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AUTHORITY: Implementing and authorized by Sections 4, 22(b), 39(f), 39(i) and 39.3(e) of the Environmental Protection Act (Ill. Rev. Stat. 1983, ch. 111 1/2, pars. 1004, 1022(b), 1039(f), and 1039(i), and Supp. to Ill. Rev. ch. 111 1/2, par. 1039.3(e)) and Section 5-10(a)(1) of The Illinois Administrative Procedure Act (Ill. Rev. Stat. 1991, ch. 127, par. 1005-10(a)(1)).

SOURCE: Adopted and codified at 8 Ill. Reg. 6693, effective June 1, 1984.

SUBPART A: INTRODUCTION

Section 168.101 Purpose

This part sets forth the procedures to be followed by the Illinois Environmental Protection Agency in contested case hearings under its jurisdiction.

Section 168.102 Applicability

This part shall apply to all hearings held by the Agency in contested cases. This part shall be construed to secure just determinations, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. In the absence of a dispositive rule, a Hearing Officer shall proceed in any manner compatible with these purposes.

Section 168.103 Definitions

"Agency" is the Illinois Environmental Protection Agency.

"APA" means the Illinois Administrative Procedure Act, (Ill. Rev. Stat. 1991, ch. 127, par. 1001-1 et seq.).

"Business" includes business, profession, occupation, and/or calling of every kind.

"Complainant" is a person who initiates an action requiring a contested case hearing.

"Contested Case" means an adjudicatory proceeding, not including rate making, rule-making, quasi-legislative, informational or similar proceedings, in which the individual legal rights, duties or privileges or a party are required by law to be determined by an agency only after an opportunity for a hearing. (Ill. Rev. Stat. 1983, ch. 127, par. 1003-02). This does not include Agency procedures for permit hearings held pursuant to 35 Ill. Adm. Code 166.

"Director" is the Director of the Illinois Environmental Protection Agency.

"Hearing" is a hearing held after notice to interested persons or parties, which testimony is taken by oath or affirmation and a verbatim record of all testimony is kept.

"Hearing Officer" is a person duly designated as a Hearing Officer by the Director to preside over the hearing.

"Interested person" is any person who may be adversely affected by the outcome of a hearing.

"Intervenor" is a person who is permitted to intervene as provided for under Section 168.230 of these rules.

"Party" may be a complainant, respondent, or intervenor.

"Person" is any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, federal or state agency, or other legal entity, or their legal representative, agent or assigns.

"Respondent" is a person against whom a statement of noncompliance is filed or Notice directed.

"State" is the State of Illinois.

SUBPART B: PROCEDURES FOR CONTESTED CASE HEARINGS

Section 168.200 Commencement of an Action

- a) A complainant may commence a contested case by serving on all parties a statement of noncompliance which shall state allegations of noncompliance, set forth facts which constitute alleged violations of a statute or Agency rules, and which are the basis of the complainant's action.
- b) Written response to the statement of noncompliance may be filed by a respondent and must be served on all parties within 21 days after service of the statement of noncompliance. If a respondent fails to respond, each alleged violation of a statute or Agency rule by the respondent shall be deemed to have been denied.

Section 168.205 Notice of Contested Case Hearing

The Complainant shall serve on all parties and the Hearing Officer a notice of contested case hearing which shall contain:

- a) A statement of the nature of the hearing including a reference to the particular law or regulation involved;
- b) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c) A statement of the date, time and place of the hearing and, if a pre-hearing conference is scheduled by the Agency, the date, time and place of that conference.

Section 168.210 Appearances and Representation

- a) Any person entitled to participate in hearings may appear as follows:
 - 1) Natural persons may appear on their own behalf or by an attorney admitted to practice in the State of Illinois.
 - 2) A business, non-profit or government organization may appear by any officer, employee or representative or may be represented by an attorney admitted to practice in the State of Illinois.

- b) Attorneys admitted to practice in states other than the State of Illinois may appear and be heard by special leave of the Hearing Officer upon the attorney's verbal representations or written documentation as to the attorney's admittance.
- c) An attorney appearing in a representative capacity shall file a written notice of appearance together with proof of service on all interested persons, parties or their respective attorneys, and the Agency Hearing Officer.
- d) An attorney may withdraw an appearance and/or representation only upon motion. However, attorneys may be substituted without motion upon notice to all parties and the Hearing Officer if the substitution will not delay the proceeding and a statement to the effect is contained in the notice.
- e) Interested persons shall file their appearance with the Agency Hearing Officer who shall include their names and addresses on the service list required in Section 168.225(e).

