DEPARTMENT OF ENVIRONMENTAL QUALITY

OFFICE OF ADMINISTRATIVE HEARINGS

CONTESTED CASE AND DECLARATORY RULING PROCEDURES

(By authority conferred on the department of environmental quality by sections 33 and 63 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.233 and 24.263 of the Michigan Compiled Laws)

PART l. GENERAL PROVISIONS

R 324.1 Definitions.

Rule 1. (1) As used in these rules:

(a) "Act" means 1969 PA 306, MCL 24.201 et. seq.

(b) "Administrative law judge" means presiding officer as referred to in the act and the person designated by the director to conduct hearings under these rules.

(c) "Department" means the department of environmental quality.

(d) "Director" means the director of the department.

(e) "Final decision maker" means the director or any other person to whom the director has delegated final decision making authority in contested cases.

(f) "Office" means the office of administrative hearings within the department.

(g) "Petition" means a petition for a contested case hearing.

(h) "Petitioner" means a person who files a petition for a contested case hearing.

(i) "Respondent" means a person against whom a contested case proceeding is commenced.

(j) "Tribunal" means the adjudicative body within the department that conducts contested case hearings.

(2) Words defined in the act have the same meanings when used in these rules.

History: 2003 AACS.

R 324.2 Construction of rules.

Rule 2. These procedural rules shall be construed to secure a fair, efficient, and impartial determination of the issues presented in contested cases consistent with due process and safeguarding the rights of the parties.

History: 2003 AACS.

R 324.3 Scope of rules; statutory procedures; absence of procedures.

Rule 3. (1) These rules govern all contested case proceedings before the department and requests for declaratory rulings.

(2) If a contested case is brought pursuant to a statute that provides governing procedures, the portions of these rules that are inconsistent with the statutory provisions do not apply, but any portion of these rules that is consistent with the statutory provisions apply in addition to those procedures. However, these rules do not apply to proceedings under Parts 615 and 617 of 1994 PA 451, MCL 324.61501, et seq. and 324.61701, et. seq.

(3) If a rule does not address an issue of procedure, then chapter 4 of the act shall govern.

History: 2003 AACS.

PART 2. COMMENCEMENT OF CONTESTED CASE PROCEEDING

R 324.21 Petition for contested case; required information; submission to the office; acknowledgment of receipt.

Rule 21. (1) A written petition for a contested case shall be on the form provided by the department or other document and shall include all of the following information:

(a) Facts or conduct that warrant a contested case.

(b) The identity of the persons involved and their relationship to the subject matter.

(c) Specific sections of applicable statutes and rules, if known.

(d) The specific remedies sought.

(e) A copy of the department's decision being challenged, if made in writing.

(2) The petition shall be signed by the person requesting a contested case or the person's authorized representative. A petition shall be mailed or delivered to the department. The date of receipt by the department shall be the date a petition is filed. Unless otherwise stated in a statute, a petition shall be filed within 60 days from the date of the department's decision to be considered timely. A person shall submit a petition on a form provided by the department or a document that complies with the requirements with subrule (1) of this rule.

History: 2003 AACS.

R 324.22 Investigation of petition; determination of tribunal; failure to provide opportunity to show compliance; notice to petitioner.

Rule 22. (1) Within a reasonable time after receipt of a petition for a contested case, the office, in conformity with any applicable statute or that rule, shall take 1 of the following actions:

(a) Request that the petitioner submit an amended petition providing a more detailed and definite statement of issues.

(b) Place the petition on the docket of pending cases and acknowledge, in writing, its receipt and that a case is opened. The acknowledgement shall be sent to all parties, and the permit holder if applicable.

(c) Take any other appropriate action within its authority, including, but not limited to, the issuance of a sua sponte order of dismissal.

(2) If a petition raises questions relevant to a proper disposition of the petition, then the department may be requested to respond to the petition in writing. Following any action under this subrule, 1 of the actions under subrule (1) of this rule shall be taken.

