02K3 Communications in a rulemaking or rate making proceeding; and

001.02K4 Communications to which all parties have given consent.

001.02L **Final assessment** means the amount of the deficiency determination thirty (30) days after the date on which notice of the deficiency determination was mailed to the registrant unless a written protest is filed with the Department within such thirty-day (30-day) period.

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

001.02N **IFTA** means the International Fuel Tax Agreement.

001.02O **IRP** means the International Registration Plan which is a reciprocal agreement between member jurisdictions authorized by Neb. Rev. Stat. 60-305.03(2), the purpose of which is to promote and encourage the fullest possible use of the highway system by authorizing apportioned registration of fleets of vehicles, and the recognition of vehicles apportioned in other jurisdictions, thus contributing to the economic and social development and growth of jurisdictions.

001.02P **Jurisdiction** means any government of any state or country or subdivision or agency thereof participating in the IRP.

001.02Q **Late billing notice** means the registrant has failed to fully pay all registration fees due.

The late billing notice will be cause for the suspension of the registration and operating privileges of the registrant.

001.02R **Motor Carrier** means any individual, firm, partnership, limited liability company, agency, association, corporation which registers a fleet of vehicles pursuant to the IRP.

001.02S **Party** means the appellant or person by whom a contested case is brought and the Department against whom a contested case is brought and may include any person allowed to intervene in a contested case pursuant to the procedures in section 004 of these rules and regulations.

001.02T **Person** means any individual, firm, partnership, limited liability company, agency, association, corporation, state, country, municipality, or other political subdivision.

001.02U **Petition** means the initial document filed by or with the Department that sets forth a claim or request for Department action.

001.02V **Pleading** means any written application, petition, complaint, answer, reply, notice, stipulation, objection, motion, order, or other formal written document used in a proceeding before the Department.

001.02W **Proceeding** means all matters formally made in connection with any appeal by a registrant under the IRP.

001.02X **Record-keeping requirements** means the records required by IRP to be maintained by a registrant operating a fleet of apportioned vehicles.

001.02Y **Registrant** means any person, individual, firm, partnership, limited liability company, agency, association, corporation, or organization registering vehicles pursuant to the IRP.

001.02Z **Revocation** means the withdrawal of registration and operating privileges by the Department.

001.02AA **Suspension** means placing the registrant on notice of failure to comply with the requirements of the IRP.

001.02BB **Temporary authority** means the provision by a jurisdiction of a means of temporary registration for the movement of new or unlicensed equipment pending receipt of apportioned license plates and cab cards as authorized by IRP Section 704.

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.

002.02 **Prohibitions; to Whom Applicable.**

002.02A **Parties and Public.** No party in a contested case or other person outside the agency having 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 who is 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 be reasonably expected to be involved in the decision making process of the contested case who received or who makes or knowingly causes to be made an ex parte communication set forth in subsection 002.02A through 002.02C shall file in the record of the contested case:

002.03A All such written communication; and

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 ex parte communications.

002.03D The filing shall be made within two (2) 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; and

002.03E Filing a 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; When Allowed.** Intervention shall be allowed when the following requirements are met:

003.01A A petition for the intervention must be submitted in writing to the hearing officer or designee at least five (5) days before the hearing. Copies must be mailed by the appellant for intervention to all parties named in the notice of hearing;

003.01B The petition must state facts demonstrating that the appellant's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the appellant 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 **Granting Intervention.** 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 Intervention; Conditions. If an appellant qualifies for intervention, the hearing officer or designee may impose conditions upon the intervenor's participation in the proceeding, either at the time that the intervention is granted or at any subsequent time. Those conditions may include:

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

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

003.03C Requiring two (2) or more intervenors to combine their presentation of evidence and argument, cross-examination, and other participation in the proceedings.

003.04 Intervention; Orders. The hearing officer or designee, at least twenty-four (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 appellant for intervention and to all parties.