Section 168.215 Form of Documents

- a) Except for exhibits, documents shall be typewritten or printed.
- b) Except for exhibits, documents shall be cut or folded so as not to exceed a width of 8-1/2 inches and a length of 11 inches. Whenever practical, all exhibits of a documentary character shall conform to these requirements.
- c) Documents shall clearly show the file or docket number of the proceeding and shall clearly describe their nature, e.g., "Petition to Intervene," "Motion," "Appearance," etc.
- d) Pleadings, written motions, and appearances shall be dated and signed and shall contain the name, address and telephone number of the party filing the document or, if represented by an attorney, the name, business address and phone number of such attorney.

Section 168.220 Filing of Documents

All documents required to be filed with the Hearing Officer shall be addressed to the Hearing Officer at the following address:

Illinois Environmental Protection Agency
2200 Churchill Road
Springfield, Illinois 62706
Attention: Agency Hearing Officer

Section 168.225 Service of Documents and Proof of Service

- a) Service of pleadings, motions or other documents shall be made by personal delivery or by depositing in the United States mail, first class postage prepaid, properly addressed to the last known address of the party or the party's representative upon whom service is to be made. One copy shall be served to each other party who has filed an appearance and to the Hearing Officer with proof of service.
- b) Proof of service shall be filed with the Hearing Officer before action will be taken on any pleading.
 - 1) The proof of service shall show the date, time and manner of service, and may be by written acknowledgement of service, by certificate of the person effecting the service, or by certified mail with a return receipt.
 - 2) The Hearing Officer shall allow the proof of service to be amended or supplied at any time before action is taken unless

- to do so would result in material prejudice to a party.
- c) Service by mail is presumed complete and the time for any response shall commence seven (7) days after mailing first class postage prepaid.
 - d) The Hearing Officer shall maintain a service list of the names and addresses of all parties and interested persons.

Section 168.230 Intervention

- a) A person desiring to intervene shall file with the Hearing Officer a petition to intervene, accompanied by any pleadings or motions the person may wish to file at the same time. The petition shall be served on all parties at least 15 days prior to the hearing, unless a different time period is allowed by the Hearing Officer, but in no case shall intervention be allowed less than seven days prior to the hearing.
- b) Intervention shall be allowed when:
 - 1) The petitioner can show an interest which may not be adequately represented by the parties to the proceedings; or
 - 2) The petitioner may be adversely affected by the Agency's final administrative decision; or
 - 3) The petitioner is another agency or department of the United States or the State of Illinois which has an interest in the subject of the hearing before the Agency.
- c) Any party may object to the petition to intervene by filing a notice of objection with the Hearing Officer within seven (7) days of service of the petition. The notice shall state the party's reason for objecting and shall be served upon all parties and the persons petitioning to intervene.
- d) In determining whether to allow intervention, the Hearing Officer shall consider whether there are other remedies available to the petitioner and whether the intervention will:
 - 1) Unduly delay the hearing;
 - 2) Be unduly burdensome to any party;
 - 3) Enlarge the scope of the proceedings;
 - 4) Insert new issues into the proceedings.
- e) The intervenor shall have the right to present evidence and cross-examine witnesses only with respect to those issues which are within the scope of the intervention.

Section 168.235 Motions

- a) Unless made during a hearing or the pre-hearing conference, motions shall be made in writing, and shall set forth the relief or order sought. Motions based on a matter which does not appear on record shall be supported by affidavit. Motions shall be ruled upon the day of such hearing or prior to such hearing after notice to all parties and opportunity to be heard on such motion.
- b) Written motions shall be titled as to the party making the motion and the nature of the relief sought. Such title shall be in capital letters and shall be placed either below the caption or to the right of the caption beneath the docket number.
- c) Amendments to all pleadings and motions and petition to intervene shall be allowed upon proper motion at any time during the proceeding.
- d) Any party to a hearing may respond to any motion. Responses shall be in writing and shall be filed within ten (10) days of service

of the motion.