(3) The petitioner shall be notified of any decision made under subrules (l) and (2) and shall be provided with a written explanation of the reasons for the decision.

(4) If it is determined the department has failed to provide the petitioner an opportunity to show compliance as required by §92 of the act, the matter shall be returned to the department for issuing a notice for an opportunity to show compliance or such other action as may be appropriate.

History: 2003 AACS.

R 324.23 Contested case docket; docket numbers; notice to parties of docketing a case; commencement of contested case proceeding; no progress docket.

Rule 23. (1) The office shall maintain a docket of all pending petitions.

(2) A case docket number shall be assigned to all petitions. The number shall correspond, if possible, to the permit, application, or document number used by the department in the matter that is the subject of the petition. Parties shall include the docket number and petitioner's name on the first page of all pleadings or correspondence filed in a case.

(3) The office shall provide a copy of the petition to the respondent, and inform all parties of the docket number at the time of acknowledgment. The acknowledgment shall be considered notice of the commencement of the contested case proceeding.

(4) A no progress docket shall be maintained by the office. Failure of a petitioner to respond in a timely manner to any directive of the office may result in placing the case on the no progress docket.

(5) A party whose case is placed on the no progress docket shall be given notice and time to show cause why the case should not be dismissed for undue delay. A party shall submit the requisite documents, or

otherwise respond to unanswered requests, as part of that party's response to the notice. If a party fails to respond to the notice within 21 days of its date, the case shall be dismissed with prejudice.

History: 2003 AACS.

R 324.24 Service of notice by office; service by party; service on attorney; manner of service; proof of service.

Rule 24. (1) The office shall serve documents by first-class mail, unless otherwise required by statute. A copy of all documents shall be included in the case file. No proof of service shall be required of the office.

(2) Service by a party shall be made in person or by mail as specified in subrules (3) and (4) of this rule. A party shall serve all documents and pleadings filed in a contested case on all other parties. Service of documents shall be made on a party's attorney who has filed an appearance, if any, and shall be effective as service on the party.

(3) Personal service may be used if service by mail is required or permitted, unless otherwise required by statute. Personal service shall be made on a person or party by leaving orders, notices, and other documents with the person or party or with a party's attorney of record.

(4) Service by mail shall be accomplished by complying with both of the following requirements, except as otherwise required by statute:

(a) Enclosing a copy of the document or pleading in a sealed envelope with postage fully prepaid and addressed to the person to be served at that person's last known address. The envelope shall list the return address of the sender.

(b) Depositing the envelope and its contents in the mail.

(5) A person or party who has served a document or pleading in a contested case shall file with the office a proof of service at the time of filing the original pleading or document with the office. Proof of service shall be made as follows:

(a) If service is made by mail, proof of service shall be made by filing a certification of service that shows compliance with subrule (4) of this rule by specifying all of the following:

(i) The method of service.

(ii)The identity of the server.

(iii)The date and place of mailing.

(iv)The address where the materials were mailed.

(b) If the service is made by personal service, proof of service shall be made by filing an affidavit of service certifying all of the following:

(i) The method of service.

(ii)The identity of the server.

(iii)The person served.

(iv)The date and place of service.

History: 2003 AACS.

PART 3. FINAL DECISION MAKER AND ADMINISTRATIVE LAW JUDGES

R 324.31 Final decision maker and administrative law judge; disqualification; motions; ruling on motions; review by office; oral motions; review by office.

Rule 31. (1) The final decision maker or an administrative law judge shall withdraw from a case if that person deems himself or herself personally biased, prejudiced, or otherwise disqualified to preside. Withdrawal shall be noted on the record and shall disclose the nature of the personal bias, prejudice, or disqualification. The director shall designate a replacement.

