

DEPARTMENT OF TREASURY
BUREAU OF REVENUE
CONTESTED CASE PROCEDURES

(By authority conferred on the state commissioner of revenue by section 3 of Act No. 122 of the Public Acts of 1941, as amended, and section 33 of Act No. 306 of the Public Acts of 1969, as amended, being SS205.3 and 24.233 of the Michigan Compiled Laws)

PART 1. GENERAL PROVISIONS

R 205.3101 Definitions.

Rule 101. (1) As used in these rules:

(a) "Act" means Act No. 306 of the Public Acts of 1969, as amended, being S 24.201 et seq. of the Michigan Compiled Laws, and known as the administrative procedures act of 1969.

(b) "Bureau" means the Michigan bureau of revenue.

(c) "Commissioner" means the Michigan commissioner of revenue and the designees of the commissioner.

(d) "Petitioner" means a person or a party who initiates the commencement of a contested case.

(e) "Presiding officer" means presiding officer as referred to in sections 79 and 80 of the act.

(f) "Respondent" means a party against whom a contested case proceeding is commenced.

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

History: 1995 AACs.

R 205.3102 Construction of rules.

Rule 102. These rules shall be construed to secure a just, speedy, efficient, and fair determination of the issues presented in a contested case proceeding consistent with due process and the safeguarding of the rights of the parties. In light of the variety of circumstances in which an appeal proceeding may arise, these rules shall be applied flexibly to achieve the goals of the act without prejudice to the rights of the parties.

History: 1995 AACs.

R 205.3103 Scope.

Rule 103. (1) These rules govern the practice and procedure in all contested case proceedings before the commissioner.

(2) Where there is no applicable rule, chapter 4 of the act shall govern.

History: 1995 AACCS.

PART 2. COMMENCEMENT OF APPEAL PROCEEDING

R 205.3201 Nature of appeal.

Rule 201. Appeals to the commissioner are limited to the following:

(a) A final determination of the city or the administrator on a final assessment, denial in whole or part of a claim for refund, or a special ruling.

(b) Adoption of a rule by the administrator.

History: 1995 AACCS.

R 205.3202 Time and place for filing appeal.

Rule 202. The appeal, in the form and content as provided in these rules, shall be filed with the commissioner at the commissioner's office in Lansing, Michigan, not later than 56 days after notice of the final determination of the administrator or the date of the adoption of a rule.

History: 1995 AACCS.

R 205.3203 Petition for appeal proceeding.

Rule 203. Except as otherwise provided by the commissioner, a person who seeks to initiate an appeal proceeding shall submit a written petition to the commissioner.

History: 1995 AACCS.

R 205.3204 Docket number.

Rule 204. Upon receipt of the petition, the matter will be docketed and assigned a number. The parties will be notified of the docket number. Thereafter, the parties shall place the docket number on all papers filed in the proceeding.

History: 1995 AACCS.

R 205.3205 Service of petition.

Rule 205. (1) In any case filed with the commissioner, the petitioner shall serve a copy of the petition upon the administrator of the city or any agent within the city designated by the administrator. The petitioner shall file proof of service with the

commissioner within 7 days after service on the respondent. If proof of service is filed with the commissioner by mail, the postmark will be considered the date of filing.

(2) Service on the administrator or his or her designated agent may be made by the petitioner or his or her representative either personally or by registered or certified mail, with the return receipt requested.

(3) If service is made by mail, proof of service shall be made by filing an affidavit of service with the commissioner which certifies compliance with subrules (1) and (2) of this rule and which specifies all of the following:

- (a) The method of service.
- (b) The identity of the server.
- (c) The date and place of mailing.

(d) The address to which the materials were mailed. The mailing receipt shall be attached to the affidavit.

(4) If the service is made by personal service, proof of service shall be made by filing an affidavit of service with the commissioner that certifies all of the following:

- (a) The method of service.
- (b) The identity of the server.
- (c) The person served.
- (d) The date and place of service.

History: 1995 AACCS.

R 205.3206 Filed papers; service of party.