004 COMMENCEMENT OF A CONTESTED CASE.

004.01 Notice. A registrant who receives a written notice of deficiency determination may file an appeal by petitioning the Department as specified below. The owner may accept such claim and pay the amount due, or he or she may dispute the claim by filing the petition and submit to the division any information which he or she may have in support of his or her position.

004.02 Petition, Manner of Service. A registrant must file a petition to appeal a deficiency determination notice as follows:

004.02A Deficiency Determination; Petition Deadline. A registrant who wishes to appeal a deficiency determination must file a written petition for appeal with the Department within thirty (30) days of the date of the written notice of deficiency determination. A petition shall state material factual allegations and state concisely the action the Department is being requested to take, and shall contain the name of the appellant and shall be signed by the party filing the petition or when represented by an attorney, the signature of that attorney.

004.02B Address for Service of Petition. Service shall be made personally or by first-class or certified mail and delivered to the Department at 301 Centennial Mall South, State Office Building, First Floor, P.O. Box 94789, Lincoln, NE 68509-4789. Petition must be postmarked or filed with the Department within the deadlines shown in 004.02A of these regulations. A petition may also be filed by facsimile transmission at (402) 471-4828. Facsimile transmissions received after normal business hours shall be deemed received the next business day.

004.02C Failure to File Petition. Failure to file a petition and deliver the petition to the Department or to postmark the petition within thirty (30) days of the date of notice of deficiency determination forecloses the registrant's right to a hearing and also results in a final assessment and/or revocation of registration and operating privileges.

004.02D An appellant may use Attachment 1 to petition the Department.

004.03 Party. A party to a contested case is as defined in section 001.02S of these rules and regulations.

004.04 Representation. A party may appear on his or her own behalf in a contested case proceeding or may be represented by an attorney licensed to practice in this jurisdiction or other representative as provided by law.

004.05 Pleadings. Pleadings are defined in section 001.02V of these rules and regulations. Any pleading filed in a contested case shall meet the following requirements:

004.05A The pleading shall contain a heading specifying the name of the appellant and the respondent and the title or nature of the pleading, and concisely state the purpose of the pleading. All pleadings shall be signed by the party filing the pleading, or when represented by an attorney, the signature of that attorney. Attorneys shall also include their address, telephone number and bar number.

004.05B All pleadings shall be made on white, letter-sized (8 1/2 x 11 inches) paper and shall be legibly typewritten, photostatically reproduced, printed or handwritten. If handwritten, a pleading must be written in ink.

004.06 Filing. All pleadings shall be filed with the Department at its official central office at 301 Centennial Mall South, State Office Building, First Floor, P.O. Box 94789, Lincoln, NE 68509-4789. Filing may be accomplished by personal delivery or by mail and will be received during regular office hours of the Department. Filing may be by facsimile transmission at (402) 471-4828. Facsimile transmissions received after normal business hours shall be deemed received the next business day.

004.07 Pleadings Subsequent to the Petition. 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. A written certificate of service shall be incorporated with or attached to each pleading filed, indicated to whom, when, where and how such pleading was served.

004.08 Hearing; How Set.

004.08A Time of Notice. Unless Nebraska law provides that a hearing is not required, a hearing date shall be set by the Department in accordance with statutory requirements and the requirements of these rules and regulations upon timely receipt of a petition from a registrant, and upon completion of any applicable prehearing procedures as provided in section 006 of these rules and regulations.

004.08B Form of Hearing Notice. A written notice of the time and place of the hearing and

the name of the hearing officer, if known, shall be served by the Department upon all attorneys of record or other representatives of record and upon all unrepresented parties. Such notice shall include a written proof of service as provided in 004.07 of these rules and regulations, and filed with the Department.

004.09 Computation of Time. In computing time prescribed or allowed under these rules and regulations or the applicable statutes in which a 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.

004.10 Notices; Mailing Requirements. All notices by the Department required by IRP shall be mailed to the address of the registrant as shown in the records of the Department. If required by statute, such notices shall be mailed certified or registered mail.