Section 168.240 Computation of Time

Computation of time shall begin with the first business day following the day on which the act, event or development initiating such period of time occurs. Time shall run until the end of the last day or the next following business day if the last day is a Saturday, Sunday or legal holiday. Where the period of time is five days or less, Saturdays, Sundays and legal holidays shall always be excluded in the computation of time.

Section 168.245 Pre-Hearing Conferences

- a) A pre-hearing conference may be scheduled at the Hearing Officer's discretion or as a result of a request by any party. This conference shall be for the purpose of considering:
 - 1) The simplification of issues of fact and law;
 - 2) The necessity or desirability of amending pleadings or documents for the purpose of clarification, amplification, or limitation;
 - 3) The possibility of making admissions of fact or stipulations concerning the foundation for testimony or exhibits or use of matters of public record, to avoid unnecessary introduction of proof;
 - 4) The limitation of the number of witnesses, including experts;
 - 5) The usefulness of prior mutual exchange between or among parties of prepared testimony and exhibits; and
 - 6) Such other matters as may aid in the simplification of the evidence and disposition of the proceeding.
- b) After a pre-hearing conference, the Hearing Officer; shall provide all parties with a statement which recites:
 - 1) Any action taken by the Hearing Officer;
 - 2) Any agreements made by the parties as to any of the matters considered; and
 - 3) Those issues remaining for hearing.
- c) A certified court reporter may be present at a pre-hearing conference. All costs related to the court reporting services shall be borne by the party requesting such service.

Section 168.250 Discovery

- a) Regarding any matter not privileged under Section 7 and 7.1 of the Environmental Protection Act (Ill. Rev. Stat. 1983, ch. 111 1/2, pars. 1007 and 1007.1), the Hearing Officer shall order discovery upon written request of any party when the parties cannot agree on the legitimate scope of discovery, if the Hearing Officer determines that the disputed matters are relevant to the subject matter involved in the case. Subject to the requirements of this section, the Hearing Officer may order:
 - 1) The production of the names and addresses of persons having knowledge of relevant facts;
 - 2) The production of the names and addresses of all witnesses whom the party intends to call at the hearing and the subject matter of their expected testimony;
 - 3) The taking of a deposition of any witness, including expert witnesses, expected to testify at the hearing;
 - 4) The answering of the interrogatory of any party; and

- 5) The production of evidence within the control or possession of any party for the purposes of inspection, copying or duplication. This shall include the right of reasonable inspection of premises of any party, with protection for the party whose premises are to be inspected with regard to confidentiality of business process, manufacturing or other information held to be confidential or protected.
- b) It is not a ground for objection that the testimony will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence or is relevant to the subject matter involved in the pending action.
- c) At any time the Hearing Officer may on his own initiative, or on motion of any party or witness, examine documents in camera in order to resolve disputed privilege questions or issue a protective order to deny, limit, condition or regulate discovery to prevent unreasonable delay, expense, harassment, or oppression, or to protect materials from disclosure by the party obtaining such materials consistent with the provisions of Sections 7 and 7.1 of the Environmental Protection Act (Ill. Rev. Stat. 1983, ch. 111 1/2, pars. 1007 and 1007.1).
- d) All depositions and interrogatories taken pursuant to this rule shall be for purposes of discovery only, except as herein provided.
 - 1) The depositions and interrogatories may be used for purposes of impeachment and as admissions of the deposed or interrogated party.
 - 2) Any party who has reason to believe that any potential witness will not be available for testimony at the hearing shall promptly so notify all other parties, and shall move that an evidence deposition be taken. The party shall in the Notice of Deposition designate the deposition as an evidence deposition. If a discovery deposition is desired, it shall be taken before the evidence deposition is desired, it shall be taken before the evidence deposition, unless the parties stipulate otherwise or the Hearing Officer orders otherwise upon notice and motion. The notice, order, or stipulation to take a deposition shall specify whether the deposition is to be a discovery deposition or an evidence deposition. In the absence of such a specification a deposition is a discovery deposition only.
- e) Upon transcription of the deposition, it shall be made available to the deponent for examination and signature, unless examination and signature are waived. Any changes in form or substance which the deponent desires to make shall be entered upon the deposition by the court reporter with a statement of the reasons given by the deponent making them. The deposition shall then be signed by the deponent unless the deponent is ill or cannot be found or refuses to sign, in which event the court reporter's certification shall state the reason for the omission of the signature. Copies of the transcripts shall be available to all parties at their expense.
- f) A party at a hearing may object to those portions of any deposition which contain evidence pursuant to Section 168.270 that would be excluded if the witness were testifying in person.
- g) Failure to comply with any ruling shall subject the person to sanctions under Section 168.400.

