

RULES AND REGULATIONS

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1. **Purpose:** To provide policy for developing, reviewing, updating, repealing, and issuing the department's rules and regulations in accordance with the Administrative Procedure Act provided by Sections 84-901 through 84-920; and the Negotiated Rulemaking Act provided by Sections 84-921 through 84-932, Nebraska Statutes, and in accordance with the department's rules on rulemaking, Title 407, Chapter 1, Nebraska Administrative Code (407 NAC 1). The office of primary responsibility for this DOT-OI is the Government Affairs Office. This DOT-OI supersedes DOT-OI 15-02 dated December 6, 2017.
 2. The department will issue rules, regulations, and standards (hereinafter called "rules") designed to implement, interpret, or make specific the law enforced or administered by it or governing its organization or procedures. This excludes rules concerning internal management of the department not affecting private rights, private interests, or procedures available to the public. Also, any person may petition the department to adopt a rule. Matters over which the department has rulemaking authority are prescribed in state statute, for example: Section 39-102, Nebraska Statutes.
 3. Individual rules (Title XXX, Chapter Y, Nebraska Administrative Code, also: XXX NAC Y) are assigned to the division or district that is responsible for the regulated activity. The Government Affairs Office is the coordinator of the department's rules. Each division and district will keep a file containing the text and background of its current rules. The Government Affairs Office, in cooperation with the Legal Division, will maintain the department's official rulemaking record.
 4. The department's rules may be accessed from the Secretary of State's Rules website. Availability from and within the department will be as follows:
 - A. The Government Affairs Office, the Resource Library (Communication Division) and the Legal Division each will maintain a binder containing the department's current rules. Those offices will provide copies of individual rules to the public upon request.
 - B. Divisions and districts will provide authoritative copies of their rules to the public upon request. Divisions and districts may also post or disseminate their rules so as to make them broadly available. Divisions and districts will supplement their rules as needed with descriptive statements of their procedures (taking care to clearly distinguish them from the actual regulations) in order to assist interested persons in dealing with the department.
 - C. The Communication Division, under the guidance from the Government Affairs Office, will maintain the department's rules, together with all rulemaking proposals, in electronic format for internal departmental use.

- D. The department may charge for costs of publication and mailing for requests for voluminous copies. Other requests will be honored at the department's expense.
5. Annually or as otherwise required by changes in law, legislative action, etc., the department will review its existing rules for completeness, adequacy, applicability, and necessity, and propose additions, revisions, or deletions. By **July 1** of each year, the Government Affairs Office will notify each division head and district engineer, in writing or by email, to review the rules applicable to them and provide a written or electronic reply by **August 1** as to whether changes **are or are not** appropriate.
6. Division heads and district engineers are responsible for having knowledge of the laws and rules which impact their areas of operation and are responsible for proposing new rules, changes, or repeals at any time. Any proposed statutory change resulting from such review will be addressed under DOT-OI 05-01, Legislative Proposals.
 - A. Division heads and district engineers should consult the Legal Division, the Government Affairs Office and other sources as needed in order to evaluate their rules.
 - B. All new rules, changes or repeals will be submitted to the Government Affairs Office along with a copy of the law or federal rule which it interprets, the reasons for issuance, change or repeal, the arguments **for and against**, the fiscal impact, and other pertinent explanatory and analytical information, using the form prescribed by the Governor's Policy Research Office as provided by the DOT Government Affairs Office.
 - C. Division heads and district engineers are advised that the reasons they provide for a rule change (including adoption or repeal) will become part of the record and will be incorporated in the department's final rulemaking documents (see 8. F. below). Those official reasons will constitute the department's sole justification should the rule's validity be challenged.
7. The Director must approve all proposals to initiate formal rulemaking. Following the public hearing and the public input period, the rule will be deemed adopted or repealed by the department upon the Director's signed approval of the final "language" of the rule of the final filing documents.

8. When the department is proposing, revising, or repealing a rule, the Government Affairs Office will:
 - A. Upon the Director's approval, request authorization from the Governor's representative to proceed with official rulemaking and a public hearing.
 - B. Direct the Public Involvement Office in the Communication Division to publish a public hearing notice 30 days prior to such hearing in a newspaper having general circulation in the state, and to publish such notice in regional newspaper(s) and other media as appropriate. The time requirement has been interpreted by the courts to mean 30 days prior to the **day before** the hearing.
 - C. Prepare and file the necessary pre-hearing materials with the Secretary of State's Office and the Executive Board of the Legislature "30 days" prior to the public hearing.
 - D. Coordinate the department's response to a rulemaking complaint filed by a member of the Legislature.
 - E. Assist the Public Involvement Office and the responsible division head or district engineer in holding a public hearing in Lincoln, Nebraska. After the hearing, a ten-day waiting period will be allowed for additional public comments. Supplementary public hearings may be held elsewhere in the state. If additional hearings are held, the public comment period will extend ten days following the final hearing, and the hearing in Lincoln will be the primary public hearing. The Public Involvement Office will prepare a transcript of the public hearing(s).
 - F. Ensure that the final text of new or revised rules is properly prepared, together with the required copies and documents for formal approval and filing, in the format prescribed by the Secretary of State. Obtain the Attorney General's approval and then the Governor's approval of new rules, revisions, and repeals.
 - G. Verify that each approved rule or repeal has been filed with the Secretary of State. The rule or repeal takes effect five days after filing with the Secretary of State.