Rule 206. (1) A party shall serve all papers filed in an appeal proceeding by that party upon all other parties. In a case in which there is an unusually large number of parties on the same side, the presiding officer may order the following:

(a) The parties need not serve their papers on each other.

(b) A response to a party pleading need only be served on the party who filed the pleading.

(c) A cross-claim, counterclaim, or allegation in an answer demanding a reply is deemed denied by the parties not served.

(d) The filing of a pleading and service on an adverse party constitutes notice of the pleading to all parties. A copy of the order shall be served on all parties.

(2) Except for the service of a petition that is otherwise provided for in these rules, a party shall serve papers in person or by first-class mail.

History: 1995 AACCS.

R 205.3207 Filing of papers.

Rule 207. Any document to be filed with the commissioner shall be filed at the commissioner's office in Lansing, Michigan; however, when hearings are held outside of Lansing, Michigan, documents may be filed at the place of hearing with the commissioner's designated representative. Any document to be filed with the

commissioner may be filed by mail. The postmark will be considered the date of filing.

History: 1995 AACCS.

R 205.3208 Form of petition.

Rule 208. The petition shall be complete so as to fully state the issues and shall appear as follows:

STATE OF MICHIGAN
BUREAU OF REVENUE
Petitioner,
Docket No. _____
City of _____
Respondent.
PETITION

TO THE STATE COMMISSIONER OF REVENUE:

The petitioner seeks a redetermination of the (final assessment, denial in whole or in part of a claim for refund, special ruling, adoption of a rule or regulation by the administrator) set out by the City of _____ in its determination, decision, order, or rule dated _____ and as a basis of this proceeding alleges:

1. The petitioner is (state whether individual, corporation, or other entity) with principal office (or residence) at (provide address, city, state, and zip code).

2. The matter in dispute is

3. The determination, decision, order, or rule is based on the following errors: (enumerate with specificity the claim of error in a concise manner; avoid pleading facts that properly belong in the succeeding paragraph). A copy of the challenged determination, decision, order or rule is attached and marked as Exhibit A.

4. The facts upon which the petitioner relies as the basis for this proceeding are: (set out the allegations of fact relied upon, the prior legal steps taken by the petitioner, in orderly and logical sequence, with subparagraphs lettered in a manner to inform the commissioner of the issues to be presented and to enable the city to admit or deny each specific allegation). The petitioner respectfully requests the commissioner to hear the proceedings and (state the relief desired).

Signed _____
Name and address _____

History: 1995 AACCS.

R 205.3209 Notice of appearance by attorney.

Rule 209. An attorney who represents a party in an appeal shall promptly file an appearance with the commissioner.

History: 1995 AACCS.

R 205.3210 Appearances generally; representation.

Rule 210. A party may appear in person, by an authorized representative, or by legal counsel. The commissioner may require adequate identification and authority.

History: 1995 AACCS.

R 205.3211 Mailing addresses and telephone numbers of parties.

Rule 211. All parties to a proceeding shall keep the commissioner informed of their current mailing addresses and telephone numbers.

History: 1995 AACCS.

PART 3. PLEADINGS, MOTION PRACTICE, AND INTERVENTION

R 205.3301 Answer.

Rule 301. (1) After service of a copy of the petition, the respondent shall have 21 days within which to file an answer to the petition. The answer shall fully and completely inform the petitioner and the commissioner of the nature of the defense. It shall contain a specific admission or denial of each material allegation of fact contained in the petition, a statement of any facts upon which the respondent relies for defense, and any affirmative defenses to be relied upon by the respondent.

(2) Each paragraph contained in the answer shall be numbered and lettered to correspond with the paragraphs of the petition. An answer, signed by the respondent or the respondent's legal representative, shall be filed with the commissioner.

(3) The respondent shall serve a copy of the answer upon the petitioner or his or her representative of record and shall file proof of service with the commissioner within 7 days after such service.

History: 1995 AACCS.

R 205.3302 General rules of pleading; late filing of pleadings.

Rule 302. (1) R 205.3208, R 205.3303, and R 205.3304 regarding the form, captioning, and signing of a petition apply to all motions, affidavits, and other papers provided for by these rules. However, an affidavit shall be verified by oath or affirmation.