Section 168.255 Admissions

- a) At least 21 days prior to a hearing, a party or the Hearing Officer, on his own motion, may serve on any other party a written request for the admission of the truth of any specified relevant fact or for admission of the genuineness of any relevant documents described in the request. Copies of the documents shall be served with the request unless copies have already been furnished.
- b) Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 21 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either:
 - 1) A sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why those matters cannot be truthfully admitted or denied; or
 - 2) Written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part.
- c) If written objections to part of the request are made, the remainder of the request shall be answered within 21 days after service of the request. If good faith requires that a party deny only a part, or requires qualification of a matter of which an admission is requested, the party shall specify so much of it as is true and deny only the remainder.
- d) Any objections to a request or to an answer shall be heard by the Hearing Officer upon motion of the party making the request.

Section 168.260 Authority of Hearing Officer

- a) The Hearing Officer shall conduct a fair and impartial hearing, take all necessary action to avoid undue delay, maintain order, and ensure development of a clear and complete record.
- b) The Hearing Officer shall have all powers necessary to these ends, including, but not limited to the authority to:
 - 1) Direct parties and interested persons to enter their appearances on the record;
 - 2) Conduct prehearing conferences;
 - 3) Require oaths and affirmations;
 - 4) Require production of documents;
 - 5) Require attendance of employees of a party at a hearing upon motion and a showing by the moving party that employees possess knowledge of material facts;
 - 6) Examine witnesses and interested parties and direct witnesses to testify;
 - 7) Limit the number of times any witness or interested party may testify, limit repetitious or cumulative testimony;
 - 8) The Hearing Officer on his own motion, or on the motion of a party, shall exclude witnesses from the hearing room until they are called to testify if the presence of the witnesses would be prejudicial to either party;
 - 9) Rule or reserve ruling on the admissibility of evidence and amendments to pleadings;
 - 10) Continue a hearing from day to day or adjourn it to a later date by announcement at the hearing or by written or oral notice to all parties and interested persons;
 - 11) Impose sanctions in accordance with Section 168.400; and
 - 12) The Hearing Officer on his own motion, or on the motion of a

party may order an expedited hearing if a showing is made that irreparable harm would occur and that all discovery had been completed.

Section 168.265 Conduct of the Hearing

- a) All testimony taken at hearings shall be under oath or affirmation.
- b) All motions and objections made during a hearing shall be stated in writing or orally on the record, including the grounds for such objections. The Hearing Officer shall rule on said motions either in writing or orally on the record, and shall state the grounds for such ruling.
- c) The parties shall proceed at all stages of the hearing including opening and closing statements, the offering of evidence, and examination of witnesses, in the order in which they appear in the pleadings unless otherwise agreed by the parties or ordered by the Hearing Officer pursuant to the Hearing Officer's authority under Section 168.260(a). In consolidated cases or where intervention has been granted the Hearing Officer shall designate the order.

Section 168.266 Burden of Proof

The Complainant has the burden to prove by the preponderance of the evidence its allegations against the respondent.

Section 168.267 Order of the Hearing

The following shall be the order of the hearing subject to modification by the Hearing Officer if the Hearing Officer determines that such modification would avoid undue delay and would not prejudice the rights of any party.

- a) Presentation, argument, and disposition of motions preliminary to a hearing on the merits of the matters raised in the complaint;
- b) Presentation of opening statements;
- c) Complainant's case in chief;
- d) Respondent's case in chief;
- e) Intervenor's case in chief;
- f) Complainant's case in rebuttal;
- g) Complainant's opening argument, which may include legal argument;
- h) Respondent's closing argument, which may include legal argument;
- i) Intervenor's closing argument, which may include legal argument;
- j) Complainant's closing argument, which may include legal argument;
- k) Presentation and argument of all motions prior to submission of the transcript to the Hearing Officer; and
- l) A schedule for submission of briefs to the Hearing Officer.

Section 168.270 Rules of Evidence

- a) *Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the circuit courts of Illinois shall be followed. However, evidence not admissible under such rules of evidence may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.*
- b) *Objections to evidentiary offers may be made and shall be noted in*

the record.