005 HEARING OFFICERS; CRITERIA, QUALIFICATIONS, POWERS AND DUTIES.

005.01 Appointment. Hearing officers shall be appointed by the Director in writing. Such appointment shall be of public record in the Director's office. A hearing officer for a contested case may be designated by the Director.

005.02 Conflict. 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 Conflict of Supervisor. 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 state may not serve as hearing officer or advise a hearing officer in the same proceeding except as provided in subsection 005.04.

005.04 Consent. 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 state may assist or advise a hearing officer in the preparation of orders.

005.05 Participation in Preliminary Determination. 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 advise a hearing officer in the same proceeding.

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

005.07 Qualifications. Hearing officers shall be attorneys licensed to practice law in the State of Nebraska.

005.08 Unbiased and Impartial. The hearing officer shall be unbiased and impartial to the subject proceeding.

005.09 Recusal. No hearing officer shall participate in an appeal in which they have an interest. For

good cause shown on the Director's own motion, the hearing officer may recuse himself or herself from conducting the hearing. Motions for recusal shall be made in writing to the Director and must be received no later than three (3) days prior to the date of the hearing.

005.10 Powers and Duties. The hearing officer shall have the duty to conduct full, fair and impartial hearings, to take appropriate action to avoid unnecessary delay in the disposition of the proceeding, and to maintain order. They shall have the following powers:

005.10A To administer oaths and affirmations;

005.10B To issue subpoenas as authorized;

005.10C To compel discovery and to impose appropriate sanctions for failure to make discovery;

005.10D To rule upon offers of proof and receive relevant, competent, and probative evidence;

005.10E To regulate the course of the proceedings in the conduct of the parties and their representatives;

005.10F To hold prehearing conferences for simplification of the issues, settlement of the proceedings, or any other purposes;

005.10G To consider and rule orally or in writing, upon all procedural and other motions appropriate in adjudicative proceedings;

005.10H To fix the time for holding the record open for additional evidence or for submission of briefs;

005.10I To exclude people from the hearing;

005.10J To issue recommended decisions, rulings, and orders as appropriate; and

005.10K To take any other action consistent with the purpose of the law.

006 PREHEARING PROCEDURES.

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

006.01A If a prehearing conference is conducted:

006.01A1 The hearing officer shall promptly notify the 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 or their representative of record.

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

006.01A3a The names and mailing addresses of all parties or their representatives or other persons to whom notice is being given by the hearing officers;

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

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

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

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

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

006.01A3g A statement that a party who fails to attend or participate in a prehearing conference, hearing or other state of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act; and

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

006.01B The hearing officer shall conduct a prehearing conference, as may be appropriate, to deal with such matters 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 presentation of evidence and cross examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

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

006.01D **Informal Disposition.** Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order, or default.

006.02 Discovery in Contested Cases.

006.02A The hearing officer or 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 be otherwise 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 representative to resolve by agreement the issues raised and that agreement has not been achieved; and

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

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

006.03 Continuances. The hearing officer may, in his or her discretion, grant extensions of time, or continuances of hearing 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, representative, or witnesses;

006.03A2 A change in legal representation; or

006.03A3 Settlement negotiations which 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, the appellant 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 supplementary pleadings alleging facts material to the case after the original pleadings were filed. A hearing officer may permit amendment of pleadings where a mistake appears or when the amendment does not materially change a claim of defense.

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

007 CONDUCTING A CONTESTED CASE HEARING.

007.01 Show Cause. The appellant shall show cause why the deficiency determination is erroneous or excessive.

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

007.02A Call to Order. The hearing shall be called to order by the hearing officer, who shall introduce him or herself, enter appearances, and state the scope and purpose of the hearing. Any preliminary motions, stipulations or agreed orders are entertained and may be disposed of by the hearing officer.

007.02B Opening Statement. Each party may be required to make an opening statement at the discretion of the hearing officer. Opening statements shall be in the same order as the presentation of evidence.

