**Title 36 MARYLAND STATE LOTTERY AND GAMING CONTROL AGENCY**

## Subtitle 01 GENERAL PROVISIONS

### Chapter 02 Administrative Procedures

#### Authority: General Provisions Article, §§ **3-101 – 3-501,** 4-101—4-601; State Government Article, §§ 9-108-9-111, 9-1A-04, 10-201, 10-226, 10-301—10-305, ~~10-501—10-512, and 10-611—10-630~~; Annotated Code of Maryland

### .01 Public Information Act Requests.

A. Scope. This regulation sets out procedures for filing and processing requests with the Agency for the inspection and copying of public records under the Public Information Act.

B. Policy. It is the policy of the Agency to facilitate access to the public records of the Agency, when access is allowed by law, by minimizing costs and time delays to applicants.

C. Definitions.

(1) In this regulation and in Regulation .02 of this chapter, the following terms have the meanings indicated.

(2) Terms Defined.

(a) “Act” means the Public Information Act, General Provisions Article, §§4-101—4-601, Annotated Code of Maryland.

(b) “Applicant” has the meaning stated in §4-101 of the Act.

(c) “Application” means a request for access under the Act for a public record of the Agency.

(d) “Board” has the meaning stated in §4-101 of the Act.

(e) “Copy” means any form of reproduction using a photocopying machine or other reproduction technology, including a paper copy, an electronic copy, a printout, or an image.

(f) “Custodian” means:

(i) The official custodian, as defined in General Provisions Article, §4-101, Annotated Code of Maryland;

(ii) The Director;

(iii) The PIA Coordinator; or

(iv) Any other authorized individual who has physical custody and control of a public record of the Agency.

(g) “Indigent” has the meaning stated in §4-206 of the Act.

(h) “Metadata” has the meaning stated in §4-205 of the Act.

(i) “PIA Coordinator” means the Agency employee who is responsible for accepting requests for public records.

(j) “Public Access Ombudsman” means the official appointed, under Title 4, Subtitle 1B of the Act, to resolve disputes under the Act.

(k) “Public Record” has the meaning stated in §4-101 of the Act.

(l) “Reasonable fee” has the meaning stated in §4-206 of the Act.

D. Who May Request Public Record. Any person may request to inspect or copy public records of the Agency.

E. Necessity for Written Application.

(1) Except as otherwise provided in this regulation, an applicant that wishes to inspect a public record of the Agency shall submit a written application to the PIA Coordinator.

(2) An applicant need not submit a written application if:

(a) The applicant seeks to inspect a public record designated by the official custodian as available to any applicant immediately on request; or

(b) The PIA Coordinator waives the requirement for a written application.

F. Application to Inspect a Public Record.

(1) An application shall be addressed to:

(a) The PIA Coordinator; or

(b) If the PIA Coordinator is not known, the Director.

(2) An application shall:

(a) Reasonably identify, by brief description, the public record sought; and

(b) Provide an address or other means by which the custodian may respond to the applicant’s request.

G. Response to Application.

(1) If the individual to whom the application is submitted is not an Agency custodian, within 10 work days after receiving the application the individual shall give the applicant:

(a) Notice of that fact; and

(b) If known, the name of the custodian and possible location of the public record.

(2) If the custodian decides to grant an application for inspection, the custodian shall produce the record for inspection:

(a) Immediately; or

(b) Within a reasonable period, not to exceed 30 days from the date of the application if that period of time is needed to retrieve the public record and conduct any necessary review.

(3) If the custodian reasonably believes that it will take more than 10 work days to search for, retrieve, prepare, and produce the public record for inspection, the custodian shall indicate in writing or by electronic mail within 10 work days after receipt of the application:

(a) The amount of time that the custodian anticipates it will take to produce the public record;

(b) An estimate of the range of fees that may be charged to comply with the application for public records; and

(c) The reason why it will take more than 10 work days to produce the public record.

(4) If an applicant requests to inspect a public record and a custodian determines the record does not exist, the custodian shall notify the applicant of this determination:

(a) Immediately, if the custodian determines this on initial review of the application; or

(b) If the custodian determines this after a search for responsive records, promptly after the search is completed but not more than 30 days after receiving the application.