(2) A party may file a written motion to disqualify the final decision maker or an administrative law judge. A motion to disqualify shall be filed before the commencement of hearing or as soon as practicable after discovery of the alleged grounds for disqualification. A motion to disqualify shall be supported by an affidavit conforming to the standards of section 79 of the act and the Michigan court rules. An

allegation that the administrative law judge is an employee of the department does not constitute a sufficient basis for disqualification.

(3) The administrative law judge presiding over the case shall rule on the motion to disqualify.

History: 2003 AACS.

R 324.32 Administrative law judge; powers.

Rule 32. An administrative law judge may exercise the powers specified in section 80 of the act and any power described in these rules or delegated by the director pertaining to presiding officers.

History: 2003 AACS.

R 324.33 Ex parte contact with final decision maker or administrative law judge.

Rule 33. Direct or indirect contact with the final decision maker or the administrative law judge who presides over the case by a party, a party's attorney, or any other person on behalf of a party concerning the merits of a case pending review is ex parte communication. Ex parte communication is prohibited and will subject a party or counsel to appropriate sanctions under R 324.59(2) or disciplinary action.

History: 2003 AACS.

PART 4. PREHEARING CONFERENCES

R 324.41 Prehearing conference; purpose.

Rule 41. (1) The administrative law judge may direct the parties to appear at the time and date established by the office for 1 or more prehearing conferences in order to do any of the following:

(a) Simplify and clarify factual and legal issues.

(b) Consider amendments to pleadings.

(c) Obtain admissions and stipulations of fact or authenticate evidence.

(d) Expedite the discovery and presentation of evidence.

(e) Produce all proposed exhibits in the possession of a party.

(f) Identify witnesses and generally describe the issues on which they may testify.

(g) Set a time for the exchange of any written testimony.

(h) Estimate the time required for the hearing.

(i) Discuss settlement or other disposition of the case.

(j) Set time limits for discovery, motions, and other matters.

(k) Determine the parties to the case.

(l) Set the time limit for the exchange of proposed exhibits and witness lists.

(m) Set the date, time, and place for the hearing.

(n) Consider other matters that may aid in the disposition of the proceedings.

(2) The administrative law judge may conduct a prehearing conference by a telephone conference call.

History: 2003 AACS.

R 324.42 Prehearing conference; failure to appear; binding nature of conference; memorandum on witnesses and exhibits.

Rule 42. (1) If a party fails to appear for a prehearing conference after proper service of notice, and if no adjournment is granted, the administrative law judge may proceed with the conference. A party who fails to attend the conference without good cause shall be subject to any procedural agreements reached and any procedural order or procedural ruling made with respect to matters addressed at the conference, and the case may be placed on the no-progress docket.

(2) The administrative law judge may order each party to exchange a list of witnesses the party intends to call and offer testimony at the hearing. The witness list shall identify the witness and contain a brief recitation of each witness's anticipated testimony. The curriculum vitae of a witness, who will be offered as an expert, shall be provided with the witness list. A witness not identified by the date established shall not be allowed to testify at the hearing without showing good cause. A witness not identified as required may be allowed to testify for the purpose of rebutting the exhibits or testimony of another party.

(3) The administrative law judge may order each party to exchange, or if appropriate identify, all proposed exhibits intended to be introduced during the party's direct case. An exhibit not exchanged or identified by the date established may not be entered on the record unless good cause is shown. The parties may stipulate to a schedule for the exchange of such materials, subject to the approval of the administrative law judge.

History: 2003 AACS.

R 324.43 Prehearing conference; record of rulings and orders; summary; copies and corrections.

Rule 43. After a prehearing conference, the administrative law judge shall issue a conference summary setting forth the date, time, and place of the hearing. The conference summary shall also describe the agreements of the parties regarding the date for the exchange of witness lists and proposed exhibits, dates for filing motions and responses, discovery, and any other attendant matters. The conference summary shall also set forth the factual stipulations of the parties. All of the terms and conditions in the conference summary shall become binding on the parties absent the filing of a written objection within the time prescribed in the conference summary.

History: 2003 AACS.

