

**SUBCHAPTER C: HEARING PROCEDURES**  
**§§80.101, 80.103, 80.105, 80.107 - 80.110, 80.113, 80.115, 80.117 -**  
**80.119, 80.125 - 80.129, 80.131, 80.133, 80.135, 80.137**  
**Effective January 3, 2019**

**§80.101. Remand to Executive Director.**

At the request of the applicant, a judge shall remand an application to the executive director if all timely hearing requests have been withdrawn or denied or, if parties have been named, all parties to a contested case reach a settlement so that no facts or issues remain controverted. After remand, the application shall be uncontested and the applicant is deemed to have agreed to the action of the executive director. The executive director may act on the application or set it for a commission meeting.

Adopted April 16, 1997

Effective May 15, 1997

**§80.103. Procedure Before Preliminary Hearing.**

(a) Conference before preliminary hearing.

(1) At the judge's discretion, a conference before hearing may be held at a time and place stated in the notice. If notice of the conference is not given in the notice of public hearing, notice of the conference shall be mailed at least ten days prior to the conference or the conference may be held at the public hearing date, time, and place stated in the notice of public hearing. If notice of public hearing is required to be published, notice of a conference to be held prior to the initial public hearing date shall be published at least ten days prior to the conference.

(2) Any issue appropriately considered at a preliminary hearing may be considered at a conference.

(b) Record of conference action. As determined by the judge, action taken at the conference shall be reduced to writing and made a part of the record or a statement thereof shall be made on the record at the close of the conference or at the hearing. After a prehearing conference, the judge may make appropriate rulings concerning matters discussed at the conference.

Adopted May 8, 1996

Effective June 6, 1996

**§80.105. Preliminary Hearings.**

(a) After the required notice has been issued, the judge shall convene a preliminary hearing to consider the jurisdiction of the commission over the proceeding. A preliminary hearing is not required in an enforcement matter, except in those under federally authorized underground injection control or Texas Pollutant Discharge Elimination System programs. A preliminary hearing is required for applications referred to the State Office of Administrative Hearings under §55.210 of this title (relating to Direct Referrals).

(b) If jurisdiction is established, the judge shall:

(1) name the parties;

(2) accept public comment in the following matters:

(A) enforcement hearings; and

(B) applications under Texas Water Code (TWC), §11.036 or §11.041 and TWC, Chapter 13;

(3) establish a docket control order designed to complete the proceeding within the maximum expected duration set by the commission. The order should include a discovery and procedural schedule including a mechanism for the timely and expeditious resolution of discovery disputes; and

(4) allow the parties an opportunity for settlement negotiations.

(c) When agreed to by all parties in attendance at the preliminary hearing, the judge may proceed with the evidentiary hearing on the same date of the first preliminary hearing.

(d) One or more preliminary hearings may be held to discuss:

(1) formulating and simplifying issues;

(2) evaluating the necessity or desirability of amending pleadings;

(3) all pending motions;

(4) stipulations;

(5) the procedure at the hearing;

(6) specifying the number and identity of witnesses;

- (7) filing and exchanging prepared testimony and exhibits;
- (8) scheduling discovery;
- (9) setting a schedule for filing, responding to, and hearing of dispositive motions; and
- (10) other matters that may expedite or facilitate the hearing process.

(e) For applications directly referred under §55.210 of this title, a preliminary hearing may not be held until the executive director's response to public comment has been provided.

Adopted December 12, 2018

Effective January 3, 2019

**§80.107. Sanctions.**

(a) On the judge's own motion or on motion of a party and after notice and an opportunity for a hearing, a judge may impose sanctions against a party or its representative for:

- (1) filing a motion or pleading that is groundless and brought:
  - (A) in bad faith;
  - (B) for the purpose of harassment; or
  - (C) for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;
- (2) abuse of the discovery process in seeking, making, or resisting discovery; or
- (3) failure to obey an order of the judge or the commission.

(b) A sanction imposed under this section may include, as appropriate and justified, issuance of an order:

- (1) disallowing further discovery of any kind or of a particular kind by the offending party;
- (2) charging all or any part of the expenses of discovery against the offending party or its representatives;

(3) holding that designated facts be considered admitted for purposes of the proceeding;

(4) refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters in evidence;

(5) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of those requests; and

(6) striking pleadings or testimony, or both, in whole or part.