9. Rulemaking should be an open and transparent process. Furthermore, the Administrative Procedure Act does not allow for substantial change to a proposed new or revised rule once the text has been published for public hearing and filed for rulemaking. Therefore, divisions and districts, in coordination with the Government Affairs Office, should consider the following **optional additional actions** when appropriate and cost-effective.
 - A. Prior to official rulemaking, consult widely within the department and among external experts and affected parties. This may include circulating proposed drafts and supporting materials for comment, appointing task groups for drafting, holding public meetings and informal hearings, and/or publishing a pre-rulemaking notice, in order to receive broad public and expert input at the drafting stage.
 - B. Once rulemaking has begun, reach out directly to interested parties to inform them of the proposal and to invite them to the public hearing. After the hearing, keep them posted on progress toward adoption of the rule and on the department's plan of action for implementation.
 - C. Hold one or more supplementary public hearings, preferably in or near areas that are likely to be most impacted by the rule.
 - D. If the rulemaking process is anticipated to be very contentious, complex, and lengthy, the Negotiated Rulemaking process should be considered.

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LICENSE, CERTIFICATION, DESIGNATION, AND PROFESSIONAL MEMBERSHIPS - EXPENSES ALLOWED

- *** 1. **Purpose:** NDOT is committed to lifelong learning to ensure that we are prepared to meet future challenges. We encourage employees to improve their industry knowledge through relevant certification, designation, license programs and professional organizations membership. The office of primary responsibility for this DOT-OI is the Human Resources Division. This DOT-OI supersedes DOT-OI 15-04 dated March 31, 2021.
- *** 2. **Eligibility:** Any full-time non-temporary employee for whom a certification, designation, or license is required to fulfill the primary functions of their position, or when the District Engineer or Division Head prefers that an employee obtain a credential or belong to a professional organization to meet a business need. Division Head or District Engineer approval is needed for preferred certification, designation, license, or professional membership, not required by the employee's position or for career progression.
- *** 3. **Covered Expenses:** Include examinations (job required: two attempts - DE/DH preferred: one attempt), application, and license or certification fees, study materials, required preparatory classes, renewal fees, conferences, and one membership in a professional organization. The professional memberships must be nationally or locally recognized organizations. If belonging to a professional organization results in a member discount on a certification exam or renewal that is equal to or more than the cost of an annual membership, the employee should become a member of the organization to reduce the overall NDOT cost. In these instances, the employee may have more than one professional membership paid by NDOT.
- *** 4. **Administration:**
- *** A. Expenses for exams, renewal fees, and learning opportunities, including conferences, training, study materials, certification courses, and required preparatory classes, must be submitted to the Learning and Organizational Development Team in Human Resources via the online [License and Certification Expense Reimbursement \(office.com\)](#). Human Resources will ensure the expense complies with NDOT's policy and provide the necessary accounting codes for expense reimbursement. See 4.b below for travel expenses. Expense reimbursements must be submitted within 60 days of purchase. For assistance completing NDOT Expense Reimbursement Form 689, contact ndot.controllercoding@nebraska.gov.
- *** B. Professional memberships may be directly paid for by the Division or District. Verification is required for each employee invoiced for their one selected professional membership for payment processing unless multiple memberships have been approved per this policy. If the employee pays for these expenses personally, an Expense Reimbursement Document NDOT Form 689 needs to be submitted to receive reimbursement per the District or Divisions normal process.

- *** C. The respective Division or District must budget for all travel expenses, when necessary, which will be reimbursed per DOT-OI 20-05. Employees may use a state vehicle for travel or at the discretion of the Division Head or District Engineer, use a personal vehicle and have mileage paid.

- *** 5. **Exclusions:**

- *** A. Except when attending as an appointed NDOT representative, participation on boards or committees, attending meetings, or luncheons (i.e., Toastmasters, Young Professionals) shall be at the employee's own time and expense, and a state vehicle may not be utilized.

- *** B. CDL skills tests should be taken from the DMV or from an NDOT third-party tester. If a supervisor would like an employee to take a CDL skills test from a non-NDOT third-party tester, they must first get approval from Human Resources for this expense to be reimbursed.

- *** C. Principles and Practice of Engineering (PE) and/or Fundamentals in Engineering (FE) - Individuals looking to purchase study materials for the PE or FE exams, should first contact their training coordinator. The training coordinator will be able to work with the training team to purchase the materials (up to \$2000 for one online program) so the individual will not have to purchase it out of pocket. If the individual does purchase a program, they can submit a License and Certification Expense Reimbursement Form and be reimbursed.

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