(2) Every pleading shall be legibly typewritten or printed and cover only 1 side of plain white paper. The paper shall be not more than 8 1/2 inches wide and 11 inches long. Copies may be on any weight paper.

(3) Except as otherwise provided in these rules, a signed original of all papers shall be filed.

(4) If a pleading or other paper is not filed in accordance with applicable time limits, the right of a party to make that filing is waived. The presiding officer may exercise discretion and may, upon a showing of good cause for the late filing, permit the late filing of a pleading or other paper.

History: 1995 AACS.

R 205.3303 Names of parties.

Rule 303. (1) In a petition, the caption shall include the names of all parties. In other papers, it is sufficient to state the name of the first party on each side, with an appropriate indication of other parties, such as "et al."

(2) If the petitioner is an individual, the full given name and surname shall be stated in the caption. If the petitioner is a married woman, her given name shall be used, and not the name of her husband preceded by "Mrs." If the petitioners are husband and wife, the full given name and surname of each shall be stated.

(3) If the petitioner is a fiduciary, the names of the estate, trust, or other person for whom he or she acts shall be given first, followed by the name of the fiduciary.

(4) If the petitioner is a business operating under an assumed name, the full name of the business, for example, the d/b/a, shall be stated. If the petitioner is a corporation, the full name of the corporation shall be stated. If the petitioner is a limited liability company, the full name of the limited liability company shall be stated.

History: 1995 AACS.

R 205.3304 Signature.

Rule 304. The written signature, whether of the representative or of the petitioner, shall be in individual form and not in the firm name, except that if the petitioner is a corporation, the written signature shall be by an active officer of the corporation, and if the petitioner is a limited liability company, the written signature shall be by a managing member of the limited liability company. The name and mailing address of the petitioner or of the representative shall be typed or printed immediately following the written signature.

History: 1995 AACS.

R 205.3305 Reply to motion; failure to file; oral argument.

Rule 305. (1) A party may file a written reply to a written motion. A party shall have not less than 14 days from the date of service of a motion to file a reply unless a shorter response period is specified by the presiding officer for good cause. The

presiding officer may order an opposing party to file a written reply to a written motion.

(2) Failure to file a reply as ordered shall constitute consent to the granting of relief sought in the motion.

(3) The presiding officer may order oral argument on any motion.

History: 1995 AACCS.

R 205.3306 Relief sought by motion; disposal by proposal for decision.

Rule 306. Any relief sought by motion that has the result of substantially affecting a significant claim or interest of any party shall be disposed of by proposal for decision by the presiding officer.

History: 1995 AACCS.

R 205.3307 Motion for extension of time.

Rule 307. (1) Except as otherwise provided by law and except for oral motions made during a hearing, requests for extensions of time in which to perform any act required or allowed to be done at or within a specific time by these rules shall be made by a written motion. The motion shall be filed before the expiration of the period originally prescribed or previously extended. If the presiding officer determines that there is good cause for the extension of time, the motion may be granted. The presiding officer shall state, with particularity, the reasons for granting the extension.

(2) This rule shall not apply to motions for adjournment of a prehearing conference or a hearing.

History: 1995 AACCS.

R 205.3308 Time for filing motion for more definite statement, motion for amendment, or motion for intervention.

Rule 308. A party may file a motion for more definite statement, a motion for amendment, or a motion for intervention at any time before the date set by the presiding officer for a prehearing conference.

History: 1995 AACCS.

R 205.3309 Amendments.

Rule 309. (1) Either party may amend his or her petition or answer at any time before the hearing by consent of the adverse party or by leave of the presiding officer. All motions to amend shall be accompanied by the proposed amendments.

(2) An original of the motion shall be filed with the commissioner, and a copy shall be served upon the adverse party or authorized representative.

History: 1995 AACCS.

R 205.3310 Summary decision.

Rule 310. A party may move for a summary decision in the party's favor upon any of the following grounds:

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

(b) The opposing party has failed to state a valid defense to the claim asserted by that party.

(c) There is no genuine issue of material fact and the moving party is entitled to a summary decision as a matter of law.

History: 1995 AACCS.