Adopted May 8, 1996

Effective June 6, 1996

#### **§80.108. Executive Director Party Status in Permit Hearings.**

The executive director is a party in all contested case hearings concerning permitting matters. The executive director's participation shall be to complete the administrative record and support the executive director's position developed in the underlying proceeding. The executive director may revise or reverse his position based on the evidence presented in the hearing.

Adopted December 9, 2015

Effective December 31, 2015

#### **§80.109. Designation of Parties.**

(a) Determination by judge. All parties to a proceeding shall be determined at the preliminary hearing or when the judge otherwise designates. To be admitted as a party, a person must have a justiciable interest in the matter being considered and must, unless the person is specifically named in the matter being considered, appear at the preliminary hearing in person or by representative and seek to be admitted as a party. After parties are designated, no person will be admitted as a party except upon a finding that good cause and extenuating circumstances exist and that the hearing in progress will not be unreasonably delayed.

(b) Parties.

(1) The executive director is a mandatory party to all commission proceedings concerning matters in which the executive director bears the burden of proof, and in the following commission proceedings:

(A) matters concerning Texas Water Code (TWC), §11.036 and §11.041; TWC, Chapters 13, 35, 36, and 49 - 66; and Texas Local Government Code, Chapters 375 and 395;

(B) matters arising under Texas Government Code, Chapter 2260 and Chapter 11, Subchapter D of this title (relating to Resolution of Contract Claims); and

(C) matters under TWC, Chapter 26, Subchapter I, and Chapter 334, Subchapters H and L of this title (relating to Reimbursement Program and Overpayment Prevention).

(2) In addition to paragraph (1) of this subsection, the executive director is always a party in contested case hearings concerning permitting matters, pursuant to, and in accordance with, the provisions of §80.108 of this title (relating to Executive Director Party Status in Permit Hearings).

(3) The public interest counsel of the commission is a party to all commission proceedings.

(4) The applicant is a party in a hearing on its application.

(5) Affected persons shall be parties to hearings on permit applications, based upon the standards set forth in §55.29 and §55.203 of this title (relating to Determination of Affected Person). Regardless of any other law, a state agency, except a river authority, may not be a party to a hearing on an application received by the commission on or after September 1, 2011 unless the state agency is the applicant.

(6) The parties to a contested enforcement case include:

(A) the respondent(s);

(B) any other parties authorized by statute; and

(C) in proceedings alleging a violation of or failure to obtain an underground injection control or Texas Pollutant Discharge Elimination System permit, or a state permit for the same discharge covered by a National Pollutant Discharge Elimination System (NPDES) permit that has been assumed by the state under NPDES authorization, any other party granted permissive intervention by the judge. In exercising discretion whether to permit intervention, the judge shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(7) The parties to a hearing upon a challenge to commission rules include the person(s) challenging the rule and any other parties authorized by statute.

(8) The parties to a permit revocation action initiated by a person other than the executive director shall include the respondent and the petitioner.

(9) The parties to a post-closure order contested case are limited to:

(A) the executive director;

(B) the applicant(s); and

(C) the Public Interest Counsel.

(c) Alignment of participants. Participants (both party and non-party) may be aligned according to the nature of the proceeding and their relationship to it. The judge may require participants of an aligned class to select one or more persons to represent them in the proceeding. Unless otherwise ordered by the judge, each group of aligned participants shall be considered to be one party for the purposes of §80.115 of this title (relating to Rights of Parties) for all purposes except settlement.

(d) Effect of postponement. If a hearing is postponed for any reason, any person already designated as a party retains party status.

Adopted December 12, 2018

Effective January 3, 2019

**§80.110. Public Interest Factors.**

(a) In order to determine the nature and extent of the public interest, the public interest counsel must consider the following factors before deciding to represent the public interest as a party to a commission proceeding on a proposed agency action:

(1) the extent to which the action may impact human health;

(2) the extent to which the action may impact environmental quality;

(3) the extent to which the action may impact the use and enjoyment of property;

(4) the extent to which the action may impact the general populace as a whole, rather than impact an individual private interest;

(5) the extent and significance of interest expressed in public comment received by the commission regarding the action;

(6) the extent to which the action promotes economic growth and the interests of citizens in the vicinity most likely to be affected by the action;

(7) the extent to which the action promotes the conservation or judicious use of the state's natural resources; and

(8) the extent to which the action serves commission policies regarding regionalization or other relevant considerations regarding the need for facilities or services to be authorized by the action.

