

TITLE 62: MINING
CHAPTER I: DEPARTMENT OF NATURAL RESOURCES
PART 100
PROCEDURE IN ADMINISTRATIVE PROCEEDINGS

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AUTHORITY: Implementing and authorized by the Coal Mining Act [225 ILCS 705/2.14].

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Section 100.10 Authority and Definitions

a) Authority

These Rules (hereinafter referred to as "Rules of Procedure") are hereby established and issued by the Director of the Department of Natural Resources pursuant to Section 2.14 of the Coal Mining Act of 1953, as amended, now in force in the State of Illinois, which empower the Director to "promulgate rules necessary for the effective and orderly conduct of hearings" held pursuant to the Act (Ill. Rev. Stat. 1981 ch. 96 1/2 par. 314)

b) Definitions

Whenever used or referred to in these Rules of Procedure, unless a different meaning clearly appears from the context:

"Act" means the Coal Mining Act of 1953, as amended;

"Adjudicatory Proceedings" means a proceeding including, but not restricted to a hearing or hearings, in which the legal rights, duties, or privileges of a party are, as required by the Act, determined by the **Department**;

"Board" means the Mining Board of the Department of Natural Resources, Office of Mines and Minerals of the State of Illinois or the Director of the Office of Mines and Minerals in his capacity as executive officer of said Board;

"Department" means the Department of Natural Resources of the State of Illinois;

"Director" means the Director of the Department of Natural Resources or duly appointed Acting Director, or, in his absence from the State or in any event of his incapacity to act, his next immediate subordinate statutory officer within said Department;

"Interested Person" means any individual, partnership, corporation, association, or public or private organization which has made a timely request to the Director for notice with respect to Rule-making proceedings under Section 2 of the Act;

"Party" means any person as defined in these Rules of Procedure, including the Director and the Department, who or which has filed a petition, application, complaint, or answer or has been granted leave to intervene in any proceeding conducted under these Rules of Procedure;

"Person" means any individual, partnership, corporation, association, public or private organization;

"Proceedings" means any formal or informal Board process as defined by Section 100.10(b) "adjudicatory proceedings" and "rule making proceedings" of these Rules of Procedure;

"Record" means that compilation of information presented to the Mining Board in any matter conducted pursuant to the Act, including, but not limited to, the transcript of any hearing, and any submissions data and documents;

"Respondent" means any party to an adjudicatory proceeding against whom a petition or complaint has been filed;

"Rule" means the whole or a part of the statement by the Department for general or particular applicability and future effect designed to implement or interpret the Act or Departmental policy under the Act; and

"Rule-making Proceedings" means the process of promulgating, interpreting, amending, or rescinding a rule.

Section 100.20 Initiating Action Before the Mining Board

- a) Initiating Adjudicatory Proceeding - Complaints and Petitions
 - 1) The Director may initiate action before the Board for adjudicatory proceedings under the Act by filing a complaint with the Board. The form and contents of such complaint shall be in accordance with Section 100.40(b) of this Part.
 - 2) Pursuant to the provisions of the Act, including, but not limited to Sections 2.13, 4.24, 5.04, 6.14, and 7.05 and subject to those provisions, any person or persons may initiate action before the Board for adjudicatory proceedings under the Act by filing a formal petition for relief with the Director. The form and contents of such petition shall be in accordance with Section 100.40(c) of this Part. If such petition alleges a breach of any statute or any rule or regulation of the Department, the Director, if he so elects, may also file a complaint with the Board. Regardless of whether the Director elects to file such complaint, he shall, within five (5) days from receipt of any petition, file said petition with the Board.
- b) Initiating Rule-making Proceedings
 - 1) Any person or persons may initiate action for rule-making proceedings under the Act by filing an application for such rule-making with the Director. The form and contents of such application shall be in accordance with Section 100.40(a) of this Part. The Director, within sixty (60) days from receipt of such application, shall, at his discretion:

- A) File said application with the Board;
 - B) Deny said application and transmit such denial and the reasons for same to the applicant; or
 - C) Amend such application and file said amended application with the Board, transmitting such amendments and the reasons for same to the applicant.
- 2) The Director may initiate action for rule-making proceedings under the Act by serving written notice as provided in Section 100.90(a) of these Rules of Procedure.