(5) If the custodian denies an application for inspection:

(a) The custodian shall do so within 30 days after the request; and

(b) Immediately notify the applicant of the denial.

(6) If an application is denied, the custodian shall provide the applicant, at the time of the denial or within 10 work days, a written statement that gives:

(a) The reason for the denial including, for records denied under §4-343 of the Act, a brief explanation of:

(i) Why denial is necessary; and

(ii) Why the harm from disclosure of the public record would be greater than the public interest in providing access to the information in the public record such that disclosure of the public record would be contrary to the public interest;

(b) The legal authority for the denial;

(c) Without disclosing the protected information, a brief description of the undisclosed records that will enable the applicant to assess the applicability of the legal authority for the denial; and

(d) Notice of the remedies available for review of the denial

(7) A time limit imposed by §G(2) and (3) of this regulation may be extended:

(a) With the consent of the applicant, for an additional period of up to 30 days; and

(b) For the period of time during which a dispute initiated by the applicant is pending before the Public Access Ombudsman.

 **(8) The Agency is not required to create a new record in response to an application.**

H. Notice to and Consideration of Views of Person Potentially Affected by Disclosure.

(1) Unless prohibited by law, the custodian may provide notice of a request for inspection or copying of any public record of the Agency to any person who, in the judgment of the custodian, could be adversely affected by disclosure of that public record.

(2) The custodian may consider the views of the potentially affected person before deciding whether to disclose the public record to the applicant.

I. Electronic Records.

(1) Except as provided in §I(3) and (4) of this regulation, the custodian shall provide an applicant with a copy of the public record in a searchable and analyzable electronic format if:

(a) The public record is in a searchable and analyzable electronic format;

(b) The applicant requests a copy of the public record in a searchable and analyzable electronic format; and

(c) The custodian is able to provide a copy of the public record, in whole or in part, in a searchable and analyzable electronic format that does not disclose information that is exempt from disclosure under the Act.

(2) The custodian shall provide a portion of the public record in a searchable and analyzable electronic format if:

(a) Requested by the applicant; and

(b) The custodian is able to do so by using the existing functions of the database or software program that contains the searchable an analyzable data.

(3) The custodian is not required to:

(a) Create or reconstruct a public record in an electronic format if the public record is not available in an electronic format; or

(b) Release an electronic record in a format that would jeopardize or compromise the security or integrity of the original record or any proprietary software in which the record is maintained.

(4) The custodian may remove metadata from an electronic document before providing the electronic record to an applicant by:

(a) Using a software program or function; or

(b) Converting the electronic record into a different searchable and analyzable format.

J. Review of Denial.

(1) If the custodian denies an application to inspect or copy a public record of the Agency, the applicant may, file an action for judicial enforcement under §4-362 of the Act without pursuing the remedies set forth in §J(2) and (3) of this regulation.

(2) If the custodian charges a fee of more than $350 under §L of this regulation, the applicant may, within 90 days after the date the fee is imposed, file a written complaint with the Board under General Provisions Article, §4-1A-05, Annotated Code of Maryland.

(3) The applicant and the custodian each may contact the Public Access Ombudsman to resolve, under General Provisions Article, Title 4, Subtitle 1B, Annotated Code of Maryland, a dispute relating to requests for public records.

K. Temporary Denial.

(1) If the act authorizes inspection of a public record but the custodian believes inspection would cause substantial injury to the public interest, the custodian may temporarily deny inspection.

(2) Within 10 work days after the denial, the custodian shall petition a circuit court to authorize continued denial of inspection.

(3) The petition shall be filed in:

(a) The circuit court for the county where the public record is located; or

(b) The Circuit Court for Baltimore City.

(4) The custodian’s petition shall be served on the applicant as provided in the Maryland Rules.

L. Fees.

(1) The fee for a photocopy of a public record of the Agency is 25 cents per page.

(2) The fee for a certified true copy of a public record is an additional fee of $1 per page.

(3) There is no charge if the total fee for copies is $10 or less.

(4) Notwithstanding §L(1) of this regulation, if another law sets a fee for a copy, printout or photograph of a public record, that law applies.

(5) The custodian may charge for the cost of providing facilities for the reproduction of a public record if the custodian does not have the facilities.