R 205.3311 Motion for more definite statement.

Rule 311. If a pleading is so vague or ambiguous that it cannot be understood or answered, an opposing party may move for a more definite statement before filing a responsive pleading. The motion shall identify the defects and shall request the desired details. If the motion is granted and not obeyed within 14 days after notice of the order, the presiding officer may strike the pleading to which the motion was directed or make any other order that is deemed just. If the motion is denied, the moving party shall promptly file the responsive pleading that was delayed by the motion.

History: 1995 AACCS.

R 205.3312 Intervention.

Rule 312. (1) A person shall be permitted to intervene in a proceeding if either of the following occurs:

(a) The applicant has an unconditional right to intervene conferred by law.

(b) An interest of the applicant that may be directly affected is not adequately represented by the existing parties and the applicant may be bound by a decision in the proceeding.

(2) A person may be permitted to intervene in a proceeding if any of the following occurs:

(a) A statute of this state confers a conditional right to intervene.

(b) The applicant's claim or defense and the proceeding have a question of law or fact in common.

(c) The parties to the proceeding stipulate to the intervention.

(3) When ruling on an application for intervention, the presiding officer shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

History: 1995 AACCS.

R 205.3313 Application for intervention; filing; late filing.

Rule 313. (1) Any person claiming a right to intervene or an interest of such a nature that intervention may be appropriate may file an application to intervene. An application for intervention shall state the grounds for intervention and the supporting facts in a manner that fully advises the parties and the presiding officer of the specific issues of fact or law with which the applicant is concerned.

(2) A person shall file an application for intervention not less than 14 days before the date set for the hearing. The person who files the application shall attach copies of all the proofs of service for papers served upon parties to the proceeding. The presiding officer shall not grant an application for intervention that is filed late unless the person who files the application shows good cause for the delay and shows that a denial of the application is detrimental to the public interest.

History: 1995 AACCS.

R 205.3314 Answer to application for intervention; waiver; time for filing.

Rule 314. (1) A party to a proceeding may file an answer to an application for intervention.

(2) Failure of a party to file an answer waives the party's right to object to the intervention.

(3) An answer shall be filed with the commissioner within 7 days after the date of service of the application, but not later than 4 days before the date of the hearing. The presiding officer may set other dates for filing an answer where an application has been filed late.

(4) An application shall not be granted until all parties have had an opportunity to object to the intervention.

History: 1995 AACCS.

R 205.3315 Ruling on application for intervention.

Rule 315. (1) As soon as practicable after expiration of the time for filing an answer to an application for intervention, the presiding officer shall grant or deny, in whole or in part, the application and may, if appropriate, authorize limited participation. The presiding officer shall indicate in an order granting intervention any limits on participation. The presiding officer shall not authorize intervention beyond that for which the intervenor applied.

(2) Where intervenors have substantially like interests and positions, the presiding officer may, in order to expedite the proceedings, limit the number of attorneys that will be permitted to take part in the proceedings and limit the extent to which intervenors may engage in the following activities:

- (a) Filing of pleadings, briefs, motions, and other papers.
- (b) Presenting opening and closing statements, oral arguments, and motions.
- (c) Calling and cross-examining witnesses.
- (d) Introducing evidence.

History: 1995 AACCS.

R 205.3316 Limited intervention without party status.

Rule 316. (1) Upon order of the presiding officer, a person may testify or make a statement at a proceeding if all of the following actions occur:

(a) The person files a statement with the administrator, not less than 7 days before the date of hearing, in which the person discloses the person's interest in the proceeding and the position the person intends to take, establishes that the person's contentions are relevant to an issue in the case, and disclaims any right to broaden the issues in the case.

(b) The person serves copies of the statement described in subdivision (a) of this subrule upon all the parties to the case before the hearing.

(c) The presiding officer decides that the person has served the parties and that the person's contentions are relevant to an issue in the case.

(2) The presiding officer may limit the testimony or statement to expedite the proceedings.

(3) A person does not become a party to the proceeding due to the person's testifying or making a statement pursuant to this rule.

History: 1995 AACCS.