Section 100.30 Right to Counsel, Appearance, Substitution of Parties

a) Right to Counsel

- 1) Any party may appear and be heard through an attorney at law authorized to practice in the State of Illinois. In any proceeding before the Board:
- A) Attorneys admitted to practice in States other than the State of Illinois may appear and be heard by special leave of the Board;
 - B) A natural person may appear and be heard on his own behalf; and
 - C) A corporation or association may appear and present evidence by a bona-fide officer, employee, or representative.
- 2) Only a person admitted to practice as an attorney at law shall represent anyone else in any proceeding before the Board in any matter involving the exercise of legal skill or knowledge. All persons appearing in proceedings before the Board shall conform to the standards of conduct of attorneys before the courts of the State of Illinois. If a person does not conform to such standards, the Board may decline to permit such person to appear in any proceeding or may exclude such person.

b) Appearance of Attorney

An attorney appearing in a representative capacity in any proceeding hereunder shall file a written notice of appearance identifying himself by name, address and telephone number, and identifying the party represented.

c) Adjudicatory Proceedings - Special Appearance

Prior to filing any other pleading or motion, a special appearance may be made either in person or by attorney for the limited purpose of objecting to the jurisdiction of either the Department or the Board. Every appearance not expressly designated a special appearance shall be deemed to be a general appearance. If the reasons for objecting to jurisdiction are not apparent from the papers on file in the proceeding, the special appearance shall be supported by affidavit setting forth the reasons. In ruling upon any objection at any proceeding, the Board may consider all matters apparent from the papers on file, affidavits submitted by any party, and any other evidence adduced upon disputed issues of fact. No determination of any issue of fact in connection with the objection is a determination of the merits of the case or any aspect thereof. A ruling adverse to the objector does not preclude him from making any motion or defense which he might otherwise have made. If the Board sustains the objection, an appropriate order shall be entered of record. Error in ruling against the objection is not waived by the objector's taking part in further proceedings in the matter.

d) Adjudicatory Proceedings - Substitution of Parties

The Board may, upon motion when proper, order a substitution of parties.

Section 100.40 Applications, Complaints, Petitions, and Other Pleadings

a) Applications for Rule-making

Applications shall be in writing and shall contain:

- 1) The name and address of the applicant;
- 2) Specific reference to the Rule or Rules with which the applicant has an interest, or, in the case where the applicant's request is that a Rule be promulgated, a concise statement of the subject matter and issues involved in the proposed Rule; and
- 3) A specific statement of the course of action requested of the Board.

b) Complaints

Complaints shall be by the Department, shall be in writing and shall contain:

- 1) A plain and concise statement of the act or things done or omitted to be done in violation, or claimed to be in violation, of any statute administered by the Department or the rules made pursuant to such statutes;
- 2) Specific reference to or citation of such statute or rules; and
- 3) Specific prayers for relief or penalty, which may be in the alternative.

c) Petitions

Petitions shall be in writing and shall contain:

- 1) The name and address of the Petitioner and the name and address of any respondent;
- 2) A plain and concise statement of the nature of Petitioner's interest and the facts relied upon as a basis for the relief sought, and where such basis is statutory, specific reference to or citation of the statute shall be made; and
- 3) Specific prayers for relief, which may be in the alternative.

d) Intervening Petitions

- 1) Any person may file a petition requesting leave to intervene in any matter already before the Board. Intervening petitions shall contain:
 - A) The name of the Petitioner seeking leave to intervene;
 - B) A plain and concise statement of the nature of such Petitioner's interest;
 - C) A prayer for leave to intervene and be treated as a party to the proceeding; and
 - D) If affirmative relief is sought, specific prayers for such relief, which may be in the alternative.
- 2) Any affirmative relief requested shall be germane to the issues. Intervening petitions shall be presented upon or prior to the day the proceeding in which intervention is sought is first called for hearing of evidence, but not afterward except for good cause shown. Intervention shall be granted or denied at the discretion of the Board.