(6) Before searching for, retrieving, reviewing, preparing, or copying a public record of the Agency, the custodian shall estimate the cost of reproduction and notify the applicant of the cost, and may:

(a) Obtain the agreement of the applicant to pay the cost; or

(b) Demand prepayment of the cost from the applicant.

(7) Search and Preparation Fee.

(a) Except as provided in §L(8) of this regulation, the Agency may charge a reasonable fee to:

(i) Search for and retrieve requested public records;

(ii) Review requested public records for potential disclosure; and

(iii) Prepare public records for inspection and copying.

(b) The custodian shall determine the fee by multiplying the staff’s or attorney’s salary, prorated to an hourly basis, by the actual time attributable to the search for, retrieval of, review of, and preparation of public records for inspection and copying.

(8) The custodian may not charge a fee for the first 2 hours spent searching for, retrieving, reviewing and preparing a public record for inspection.

(9) Waiver or Reduction of Fee.

(a) The custodian may waive or reduce any fee set under this regulation if the applicant requests a waiver, and:

(i) The custodian determines that the waiver or reduction is in the public interest; or

(ii) The applicant is indigent and ~~files~~ **submits** an affidavit verifying the facts that support a claim of indigency.

(b) In determining whether a fee is in the public interest, the custodian shall consider, among other relevant factors, the ability of the applicant to pay the fee.

(10) If the applicant requests that copies of a public record be mailed or delivered to the applicant or a third party, the custodian may charge the applicant for the cost of postage or delivery.

(11) If the applicant fails to respond to the custodian within 30 days of the notification under §L(11) of this regulation, the custodian may deem the request withdrawn without further notification to the applicant.

(12) An applicant’s request to reopen a request deemed withdrawn under §L(11) of this regulation shall be processed as a new request.

M. Time and Place of Inspection.An applicant may inspect a public record of the Agency that the applicant is entitled to inspect during a work day of the Agency.

### .02 Correction of Public Records.

A. Scope. This regulation sets out procedures under which a person in interest may request the correction or amendment of a public record of the Agency pursuant to ~~State Government~~ **General Provisions** Article, §~~10-625~~ **4-502**, Annotated Code of Maryland.

B. Definitions. The definitions in Regulation .01 of this chapter also apply to this regulation.

C. Who May Request. A person in interest may request that the Agency correct or amend any public record that the:

(1) Agency keeps; and

(2) Person in interest is authorized to inspect.

D. Form and Contents of Request.

(1) The request shall be:

(a) In writing; and

(b) ~~Filed with~~ **submitted to**:

(i) The custodian of the record; or

(ii) If the custodian is unknown to the person in interest, to the Director.

(2) The request shall:

(a) Contain the name, address, and telephone number of the requestor;

(b) Identify the public record sought to be corrected or amended;

(c) Specify the precise correction or amendment sought;

(d) State the reason for the correction or amendment; and

(e) Include a statement that, to the best of the requestor’s belief, the public record is inaccurate or incomplete.

E. Return of Nonconforming Request.

(1) The Agency shall accept a request to correct or amend a public record when it is received if it reasonably complies with §§B and C of this regulation.

(2) If the request does not reasonably comply with §§B and C of this regulation, the Agency shall return the request to the requestor with:

(a) An explanation of the reason for the return; and

(b) A statement that, on receipt of a request that reasonably complies with §§B and C of this regulation, the request will be accepted.

F. Response to Request. Within 30 days after the Agency receives a request for correction or amendment that reasonably complies with §§C and D of this regulation, the custodian shall:

(1) Make the requested correction or amendment and inform the requestor in writing of the action; or

(2) Inform the requestor in writing that the Agency will not:

(a) Make the requested correction or amendment, and the reason for the refusal; or

(b) Act on the request because:

(i) The requestor is not a person in interest;

(ii) The requestor is not authorized to inspect the record;

(iii) The record is correct as it stands; or

(iv) Of any other reason authorized by law.

G. Statement of Disagreement.

~~(1)~~ If the Agency refuses to make a requested correction or amendment, a person in interest may ~~file with~~ **submit to** the Agency a concise**, written** statement **that, in five pages or less, states** ~~of~~ the reasons for:

~~(a)~~ **(1)**The requested correction or amendment; and

~~(b)~~ **(2)** The person's disagreement with the refusal of the Agency to make the correction or amendment.

