



Rules of
Department of Insurance
Division 800—General Counsel
Chapter 1—Hearings

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Title 20—DEPARTMENT OF INSURANCE

Division 800—General Counsel Chapter 1—Hearings

20 CSR 800-1.100 Administrative Hearing Procedures

PURPOSE: This regulation prescribes procedures to be followed where hearings are held before the director of insurance pursuant to the insurance laws which provide for hearings by the Department of Insurance. This regulation was adopted pursuant to section 374.045, RSMo (1986).

(1) Applicability. These rules apply to all hearings conducted pursuant to provisions contained in the *Missouri Revised Statutes* unless they conflict with specific statutory hearing requirements, in which case the statutory requirements shall prevail. They shall be read together with Chapter 536, RSMo. They shall not apply to legislative-type nonadversary hearings.

(2) Definitions.

(A) Director means the director of the Department of Insurance or his/her appointee.

(B) Department means the Department of Insurance, staff and employees.

(C) Hearing means any hearing authorized by or provided for under the *Missouri Revised Statutes* to be held by the director of the Department of Insurance.

(D) Order means the whole or any part of the final decision of the director in any hearing, including findings of fact, opinions, conclusions of law and directives issued.

(E) Party means any individual, partnership, corporation, association, public or private organization of any character or any other governmental agency properly seeking to be heard or entitled to intervene in any department proceeding.

(F) License means the whole or part of any department permit, certificate of approval, registration, charter, membership, statutory exemption or any other form of permission.

(G) Licensing means any department process respecting the granting, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification or conditioning of a license.

(3) Filing. Documents and requests permitted or required to be filed with the department in connection with a hearing shall be addressed to or mailed to or filed with the Missouri Department of Insurance, P.O. Box 690, 301 West High Street, Jefferson City, MO 65102.

(4) Form of Documents.

(A) Except as otherwise provided, one (1) original and two (2) copies of all documents shall be signed by the party or by his/her authorized representative or attorney and filed with the department.

(B) Documents shall leave sufficient space to enter the file hearing number and the title of the proceeding in connection with which they are filed.

(C) Documents shall be typewritten or reproduced from typewritten copy on eight and one-half by eleven inch (8 1/2" × 11") white paper.

(D) A certified copy may be submitted in lieu of the original.

(E) For those hearings conducted pursuant to section 375.241, RSMo (1986), the original and six (6) copies shall be filed at least ten (10) days before the hearing.

(F) For those hearings conducted pursuant to sections 375.355, RSMo (1986) and 382.060, RSMo (1986), the original and four (4) copies shall be filed at least ten (10) days before the hearing.

(5) Computation of Time.

(A) In computing any period of time prescribed or allowed by this regulation or by any applicable statute, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor a legal holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(B) Notice requirements shall be construed to mean notice received, but proof that notice was dispatched by means reasonably calculated to be received by the prescribed date shall be *prima facie* evidence that notice was timely received.

(6) Appearance.

(A) Any person entitled to participate in any proceedings may appear as follows:

1. A natural person may appear on his/her own behalf or by an attorney at law licensed to practice in Missouri or both; and

2. A business, nonprofit or government organization may appear by any bona fide officer, employee or representative or may be represented by an attorney licensed to practice in Missouri or both.

(B) Attorneys not licensed to practice in Missouri may appear on motion.

(C) An attorney appearing in a representative capacity shall file a written notice of appearance. An Entry of Appearance will not be required of attorneys employed by the Department of Insurance on a full-time basis, appearing for the department staff.

(7) Notice of Hearing. All administrative hearings shall be initiated by the issuance by the department of a written notice of hearing and/or statement of charges, which shall be served upon all known parties to the hearing and which shall clearly give notice of the particular acts complained of by the department, the statutes or rules upon which the allegations in the notice are based, the caption of the case, the time and place for hearing and those matters required section 536.067(2), RSMo (1986).

(8) Service of the Notice of Hearing. Service of the notice of hearing shall be effected upon all parties involved not less than ten (10) days before the date designated for the hearing either by United States mail, postage prepaid, certified or registered, addressed to the parties' last known address or by another personal service.

(9) Motion and Answer.