e) Amendments or Supplements

Amendments of, or supplements to, complaints, petitions, or applications may be filed setting forth matters which have arisen before or after the institution of any proceeding. Amendments or supplements may be made at any time before or after a final decision on the merits either to approve the application or sustain the claim intended to be brought or to make or assert a defense or to conform the pleadings to the proofs upon terms as to continuance that may be just and reasonable.

f) Notice as to Duration of Hearing

If at the time a petition, application or complaint is filed with the Board, the Board determines or is advised by the filing party that the probable duration of the presentation of the matter in entirety may exceed one (1) day, the Board whenever possible, shall set the hearing for consecutive days.

g) Adjudicatory Proceedings - Answers

Answers to formal complaints or petitions shall be filed with the Board within ten (10) days after the day on which such complaint or petition is served upon the adverse party, unless otherwise ordered. If any adverse party fails to file an answer, issue as to such adverse party will be considered joined. Answers shall contain an explicit admission, denial, or appropriate response to each allegation of the pleading to which they relate and a concise statement of the nature of the defense.

Section 100.50 Motions

a) Scope of Motions

Motions in the course of any adjudicatory proceeding may be presented to add necessary parties or to dismiss improper parties; or to request the dismissal of the proceedings for want of jurisdiction or want of prosecution, the quashing of a subpoena, the postponement of an effective date of an order, the extension of time for compliance with an order, or for such other relief as may be appropriate.

b) Motions in Writing, Service of Copies

All motions shall be made in writing and shall set forth the relief or order sought and shall be filed with the Department for transmittal to the Board at the earliest convenient time. Motions based on matter which does not appear of record shall be supported by affidavit.

Section 100.60 Form of Papers

- a) All papers, exhibits, data, or written statements filed in any proceeding shall be typewritten on white paper using one side of the paper only. They shall bear a caption clearly showing the title of the proceeding in connection with which they are filed together with the hearing or docket number, if such number is assigned.
- b) All papers shall be signed by the party or by his authorized representative or attorney and shall contain his address and telephone number. No less than an original and six (6) copies of all papers shall be filed with the Department for transmittal to the Board.

Section 100.70 Service

- a) Service to Conform to Law

All service shall conform to all applicable statutes made and provided therefor.

- b) Additional Rules as to Service

- 1) Complaints, petitions, applications, answers, intervening petitions, amended or supplemental complaints and petitions or other pleadings, amendments or supplements to any pleadings, motions, affidavits in support of motions, and notices shall be served by the party filing same upon the Director as executive officer of the Board and all parties to any adjudicatory proceeding. Proof of such service upon all parties shall be filed with the Board;
- 2) Findings of fact and conclusions of law, briefs, motions for further hearing or rehearing, and notice of appeal shall be served by the Board or the party filing same upon each party to any adjudicatory proceeding, and when filed shall be accompanied by proof of service upon all such parties;
- 3) Service shall be made by delivering in person or by depositing in the United States mail, properly addressed with postage prepaid, one (1) copy to each party or interested person entitled thereto. When any party or parties have appeared by attorney, service upon the attorney shall be deemed service upon the party or parties; and
- 4) Any pleading, notice, proof of service, or other communication required under these Rules of Procedure to be served upon the Board shall be served at the following address:

Illinois Department of Natural Resources - Mining Board
Office of Mines and Minerals
524 S. Second St.
Springfield, Illinois 62701-1787

c) Proof of Service

Proof of service of any paper shall be by certificate of attorney, affidavit, or acknowledgment.