~~(2) Form of Statement of Disagreement.~~

~~(a) The statement of disagreement may not exceed five pages.~~

~~(b) The pages may not exceed 8-1/2" x 11" each.~~

~~(c) Only one side of a page may be used for the statement.~~

H. Statement of Disagreement Provided Third Parties. ~~When~~ **If** the Agency discloses to a third party information about which a statement of disagreement has been ~~filed~~ **submitted** under §H of this regulation, the Agency shall provide a copy of the statement ~~to that third party~~ **submitted to the Agency by the person in interest**.

I. Administrative Review.

(1) A person may seek administrative review under this regulation if the Agency:

(a) Has refused the person's request to correct or amend a public record under §E of this regulation;

(b) Has rejected the person's statement of disagreement under §F of this regulation; or

(c) Has not provided a statement of disagreement to a third party under §G of this regulation.

(2) A request for administrative review shall be ~~filed with~~ **submitted to** the Director within 30 days after the requestor is advised of the Agency’s action.

(3) The administrative review proceedings shall be conducted in accordance with State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland, and the hearing regulations of the Agency.

### .03 Open Meetings.

A. Public Attendance.

(1) ~~At any~~ **The public may attend and observe an** open session of ~~the~~ **a** Commission **meeting** ~~the general public is invited to listen and observe~~.

(2) Except in instances when the Commission expressly invites public testimony, questions, comments, or other forms of public participation, or when public participation is otherwise authorized by law, no member of the public attending an open meeting may participate in the session.

B. Disruptive Conduct or Activity.

(1) A person attending an open session of the Commission may not engage in ~~any~~ conduct~~, including visual demonstrations such as the waving of placards, signs, or banners, which~~ **that** disrupts the session or interferes with the opportunity of members of the public to ~~listen~~ **attend** and observe the session.

(2) The presiding officer may:

(a) Order any person who engages in conduct ~~prohibited in §A of this regulation, or who has violated another regulation concerning the conduct of an open~~ **that disrupts a** session~~,~~ to be removed from the session;

(b) Request police assistance to restore order; and

(c) Recess the session while order is restored.

C. Recording, Photographing, and Broadcasting of Open Meetings.

(1) A member of the public, including a representative of the news media, may record discussions of the Commission at an open session by means of a tape recorder or another recording device if the device:

(a) Is operated from the individual's seat;

(b) Does not create a noise that disturbs members of the Commission or other persons attending the session;

(c) Does not otherwise interfere with another person’s **attendance or** observation of ~~or participation in~~ the session; and

(d) Is operated openly so that it is obvious to those in attendance that the session is being recorded.

(2) A member of the public, including a representative of the news media, may photograph, videotape, broadcast, or televise the proceedings of the Commission at an open session by means of any type of camera if the camera:

(a) Is operated from a fixed position that does not block the view of another individual;

(b) Is operated without a flash or other form of excessively bright artificial light that disturbs members of the Commission or other persons attending the session;

(c) Does not otherwise interfere with another person’s observation of or participation in the session;

(d) Is operated openly so that it is obvious to those in attendance that the session is being photographed or videotaped; and

(e) Does not create a noise that disturbs members of the Commission or other persons attending the session.

(3) Except with the unanimous consent of all members present at an open session of the Commission, a microphone may not be placed on the tables used by members of the Commission during an open session.

(4) Except during a recess of an open session of the Commission a person may not:

(a) Move about the meeting room when using a recording device, camera, or broadcasting or televising equipment; or

(b) Move a recording device, camera, or broadcasting or televising equipment from its initial location.

(5) The Commission may require any person who intends to record, photograph, videotape, broadcast, or televise an open session to register **with the Commission** ~~in advance of the~~ ~~beginning of~~ **at least 24 hours before** the session **begins**.

(6) A representative from the news media who desires special arrangements for the use of a recording device, camera, or broadcasting or televising equipment in a manner not consistent with the provisions of this regulation may request these special arrangements in advance by contacting the Director.

D. Recordings Not Part of Record. A recording of an open session made by a member of the public, and any transcript derived from the recording, may not be considered a part of the record of any proceeding of the Commission.