PART 5. PREHEARING MATTERS

R 324.51 Appearance by attorney.

Rule 51. An attorney who represents a party in a contested case shall promptly file an appearance with the office.

History: 2003 AACS.

R 324.52 Pleadings and other documents; form; statements of facts; answer; certification; manner of filing; time limits.

Rule 52. (1) Pleadings and other documents, including all of the following, may be permitted by the administrative law judge:

(a) An administrative complaint.

(b) A petition for contested case proceeding.

(c) Answers.

(d) Memoranda.

(e) Motions, briefs, and affidavits in support of, and responses to, a motion.

(2) Pleadings and other documents shall include the title and docket number of the case and be submitted on 8½ by 11-inch paper. The Michigan court rules may be used as to all matters of form.

(3) The paragraphs of an answer or response shall be numbered to correspond to the numbered paragraphs, if any, of the pleading to which they respond. If a pleading does not contain numbered paragraphs, the answer or response shall address the issues in the order presented.

(4) The original of each petition, pleading, or other documents shall be signed by the submitting party or by the party's authorized representative. The signature of an attorney constitutes a certification by the attorney that he or she has read the document; that to the best of the attorney's knowledge, information, and belief it is well grounded in fact and supported by law; and that it is not interposed for unwarranted delay, harassment, or any other improper purpose.

(5) Pleadings and other documents shall be filed by sending or delivering them to the office at its Lansing address, unless otherwise directed. The date of receipt or delivery at the office shall be used to determine whether a pleading or other document has been filed in a timely manner, unless the administrative law judge orders otherwise.

(6) If a pleading or other document is not filed in accordance with applicable time limits, then a party may move that it be stricken from the record. The motion shall be granted if the party making the late filing does not show good cause and the late filing will not prejudice the moving party.

History: 2003 AACS.

R 324.53 Facsimile transmission of documents.

Rule 53. The office permits the use of facsimile communication equipment for the filing of documents. The following provisions govern the use of facsimile equipment for the filing of documents:

(a) All filings shall be on 8½ by 11-inch paper and consist of not more than 20 pages at any one time.

(b) A cover sheet that includes all of the following information shall accompany each transmission:

(i) Case name.

(ii)Case number.

(iii)Document title.

(iv)Name.

(v) Telephone number, and facsimile number of the sender.

(c) Documents received in the office after 5 p.m. eastern time are considered filed on the following business day.

(d) The original document shall be sent to the office by mail contemporaneous with the facsimile filing. Upon receipt of the original document, the office shall retain only the cover page of the facsimile filing in its file in order to verify the date of filing.

(e) For purposes of R 324.52(4), a signature includes a signature transmitted by facsimile communication equipment.

History: 2003 AACS.

R 324.54 Electronic filing of pleadings and documents.

Rule 54. The office may permit the filing and service of pleadings and documents by electronic mail in circumstances that further the purpose of R 324.2. The original document shall be sent to the office by mail contemporaneous with the electronic filing. R 324.53 shall be a guide in determining the filing date and retention of documents filed electronically.

History: 2003 AACS.

R 324.55 Summary disposition.

Rule 55. A party may move for full or partial summary disposition on any of the following grounds:

(a) The department lacks jurisdiction over the person or subject matter.

(b) The opposing party has failed to state a claim upon which relief can be granted.

(c) No genuine issue exists as to any material fact, and the moving party is, therefore, entitled to a favorable decision as a matter of law.

(d) The party asserting the claim lacks standing.

History: 2003 AACS.

R 324.56 Application for order in pending action.

Rule 56. An application for an order shall be made by motion. Unless made during a hearing, the motion shall be in compliance with all of the following provisions:

(a) Be in writing.

(b) State with particularity the grounds and authority upon which it is based.
(c) State the relief or order sought.
(d) Be signed by the party or attorney.

History: 2003 AACS.