Section 100.80 Conferences in Adjudicatory Proceedings

a) Purpose of Conferences

Upon written notice by the Department of the Board in any proceeding, parties or their attorneys may be directed to appear at a specified date, time and place for a conference, prior to the date set for any hearing in the particular proceeding, or, without notice on the date and at the place set for such hearing and prior to the commencement thereof or during the course of such hearing, for the purpose of formulating issues and considering:

- 1) the simplification of issues;
- 2) the necessity or desirability of amending the pleadings for the purpose of clarification, amplification, or limitation with respect to matters alleged in any pleading;
- 3) the possibility of making admissions or stipulations of fact to the end of avoiding the unnecessary introduction of evidence at the hearing;
- 4) the procedure at the hearing consistent with these Rules of Procedure;
- 5) the limitation of the number of witnesses;
- 6) the propriety of prior mutual exchange between or among parties or prepared testimony or exhibits; and
- 7) such other matters as may aid in the simplification of the evidence and disposition of the proceeding.

b) Record of Conference

Action taken at any conference pursuant to (a) above shall be recorded in an appropriate ruling by the Board unless the parties file a written stipulation as to such matters or agree to a statement thereof made on the record.

Section 100.90 Hearings

a) Public Hearings; Notice and Place

All hearings conducted in any proceeding shall be open to the public. The time and place of all such hearings shall be set by the Board or the Director of the Office of Mines and Minerals. Notice of such hearing, the number of days' notice, the service of such notice, and the manner of such shall be in accordance with the following provisions:

1) Adjudicatory Proceedings

Within fifteen (15) days from the filing with the Board of a formal complaint or petition, notice of the time and place for an adjudicatory hearing on the matter shall be served on all parties. Notice shall include a copy of the complaint or petition. Such notice shall be sent not less than fifteen (15) days prior to the date fixed for said hearing. Service of such notice shall be in accordance with Section 100.70(b)(3) of this Part. Upon written agreement by all parties, the notice provisions of this sub-paragraph may be waived by the Board.

2) Rule-making Proceedings

The Director of the Office of Mines and Minerals shall give written notice of the intention of the Board to adopt, amend, or repeal any Health and Safety Rules. The notice shall contain the time, date, and place of a hearing where interested persons may present their views and either a statement of the terms or substance of the intended action, including, when appropriate, a specific reference to the Rule or Rules involved a description of the subject matter and issues involved in the intended action. Such notice shall be served on all interested persons as defined in these Rules of Procedure, published in the official State newspaper not less than thirty (30) nor more than forty-five (45) days prior to the date fixed for said hearing. Service of said notice on all interested parties shall be in accordance with Section 100.70(b) (3) of this Part.

b) Default in Adjudicatory Proceedings

In the event of failure to appear or answer, after notice served as herein provided, a hearing may be held ex parte immediately in the direction of the Board.

c) Mining Board: Powers and Duties

- 1) Subject as herein provided and particularly, but without limitation, subject to sub-paragraph (5) of this Section, all hearings involving any complaint, petition, application, or other proceedings shall be heard by the Mining Board. No less than four (4) members of the Mining Board plus the Director, as the Board's executive officer, shall constitute a quorum. Only in the case of the tie vote shall the Director, as executive officer, have the right to vote.
- 2) The Director may, if the Board so recommends and if the Department makes funds available for such purpose, designate any attorney duly licensed to practice law in the State of Illinois, and not regularly engaged in the representation of parties before the Board, as counsel for the Board in any matter pending before it.
- 3) The Board's counsel may, at the discretion of the Board, examine witnesses and afford the Board such legal counsel as the Board may require, whether before, at or after any hearing, with respect to the law applicable to all or any of the following:
 - A) The subject matter of the proceedings;
 - B) The pleadings therein and any other papers or memoranda filed by the parties, or any of them, in the proceedings;
 - C) The evidence presented or sought to be presented at the hearing or at any other time in the proceedings;
 - D) Procedural or other matters or questions which may be involved in or raised at such hearing or at any other time in the proceedings;
 - E) Arguments of any of the parties or their counsel;
 - F) The Board's findings and recommendations, and report thereof, to the Director; and
 - G) Decision, order, ruling, determination or action proposed to be made or taken by the Board or the Director or both; and