PART 4. JOINT AND CONSOLIDATED PROCEEDINGS

R 205.3401 Joint hearing; consolidation of proceedings; other orders.

Rule 401. When proceedings involving a substantial and controlling common question of fact or law are pending before the commissioner, the presiding officer may, on the presiding officer's own motion or on motion by a party, take any of the following actions:

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

(b) Order the proceedings consolidated.

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

History: 1995 AACCS.

R 205.3402 Notice of intent to issue order; filing; hearing.

Rule 402. Before issuing an order pursuant to R 205.3401, the presiding officer shall serve a notice of intent to issue the order on the parties. The parties shall have 5 days from the receipt of the notice to file objections to the order.

History: 1995 AACCS.

PART 5. PREHEARING CONFERENCES

R 205.3501 Purposes of the prehearing conference.

Rule 501. (1) The presiding officer may direct the parties to appear before the presiding officer for 1 or more prehearing conferences for any of the following purposes:

- (a) To simplify and clarify factual and legal issues.
- (b) To consider amendments to pleadings.
- (c) To obtain admissions or stipulations to facts or to the authenticity of evidence.
- (d) To expedite the discovery and presentation of evidence.
- (e) To produce all proposed exhibits in the possession of a party.
- (f) To identify witnesses, specify the issues on which they will testify, and summarize their testimony.
- (g) To set a time for the exchange of any written testimony.
- (h) To estimate the time required for the hearing.
- (i) To discuss settlement or other disposition of the case.
- (j) To consider other matters that may aid in the disposition of the proceedings.

(2) The presiding officer may conduct the prehearing conference by telephone, by other electronic media, or face-to-face. A face-to-face prehearing conference shall be conducted if a party requests a face-to-face prehearing conference.

History: 1995 AACS.

R 205.3502 Prehearing conference; notification of parties; record of conference.

Rule 502. (1) Upon an approved request by a party or upon the presiding officer's own motion, a prehearing conference may be held. The presiding officer shall notify the parties of the time, place, and manner of a conference. The initial notice shall direct the parties to appear or to be available and shall state the subjects to be discussed at the conference.

(2) The presiding officer may require that a conference or any portion of a conference be recorded.

History: 1995 AACS.

R 205.3503 Failure to appear at prehearing conference; waiver of objections; binding nature of conference.

Rule 503. (1) If a party fails to appear or to be available at a conference after proper service of notice or after filing a request for a conference, the presiding officer may proceed with the conference if no adjournment is granted.

(2) Failure of a party to attend or be available for the conference shall constitute a waiver of all objections to any agreements reached and any ruling or summary with respect to matters covered by the notice of the conference.

History: 1995 AACS.

R 205.3504 Record of ruling; summary; copies; objection.

Rule 504. (1) After a prehearing conference and before the hearing, the presiding officer shall enter any rulings in the record and may enter a summary of the conference in the record.

(2) The presiding officer shall distribute to the parties copies of the rulings or summaries entered in the record.

(3) A party may object to a summary of a conference and file a motion to seek correction of the summary.

History: 11995 AACCS.

R 205.3505 Adjournment of prehearing conference.

Rule 505. (1) A prehearing conference may be adjourned only upon an order of the presiding officer.

(2) Before a scheduled prehearing conference date, motions or stipulations for adjournment filed by the parties shall be in writing and shall be filed, with appropriate proof of service, at least 1 week before the date scheduled for the prehearing conference, unless a shorter period is allowed by order of the presiding officer. The presiding officer may order an adjournment on his or her own motion.

(3) The presiding officer may grant 1 adjournment to each party.

(4) The presiding officer may grant adjournments in such other instances as the presiding officer finds are in the interests of justice.

History: 1995 AACCS.

PART 6. CONDUCT OF HEARINGS

R 205.3601 Notice of hearing; service; place of hearing.

Rule 601. (1) Except as otherwise provided or required by law, an initial notice of hearing shall be served not less than 21 days before the date of hearing, unless the parties consent to a lesser time period.

(2) Except as otherwise provided by law, the bureau shall serve a notice of hearing and any amendments to a notice of hearing in person or by certified mail, return receipt requested.