(A) Any party receiving a notice of hearing may file an answer not later than five days prior to the date of hearing. All answers or motions preliminary to a hearing shall be presented to the department and the director at least five (5) days prior to the date of hearing or on another date the director shall designate and shall be served personally or by registered or certified United States mail.

(B) Unless made orally on the record during a hearing or unless the director directs otherwise, an answer or a motion shall be in writing and shall be accompanied by any affidavits or other evidence relied upon. At least two (2) copies of all these motions shall be filed with the department and at least one (1) copy served on each additional party, if any, to the hearing.

(C) Within five (5) days after service of a written motion or another period the director may prescribe, a party may file a response in support of or in opposition to the motion, accompanied by affidavits of other evidence. If no response is filed, the parties shall be deemed to have waived objection to the granting of the motion. The moving party shall have no right to reply, except as permitted by the director.

(D) No oral argument will be heard on a motion unless the director directs otherwise. A written brief may be filed with a motion or



an answer to a motion, stating the arguments and authorities relied upon.

(E) A written motion will be disposed of by written order. All parties to the hearing shall receive notice of the disposition, as well as a written copy of the order.

(F) The director shall rule upon all motions, except that s/he shall have no authority to dismiss or decide a hearing on the merits without granting all parties to the proceeding a right to be heard and to establish a record.

(G) Unless otherwise ordered, the filing of an answer or motion shall not stay the proceeding or extend the time for the performance of any act.

(H) A party may participate in the proceedings without forfeiting any jurisdictional objection, if the objection is raised at or before the time the party files his/her answer or motion or if no answer or motion is made before the commencement of the hearing.

(10) Consolidation and Severance of Matters—Additional Parties. In the interest of convenient, expeditious and complete determination of matters, the director may consolidate or sever hearing proceedings involving any number of parties and may order additional parties to be brought in.

(11) Intervention.

(A) Upon timely written application, the director shall permit any party to intervene in a hearing proceeding, subject to the necessity for conducting an orderly and expeditious hearing, when either of the following conditions is met:

1. When the party is so situated that s/he will be adversely affected by a final order arising from the hearing; or

2. When a party's circumstances and the hearing proceeding have a question of law or fact in common.

(B) Two (2) copies of a petition for intervention shall be filed with the department and one (1) copy served on each additional party no later than forty-eight (48) hours prior to the date set for hearing of the matters set forth in the notice of hearing. The director may permit later intervention when there is good cause for the delay.

(C) An intervenor shall have all the rights for an original party, except that the director, in his/her order allowing intervention, may provide that the applicant shall be bound by orders entered or by evidence received, that the applicant shall not raise issues which might more properly have been raised at an earlier stage of the proceeding, that the applicant shall not raise new issues or add new parties or that in other respects the applicant

shall not interfere with the control of the hearing, as justice and the avoidance of undue delay may require.

(12) Postponement of Continuance of Hearing. A hearing may be postponed or continued by the director upon good cause shown by a party to the hearing or at the discretion of the director for good cause. Notice of any postponement or continuance shall be given in writing to all parties to the hearing within a reasonable time in advance of the previously scheduled hearing date.

(13) Authority of the Director. The director or his/her appointee has the authority to conduct a hearing, take all necessary action to avoid delay, maintain order and insure the development of a clear and complete record. S/he shall have all powers necessary to conduct a hearing including, but not limited to, the power to—

(A) Administer oaths and affirmations;

(B) Regulate the course of hearings, set the time and place for continued hearings, fix times for filing of documents, provide for the taking of testimony by deposition if necessary and generally conduct the proceedings according to generally recognized administrative law and this regulation;

(C) Examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitious or cumulative testimony and set reasonable limits on the amount of time each witness may testify;

(D) Rule upon offers of proof and receive relevant evidence;

(E) Sign and issue subpoenas that require attendance giving testimony and the production of books, papers and other documentary evidence;

(F) Direct parties to appear and confer for the settlement or simplification of issues and to otherwise conduct prehearing conferences;

(G) Dispose of procedural requests or similar matters;

(H) Render findings of fact, opinions and recommendations;

(I) Order the filing of written direct testimony by all parties to a hearing. Written direct testimony, if ordered to be filed, shall be on eight and one-half inch by eleven inch (8 1/2" × 11") paper, in question and answer form and the truth sworn to before a notary public. Written direct testimony, if ordered to be filed, shall be in lieu of all live direct testimony except redirect or rebuttal testimony or if good cause is shown to the director. The right to cross-examination of any witness on whose behalf written direct testimony is filed is mandatory; and

(J) Enter any order that further carries out the purpose of this regulation.