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- H) In no event shall such legal counsel have any vote in any recommendation made by the Board. All hearings and conferences shall at all times be under the control of the Board, except as provided in (5) below.
- 4) Without in any way limiting of the powers of the Board under any applicable statute, said Board in any hearing before it shall have full authority to:
- A) Rule upon all motions made in the course of the hearing;
 - B) Rule upon all other matters arising in the course of the hearing, such as, but not limited to, admissibility of evidence or amendments to pleadings;
 - C) Direct parties to enter their respective appearances of record;
 - D) Determine at which stage of any hearing an intervenor may be permitted to offer evidence;
 - E) Require upon reasonable notice, any party, including without limitation, the Department, at any stage of any hearing or after all parties have completed the presentation of their evidence, to present further material or relevant evidence upon any issue including, but not limited to, the production of any and all documents, books, papers, and accounts, the Board reasonably deems material or relevant to any issue pending before it; and
 - F) To administer oaths to all persons appearing before it.
- 5) If the respondent in an adjudicatory proceeding shall believe the members of the Board are prejudiced against such respondent, he shall petition the Director in writing, at least ten (10) days prior to the date set for hearing, to appoint a Special Committee of the Board to hear the matter. Such petition shall be accompanied by an affidavit setting forth the facts upon which such claim of prejudice is based signed by the respondent. The Director shall make a determination based on such evidence as he deems sufficient whether such prejudice exists, and may remove any or all such Board members he finds prejudiced. If he removes all such members, then the Director may designate any attorney duly licensed to practice law in the State of Illinois to serve as the Special Committee of the Board with the same powers as the Board.

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- 6) The following shall be the order of proceedings at all hearings, subject to modification by the Board before which such hearing is scheduled, for good cause:
- A) Adjudicatory Hearings
 - i) Presentation, argument, and disposition of all preliminary motions;
 - ii) Presentation of opening statements;
 - iii) Case in chief of the Department and any intervenor, or case in chief of any petition, as the case may be;
 - iv) Respondent's case in chief;
 - v) Rebuttal if allowed by the Board;
 - vi) Surrebuttal if allowed by the Board;
 - vii) Statements from interested persons if allowed by the Board;
 - viii) Summation, which may include legal argument by the Department, intervenor or any petitioner, as the case may be;
 - ix) Respondent's summation, which may include legal argument;
 - x) Rebuttal statement by the Department; and
 - xi) Presentation and argument of all motions prior to final order.
 - B) Rule-Making Hearings
 - i) Presentation of the intended action and the basis for such intended action, including all evidence, testimony, and data relied on by the Department;
 - ii) Presentation of applicant's case in chief, oral, and written in support of intended Rule-making, if application was made;

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- iii) Presentation of other oral and written testimony in support of the intended Rule-making;
 - iv) Presentation of oral and written testimony in opposition to the intended Rule making; and
 - v) Closing statement by the Department, which may include rebuttal of statements made in opposition to the Rule-making action.
- d) Rules of Evidence
- 1) The technical rules of evidence shall not apply at any hearing.
 - 2) The burden of proof in any adjudicatory proceeding shall be upon the Department, or petitioner, as the case may be, therein, except that, in the case of any new matter introduced in any affirmative defense or in any kind of intervening petition, or otherwise, the burden of proof with respect thereto shall be upon the party, petitioner, or intervenor who, or which, alleges such new matter.
 - 3) Any evidence having probative value and force, relevant and material to facts in issue, shall be admitted in the proceedings, subject only to objections to the weight thereof as distinguished from admissibility, per se. Immaterial, irrelevant, and unduly repetitious evidence shall be excluded. When the admissibility of evidence is in dispute and depends upon fairly arguable interpretations of law, such evidence shall be admitted.
- e) Examination of Witnesses
- 1) Any party may, upon request, conduct examinations or cross-examinations without rigid adherence to formal rules of evidence, provided the examination or cross-examination does not descend to sheer abuse or harassment of a witness and the examination or cross-examination can be shown to be necessary to a full and fair disclosure of facts bearing upon matters in issue.
 - 2) Each member of the Board may, in his discretion, examine all or any of the witnesses at any hearing.
- f) Special Rules for Adjudicatory Hearings