(3) A hearing may be conducted by telephone, by other electronic media, or face-to-face. A face-to-face hearing shall be conducted if a party requests a face-to-face hearing.

History: 1995 AACCS.

R 205.3602 Adjournments.

Rule 602. The procedure and time limit established by R 205.3505 for the adjournment of a prehearing conference shall apply to an adjournment of a hearing.

History: 1995 AACCS.

R 205.3603 Failure to appear.

Rule 603. The unexcused absence of a party or his or her representative at the place and hour set for hearing of any proceeding before the commissioner will not be an occasion for delay. The hearing shall proceed and the case will be considered as submitted on the part of the absent party.

History: 1995 AACCS.

R 205.3604 Opening statement; presentation of evidence; regulation of order of presentation.

Rule 604. (1) The presiding officer may allow the parties to make opening statements or appropriate motions.

(2) Unless otherwise directed by the presiding officer, the petitioner or other party having the burden of proof shall first present the evidence in support of that party's case.

(3) An intervenor shall follow the party on whose behalf the intervention is made, except where the intervention is not in support of any party.

(4) Except as otherwise provided by law, the presiding officer may regulate the order of the hearing to promote the fair and efficient determination of the issues presented.

History: 1995 AACCS.

R 205.3605 Witnesses; oath or affirmation; examination.

Rule 605. A witness shall be administered an oath or affirmation before testifying. A witness shall be examined orally unless the testimony is submitted in written form pursuant to these rules. Where appropriate, the presiding officer may require a party submitting written testimony to make the witness available for cross-examination.

History: 1995 AACCS.

R 205.3606 Objections; notation on record; failure to object.

Rule 606. An objection to an offer of evidence shall be made in a timely manner and shall state fully the grounds for objection. An objection to evidence shall be noted in the record. Failure to object to evidence in a timely manner constitutes a waiver of the right to object.

History: 1995 AACCS.

R 205.3607 Witnesses; limitation.

Rule 607. The presiding officer may limit the number of witnesses on an issue to prevent undue delay, waste of time, or the needless presentation of cumulative evidence.

History: 1995 AACS.

R 205.3608 Additional evidence.

Rule 608. The presiding officer may call for evidence upon an issue and require the evidence to be presented by a party or other person.

History: 1995 AACS.

R 205.3609 Adverse witnesses; interrogation; impeachment.

Rule 609. A witness, an adverse party, or an officer, agent, or employee of an adverse party who appears to be hostile, unwilling, or evasive may be interrogated by leading questions and may be contradicted and impeached by the party calling the witness.

History: 1995 AACS.

R 205.3610 Conference during hearings.

Rule 610. (1) At the opening of a hearing or at any other time during a hearing, the presiding officer may hold a conference upon the request of a party or upon the presiding officer's own motion.

(2) A conference may be held for the purpose of clarifying or simplifying issues presented at the hearing, including the possibility of obtaining stipulations and admissions of fact and consideration of the authenticity of evidence and contents of documents so as to avoid unnecessary proof.

(3) A conference may be held to expedite the presentation of evidence, the exchange of copies of proposed exhibits, and other matters as may promote a fair and expeditious hearing or aid in the disposition of the proceeding.

(4) At the conclusion of a conference, the presiding officer may enter in the record a ruling or order that states the matters agreed upon by the parties and any procedural determinations made by the presiding officer.

History: 1995 AACS.

R 205.3611 Notice of judicially cognizable facts.

Rule 611. The presiding officer may take official notice of judicially cognizable facts and may take notice of general or technical facts within the presiding officer's specialized knowledge.

History: 1995 AACCS.

R 205.3612 Use of expertise to evaluate evidence.

Rule 612. The presiding officer may use his or her experience, technical competence, and specialized knowledge in the evaluation of evidence presented to him or her.

History: 1995 AACCS.

R 205.3613 Evidence and arguments.

Rule 613. The parties shall be given an opportunity to present oral and written arguments on issues of law and policy and an opportunity to present evidence and argument of issues of fact.

History: 1995 AACCS.

R 205.3614 Cross-examination and rebuttal evidence.