R 324.57 Response to motion; oral argument.
Rule 57. A party may file a written response to a written motion within 14 days or within a time specified by the administrative law judge. A party may request oral argument and the request may be granted at the discretion of the administrative law judge. The administrative law judge may order oral argument if he or she believes such argument will aid in the decision making process.

History: 2003 AACS.

R 325.58 Motion to correct or strike pleadings; failure to obey if granted; time for submission if denied; striking material.
Rule 58. (1) An opposing party may move for a more definite statement of the issues on the ground that a pleading is so vague or ambiguous that it cannot be understood or answered. The motion shall identify the defects or deficiencies.
(2) An order for a more definite statement shall be obeyed within 14 days after service of the order. If not obeyed, the administrative law judge may strike the pleading to which the motion was directed or enter any other order that is just.
(3) If a motion for a more definite statement is denied, the moving party shall file the responsive pleading that was delayed by the motion within 14 days after the date of the order.
(4) The administrative law judge, on motion by a party or on his or her own motion, may order either or both of the following stricken from any pleading:
(a) Redundant, irrelevant, immaterial, impertinent, scandalous, privileged, or indecent matter.
(b) All or any part of a pleading not drawn in conformity with these rules.

History: 2003 AACS.

R 324.59 Depositions; discovery; failure to comply; order directing compliance; effect of refusal to obey order.
Rule 59. (1) The taking and use of depositions and other discovery shall be allowed only upon stipulation of the parties or by leave of the administrative law judge. A motion for discovery shall not be filed unless the discovery sought has been previously requested of a party and refused.The motion shall describe the nature of the discovery sought and the purpose of the discovery. A party against whom the discovery request is directed shall have 14 days to respond to the motion or within a time frame specified by the administrative law judge. If discovery is granted, it shall proceed in the same manner as in the circuit courts. A deposition or other discovery taken pursuant to this subrule, may be offered as evidence at the discretion of the administrative law judge.
(2) If a party refuses to obey an order issued under subrule (1) of this rule, then the administrative law judge, on the motion of a party or sua sponte, may enter such orders addressing the refusal as are just, including, but are not limited to, any of the following:
(a) Deem that the facts sought under the original order are established for the purposes of the proceeding in accordance with the claim of the party obtaining the order.
(b) Prohibit the disobedient party from admitting new evidence supporting or opposing designated claims or defenses.
(c) Ordering that pleadings or parts of pleadings are stricken, staying further proceedings until the order is obeyed, dismissing the proceeding or a part of the proceeding, or defaulting the disobedient party.

History: 2003 AACS.

R 324.59a Adjournment of hearings; written motion; time for serving; exceptions.

Rule 59a. (1) A hearing may be adjourned only by order of the administrative law judge on motion by a party or sua sponte. The administrative law judge may order an adjournment on stipulation of the parties at the discretion of the administrative law judge, if it is determined an adjournment is not in conflict with R 324.2.

(2) Before a hearing commences, a motion for adjournment shall be made in writing and state with particularity the reasons why an adjournment is necessary. A written motion served less than 5 days before the date set for hearing shall not be considered unless the administrative law judge finds that an exception should be made because of any of the following:

(a) The motion could not be served within the time limit for reasons not within the control of the party making the motion.

(b) The interests of justice require the exception.

(c) The parties have reached a settlement agreement and the specific date as to when the settlement will be finalized is provided in the motion.

History: 2003 AACS.

R 324.59b Motion for extension of time.

Rule 59b. Requests for extensions of any time limit established in these rules shall be made by written motion and filed with the office before the expiration of the period originally prescribed or previously extended, except as otherwise provided by law, or by stipulation of the parties. A motion under this rule shall be granted only for good cause or on the written stipulation of the parties, and only if the order for extention would not be in conflict with R 324.2.

History: 2003 AACS.

R 324.59c Accompaniment of written motion by proposed order.

Rule 59c. A written motion may be accompanied by a proposed order.

History: 2003 AACS.

R 324.59d Application for intervention; filing; service; answers; oral argument; rulings.