- c) *When a Hearing is expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.*

Section 168.275 Testimony and Cross-Examination of Witnesses

- a) Written narrative testimony may be introduced by a party in a hearing only if provided to all other parties of record prior to the date of the hearing and only after the opposing parties have had an opportunity to object to all or portions of the written testimony and to obtain a ruling on said objections prior to its introduction. The person whose testimony is submitted shall be available at the hearing for cross-examination.
- b) All parties may cross-examine any other party's witness. The scope of cross-examination shall be defined by the scope of direct examination.
- c) Employees of one party required by order of the Hearing Officer to attend a hearing may be examined as if under cross-examination.
- d) If the Hearing Officer determines that a witness is hostile or unwilling, the party calling the witness may examine the witness as if under cross-examination.
- e) Questions calling for an opinion of an expert witness need not be hypothetical in form.

Section 168.280 Official Notice

- a) *Official notice may be taken of matters of which the circuit courts of Illinois may take judicial notice.*
- b) *Official notice may also be taken of generally recognized technical or scientific facts within the agency's specialized knowledge.*
- c) *Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed.*

Section 168.285 Records in Other Proceedings

- a) The Hearing Officer shall order the record, or any part thereof, of any relevant proceeding before the Agency or governmental department or subdivision, incorporated into the record of the present proceeding.
- b) When a party or intervenor desires to offer in evidence any portion of the record in any other proceeding, such portion shall be offered in the form of an exhibit.

Section 168.290 Documentary Evidence

- a) Relevant scientific or technical articles, treatises, or materials may be introduced into evidence by stipulation of the parties, or subject to qualification of the author and subject to refutation or disputation through any introduction of comparable documentary evidence or expert testimony.
- b) Any writing or record made as a memorandum of any act, transaction, occurrence or event shall be admissible as evidence

of the act, transaction, occurrence or event provided it was made in the regular course of the business to make such a memorandum or record at the time of such an act, transaction, occurrence or event or within a reasonable time thereafter.

- c) All other circumstances of the making of the writing or record, including lack of personal knowledge by the maker, may be shown to affect its weight but shall not affect its admissibility.

Section 168.295 Exhibits

- a) Proposed exhibits shall be reviewed or exchanged at the pre-hearing conference or otherwise prior to the hearing if the Hearing Officer so requires in order to expedite the proceeding. The Hearing Officer may deny admission as evidence of proposed exhibits not reviewed or exchanged if no prehearing conference was held or if it is shown that the exhibits were out of the party's custody or did not exist at the time of the original request.
- b) The exhibits shall be marked for identification in accordance with the following standard markings:
 - 1) C = complainant;
 - 2) R = respondent;
 - 3) I = intervenor
- c) Other additional markings required for clarity may be used as the Hearing Officer may direct.

Section 168.300 Consolidation

At any time after a contested case has been initiated, any party or the Hearing Officer may move to consolidate other contested cases involving common questions of fact or law between identical parties or between any party to the contested case and the Agency. Such motion shall be granted if the Hearing Officer determines that to do so would be in the best interest of the parties, and would result in the expeditious and complete determination of the issues.

Section 168.305 Transcript of Hearing

- a) Within 21 days of the completion of the hearing the complainant at his/her own cost shall furnish the Agency a legible copy of a complete stenographic transcript of the hearing. Any unreasonable delay in the filing of the transcript may subject the petitioner to sanctions in accordance with Section 168.400.
- b) After the transcript is filed, the Hearing Officer shall for ten (10) days after the date of filing entertain requests for corrections and enter corrections either on the record of a subsequent hearing or in an Order.
- c) Any person may inspect and copy the hearing record pursuant to Illinois Environmental Protection Agency requirements for Public Inspection of Agency Documents filed with the Secretary of State's office on June 2, 1978.

Section 168.310 Proposed Findings of Fact and Conclusions of Law

- a) If the Hearing Officer finds it necessary in order to render a decision, the Hearing Officer shall require and establish a schedule for the filing of briefs, proposed findings of fact and conclusions of law.

- b) All proposed findings of fact and conclusions of law shall:
 - 1) Be in writing and served upon all other parties;
 - 2) Be accompanied by a supporting statement or brief; and
 - 3) State specifically all matters officially noticed.