### .04 Petition for Declaratory Ruling.

A. ~~Who May File~~ **Submissions**. ~~Any~~ **A** person may ~~file~~  **submit** a petition with the Agency seeking the issuance of a declaratory ruling with respect to the applicability of ~~any~~ **a** regulation, order, or statute enforceable by the Agency.

B. Petition Requirements.

(1) Form.

(a) The petition shall:

(i) Be in writing and specifically state the declaratory ruling sought;

(ii) Include a detailed statement of the relevant facts and the petitioner's argument in support of the position asserted in the petition; and

(iii) Include a statement concerning the interest of the petitioner in the controversy and how a declaratory ruling would affect the petitioner's interest.

(2) Submission and Consideration.

(a) The petition shall be submitted to the Director.

(b) The Director:

(i) Shall consider the petition; and

(ii) May delegate the preparation of written findings of fact and proposed conclusions of law.

C. Disposition.

(1) If the Director decides not to issue a declaratory ruling, the Director shall notify the petitioner in writing, stating briefly the reasons for the refusal.

(2) If the Director decides to issue a declaratory ruling, the Director shall after appropriate consideration, issue the ruling in writing, stating the findings of fact and conclusions of law.

(3) Unless reviewable by the Commission under §E of this regulation, the Director’s decision ~~shall be considered~~ **is** final.

D. Effect of Declaratory Ruling. A final declaratory ruling is binding between the Agency and the petitioner on the statement of facts set forth in the final ruling.

E. Review By Commission.

(1) ~~For declaratory rulings~~ ~~under~~ ~~Criminal Law Article, Title 12, Subtitle 3, and State Government Article, Title 9, Subtitle 1A~~, ~~Annotated Code of Maryland, or regulations promulgated thereunder, the~~ **The** Director’s decision on a declaratory ruling shall be forwarded to the Commission for review and approval before it may be considered final **for a petition for declaratory ruling under:**

**(a) State Government Article, Title 9, Subtitles 1, 1A, 1B, and 1D, Annotated Code of Maryland or regulations promulgated thereunder; and**

**(b)** Criminal Law Article, Title 12, Subtitle 3, ~~and State Government Article, Title 9, Subtitle~~ **~~1 or~~** ~~1A~~, Annotated Code of Maryland, or regulations promulgated thereunder~~, the Director’s decision shall be forwarded to the Commission for its review and approval before it may be considered final~~.

(2) The Commission’s approval of the Director’s decision ~~shall~~ make**s** the Director’s decision final.

F. Judicial Review. A final declaratory ruling is subject to judicial review in the manner provided for by State Government Article, §10-222, Annotated Code of Maryland.

G. Agency File.

(1) The Agency shall maintain a file of:

(a) All petitions submitted for declaratory ruling; and

(b) The Director's responses and rulings.

(2) The Agency’s file ~~shall be available for~~ **is a** public ~~inspection~~ **record** as ~~provided~~ **defined** in ~~State Government~~ **General Provisions** Article, §~~10-613~~ **4-101**, Annotated Code of Maryland.

### .05 Petition for Promulgation, Amendment, or Repeal of a Regulation.

A. ~~Who May File~~ **Submissions**. ~~Any~~ **A** person may ~~file~~ **submit** a petition requesting the promulgation, amendment, or repeal of ~~any~~ **a** regulation concerning which the Agency has ~~rule-making~~ **rulemaking** authority.

B. Form and Submission.

(1) The petition shall:

(a) Be submitted to the Director in writing;

(b) Include the name, address, and telephone number of the petitioner;

(c) Generally describe the regulation sought or identify the regulation which the petitioner seeks to amend or repeal; and

(d) Include a brief statement of reasons in support of the petition.

(2) The petition may be in the form of a letter or any other written form as requested by the Director.

C. Consideration.

(1) Upon receipt of the petition, the Director shall consider the petition.

(2) In considering the petition, the Director may use any of the following procedures to obtain additional information or views:

(a) Publication of the petition or a summary of it in the Maryland Register;

(b) Submission of the petition to other interested persons requesting their comments;

(c) Public meetings or hearings on the petition; or

(d) Any other procedure designed to obtain the views of the public on the subject matter of the petition.

D. Disposition.

(1) Within 60 days after submission of the petition, the Director shall either:

(a) Deny the petition, stating the reason for denial; or

(b) Initiate rulemaking proceedings.