(14) Prehearing Conferences.

(A) Upon written notice of the director or upon written request by any party, the director may direct parties or their attorneys to appear at a specified time and place for a conference, prior to or during the course of hearing, for the purpose of formulating issues and considering—

1. The simplification of issues;

2. The necessity or desirability of amending the pleadings for the purpose of clarification, amplification or limitation;

3. The possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record to avoid unnecessary introduction of proof or any other matters to which the parties may stipulate;

4. The limitation of the number of witnesses;

5. The propriety of prior mutual exchange between or among the parties of prepared testimony and exhibits; and

6. Other matters as may aid in the simplification of the evidence and disposition of the proceeding.

(B) Opportunity shall be afforded all parties to be represented by legal counsel and to dispose of the case by stipulation, agreed settlement or consent order, unless otherwise precluded by law. Any stipulation, agreed settlement or consent order reached before a final determination by the department, shall be submitted in writing to the director and shall become effective only if approved by the director.

(C) Only if all parties to a controversy agree, shall a record of the prehearing conference be kept. It must be certified to by the parties, then filed with the case material in the departmental files.

(15) Discovery shall be permitted to the full extent authorized by section 536.073, RSMo. The director shall have authority to the full extent authorized by law to make orders or sanctions concerning discovery.

(A) All depositions and interrogatories taken pursuant to this regulation shall be for purposes of discovery only, except as provided. The depositions and interrogatories may be used for purposes of impeachment and as admissions of the deposed or interrogated party. Upon application to the director either before or after the taking of the deposition or interrogatories and upon a showing that at the time of the hearing, the party deposed or interrogated will not be available to participate in the hearing because of death, age,

sickness, infirmity, absence from the country or other exceptional circumstances, the director may order that the deposition or interrogatories be used as evidence in the hearing.

(16) Subpoenas.

(A) Upon application to the director by department counsel or any party, s/he shall issue, for good cause shown, a subpoena for attendance at deposition or hearing, which may include a command to produce books, papers, documents or tangible things designated and reasonably necessary to resolution of the matter under consideration, subject to the limitations on discovery prescribed by this regulation.

(B) Every subpoena shall state the title of the action and shall command each person to whom it is directed to attend and give testimony at the time and place specified.

(C) The director, upon motion made before the day specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable and oppressive.

(17) Conduct of the Hearing.

(A) All hearings shall be public unless required by statute to be otherwise.

(B) The following shall be the order of proceedings of all hearings, subject to modification by the director for good cause:

1. Presentation, argument and disposition of motions preliminary to a hearing on the merits of the matters raised in the notice or answer;

2. Presentation of opening statements;

3. Complainant's case in chief;

4. Respondent's case in chief;

5. Complainant's case in rebuttal;

6. Statements from interested citizens, if authorized by the director or his/her appointee;

7. Complainant's closing statement, which may include legal argument;

8. Respondent's closing statement, which may include legal argument; and

9. Presentation and argument of all motions prior to final order.

(18) Default. Failure of a party to appear on the date set for hearing or failure to proceed as ordered by the director shall constitute a default. The director shall enter those findings, opinions, recommendations or orders as are appropriate under the pleadings and evidence as s/he shall receive into the record.

(19) Evidence.

(A) The director shall receive evidence which is admissible under the law of the rules of evidence of Missouri pertaining to civil actions or under the Administrative Procedure Act, Chapter 536, RSMo (1986). In

addition, the director may receive materially relevant evidence which would be relied upon by a reasonably prudent person in the conduct of serious affairs if it is reasonably necessary to resolution of the issue for which it is offered; provided that the rules relating to privileged communications and privileged topics shall be observed.

(B) The director shall exclude immaterial, irrelevant and repetitious evidence.

(C) When the admissibility of disputed evidence depends upon an arguable interpretation of substantive law, the director shall admit the evidence.