007.02C Presentation of Evidence. Documentary evidence may be marked, and where appropriate, may be offered by either party, prior to the taking of any testimony.

007.02C1 Order. Evidence will be received in the following order:

007.02C1a Evidence is presented by the appellant;

007.02C1b Evidence is presented by the Department;

007.02C1c Rebuttal evidence is presented by the appellant; and

007.02C1d Surrebuttal evidence is presented by the respondent.

007.02C2 Witnesses. With regard to each witness who testifies, the following examination may be conducted:

007.02C2a Direct examination conducted by the party who calls the witness;

007.02C2b Cross examination by the opposing party;

007.02C2c Any Redirect as necessary; and

007.02C2d Any Recross as necessary.

007.02D Closing Argument. After the evidence is presented, at the discretion of the hearing officer, each party may have the opportunity to make a closing argument. Closing argument shall be made in the same order as the presentation of evidence. The hearing officer may request that the parties present briefs in lieu of closing arguments. The hearing officer shall specify the date

such briefs shall be received by the Department.

007.03 Evidence. The hearing shall be conducted informally unless a party requests the rules of evidence pursuant to 007.02B.

007.03A In contested cases, the Department or hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

007.03B Formal Hearings. Any party to a formal hearing before the Department, from which a decision may be appealed to the courts of this state, may request that the Department be bound by the rules of evidence applicable in district court by delivering to the Department at least three (3) days prior to the holding of the hearing, a written request for the rules of evidence. 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.

007.03C Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.

007.03D All evidence including records and documents in the possession of the Department of which it desires to avail itself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case.

007.03E 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.

007.03F The Department shall recognize and give effect to the rules of privilege recognized by law.

007.03G The Department may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by such agency.

007.03G1 Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.

007.03G2 Parties shall be afforded an opportunity to contest facts so noticed.

007.03G3 The record shall contain a written record of everything officially noticed.

007.03H The Department may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

007.04 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. When a hearing is conducted electronically:

007.04A Department-s Exhibits. The Department shall serve the appellant with a copy of the official exhibits in its casefile by facsimile transmission or by mailing them to the address of the appellant or his or her representative. Each exhibit shall be premarked for ease of identification; and

007.04B Appellant-s Exhibits. Any exhibits the appellant wishes to offer in addition to the Department-s exhibits shall be submitted to and received by the Department no later than five (5) days prior to the date of the hearing. If such exhibits are not both filed and received by the Department within the time specified, such exhibits will not be admitted unless substantial injustice will result.

007.05 Official Record.

007.05A Transcripts. The Department shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purpose of rehearing or appeal, in which event the transcript and record shall be furnished by the agency upon request and tender of the cost of preparation.

007.05B Official Record. The Department shall maintain an official record of each contested case under the Administrative Procedure Act for at least four (4) years following the date of the final order.

007.05B1 The Department shall tape record each informal hearing to be available for the preparation of a transcript upon the appellant-s request pursuant to 007.04A.

007.05B2 In the case of a formal hearing, the court reporter shall keep the record at hearing pursuant to 007.02B which shall be made available for preparation of a transcript pursuant to 007.04A.

007.05C Contents of Record. The agency record shall consist of the following:

007.05C1 Notices of all proceedings.

007.05C2 Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Department pertaining to the contested case;

007.05C3 The record of the hearing before the Department, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the Department during the proceeding, and all proffers of proof and objections and rulings thereon; and

007.05C4 The final order.

007.05D Ex Parte Communications. As provided in section 002.03 of these rules and regulations, 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.

007.05E 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.

007.06 **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 **Order.** Every decision and order adverse to a party to the proceeding, rendered by the Department in a contested case, shall be in writing or state in the record and shall be accompanied by findings of fact and conclusions of law.