(b) In prioritizing the public interest counsel's workload, the public interest counsel must consider the following factors:

(1) the number and complexity of the issues to be considered in any contested case hearing on the action;

(2) the extent to which there is a known disparity in the financial, legal, and technical resources of the potential parties to the action, including consideration of whether the parties are represented by counsel;

(3) the extent to which the public interest counsel's participation will further the development of the evidentiary record on relevant environmental or consumer-related issues to be considered by the commission; and

(4) staffing and other resource limitations of the office of public interest counsel.

Adopted May 16, 2012

Effective June 7, 2012

**§80.113. Appearance.**

(a) Any person may appear at a hearing in person or by authorized representative. A person appearing in a representative capacity may be required to prove his authority.

(b) Except for good cause, the applicant or petitioner shall appear at the public hearing. Failure to so appear may be grounds for withholding consideration of a matter or for dismissal without prejudice.

(c) An affidavit may be made by either the party or a representative, unless otherwise provided by statute.

(d) Failure to appear at an enforcement hearing may result in a default order under §70.106 of this title (relating to Default Orders).

Adopted May 8, 1996

Effective June 6, 1996

**§80.115. Rights of Parties.**

(a) A party has the right to conduct discovery, present a direct case, cross-examine witnesses, make oral and written arguments, obtain copies of all pleadings, motions, replies, and other filed documents, receive copies of all notices issued by the commission concerning the proceeding to which the person is a party, and, as directed by the judge, otherwise fully participate as a party in the proceeding. In an enforcement proceeding, no party except the executive director may seek to amend or add to the violations alleged in the petition that initiated the case.

(b) Except in enforcement matters, a person may seek leave to withdraw his or her party status at any time upon written request to the judge or by request stated on the record during a hearing. Party status is not withdrawn unless and until the judge grants the request for leave to withdraw.

Adopted November 5, 1997

Effective December 1, 1997

**§80.117. Order of Presentation.**

(a) In all proceedings, the moving party has the right to open and close. Where several matters have been consolidated, the judge will designate who will open and close. The judge will determine at what stage other parties will be permitted to offer evidence and argument. After all parties have completed the presentation of their evidence, the judge may call upon any party for further material or relevant evidence upon any issue.

(b) The applicant shall present evidence to meet its burden of proof on the application, followed by the protesting parties, the public interest counsel, and the executive director. In all cases, the applicant shall be allowed a rebuttal. Any party may present a rebuttal case when another party presents evidence that could not have been reasonably anticipated. For applications subject to subsection (c) of this section, the applicant's presentation of evidence to meet its burden of proof may consist solely of the filing with the State Office of Administrative Hearings (SOAH), and admittance by the judge, of the administrative record as described in subsection (c) of this section.

(c) For contested cases regarding a permit application filed on or after September 1, 2015, and referred to SOAH under Texas Water Code, §5.556 or §5.557:

(1) The filing of the administrative record as described in §80.118(c) of this title (relating to Administrative Record) establishes a prima facie demonstration that:

(A) the draft permit meets all applicable state and federal legal and technical requirements; and

(B) the permit issued by the commission is consistent with the draft permit in the administrative record would protect human health and safety, the environment, and physical property.

(2) The applicant, protesting parties, the public interest counsel, and the executive director may present evidence after admittance of the administrative record by the judge.

(3) Any party may present evidence to rebut the prima facie demonstration by demonstrating that one or more provisions in the draft permit violate a specifically applicable state or federal requirement that relates to a matter directly referred to SOAH or referred by the commission. If the prima facie demonstration is rebutted, the applicant or the executive director may present additional evidence to support the executive director's draft permit.

(d) In all contested enforcement case hearings, the executive director has the right to open and close. In all such cases, the executive director shall be allowed to close with his rebuttal.

Adopted December 9, 2015

Effective December 31, 2015

**§80.118. Administrative Record.**

(a) Except as provided in subsection (c) of this section, in all permit hearings, the record in a contested case includes, at a minimum, the following certified copies of documents:

(1) the executive director's final draft permit, including any special provisions or conditions;

(2) the executive director's preliminary decision, or the executive director's decision on the permit application, if applicable;

(3) the summary of the technical review of the permit application;

(4) the compliance summary of the applicant;

(5) copies of the public notices relating to the permit application, as well as affidavits regarding public notices; and

(6) any agency document determined by the executive director to be necessary to reflect the administrative and technical review of the application.

(b) For purposes of referral to the State Office of Administrative Hearings (SOAH) under §80.5 and §80.6 of this title (Referral to SOAH), of applications filed before September 1, 2015, or applications not referred under Texas Water Code, §5.556 or §5.557, the chief clerk's case file shall contain the administrative record as described in subsection (a) of this section.