Section 168.315 Proposal for Decision

- a) After the hearing is concluded, the Hearing Officer or designated Agency employee who has read the record shall file with the Director or the Director's designee and serve upon the parties a proposal for decision based exclusively on:
 - 1) Evidence and arguments presented during the course of the hearing and made a part of the record;
 - 2) The Agency's experience, technical competence and specialized knowledge shall be utilized in the evaluation of the evidence if presented during the course of the hearing and made part of the record, and the Hearing Officer determines that such evidence is relevant, however, it must be stated in the proposal for decision where in relation to the evidence this has been used;
 - 3) Stipulations of fact; and
 - 4) Matters officially noticed.
- b) The Proposal for Decision shall be final in form and dispositive of all issues in the case.
- c) The Proposal for decision shall contain:
 - 1) A short statement of the nature of the proceedings;
 - 2) Complete references to the specific statutes or regulations at issue;
 - 3) A list of exhibits admitted in evidence;
 - 4) Specific findings of fact;
 - 5) Specific conclusions of law based upon the findings of fact and applicable constitutional principles, statutes, and rules or regulations;
 - 6) An appropriate recommendation for the disposition of the entire contested case including a statement of reasons based upon the findings of fact and conclusions of law;
 - 7) No substantive finding of fact or conclusion of law nor any recommendation in the proposal for decision shall be binding upon the Director.

Section 168.320 Contested Case Record

The record in a contested cases shall include:

- a) All pleadings (including all notices and responses thereto), motions, and rulings;
- b) The hearing record;
- c) Evidence received;
- d) A statement of matters officially noticed pursuant to Section 168.280;
- e) Offers of proof, objections and rulings thereon;
- f) Proposed findings and exceptions;
- g) Any decision, opinion or report by the Hearing Officer;
- h) All staff memoranda or data submitted to the Hearing Officer or members of the Agency in connection with their consideration of the case;
- i) Any stipulations, settlement agreements, or consent orders entered into by any of the parties prior to the hearing;
- j) Any communication prohibited by Section 15 of the APA but such

- communications shall not form the basis for any finding of fact;
- k) Proposed finding of fact and conclusion of law; and
 - l) Proposal for decision.

Section 168.325 Decision in Contested Case

- a) Within 21 days after service of the proposal for decision the parties may file with the Director exceptions, and proposed findings of fact, and present a brief to the Director, and thereafter the Director shall issue a Final Decision or Order.
- b) The Director's final decision or order adverse to a party in a contested case shall be in writing or stated in the record;
 - 1) *The final decision shall include findings of fact and conclusions of law, separately stated;*
 - 2) *Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.*
 - 3) *If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.*
- c) *Parties or their agents appointed to receive service of process shall be notified either personally or by registered or certified mail or any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party or to the party's attorney of record.*

SUBPART C: MISCELLANEOUS PROVISIONS

Section 168.400 Sanctions

- a) If a party or any person refuses to comply with any provision of these rules or fails to comply with any order entered under these rules, the Hearing Officer shall enter such orders as are just including, among others, the following:
 - 1) That further proceedings be stayed until there is compliance with the order or rules;
 - 2) That the offending party be debarred from filing any other pleading relating to any issue to which the refusal or failure relates;
 - 3) That the offending party be debarred from maintaining any particular claim or defense relating to that issue;
 - 4) That a witness be barred from testifying concerning that issue; and
 - 5) That any portion of the offending party's pleadings relating to that issue be stricken.
- b) If a party or person refuses to answer any question propounded at deposition, the deposition shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on notice to all persons affected thereby, the proponent may move the Hearing Officer for an order compelling an answer.
- c) If a party fails to answer any interrogatory served upon him, the proponent of the interrogatory may on notice move for an order compelling an answer. If the Hearing Officer finds that the refusal or failure was without substantial justification, the Hearing Officer shall require the party or person to answer.

Section 168.405 Ex Parte Communication

The Hearing Officer, after notice of a contested case hearing, shall not communicate directly or indirectly in connection with any issue of fact or any other issue with any person or party, except upon notice and opportunity for all parties to participate.

Section 168.410 Severability

If any portion of these rules is for any reason held to be unconstitutional or violative of law by a court of competent jurisdiction, such decision shall not affect or impair the validity of the remaining portions of these rules.