008.02 **Order, Contents.** The decision and order should include:

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

008.02B The time and place of the hearing;

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

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

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

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

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

009 **APPEALS.**

009.01 **Appeal of Decision.** Any person aggrieved by a final decision in a contested case is entitled to a judicial review under the Administrative Procedure Act.

009.02 **Filing.** Parties desiring to appeal a Department decision must file a petition for review in the district court of the county where the agency action is taken within thirty (30) days after the service of the final decision by the Director. The thirty-day (30-day) period for appeal commences to run from the date of mailing of the decision and order to the parties or their attorneys of record. Service of the petition and summons must be made in accordance with Nebraska law.

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

010 APPLICATIONS AND RENEWAL, PROCEDURES, AND POWERS OF THE DEPARTMENT.

010.01 Required Documentation. The Department may require the registrant to submit any documentation it deems necessary as allowed by 60-305.09 through 60-305.17 or the IRP.

010.02 Applications and Renewals The Department may adopt formats or procedures for applications and renewal consistent with the IRP and 60-305.09 through 60-305.17, including procedures for electronic filing for vehicle registration as may be developed.

010.03 Failure to Complete Application or Renewal Process. Any person who begins but does not fully complete the application or renewal process as provided by the Department when required, or who fails to use the prescribed formats and procedures, shall not be considered to have completed the IRP registration process and shall not be properly registered.

010.04 Procedures. Registrants are required to follow the IRP Apportion Registration Manual compiled and issued by the Division of Motor Carrier Services of the Department of Motor Vehicles pursuant to the IRP. Provisions of the manual shall be considered binding on registrants. All registrants shall be given a copy of the manual upon initial registration and provided updates as may be necessary. Provisions of the manual shall be admissible at hearing as records of the Department in the form that they are kept.

010.05 Compliance Dates for Renewal Application. All Nebraska-based registrants previously apportioned before September 1 of any year will receive a computer generated renewal application. The following compliance dates will apply:

November 1, preceding the year for which registration is sought, all renewal applications are due.

January 1, payment of fees for the current registration year to guarantee receipt of credentials by the enforcement date.

February 1, credentials for the new licensing year must be displayed.

010.06 Completion of Application. Upon completion of the processing of an application and the receipt of appropriate fees from the applicant for registration, the division shall issue to the applicant for registration a sufficient number of distinctive registration certificates and such other evidence of registration for display on the vehicle as the division determines appropriate for each of the vehicles of the applicant for registration's fleet, identifying it a part of an interstate fleet proportionately registered.

010.07 Director's Powers. The Director of the Department shall ratify and do all things necessary to effectuate the IRP with such exceptions as are deemed advisable and such changes as are necessary.

011 ADDITIONAL ASSESSMENT. If adequate records are not maintained or are not made available for audit, the registrant may lose the right to apportioned registration and may be subject to a possible full fee assessment.

012 DENIAL OR REVOCATION OF REGISTRATION; GROUNDS. The Department may refuse to issue, deny registration, or revoke a registrant's temporary authority or operating authority for any reason given below:

012.01 Failure to Fully Complete an Application. After reviewing an application which is not in proper form, or lacks necessary information, the Department may deny registration until the applicant for registration fully complies with the application requirements.

012.02 Failure to Pay Fees or Failure to Pay a Deficiency Determination. The Department may refuse to issue a registration to or revoke the registration of any registrant which previously had apportioned registration pursuant to the laws of this jurisdiction if the registrant:

012.02A Fails to Pay a Final Assessment. Any registrant which has failed to pay or satisfy a deficiency determination which has become a final assessment.

012.02B Fails to Pay the Appropriate Fees. The registrant's operating privileges will be suspended upon the mailing of the late billing notice. Any registrant whose account is delinquent more than thirty (30) days past the date of the late billing notice will be revoked.

012.03 Denial or Revocation Rescinded upon Full Payment. Such denial of registration or revocation of registration may be summarily rescinded by the Department upon full payment by the registrant to the Department of the required delinquent fees or the amount of the final assessment and any other fees required for registration.