- 1) If the Board determines that a witness is hostile or unresponsive, the Board may authorize the examination by the party calling him as if under cross-examination.
- 2) The Department may call any adverse party as a witness without vouching for his credibility and proceed to examine such adverse party as if under cross-examination. Any party calling a witness, upon a showing that he called the witness in good faith and is surprised by his testimony, may impeach that witness by evidence of prior inconsistent statements.

g) Stipulations in Adjudicatory Hearings

Parties may by stipulation agree upon any facts involved in the proceeding. The facts stipulated shall be considered as evidence in the proceeding, provided that the Board may require proof of any fact by evidence where matters of public interest are involved. At any stage of the hearing, or after all parties have completed the presentation of their evidence, the Board may call upon any party or the Department for further material or relevant evidence upon any issue.

h) Court Reporter

The Department will designate a licensed court reporter to make a stenographic record of hearings in all proceedings in which a recording is required by the Act or upon request of any party, provided that all costs of such stenographic record shall be borne by the party so requesting said record. The Department will arrange for the reporter to provide for such copies of the transcript as any other party may request and at such time as it may request same, for its own purposes, provided that such other party shall pay directly to such reporter the payment for the cost of the transcript including one (1) copy thereof to be furnished the Department for its use in any proceeding for Administrative Review as hereinafter provided, or otherwise.

i) Corrections to Transcript

Suggested corrections to the transcript of record may be offered within ten (10) days after the transcript is filed in the proceeding, unless the Board permits suggested corrections to be offered thereafter. Suggested corrections shall be served upon, or brought to the attention of, each party whose appearance is of record or his attorney, the official reporter and the Board. If suggested corrections are not objected to, the Board will direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections,

they may be heard by the Board, which shall then determine the manner in which the record shall be changed, if at all.

j) Additional Hearings

Motions for a further hearing in any proceeding at any time before final order of the Board shall be made in writing to the Board and shall state specifically the reasons therefor. If such motion seeks leave to introduce further or newly discovered evidence, the nature and purpose of the evidence to be adduced shall be stated and supported by affidavit, and it must appear that such evidence is relevant and material, was not reasonably available at the time of the hearings and is not merely cumulative. The Board shall rule on such motion and shall give notice of its decision to all parties in accordance with Section 100.70(b) (3) of this Part.

k) Motions for Rehearing - Adjudicatory Proceedings

Motions to the Board for rehearing or for reconsideration of the recommendations of the Board on the record made or for modification thereof shall be made in writing pursuant to governing statutes and shall state specifically the grounds relied upon. If rehearing is sought on the ground of new evidence, the nature and purpose of such evidence shall be stated, supported by affidavit showing why evidence was not available at the time of the hearings. The Board shall rule on such motion and shall give notice of its decision to all parties in accordance with Section 100.40(b) (3) of this Part.

l) Postponement or Continuance of Hearing

A hearing may, at any time or from time to time, be postponed or continued for due cause shown by the Board upon its own motion or upon motion of any party to the proceeding. Notice of any motion for postponement or continuance shall be given in writing to all parties to the hearing within a reasonable time in advance of the previously scheduled hearing date, but in no event less than three (3) business days prior to the previously scheduled hearing date (in absence of a bona fide emergency). All parties involved in a hearing shall avoid undue delay caused by repetitive postponements or continuances so that the subject matter of the hearing may be resolved expeditiously.