(c) In all hearings on permit applications filed on or after September 1, 2015, which are referred for hearing under Texas Water Code, §5.556 or §5.557, the administrative record in a contested case filed by the chief clerk with SOAH includes the following certified copies of documents:

(1) the items in subsection (a)(1) - (6) of this section, including technical memoranda, that demonstrate the draft permit meets all applicable requirements and, if issued, would protect human health and safety, the environment, and physical property; and

(2) the application submitted by the applicant, including revisions to the original submittal.

(d) For purposes of referral to SOAH under §80.6 of this title for hearings regarding permit applications filed on or after September 1, 2015, that are referred under Texas Water Code, §5.556 and §5.557, the applicant shall provide two duplicates of the original application, including all revisions to the application, to the chief clerk for inclusion in the administrative record in the format and time required by the procedures of the commission, no later than:

(1) for applications referred by the commission, 10 days after the chief clerk mails the commission order; or

(2) for applications referred by the applicant or executive director, 10 days after the chief clerk mails the executive director's response to comments.

(e) For purposes of referral to SOAH under §80.6 of this title for hearings regarding permit applications filed on or after September 1, 2015, that are referred

under Texas Water Code, §5.556 and §5.557, the chief clerk shall file the administrative record with SOAH at least 30 days prior to the hearing.

Adopted December 9, 2015

Effective December 31, 2015

**§80.119. Continuance.**

(a) The judge may continue a hearing from time to time and from place to place. If the time and place for the hearing to reconvene are not announced at the hearing, a notice shall be mailed at a reasonable time to all parties and other persons who, in the opinion of the judge, may be affected by action taken as a result of the hearing.

(b) Motions for continuance shall be in writing or stated on the record, and shall be sworn unless the facts alleged therein to show good cause are part of the record of the proceeding.

(c) Upon joint motion of all parties, the judge may continue the hearing to allow the parties to use alternative dispute resolution procedures or to engage in and complete settlement negotiations.

Adopted May 8, 1996

Effective June 6, 1996

**§80.125. Agreements.**

Agreements between parties affecting any pending matter must be in writing, signed and filed as a part of the record, or announced at the hearing and entered in the record.

Adopted May 8, 1996

Effective June 6, 1996

**§80.126. Public Comment in Direct Referrals**

In permit cases referred under §55.210 of this title (relating to Direct Referrals), all timely public comment on the application and the executive director's responses to timely, relevant and material, or significant public comment shall be admitted into the administrative record as defined by §80.118 of this title (relating to Administrative Record). The response shall specify the provisions of the draft permit that have been changed in response to public comment and the reasons for the changes. The parties may be allowed to respond and to present evidence on each issue raised in public comment or the executive director's responses. The commission shall consider all public comment in making its decision and shall either adopt the executive director's response to public comment or prepare its own response.

Adopted December 5, 2001

Effective December 27, 2001

**§80.127. Evidence.**

(a) General admissibility of evidence.

(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The Texas Rules of Civil Evidence, as applied in nonjury civil cases in the district courts of this state, shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under those rules may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. The judge shall give effect to the rules of privilege recognized by law.

(2) Testimony will be received only from witnesses called by a party or the judge. The judge may allow or request testimony from any person whose position is not adequately represented by any party, subject to cross-examination by all parties. Such testimony shall only be allowed at the judge's discretion. All parties shall have an opportunity to conduct discovery of such person.

(3) Testimony offered by any witness shall be under oath.

(4) In a contested case hearing concerning a permit application, the executive director shall not rehabilitate the testimony of a witness unless the witness is an agency employee testifying for the sole purpose of providing information to complete the administrative record.

(b) Stipulation. Evidence may be stipulated by agreement of all parties. The judge and commission will determine the weight, if any, to be accorded stipulated evidence.

(c) Prefiled testimony and exhibits. The judge may require or allow parties to prepare their direct testimony in written form if the judge determines that a proceeding will be expedited and that the interests of the parties will not be prejudiced substantially. The judge may require the parties to file and serve their direct testimony and exhibits before the beginning of the hearing. The prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be admitted into evidence as if read or presented orally, upon the witness being sworn and identifying the same as a true and accurate record of what the testimony would be if given orally. The witness shall be subject to cross-examination, and the prepared testimony shall be subject to objection.

(d) Exhibits.

(1) Exhibits of a documentary character shall not exceed 8 1/2 by 11 inches unless they are folded to the required size. Maps and drawings which are offered as exhibits shall be rolled or folded so as not to unduly encumber the record. Exhibits not conforming to this rule may be excluded.