012.04 Effect of Bad Checks. The Department may revoke or deny registration of any registrant who is in arrears for the Single State Registration System or the International Fuel Tax Agreement or any applicant for registration who has issued a check or a draft to the Department which has been returned because of insufficient funds, no funds, or a stop payment order. Such denials or revocations may be appealed pursuant to Neb. Rev. Stat. 60-305.17, or 66-1406.02.

012.05 Statute or IRP Violation. The Department may revoke operating authority or deny registration to a motor carrier for any other reason provided by statute, for any reason provided in the IRP agreement, or if the Department discovers falsified information on the application or other information provided by the registrant to the Department.

013 AUDITS BY THE DEPARTMENT; DEFICIENCY DETERMINATIONS; AND PROCEDURE.

013.01 Examination and Audit. Under the provisions of IRP, all registrants electing to license and register their vehicles on an apportioned basis are subject to audit. Generally, the Division of Motor Carrier Services of the Department will audit apportioned applications and supporting records of registrants based in Nebraska. Audits may be made by the Commissioners of the several jurisdictions under Article XVI, section 1606, of the International Registration Plan.

013.02 Authority. Pursuant to Article XVI, section 1600, of the IRP, the base jurisdiction shall audit the registrants displaying a base plate of the jurisdiction as to the authenticity of mileage figures derived from operational records and registrations.

013.03 Final Assessment. If a greater amount of fee is due pursuant to 60-305.09 than was paid,

the Department shall notify the registrant in writing of the additional amount claimed to be due. The amount of the deficiency determined shall constitute a final assessment thirty (30) days after the date on which notice was mailed to the registrant at his or her last known address unless a written protest is filed with the Department within such thirty-day (30-day) period.

013.04 Final Decision. An order pursuant to 008 shall constitute a final decision for purposes of the Administrative Procedure Act.

013.05 Compliance with Procedures. All audits conducted by the Department shall be in compliance with the requirements that are established by IRP in the agreement and shall follow the procedures as outlined in the IRP procedures manual.

013.06 Audits Performed Prior to July 1, 1996. Any audit performed by the Nebraska Department of Revenue for IFTA purposes may be relied upon for purposes of enforcement of IRP by the Department's Division on or after July 1, 1996 pursuant to LB 1218, 1996.

013.07 Failure of the Registrant to Maintain Adequate Records. If adequate records are not maintained or are not made available for audit, the registrant may lose the right to apportioned registration and may be subject to a possible full fee assessment.

014 RECORD-KEEPING REQUIREMENTS. Records shall be kept as specified in the IRP for a period of five (5) years to substantiate three (3) previous years of registration. All information must be readable and accurate. If adequate records are not maintained and or made accessible for audit, the registrant may lose the right to apportioned registration and may be subject to a possible full-fee assessment.

014.01 Acceptable Documentation. An Individual Vehicle Mileage and Fuel Record or similar trip record shall be maintained. Such record must be completed for each movement of the vehicle (interstate and intrastate) including loaded, empty, dead-head, and or bobtail miles. Miles operated on trip permits must be included. Acceptable documentation shall include:

014.01A Date of trip (starting and ending);

014.01B Trip origin and destination (including odometer or hubometer readings at each);

014.01C Routes of travel or odometer reading at jurisdiction line;

014.01D Total trip miles;

014.01E Miles by jurisdiction;

014.01G Unit number or vehicle identification number;

014.01H Vehicle fleet number;

014.01I Registrant's name; and

014.01J Driver's signature or name.

015 REVOCATION, OR CANCELLATION OF REGISTRATION; REGISTRANT'S DUTIES.

Upon revocation by the Department or cancellation of registration by the registrant, the registrant shall:

015.01 Return the registrant's IRP registration certificates and all license plates; and

015.02 Revocation of registration issued by the Department or cancellation of registration by the registrant shall not relieve any person from a periodic audit by the Department for those periods that the registrant had active apportioned registration.