Rule 59d. (1) A person who has legal standing and who seeks to intervene as a party in a contested case shall file an application to intervene with the office setting forth the legal authority and facts supporting intervention. A person who files an application shall serve copies on all parties known to the person at the time of application and provide proof of service at the time of filing. The office shall advise an applicant for intervention of the names and addresses of parties not served by the applicant, who shall then serve those parties and file a proof of service consistent with R 324.24.

(2) An application under subrule (1) of this rule shall not be granted until all parties have had an opportunity to answer the application in writing, unless the applicant is the permit holder. An answer shall be filed within 14 days after the date of service of the application or within the period of time established by an order of the administrative law judge.

(3) The administrative law judge shall consider whether intervention would be in conflict with R 324.2 or prejudice the rights of the existing parties. To avoid prejudice, intervention by a person may be denied or limited.

(4) The applicable statute and rules shall govern the issue of standing in a contested case hearing and these rules shall not be construed to either expand or restrict the legal standing of any person to intervene as a party in a contested case.

History: 2003 AACS.

R 324.59e Joint hearing; consolidation of proceedings; representative actions; notice of intent to issue order; filing of objections.

Rule 59e. (1) When contested cases involving a substantial and controlling common question of fact or law or where multiple petitions have been filed regarding the same project or application are pending on the docket, the office may, on motion of a party or sua sponte, take any of the following actions provided that the interests of the parties are not prejudiced by such actions:

(a) Order a joint hearing on any or all of the matters at issue.

(b) Order the proceedings consolidated.

(c) Make other orders concerning the proceedings to avoid unnecessary costs or delays.

(d) Appoint a representative petitioner to fairly and adequately assert and protect the interests of all petitioners.

(2) Before issuing an order sua sponte under subrule (1), the office shall serve on the parties a notice of intent to issue the order. The parties shall have 14 days from service of the notice to file objections.

History: 2003 AACS.

PART 6. HEARINGS

R 324.61 Hearing; location.

Rule 61. A hearing shall be conducted in Lansing unless the administrative law judge orders a change of situs.

History: 2003 AACS.

R 324.62 Hearing; record.

Rule 62. A hearing shall be conducted on the record. A certified court reporter or court recorder shall take a transcript of testimony. The record shall consist all of the following:

(a) The sworn testimony.

(b) Stipulations.

(c) Exhibits admitted into evidence.

(d) Offers of proof.

(e) Pleadings and motions filed.

(f) The rulings made. The official record, excluding transcripts, shall be made available to the parties upon request. A request for a transcript shall be made to the court reporter and the cost shall be borne by the party making the request.

History: 2003 AACS.

R 324.63 Hearing; opening statements; closing arguments.

Rule 63. A party may make, reserve, or waive an opening statement. A party may make a closing argument. The administrative law judge may order closing arguments to be submitted in writing and may require written proposed findings of fact and conclusions of law.

History: 2003 AACS.

R 324.64 Hearings; burden of proof; order of presentation of evidence; regulation of order of presentation; cross-examination.

Rule 64. (1) The party filing an administrative complaint or petition for a contested case hearing, a motion for summary disposition, or other motion as allowed by these rules, has the burden of proof and of moving forward unless otherwise required by law.

(2) All other parties shall present the evidence in an order determined by the administrative law judge. The administrative law judge may allow rebuttal testimony and may permit further testimony as deemed appropriate.

(3) The administrative law judge shall regulate the order of the hearing to promote the fair and efficient determination of the issues presented.

(4) Parties are entitled to cross-examine witnesses.

(5) Parties are entitled to offer evidence as to the facts at issue. Issues of law and policy are matters for argument and the administrative law judge may require they be addressed in writing.

(6) Admissibility of evidence shall be governed by section 75 of the act.

History: 2003 AACS.

R 324.65 Witnesses; oath or affirmation; examination; written testimony; motion to strike testimony.

