

TITLE 32: ENERGY
CHAPTER II: ILLINOIS EMERGENCY MANAGEMENT AGENCY
SUBCHAPTER a: ADMINISTRATIVE HEARING RULES

PART 200
ADMINISTRATIVE HEARINGS

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AUTHORITY: Implementing Section 18 of the Radiation Protection Act of 1990 [420 ILCS 40/18].

SOURCE: Filed April 20, 1974 by the Department of Public Health; transferred to the Department of Nuclear Safety by P.A. 81-1516, effective December 3, 1980; amended at 7 Ill. Reg. 9306, effective July 22, 1983; codified at 7 Ill. Reg. 16404; amended at 10 Ill. Reg. 17200, effective September 25, 1986; amended at 26 Ill. Reg. 17739, effective December 2, 2002; recodified from the Department of Nuclear Safety to the Illinois Emergency Management Agency at 27 Ill. Reg. 13641; amended at 33 Ill. Reg. 14137, effective September 28, 2009; amended at 36 Ill. Reg. 16780, effective November 13, 2012.

Section 200.10 Scope and Nature of Rules

- a) Authority and Scope
 - 1) Authority. This Part is promulgated pursuant to Section 5-10(a) of the Illinois Administrative Procedure Act (IAPA) [5 ILCS 100/5-10].
 - 2) Scope. This Part shall govern the proceedings of any adjudicatory administrative hearing of the Illinois Emergency Management Agency (Agency), except as otherwise specifically provided by statute or regulation.
- b) Communications to the Agency. All communications to the Agency concerning administrative hearings shall be addressed to the Legal Office at Illinois Emergency Management Agency, 1035 Outer Park Drive, Springfield, Illinois 62704, unless otherwise directed.
- c) Construction of Rules. This Part shall not be construed to abrogate, modify or limit any rights, privileges or immunities granted or protected by the Constitution or laws of the United States or the State of Illinois. In case of any conflict between this Part and the IAPA or a licensing statute, the procedures of the IAPA or licensing statute shall control.

(Source: Amended at 36 Ill. Reg. 16780, effective November 13, 2012)

Section 200.20 Appearance – Right to Counsel

- a) *The Agency shall allow only attorneys licensed and registered to practice in this State to appear before it in administrative hearings, except that a natural person may appear on his or her own behalf.* [420 ILCS 40/18]
- b) Each party to a proceeding before the Agency shall inform the Agency in writing of the name and address to which any notice or other document should be served. Attorneys representing a party must enter an appearance prior to the hearing.
- c) All persons appearing in proceedings before the Agency shall conform to the standards of conduct of attorneys before the courts of the State of Illinois (RPC Rule 3.3). If a person fails to conform to these standards, and the failure delays or disrupts the proceeding, the Agency or the hearing officer shall have the authority to prohibit that person from appearing in the proceeding.

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)

Section 200.30 Parties

- a) The parties to administrative hearings before the Agency are the Agency and the Respondent.
- b) A Respondent is a person or entity against whom a Preliminary Order and Notice of Opportunity for Hearing or a denial of licensure is issued by the Agency.
- c) Misnomer of a party is not a ground for dismissal. The name of any party may be corrected at any time.

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)

Section 200.40 Form of Papers

- a) Written pleadings, motions or other documents filed in any proceeding shall be typewritten. Copy shall be on one side of the paper and shall be double spaced, except that quotations may be single spaced and indented. Reproductions of any documents to be incorporated into the record may be made by any process that produces legible black on white copies.
- b) Written pleadings, motions or other documents filed in any proceeding shall be cut or folded to a width of 8½ inches and a length of 11½ inches and shall have inside margins of no less than one inch width.
- c) Written pleadings, motions, or other documents shall be signed in ink with the name and address of the party filing the paper and, if represented by an attorney, the name and address of the attorney.
- d) Written pleadings, motions, affidavits, and other documents shall be filed with the Agency and one copy shall be served on each party to the proceeding.

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)

Section 200.50 Notice, Service and Proof of Service

- a) The hearing officer and all parties to the proceedings shall be served all pleadings, motions, notices and other documents filed by any party. Proof of service on all parties shall be filed with the hearing officer.
- b) Any Order or Notice issued by the Agency shall either be served personally or by registered or certified mail on the Respondent.