(D) A party may conduct examinations or cross-examinations without adherence to formal rules of evidence, provided the examination or cross-examination can be shown to be necessary and pertinent to a full and fair disclosure of the subject matters of the hearing.

(20) Official Notice. Official notice may be taken of all facts of which judicial notice may be taken and of other facts, of a technical nature, within the specialized knowledge and experience of the department.

(21) Hostile Witnesses.

(A) If the director determines that a witness is hostile or unwilling, the witness may be examined by the party calling him/her as if under cross-examination.

(B) The party calling an occurrence witness, upon the showing that s/he called the witness in good faith and is surprised by his/her testimony, may impeach the witness by proof of prior inconsistent statements.

(22) Transcription Proceedings.

(A) Oral proceedings at which evidence is presented shall be recorded either by a certified court reporter or a mechanical recording device, but need not be transcribed unless requested by a party who shall pay for the transcription of the portion requested, except as otherwise provided by the department or by law. Any transcription will be retained through and including the time allotted for appeal, revision, rehearing or other manner of review prior to final disposition as provided for by the department or by law.

(B) The transcript and the record offered in connection with the hearing shall constitute the official record. Before the transcript is filed, the director shall notify the parties that the transcript has been produced, receive corrections from any person, examine the transcript for accuracy and then within a reasonable time certify that it is a true and correct transcript of the hearing. Only after the certification may the transcript be made available

for public inspection as the department may allow.

(C) The record in an administrative hearing shall include: prehearing records; all pleadings (including all notices and answers, motions, briefs and rulings); evidence received; a statement of matters officially noticed; offers of proof, objections and rulings; and findings, opinions and recommendations of the director.

(23) Briefs. The parties may submit written briefs to the director within ten (10) days after the close of the hearing or another reasonable time as they shall determine consistent with the director's responsibility for expeditious decision. Submission of briefs is not required.

(24) Director's Findings, Opinions and Recommendations.

(A) The director's findings, opinions and recommendations shall be in writing and shall include findings of fact and conclusions of law or opinions separately stated when possible. Findings of fact shall be based exclusively on the evidence presented at the hearing or known to all parties, including matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a statement of the underlying supporting facts. If a party submits proposed findings of fact which may control the decision or order, the decision or order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by authority or reasoned opinion. A decision or order shall not be except upon consideration of the record as a whole or such portion as may be supported by competent and substantial material evidence on the whole record.

(B) A copy of the order immediately shall be delivered personally or mailed, postage prepaid, certified or registered, to each party and to his/her attorney of record.

(C) The director, as part of his/her order, may require any party to the proceeding to pay part or all of the costs of the hearing, including, but not limited to, witness fees, court reporter fees, director fees and the cost of the transcript.

(D) All attorneys representing parties shall submit proposed orders at the close of the hearing.

(25) Rehearings.

(A) Except as otherwise provided by law and for good cause shown, the director may order, in his/her discretion a rehearing in a contested case on petition of an interested party.



(B) Where the record of testimony made at the hearing is found by the director to be inadequate for purposes of judicial review, s/he may order a reopening of the hearing.

(C) A rehearing shall be noticed and conducted in the same manner as an original hearing. The evidence received at the rehearing shall be included in the record for director's reconsideration and for judicial review.

(D) Except as expressly permitted by law, no rehearing may be held in a contested case after order by the director unconditionally disposing of all issues.

(26) Existing Statutory or Department Procedures and Practices. This regulation shall not be construed to limit or repeal additional requirements imposed by statute or otherwise or to change existing department procedures which are equivalent to or exceed the standards of administrative procedure prescribed in this regulation.

*AUTHORITY: sections 354.120 and 374.045, RSMo (Cum. Supp. 1996). * This rule was previously filed as 4 CSR 190-19.010. Original rule filed Aug. 5, 1974, effective Aug. 15, 1974. Amended: Filed Jan. 14, 1981, effective July 20, 1981. Amended: Filed March 16, 1988, effective June 27, 1988. Amended: Filed Aug. 30, 1996, effective March 30, 1997.*

**Original authority: 354.120, RSMo (1973), amended 1983, 1993, 1995 and 374.045; RSMo (1967), amended 1993, 1995.*

20 CSR 800-1.200 Workers' Compensation Rate Hearings
(Rescinded March 30, 1997)