(2) Each exhibit offered shall be tendered for identification and placed in the record. Copies shall be furnished to the judge, each of the parties, and the hearings reporter, unless the judge rules otherwise.

(3) If an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit shall be included in the record for the purpose of preserving the objection to the exclusion of the exhibit.

(e) Official notice.

(1) The judge may take official notice of all facts judicially cognizable. In addition, the judge may take official notice of any generally recognized facts within the specialized knowledge of the commission.

(2) The judge shall notify all parties of any material officially noticed, including any memoranda or data prepared by the executive director and relied upon by the commission in prior proceedings. All parties shall be afforded an opportunity to contest any material so noticed.

(f) Invoking the "rule." At the request of the party, and subject to the discretion of the judge, witnesses may be placed under "the rule" as provided by, and subject to the conditions of, Texas Rule of Civil Procedure 267 and Texas Rule of Evidence 614.

(g) Staff testimony and evidence. Testimony or evidence given in a contested case permit hearing by agency staff, regardless of which party called the staff witness or introduced the evidence relating to the documents listed in §80.118 of this title (relating to Administrative Record), or any analysis, study, or review that the executive director is required by statute or rule to perform, shall not constitute assistance to the permit applicant in meeting its burden of proof.

(h) In contested cases regarding a permit application filed with the commission on or after September 1, 2015, and referred under Texas Water Code, §5.556 or §5.557, the filing of the administrative record as described in §80.118 of this title (relating to Administrative Record) establishes a prima facie demonstration that the executive director's draft permit meets all state and federal legal and

technical requirements, and, if issued, would protect human health and safety, the environment, and physical property. The ALJ shall admit the administrative record into evidence for all purposes.

Adopted December 9, 2015

Effective December 31, 2015

**§80.128. Specific Admissibility of Evidence for Concrete Batch Plants.**

If the commission considers air dispersion modeling information in the course of issuing a standard permit under Chapter 116, Subchapter F of this title (relating to Standard Permits) for a plant that performs wet batch, dry batching, or central mixing, evidence regarding air dispersion modeling may not be submitted at a hearing under Texas Health and Safety Code, §382.056.

Adopted July 26, 2000

Effective August 20, 2000

**§80.129. Objections.**

Objections shall be timely noted in the record. Formal exception to the ruling of the judge is not necessary to preserve the objecting party's right on appeal.

Adopted May 8, 1996

Effective June 6, 1996

**§80.131. Interlocutory Appeals and Certified Questions.**

(a) No interlocutory appeals may be made to the commission by a party to a proceeding before a judge except that in an enforcement action a party may seek an interlocutory appeal to the commission on jurisdictional issues only.

(b) On a motion by a party or on the judge's own motion, the judge may certify a question to the commission. Certified questions may be made at any time during a proceeding, regarding commission policy, jurisdiction, or the imposition of any sanction by the judge which would substantially impair a party's ability to present its case. Policy questions for certification purposes include, but are not limited to:

- (1) the commission's interpretation of its rules and applicable statutes;
- (2) which rules or statutes are applicable to the proceeding; or
- (3) whether commission policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.

(c) If a question is certified, the judge shall file a request to answer the certified question with the chief clerk and serve copies on the parties. Within five days after the request is filed, all parties to the proceeding may file briefs or replies. The chief clerk shall provide copies of the request and any briefs or replies to the general counsel and commission. Upon the request of the general counsel or a commissioner to the general counsel, the request will be scheduled for consideration during a commission meeting. The chief clerk shall give the judge and all parties notice of the meeting. The judge may abate the hearing until the commission answers the certified question, or continue with the hearing if the judge determines that no party will be substantially harmed. If the chief clerk does not receive a request from the general counsel to set the question for consideration within 15 days after filing, the request is denied by operation of law.

Adopted April 11, 2012

Effective May 3, 2012

**§80.133. Oral Argument.**

At the conclusion of the hearing, oral argument may be heard upon request of the parties or at the judge's direction. The judge may prescribe reasonable time limits, and may require or accept written briefs in lieu of oral arguments, and may set a schedule for the submission of written briefs.

Adopted May 8, 1996

Effective June 6, 1996

**§80.135. Submittal of Findings of Fact and Conclusions of Law.**

The judge may request that the parties submit proposed findings of fact and conclusions of law separately stated.