(2) ~~For petitions related to regulations under State Government Article, Title 9, Subtitle 1A, or Criminal Law Article, Title 12, Subtitle 3, Annotated Code of Maryland, within~~ **Within** 60 days after submission of the petition, the Director shall forward the petition to the Commission with a recommendation to deny the petition or initiate rulemaking proceedings **for a petition pertaining to regulations promulgated under:**

**(a) State Government Article, Title 9, Subtitles 1, 1A, 1B, and 1D, Annotated Code of Maryland; or**

**(b)** Criminal Law Article, Title 12, Subtitle 3, ~~and State Government Article, Title 9, Subtitle~~ **~~1 or~~** ~~1A~~, Annotated Code of Maryland~~,~~ ~~or~~.

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(3) The Director shall send written notice of the final action taken on the petition to the petitioner and any other person requesting notification.

E. Agency File.

(1) The Agency shall maintain a file of all:

(a) Petitions submitted; and

(b) Responses and rulings.

(2) The Agency’s file ~~shall be available for~~ **is a** public ~~inspection~~ **record** as ~~provided~~ **defined** in ~~State Government~~ **General Provisions** Article, §~~10-613~~ **4-101**, Annotated Code of Maryland.

**.06 Commission Hearings.**

A. Scope.

(1) These regulations apply only to contested case hearings before the Commission.

(2) These regulations do not apply to conferences**, meetings,** or other informal proceedings where no formal ruling or decision is made.

B. Definitions.

(1) In this regulation, the following terms have the meanings indicated.

(2) Terms Defined.

(a) "Act" means the Administrative Procedure Act, State Government Article, §§10-201—10-226, Annotated Code of Maryland.

(b) "Administrative law judge" has the meaning stated in COMAR 28.02.01.

(c) "Contested case" has the meaning stated in State Government Article, §10-202, Annotated Code of Maryland.

~~(d) “Filed” means when a document related to a hearing is:~~

 ~~(i) Received by the Commission or, if earlier, postmarked; and~~

 ~~(ii) If required, served on the other parties to the proceeding.~~

 ~~(e)~~ **(d)** "Party" means a person, including the Agency, named or admitted to participate in a hearing.

~~(f)~~ **(e)** “Presiding Officer” means:

(i) The Chairman of the Commission or a member designated by the Chairman; or

(ii) In the absence of the Chairman or the member designated by the Chairman, any other Commission member in attendance.

~~(g)~~ **(f)**“Quorum” means a majority of the full authorized membership of the Commission.

C. Conduct of Hearing.

(1) Commission Action.

(a) A hearing conducted by the Commission shall be held before not less than a quorum of the Commission.

(b) Commission action shall be by the concurrence of at least four members.

(2) Duties of Presiding Officer.

(a) The Presiding Officer shall have complete charge of the hearing.

(b) In addition to other powers and authority granted by law, the presiding officer may:

(i) Administer oaths and affirmations;

(ii) Rule upon offers of proof by the parties;

(iii) Rule upon the admission and inadmissibility of evidence;

(iv) Consider and rule upon all procedural and other motions appropriate to the procedures;

(v) Examine witnesses;

(vi) Maintain order; and

(vii) Limit ~~unduly~~ **unnecessarily** repetitious or irrelevant ~~testimony~~ **evidence** or argument.

D. Legal Advisor.

(1) The presiding officer may ask the Office of the Attorney General to act as legal advisor to the Commission.

(2) The legal advisor may assist the Commission with:

(a) Questions of evidence and law;

(b) Preparation of the Commission’s written decision; and

(c) Any other appropriate advice function.

E. Presenter of Evidence.

(1) The presiding officer may ask the Office of the Attorney General to act as the presenter of evidence before the Commission.

(2) An Agency staff member may act as the presenter of evidence before the Commission.

(3) The presenter of evidence shall have all the rights as a representative for any other party with regard to:

(a) Submission of evidence;

(b) Examination and cross-examination of witnesses;

(c) Preparation of summation and argument; and

(d) Filing of objections, exceptions, and motions.

F. Evidence.

(1) Only evidence that possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs shall be admitted into the record and considered by the Commission in reaching its decision.