- c) All other pleadings and other documents shall be served personally or by first class United States mail properly addressed, with postage prepaid, to each party to the proceeding.
- d) When any party or parties have appeared by attorney, service upon the attorney shall be deemed service upon the party or parties.
- e) Proof of service of any paper shall be by certificate of attorney, affidavit or acknowledgement, or certified or registered mail receipt.
- f) Wherever notice or notification is indicated or required, it shall be effective upon the date of mailing to the party's last address on file with the Agency. Orders and notices sent by certified or registered mail to the party's last address on file with the Agency that have been returned to the Agency as unclaimed or refused by the addressee shall be considered served.
- g) In addition to the methods provided for in this Part, a Respondent may be served in any manner permitted by law.

(Source: Amended at 36 Ill. Reg. 16780, effective November 13, 2012)

Section 200.60 Preliminary Order and Notice of Opportunity for Hearing

- a) In the event that a person has violated or is alleged to have violated the statutes, regulations or terms of licensure or accreditation, the Agency shall commence administrative proceedings by the service of a Preliminary Order and Notice of Opportunity for Hearing upon the Respondent.
- b) The Preliminary Order and Notice of Opportunity for Hearing shall contain:
 - 1) A statement of the legal authority and jurisdiction under which a hearing would be held;
 - 2) A reference to the provisions of the statutes, regulations or terms of licensure or accreditation involved;
 - 3) A short and plain statement of the matters asserted, including dates, location, events, nature, extent, and duration, to advise the Respondent of the extent and nature of the alleged violations;
 - 4) A statement of the right to request a hearing and the date that a request for a hearing is to be submitted to the Agency, which shall be at least 10 days from the date of the Preliminary Order;

- 5) The time, date and location when the hearing will be held, if one is requested; and
- 6) A statement of the actions that will be taken by the Agency in the event that a hearing is not requested by the Respondent.

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)

Section 200.70 Right to Hearing

- a) In the event that the Respondent seeks a hearing pursuant to matters raised in a Preliminary Order issued in accordance with Section 200.60, the Respondent must submit a request for a hearing by the date specified in the Preliminary Order. In the event that a person seeks a hearing pursuant to the denial of an application for licensure or accreditation or the denial of reinstatement of licensure or accreditation by the Agency, the person must submit a request for a hearing within 30 days after the denial.
- b) This request must be in writing and must contain a brief statement of the basis upon which the Agency's Preliminary Order or denial of licensure or accreditation is being challenged.
- c) If the request is not submitted by the date required in accordance with subsection (a), or if the request is submitted but later withdrawn, the actions proposed by the Agency in the Preliminary Order or denial of licensure or accreditation shall be a final and binding administrative determination subject to the Administrative Review Law.
- d) Upon notice from the Agency that a Respondent is required to have an attorney pursuant to 420 ILCS 40/18, the Respondent's attorney shall have 30 days to enter an appearance with the Agency. If no such appearance is filed, the hearing request will be considered withdrawn and the Preliminary Order or denial of licensure shall be a final and binding administrative determination subject to the Administrative Review Law.
- e) No final decision shall be made or action taken by the Agency until the Respondent has had an opportunity to request a hearing and, if requested, a hearing has been held, except that, in cases in which there is an immediate threat to public health or safety, the Agency may take action to immediately enjoin the threat pending a hearing. The hearing shall be held within 30 days after the Agency's action [420 ILCS 40/38(a)].

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)

Section 200.80 Motions

A hearing officer may allow oral motions and responses on emergency or purely procedural questions or for good cause shown. Emergency and procedural motions will be ruled upon when made. Other motions, such as motions to dismiss, etc., will not be ruled upon by the hearing officer but will be considered by the hearing officer in preparation of the written report and will be submitted to the Director for a decision.

(Source: Former Section 200.80 repealed, new Section 200.80 adopted at 10 Ill. Reg. 17200, effective September 25, 1986)

Section 200.90 Continuances

A party shall be granted one continuance of up to 14 days on request or as agreed to by all parties. Any other requests for a continuance will be granted only for good cause shown. In determining good cause, factors that the hearing officer may consider shall include the inability to produce a material witness or evidence, surprise, required attendance of legal counsel elsewhere, illness or death of a party or witness, and substitution of an attorney.

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)

Section 200.100 Hearing Officer

- a) When a Preliminary Order and Notice of Opportunity for Hearing is issued and a hearing is requested, the Director of the Agency shall designate a hearing officer to preside at the formal administrative hearing.
- b) The appointed hearing officer shall not have direct involvement with the case or have an interest in the decision to be reached. Mere familiarity with the facts shall not disqualify a hearing officer.
- c) The hearing officer shall have the duty to conduct a fair hearing, to maintain order, to ensure development of a clear and complete record, and to submit a written report to the Director for the Director's decision.
- d) In addition to other authority provided in this Part, the hearing officer shall have the authority to:
 - 1) Direct the parties to meet in an informal conference in accordance with Section 200.120;

- 2) Administer oaths;
- 3) Receive evidence and rule upon the admissibility of oral testimony and other evidence;
- 4) Examine witnesses for the purpose of clarifying the record;
- 5) Consider and rule upon motions in accordance with Section 200.80.