Rule 65. (1) Testimony of witnesses shall be taken only after an oath or affirmation is administered. A witness shall be examined orally.

(2) The administrative law judge may permit testimony to be submitted in written form or in the narrative. Testimony submitted in written form shall be filed with the office and served upon the parties not less than 14 days before a hearing scheduled in the matter unless otherwise ordered by the administrative law judge. A motion to strike written testimony shall be filed not less than 5 days in advance of the hearing unless otherwise permitted by the administrative law judge. A party submitting testimony in written form shall make the witness available for cross-examination.

(3) The administrative law judge shall issue subpoenas if authorized by statute pursuant to section 73 of the act.

History: 2003 AACS.

PART 7. DECISION PROCESS

R 324.71 Proposal for decision; replacement of administrative law judge; exclusiveness of record, transcripts; briefs.

Rule 71. (1) The administrative law judge shall prepare a proposal for decision and serve it on the parties within a reasonable time after the hearing or the submission of written closing arguments. If the administrative law judge becomes unavailable, another administrative law judge may be assigned to read the record, including a transcription of the testimony, and to prepare a proposal for decision.

(2) A proposal for decision shall be based exclusively on the record made at the hearing. The administrative law judge may rely on his or her expertise in evaluating the facts included in the record. Except as provided for under section 77 of the act, the administrative law judge shall not consider facts not on the record.

(3) The administrative law judge may require or permit the parties to submit written closing arguments at a time specified. A party submitting a brief containing references to a transcript shall include the page and volume numbers of the transcript. A brief containing references to exhibits shall include the exhibit numbers and identify the page number of the exhibit cited.

History: 2003 AACS.

R 324.72 Proposal for decision; exceptions; written arguments; responses; review on the director's own motion.

Rule 72. (1) A party may file and serve exceptions and written argument supporting or opposing a proposal for decision under a schedule established by the office.

(2) A party's written argument in support of an exception or supporting or opposing a proposal for decision shall do all of the following:

(a) Identify any specific findings of fact in the proposal for decision to which exception is taken and identify the evidence in the record supporting the party's view.

(b) Identify specifically the evidence from the record supporting a party's view that other factual findings should have been made.

(c) Use the names of witness and exhibit numbers when referring to the record, including transcript volumes and page numbers, if relevant.

(d) State any specific conclusions of law to which exception is taken and the basis for the exception.

(e) If it is believed other conclusions of law should have been reached, submit them in writing, identify the basis for them in the record, and provide arguments supporting the proposed conclusion.

(f) Identify any policy judgment or exercise of discretion in the proposal for decision with which there is disagreement, provide argument as to why a different policy or discretionary decision is appropriate, submit a specific statement of policy or decision to replace any challenged policy or discretionary decision, and identify factors in the relevant statutes and rules supporting the proposed policy or exercise of discretion.

(g) State specifically the proposed decision the final decision maker should render.

History: 2003 AACS.

R 324.73 Proposal for decision; request for oral argument; opportunity for rebuttal.

Rule 73. (1) A party desiring to make oral argument in support of exceptions to a proposal for decision or in addition to written argument shall include a request in the exceptions filed under R 324.72. Oral argument may be granted by leave of the final decision maker and may be limited in scope and duration. Oral argument shall not be permitted without a written request supported by written exceptions and arguments filed in a timely manner. If oral argument is granted, notice shall be served on the parties.

(2) If oral argument is granted, all parties shall be given an opportunity for rebuttal argument, which the final decision maker may limit as to scope and duration.

(3) The final decision maker may schedule oral argument without a request for oral argument by a party.

History: 2003 AACS.

R 324.74 Final decisions; evidence; date; basis for overturning proposal for decision; record for judicial review.

Rule 74. (1) Review of a proposal for decision by the final decision maker shall be restricted to the record made at the hearing and the exceptions and arguments submitted by the parties. Issues not raised in the written exceptions and arguments shall not be considered at oral argument. The final decision maker shall not accept additional testimony or exhibits.