(2) The presiding officer may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

(3) The presiding officer shall give effect to the rules of privilege recognized by law.

(4) In making its determination, the Commission may consider only evidence which has been:

(a) Introduced in the course of the hearing; and

(b) Made part of the record in the case.

(5) Documentary evidence may be received in the form of copies or excerpts, or incorporated by reference.

(6) The Commission may use its experience, technical competence, and specialized knowledge in its evaluation of the evidence.

(7) The Commission may take notice of:

(a) Judicially cognizable facts; and

(b) General, technical, or scientific facts within its specialized knowledge.

(8) The presiding officer shall inform the parties of notices taken by the Commission.

(9) A Party may contest facts so noticed.

G. Rights of Parties.

(1) At a hearing, the parties may:

(a) Be represented by counsel;

(b) Present witnesses;

(c) Cross-examine witnesses presented by the other party or presiding officer;

(d) Present documentary and other evidence which is relevant;

(e) Submit rebuttal evidence; and

(f) Present argument ~~and summation~~.

(2) If a party is represented by counsel, submissions of evidence, examination and cross-examination of witnesses, and ~~summation~~ **argument** shall be performed solely by counsel.

(3) The presiding officer, on the presiding officer's own motion or upon request by a member of the Commission, may call additional witnesses.

(4) A member of the Commission may examine a witness.

H. Record and Transcript of Hearing.

(1) Record.

(a) The Commission shall prepare an official record of the hearing, which shall include all pleadings, testimony, exhibits, and other memoranda or other documents ~~filed~~ **submitted** in the proceedings.

(b) A record of the hearing shall be made at the expense of the Commission.

(c) This record need not be transcribed unless requested by a party or the Commission.

(2) Transcript Expense.

(a) The cost to obtain a written transcript of a **any part of a** proceeding~~, or part of one,~~ shall be paid by the party requesting the transcript.

(b) The party requesting the transcript is responsible for all costs of transcription ~~unless, at the party’s request, the Commission agrees to reduce or waive those costs for good cause shown~~.

(c) If a party is excepting to**,** ~~or~~ appealing from**, or seeking judicial review of** ~~a~~ **the Commission’s** proposed **or final** decision ~~by the Commission~~, that party shall request a transcript of the recording, unless a transcript already has been prepared. ~~or the Director or the Commission waives the requirement for a transcript~~.

~~(d) If a party is seeking judicial review of a final decision, that party shall request a transcript of the recording, unless a transcript already has been prepared.~~

I. Decision and Order.

(1) Each decision and order rendered by the Commission shall be in writing and accompanied by findings of fact and conclusions of law.

(2) A copy of the decision and order and accompanying findings and conclusions shall be ~~delivered or mailed~~ **transmitted** promptly to each party or each party's attorney of record.

J. Consolidation.

(1) When proceedings involving a common question of law or fact are pending before the Commission, the Commission may consolidate the proceedings pursuant to a motion or on the Commission’s own initiative.

(2) If the consolidated proceedings involve different parties or burdens of going forward or persuasion, the Commission may specify special procedures to assure an expeditious and just proceeding.

K. Default.

(1) If, after receiving notice, a party fails to attend or participate in a prehearing conference, hearing, or any other stage of a proceeding, the Commission may:

(a) Proceed in that party's absence;

(b) Continue the matter to a later time; or

(c) Issue a default order against that party.

(2) Within 30 days after issuance of a default order, the party in default may ~~file~~  **submit** a written motion requesting that the order be vacated or modified.

(3) The Commission may vacate or modify a default order if the Commission finds that:

(a) There is a substantial and sufficient basis for an actual controversy on the merits; and

(b) It is equitable to excuse the default.

(4) If a motion to vacate or modify **the default order** is not timely ~~filed~~ **submitted**, or if a motion is ~~filed~~ **submitted** and denied, the default order shall be final and effective ~~immediately~~ **when the Chairman signs the order**.

L. Dismissal for Lack of Prosecution.

(1) ~~In this section "docket entry":~~

~~(a) Means filing a pleading, requesting a hearing date, or scheduling a proceeding; and~~

~~(b) Does not include the entry or withdrawal of an appearance, case status reports, or other inquiries.~~

~~(2)~~ ~~At the expiration of 6 months from the last docket entry, the Commission may dismiss an action for lack of prosecution.~~ If six months pass since a party that initiated an action before the Commission has made a submission or otherwise contacted the Commission to pursue the party’s action, the Commission may dismiss the action.