Adopted May 8, 1996

Effective June 6, 1996

**§80.137. Summary Disposition.**

(a) Motion. After the preliminary hearing and up to 21 days before the evidentiary hearing, a party may file a motion for a summary disposition of all or any part of an action. The motion shall state the specific issues upon which the summary disposition is sought, and the specific grounds justifying the summary disposition. Except upon leave of the judge, with notice to opposing parties, the motion, any supporting affidavits, and any other relevant documentary evidence shall be filed and served at least 21 days before the date set for ruling on the motion.

(b) Written response. Except upon leave of the judge, a party may file and serve a written response, any supporting affidavits, and any other relevant

documentary evidence at least seven days before the date set for ruling on the motion.

(c) Summary disposition. Summary disposition shall be rendered if the pleadings, admissions, affidavits, stipulations, deposition transcripts, interrogatory answers, other discovery responses, exhibits and authenticated or certified public records, if any, on file in the case at the time of the hearing, or filed thereafter and before judgment with the permission of the judge, show that there is no genuine issue as to any material fact and the moving party is entitled to summary disposition as a matter of law on all or some of the issues expressly set out in the motion or in an answer or any other response.

(d) Testimony. A summary disposition may be based on uncontroverted testimonial evidence of an interested witness, or of an expert witness as to subject matter concerning which the judge must be guided solely by the opinion testimony of experts. The evidence must be clear, positive and direct, otherwise credible and free from contradictions and inconsistencies, and could have been readily controverted. No oral testimony shall be received at a hearing on a motion for summary disposition.

(e) Appendices, references and other use of discovery not otherwise on file. Discovery products not on file with the chief clerk may be used as summary disposition evidence if copies of the material, appendices containing the evidence, or a notice containing specific references to the discovery or specific references to other instruments, are filed and served on all parties together with a statement of intent to use the specified discovery as summary disposition proofs:

(1) at least 21 days before the date set for ruling on the motion if such proofs are to be used to support the summary disposition; or

(2) at least seven days before the date set for ruling on the motion if such proofs are to be used to oppose the summary disposition.

(f) Form of affidavits; further testimony. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The judge may permit affidavits to be supplemented or opposed by depositions or by further affidavits. Defects in the form of affidavits or attachments will not be grounds for reversal unless specifically pointed out by objection by an opposing party with opportunity, but refusal, to amend.

(g) When affidavits are unavailable. Should it appear from the affidavits of a party opposing the motion that he cannot for reasons stated present by affidavit facts essential to justify his opposition, the judge may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(h) Argument and ruling on motion. At the discretion of the judge, a hearing may be held and oral argument may be presented on the motion. The judge may rule on the motion with or without a hearing.

(i) Disposition of motion. If the judge grants a motion for summary disposition on all parts of an action, the judge shall close the hearing and prepare a proposal for decision. If the judge grants a motion for summary disposition on any part of an action, the judge shall not take evidence or hear further argument upon that part of the action, and shall enter an order specifying the facts that appear without substantial controversy, and directing such further proceedings as are just. Upon the hearing of the application the facts so specified shall be deemed established, and the hearing shall be conducted accordingly.

(j) Proposal for decision. At the close of the hearing, the judge shall include in the proposal for decision a statement of reasons, findings of fact and conclusions of law in support of any summary disposition rendered.

Adopted May 8, 1996

Effective June 6, 1996

**Derivation Table**  
**Rule Log No. 95123-263-AD**  
**Procedural Rules**  
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**Chapter 80 - Contested Case Hearings**  
**Subchapter C: Hearing Procedures**

This table is to be used to track sections after rule revisions. The column on the left should list the sections after the revision. The column on the right should list where the section was prior to the revision.

<b>New Section</b>	<b>Old Section</b>
§80.101	§§263.5, 263.11, 265.41
§80.103	§265.43
§80.105	§§265.60, 265.103, 337.34, 337.41
§80.107	New
§80.109	§265.61
§80.111	§265.62
§80.113	§265.63
§80.115	§§265.64, 337.36, 337.45
§80.117	§265.64, §337.47
§80.119	§§265.65, 337.33, 337.43
§80.125	§265.68, §337.44
§80.127	§§265.69, 337.42, 337.45
§80.129	§265.70
§80.131	§265.71, §337.40
§80.133	§265.72, §337.48
§80.135	§265.73
§80.137	§337.39, New

**Derivation Table**  
**Rule Log No. 96170-050-AD**  
**Hearings Requests/Procedural Rules**  
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**Chapter 80 - Contested Case Hearings**  
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§80.131	New