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)

Section 200.110 Ex Parte Consultation

Ex parte communications and consultation between and among parties shall be limited to that which is in accordance with the Illinois Administrative Procedure Act.

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)

Section 200.120 Informal Conferences

- a) Upon request of any party or on the hearing officer's own motion, the hearing officer shall have the authority to direct the parties to appear at a specified time and place for a conference, prior to or during the course of the hearing, for the purpose of:
 - 1) simplifying the issues;
 - 2) amending the pleadings for clarification, amplification, or limitation;
 - 3) making admissions of fact or stipulating to the admissibility of evidence;
 - 4) limiting the number of witnesses;
 - 5) exchanging witness lists and prepared testimony and exhibits;
 - 6) aiding in the simplification of the evidence and disposition of the proceedings; or
 - 7) stipulation and settlement concerning matters relating to confidential information, e.g. privileged medical records and commercial trade secrets or financial information the disclosure of which could cause competitive harm.

- b) The record of the hearing shall reflect any orders or other decisions which are made as a result of such a conference.

(Source: Former Section 200.120 repealed, new Section 200.120 renumbered from former Section 200.90 and amended at 10 Ill. Reg. 17200, effective 17200, effective September 25, 1986)

Section 200.130 Conduct of Hearings

- a) Unless closing the hearing is necessary to preserve the confidentiality of medical records, or the confidentiality of trade secrets or financial information the disclosure of which could cause competitive harm, hearings shall be open to the public. If matters of confidentiality are involved, the hearing officer shall have the authority to close all or a portion of the hearing to the public.
- b) The hearing officer shall direct all parties to enter their appearances on the record. All witnesses shall be sworn.
- c) The hearing officer shall inquire fully into the matters at issue and shall receive testimony of witnesses and any other evidence that is relevant and material to the issues presented. The following shall be the usual order of administrative hearings, unless the hearing officer decides otherwise:
 - 1) presentation, argument, and disposition of preliminary motions in accordance with Section 200.80;
 - 2) presentation of opening statements;
 - 3) Agency's case in chief;
 - 4) Respondent's case in chief;
 - 5) Agency's case in rebuttal;
 - 6) Respondent's case in rebuttal;
 - 7) presentation of closing arguments, including legal arguments.
- d) Parties may by stipulation agree upon any facts involved in the proceeding. The facts stipulated shall be considered as evidence in the proceeding. Disposition may be made of any case by stipulation, agreed settlement, consent order or default.

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)

Section 200.140 Amendments

At any time prior to the hearing or before completion of the hearing, amendments shall be allowed for good cause shown to introduce any party who ought to have been joined, to dismiss any party, or to delete, modify or add allegations or defenses. In the event of a change in parties or a substantive amendment to the allegations or defenses immediately preceding or during the hearing, any remaining party may request that the hearing be suspended. Upon a request, the hearing officer shall suspend the hearing for up to 14 days or as agreed to by all parties to provide an opportunity for the parties to respond to the changes in parties or substantive amendments that are introduced immediately preceding or during the hearing.

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)

Section 200.150 Burden of Proof

- a) The burden of proof shall be on the Agency, unless the matter at issue is the denial of an application for licensure or accreditation, or an application for reinstatement of licensure or accreditation that has been previously revoked, suspended, or otherwise terminated. In such cases, the burden of proof shall be on the Respondent.
- b) In the case of any new matter introduced in connection with any affirmative defense, the burden of proof shall be upon the party that alleges the new matter.
- c) The standard of proof with respect to all hearings conducted pursuant to this Part shall be a preponderance of the evidence.

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)

Section 200.160 Witnesses at Hearings

- a) The hearing officer or the official reporter may administer oaths to witnesses.
- b) Both the hearing officer and the parties or their representatives may examine witnesses.
- c) A party may conduct examination and cross-examination that is shown to be necessary to a full and fair disclosure of facts bearing upon matters in issue, provided that the examination or cross-examination does not abuse or harass a witness.