~~(3)~~ **(2)** The ~~Commission~~ **Commission** shall**:**

**(a) Document its dismissal of the action in writing; and**

**(b) Transmit the written dismissal to all parties by electronic or regular mail.** ~~notify all parties that an order of dismissal for lack of prosecution will be entered after the expiration of 30 days from the notice, unless a motion is filed under §L(4) of this regulation.~~

~~(4)~~ **(3) If a party disagrees with the dismissal, within 30 days of the date of the dismissal notice, the party shall submit, in writing, its factual and legal basis for disagreement.** ~~On motion filed within 30 days of the notice, and for good cause shown, the Commission may defer entry of an order of dismissal for the period and on the terms the Commission considers proper.~~

~~(5)~~ **(4)** ~~If a~~ ~~motion is not timely filed, or if a motion is filed and denied, the Commission shall issue an order of dismissal~~ . **The Commission may reopen the matter if good cause exists to do so.**

**(5) The Commission’s dismissal of an action is final if:**

**(a) No party timely submits written disagreement with the dismissal; or**

**(b) The Commission declines to reopen the matter.**

M. Time Modifications and Waivers.

(1) The Presiding Officer may modify or waive a time limit established by this title.

(2) An administrative law judge may not modify or waive a time limit established by this title, except with the consent of all parties or the consent of the Commission.

N. Service.

(1) A **party shall promptly serve a** copy of any notice, order, pleading, motion, response, correspondence, decision, paper, or other document ~~filed~~ **submitted** in a proceeding ~~shall be served~~ ~~promptly~~ on all other parties to the proceeding or their ~~respective~~ authorized representatives.

(2) Unless otherwise required by law, **a party shall make** service ~~shall be made~~ by personal delivery or by regular mail.

(3) **A party may make service** ~~Service~~ on a party to whom a ~~permit,~~ license, **registration,** or certification has been issued by the Agency or the Commission may be made by delivering a copy to the last address provided the Agency by that party.

(4) Every paper or document ~~filed~~ **submitted** in a proceeding, other than one ~~filed~~ **submitted** by or on behalf of the Commission, shall contain or be accompanied by a certificate of service that:

(a) Is signed by or on behalf of the party ~~filing~~ **submitting** the paper or document; and

(b) Specifies the:

(i) Date of service;

(ii) Manner of service;

(iii) Name of each person served; and

(iv) Address at which each person was served.

O. Delegation of Hearing Authority.

(1) The Commission may delegate the hearing of a contested case to the Office of Administrative Hearings.

(2) Unless the Commission expressly delegates hearing authority to the Office of Administrative Hearings, the Commission shall hear all contested case matters that come before the Commission.

(3) In a hearing delegated to be conducted by an administrative law judge of the Office of Administrative Hearings, these regulations shall be construed, whenever possible, in harmony with COMAR 28.02.01.

(4) In the event of conflict between these regulations and COMAR 28.02.01, these regulations control.

(5) The Commission may revoke all or part of a delegation previously made to the Office of Administrative Hearings if the Commission believes that the case might:

(a) Involve novel or unanticipated factual or legal issues;

(b) Have significant social or fiscal consequences;

(c) Involve policy issues of general applicability; or

(d) Be likely to have precedential value.

(6) The Commission may revoke a delegation to the Office of Administrative Hearings at any time before the earlier of:

(a) The issuance of a ruling on a substantive issue; or

(b) The taking of oral testimony from the first witness.

(7) The Commission shall provide written notice of a revocation to all parties and the Office of Administrative Hearings by sending to the parties a notice that:

(a) Contains a brief statement of the reason for the revocation;

(b) Specifies whether all or part of the delegation to hear the case is revoked; and

(c) If less than all of the delegation is revoked, specifies the parts of the contested case for which the delegation has been revoked.

(8) The Commission's decision in the case shall reflect the fact that delegation to the Office of Administrative Hearings was revoked.

(9) **The Commission’s revocation notice** ~~A copy of the Commission’s revocation notice~~ shall be ~~made a part of~~  **included in** the record.