016 CREDITS AND REFUNDS.

016.01 Transfers. Nebraska will transfer apportioned registration fees from a deleted unit to an added unit, provided the registrant has lost possession of the vehicle and the vehicle has been permanently removed from the fleet as provided by 60-305.09. Such refunds or credits shall be subject to the laws of participating jurisdictions and approved only under conditions and procedures provided in the IRP Apportion Manual.

016.02 Trailer Units. Nebraska does not allow credit or refund for the fees paid on trailer units.

016.03 Refunds. The refund will be calculated based on the postmark date of the application deleting the vehicle.

016.04 Refunds in Other Jurisdictions. Refunds are issued for Nebraska fees only. Nebraska cannot authorize the refund of other jurisdiction's fees.

017 TEMPORARY AUTHORITY; PROCEDURES FOR LATE BILLING NOTICE.

017.01 Temporary Authority. Upon application to the Department for apportioned registration by a motor carrier, the Department may grant a registrant temporary authority to permit the operation of a fleet or an addition to a fleet in this jurisdiction while the application is being processed if necessary to complete processing of the application. Such temporary authority may be suspended and/or revoked by the Department if the registrant fails to pay registration fees in full in a timely manner.

017.02 Fails to Pay the Appropriate Fees. The registrant's operating privileges will be suspended upon the mailing of the late billing notice. Any registrant whose account is delinquent more than thirty (30) days past the date of the late billing notice shall be revoked.

017.03 Late Billing Notice. Late billing notices shall be sent to the registrant by certified mail to the last known business address as shown on the application for the certificate or renewal.

017.04 Suspension or Revocation Rescinded upon Full Payment. Such suspension of registration or revocation of registration may be summarily rescinded by the Department upon full payment by the registrant to the Department of the required delinquent fees.

017.05 Effect of Bad Checks. The Department may revoke or deny registration of any registrant who is in arrears for the Single State Registration System or the International Fuel Tax Agreement or any applicant for registration who has issued a check or a draft to the Department which has been returned because of insufficient funds, no funds, or a stop payment order. Such denials or revocations may be appealed pursuant to Neb. Rev. Stat. 60-305.17, or 66-1406.02.

Attachment 1 -- 251 NAC, Chapter 2 -- SAMPLE



**FOR APPEAL UNDER THE INTERNATIONAL REGISTRATION PLAN
NEBRASKA DEPARTMENT OF MOTOR VEHICLES**

Any person/carrier registered under the International Registration Plan (IRP) by the State of Nebraska may file an appeal of an action by the Department under IRP within thirty (30) days of the date of the written notice by the Department. The petition and all pleadings must be filed with the Department of Motor Vehicles Legal Division, 301 Centennial Mall South, First Floor, P.O. Box 94789, Lincoln, NE 68509-4789. Filing may be accomplished by personal delivery or mail and will be received during the Department's regular office hours. Facsimile transmissions may be sent to (402) 471-4828. Facsimile transmissions received after normal office hours shall be deemed received on the next business day.

Name:	
Company Name:	
Mailing Address:	
Phone Number: ()	IRP Carrier Number/s:
Attorney name and address:	Attorney phone number: ()
Accountant name and address:	Accountant phone number: ()

I object to the following action by the Department:

I am protesting the Deficiency Determination dated _____.

Why do you think the Department's decision or determination is wrong?

Attach additional pages as may be necessary.

Check here and enclose \$1.00 for copying charges for a copy of the appeal procedure rules and regulations governing IRP hearings, 251 NAC, Chapter Two. DO NOT SEND CASH.

Payment of a deficiency determination does not affect your right to appeal the determination. Filing of this protest does NOT stop the registrant's obligation to keep required records.

Signature

Date

Deliver this petition to the Department of Motor Vehicles Legal Division, 301 Centennial Mall South, First Floor, P.O. Box 94789, Lincoln, NE 68509-4789. Phone: (402) 471-9593

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