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)

Section 200.170 Evidence at Hearings

- a) When the hearing results from the denial of an application for licensure or accreditation, or denial of an application for reinstatement of licensure or accreditation, the Respondent shall have the right to introduce evidence at the hearing that was not made available to the Agency at the time the application was denied. If the hearing officer determines that the additional evidence could have affected the Agency's decision to deny the application, the hearing officer shall suspend the hearing to enable appropriate representatives of the Agency to consider this additional evidence and to decide whether the decision to deny the application should be modified or reversed.
- b) 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 this State shall be followed. However, evidence not admissible under those rules of evidence may be admitted (except where precluded by statute) if it is of the type commonly relied upon by reasonably prudent persons in the conduct of their affairs. When the admissibility of evidence is in dispute and depends upon fairly arguable interpretations of law, the evidence shall be admitted. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form. Any party may submit evidence in rebuttal.
- c) Accurate summaries of voluminous documents may be admitted into evidence. The document summarized need not itself be admitted into evidence. Copies of the document need not be provided so long as all parties are accorded a reasonable opportunity to inspect the document summarized.

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)

Section 200.180 Cross-Examination

- a) Subject to the evidentiary requirements, a party may conduct cross-examination required for a full and fair disclosure of the facts.
- b) If the hearing officer determines that a witness is hostile or unresponsive, the hearing officer shall authorize the examination by the party calling the witness as if under cross-examination.
- c) Any party may call any adverse party as a witness and proceed to examine that

adverse party as if under cross-examination except that, if the Respondent wants to call a representative of the Agency as an adverse witness, he/she may do so only if the representative was directly involved in the determinations that served as the basis for the Agency's Preliminary Order under this Part.

- d) Any party calling a witness, upon a showing that he/she called the witness in good faith and is surprised by the testimony of the witness, may impeach that witness by evidence of prior inconsistent statements.

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)

Section 200.190 Official Notice

- a) Official notice may be taken of:
 - 1) Matters of which the Circuit Courts of this State may take judicial notice; and
 - 2) Generally recognized technical or scientific facts within the Agency's specialized knowledge.
- b) Parties shall be notified before or during a hearing, or by reference in preliminary reports, or otherwise, of the material noticed, including any staff memoranda or data to be offered as evidentiary matter during the course of the hearing, and the parties shall be afforded an opportunity to contest the material so noticed. The Agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)

Section 200.200 Default

Except for good cause show, the failure of a party to appear on the date set for hearing or failure to proceed as ordered by the hearing officer or Director shall constitute a default. The Director shall thereafter enter such order as appropriate, in accordance with the Preliminary Order, pleadings and the evidence introduced at the hearing, if any.

(Source: Former Section 200.200 renumbered to new Section 200.230, new Section 200.200 renumbered from former Section 200.170 and amended at 10 Ill. Reg. 17200, effective September 25, 1986)

Section 200.210 Hearing Record

- a) The Agency shall designate an official reporter to make and transcribe a stenographic record of the adjudicatory proceedings.
- b) A complete record of the hearing shall include:
 - 1) all pleadings (including all notices, responses, motions, and rulings);
 - 2) evidence received;
 - 3) a statement of matters officially noticed;
 - 4) offers of proof, objections and rulings on objections;
 - 5) proposed findings and exceptions;
 - 6) any recommended decision, opinion or report by the hearing officer;
 - 7) staff memoranda or data submitted to the hearing officer or the Agency in connection with the consideration of the case; and
 - 8) any ex-parte communication as defined by the Illinois Administrative Procedure Act. The communication shall not form the basis for any finding of fact.
- c) A copy of the record will be reproduced at the request of any party involved. The requesting party shall bear the cost.
- d) The Agency shall be the official custodian of the records of administrative hearings held before the Agency.

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)

Section 200.220 Hearing Officer's Report

- a) As soon as practicable after the close of a hearing, the hearing officer shall prepare a written report of the case, which shall be based upon the evidence adduced at the hearing or otherwise included in the record. The written report shall contain findings of fact, a recommended decision and the reasons for the decision.
- b) This report shall be submitted to the Director. The hearing officer shall also send a copy of the report to the Respondent or his/her counsel and to the Agency's counsel. Both the Respondent and the Agency's counsel may file written

exceptions with the Director within 10 days.

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)

Section 200.230 Final Decision of the Director

- a) The Director shall reach a final decision in each proceeding that shall be specified in a written order including findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statute language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
- b) A copy of the Final Decision of the Director shall be served personally or by certified or registered mail upon all parties to the proceeding.
- c) The decision of the Director shall be considered a final and binding administrative order subject to the Administrative Review Law.

(Source: Amended at 33 Ill. Reg. 14137, effective September 28, 2009)