Rule 614. (1) A party may cross-examine a witness, including the author of a document prepared by, on behalf of, or for use by, the agency and offered in evidence.

(2) A party may submit rebuttal evidence.

History: 1995 AACCS.

R 205.3615 Use of rules of evidence.

Rule 615. (1) The rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable, but the presiding officer may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(2) Irrelevant, immaterial, or unduly repetitious evidence may be excluded.

(3) Effect shall be given to the rules of privilege recognized by law.

(4) Objections to offers of evidence may be made and shall be noted in the record.

History: 1995 AACCS.

R 205.3616 Documentary evidence.

Rule 616. Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available or may be incorporated by reference if the materials so incorporated are available for examination by the parties. Upon timely

request, a party shall be given an opportunity to compare the copy with the original when available.

History: 1995 AACCS.

R 205.3617 Preparation of official hearing record.

Rule 617. The commissioner shall prepare an official record of a hearing, which shall include all of the following:

- (a) Notices, pleadings, motions, and intermediate rulings.
- (b) Questions and offers of proof, objections, and rulings thereon.
- (c) Evidence presented.

(d) Matters officially noticed, except matters so obvious that a statement of such matters would serve no useful purpose.

(e) Proposed findings and exceptions.

(f) Any decision, opinion, order, or report by the presiding officer at the hearing or the commissioner.

History: 1995 AACCS.

R 205.3618 Record of hearings.

Rule 618. Hearings shall be recorded, but need not be transcribed unless requested by a party. The party requesting the transcript shall pay for the transcript.

History: 1995 AACCS.

PART 7. DECISIONS

R 205.3701 Decision and order of the commissioner.

Rule 701. (1) Promptly after the completion of the hearing, the commissioner shall affirm, reverse, or modify the respondent's action by written order.

(2) Where required by section 81 of the act, a proposal for decision shall be prepared by the presiding officer and the parties shall be given an opportunity to file exceptions and present written arguments to the presiding officer and commissioner. The proposal for decision shall

contain a proposed decision, a statement of the reasons for the decision, and a statement for each issue of fact or law necessary to the decision.

(3) In any proceeding, the commissioner may ask the presiding officer to prepare a proposal for decision within a reasonable time after the hearing. Before preparing the proposal, the presiding officer may require or allow the parties to submit briefs and proposed findings of fact and conclusions of law. Where briefs are to be submitted, the presiding officer shall specify a filing date.

(4) After a review of the record or the proposal for decision and exceptions thereto, if any, the commissioner shall issue an order setting forth findings of fact, conclusions of law, and a final order.

(5) If a party files an exception to the proposal for decision, the exception shall contain specific reference to the record.

History: 1995 AACCS.

R 205.3702 Service of final order.

Rule 702. The commissioner shall serve a copy of the final order on the parties by registered or certified mail.

History: 1995 AACCS.

R 205.3703 Request for rehearing.

Rule 703. A request for rehearing pursuant to section 87 of the act shall state the grounds upon which the moving party relies. A party shall file any objections to a request for rehearing within 7 days of being served with the request for rehearing.

History: 1995 AACCS.

PART 8. REMAND PROCEEDINGS

R 205.3801 Initiation of remand proceedings.

Rule 801. (1) When a contested case is remanded to the commissioner, a party shall initiate the remand proceeding by filing a petition with the commissioner.

(2) The caption of the petition shall carry the same names of the parties and docket number as appeared in the pleadings in the original proceeding. In addition, the caption of the petition shall carry the phrase, ON REMAND, directly below the docket number.

(3) The petition shall include a copy of the remand order.

History: 1995 AACCS.

R 205.3802 Applicability of parts 2 through 7 to remand proceedings.

Rule 802. (1) The rules contained in parts 2 through 7 of these rules apply to a remand proceeding, except as otherwise provided in this rule.

(2) If a respondent initiates the remand proceeding, then the terms "petitioner" and "respondent" may be used interchangeably to correspond factually, in context, with the appropriate action to be taken by the appropriate party.

(3) The caption of all papers filed in the remand proceeding shall comply with R 205.3801(2).

History: 1995 AACSB.