(2) Except as otherwise provided by law, the final decision maker shall issue a final agency decision within a reasonable time after the date for filing of any exceptions or, if oral argument is permitted, a reasonable time after argument.

(3) The final decision maker may remand, reverse, modify, or set aside a proposal for decision and make a final decision which differs from the proposal for decision. The final decision maker shall consider whether the proposal for decision is deficient due to any of the following:

(a) Misapplied a rule, statute, or constitutional provision governing the issues involved.

(b) Adopted an incorrect interpretation of a rule or statute or an incorrect conclusion of law.

(c) Incorporated typographical, mathematical, or other obvious errors that affect the substantial rights of 1 or all of the parties to the action.

(d) Failed to address a relevant issue.

(e) Made factual findings inconsistent with the evidentiary record.

(f) Improperly excluded or included evidence that substantially affects the outcome of the case.

(4) The final decision maker's order shall include findings of fact and conclusions of law pursuant to section 85 of the act. The final decision maker may adopt the proposal for decision or any part of it as the final agency decision.

(5) The final agency decision in a contested case is the exhaustion of administrative remedies as set forth in section 301 of the act.

History: 2003 AACS.

R 324.75 Request for rehearing; objections; effect; remand for further consideration.

Rule 75. (1) A request for rehearing shall be addressed to the administrative law judge, served on the parties, and shall state the grounds upon which the moving party relies. A response to the motion shall not be filed, and there shall be no oral argument, unless the administrative law judge otherwise directs.

(2) Generally, and without restricting the discretion of the administrative law judge, a motion for rehearing or reconsideration which merely presents the same issues previously ruled on, either expressly or by reasonable implication, shall not be granted. The moving party shall demonstrate a palpable error by which the tribunal and the parties have been misled and show that a different disposition must result from the correction of the error. A rehearing may be ordered on grounds there is newly discovered evidence that could affect the outcome of the case only if the lack of its discovery is not attributable to the moving party.

(3) The final decision maker may determine the record or a proposal for decision is inadequate for purposes of his or her review or for judicial review, or that evidence was improperly included or excluded, and remand the case to the administrative law judge for further consideration.

History: 2003 AACS.

PART 8. DECLARATORY RULINGS

R 324.81 Declaratory rulings.

Rule 81. (1) An interested person requesting a declaratory ruling as to the applicability of a licensing statute, rule, or order administered by the department to an actual state of uncontested facts may do so on a form provided by the department. Requests regarding enforcement issues are not a proper subject for a declaratory ruling. The department shall not process a request that is incomplete. The request shall contain, at a minimum, all of the following information:

(a) The requesting person's name, mailing address, and telephone number.

(b) The requesting person's interest in the matter, including assertions regarding the person's legal standing to request a declaratory ruling.

(c) The statute, rule, or order to which the request applies.

(d) A detailed statement of the actual uncontested facts to which the statute, rule, or order may apply. Drawings, sketches, photographs, illustrations, and maps may be attached to the form.

(2) Within 60 days of receipt of the request, the department shall take 1 of the following actions:

(a) Deny the request and state the reasons for the denial.

(b) Grant the request and issue the declaratory ruling.

(c) Advise the person requesting the ruling that further clarification of the facts must be provided, or that the department requires additional time to conduct a review, including, but not limited to, an on-site investigation.

(3) If subrule (2)(c)of this rule is invoked, the department shall either deny or grant the request within 60 days after receiving satisfactory clarification of facts from the requesting person or from the date the department notifies the requesting person of the need for additional time to investigate.

(4) The department shall issue a declaratory ruling only in matters where all relevant facts are stipulated to by the requesting party and appropriate division. If relevant facts necessary to issue a declaratory ruling are contested, then a declaratory ruling shall not be issued.

(5) A denial or adverse decision of a declaratory ruling does not entitle a person to a contested case hearing.

History: 2003 AACS.