Section 100.100 Subpoenas

a) Subpoenas for the attendance of witnesses from any place in the State of Illinois, or for the production of books, papers, accounts, or documents at a hearing in a

pending adjudicatory proceeding, will be issued by the Department upon its own motion, or upon request in writing by a party incorporating a showing that any such subpoena is reasonably required.

- b) Requests for subpoenas to compel the production of books, papers, accounts, or documents shall be verified, and shall specify the books, papers, accounts, or documents desired and the material or relevant facts to be proved by them.
- c) Service of subpoenas and payment of witness fees shall be in accordance with the following:
 - 1) The party at whose instance the subpoena is issued shall serve said subpoena;
 - 2) The party at whose instance the subpoena is issued shall pay the fees of the witness; and
 - 3) The calculation of witness fees for appearances in any proceeding hereunder shall not include lost wages caused by the appearance of said witness.

Section 100.110 Discovery Rights and Procedure Adjudicatory Proceedings

After receipt of notice of an adjudicatory proceeding, any party, upon written request made to any other party, at least three (3) business days prior to the hearing and within five (5) days after such service of an additional pleading, shall be entitled to:

- a) Obtain the names and addresses of witnesses whom the other party intends to call to testify at the hearing; and
- b) Obtain a list of all writings and documents which the party proposes to offer in evidence.

Section 100.120 Documentary Evidence

- a) Record in Other Proceedings

When a party desires to offer in evidence any portion of the record made in any other proceeding, such portion shall be offered in the form of any exhibit (subject to the ruling of the Board as to its admissibility) unless otherwise stipulated by the parties.

b) Documents

When any material or relevant matter offered in evidence by any party is embraced in a book, paper, or document containing other matter not material or relevant, the party offering the same shall plainly designate the matter so offered. If in the judgement of the Board, such immaterial or irrelevant matter would unnecessarily encumber the record, such book, paper, or document will not be received in evidence as a whole, but the material or relevant portions thereof, if otherwise admissible, may be read into the record or a true copy thereof supplied in the form of an exhibit.

c) Copies of Exhibits

When an exhibit of a documentary character is marked for identification and offered in evidence, three (3) copies thereof shall be furnished for the Department's files and, upon request, one (1) copy to each party whose appearance is of record or his attorney. The Board may accept same when only one (1) copy is filed if, in its opinion, additional copies will not be required and if the party tendering the exhibit agrees to furnish two (2) additional copies promptly if subsequently requested to do so.

d) Interchange of Exhibits

Whenever possible, the parties should interchange copies of exhibits or other pertinent material before the hearing at which they are to be offered, at the same time sending a copy thereof to the Board hearing the case.

Section 100.130 Findings, Conclusions, and Recommendations

a) Adjudicatory Proceedings

After the close of all proofs in the hearing before it, the Board shall cause to be prepared and filed its findings of fact, conclusions of law, and decision together with the entire record in the proceeding.

b) Rule-Making Proceedings

After full consideration of all presented data, arguments and views, expressed orally and in writing, and the testimony of all witnesses under both direct and cross-examination, the Board shall cause to be prepared and filed its conclusions and recommendations. The Board shall not recommend the adoption of or

amendment to any Rule unless substantial evidence in support of such action has been presented.

Section 100.140 Notice of Conclusions and Recommendations

a) Adjudicatory Proceedings

- 1) Copies of the Board's findings, conclusions, and decision, and if the Board so elects, memoranda of law supporting all or any of such findings, conclusions, and decision shall be served upon each party in the manner provided by these Rules of Procedure, together with Notice that any party has twenty (20) days from the date such Notice is mailed, to present to the Board a written Motion for Rehearing to be considered by the Board. Upon the expiration of the time given by the Notice referred to in the foregoing Section, or upon the Board's denial of a timely motion for rehearing, said findings of fact, conclusions of law, and decision shall be placed on file in the Department. The Department shall then take such further action in the matter as shall be in accordance with statutes in such case made and provided and enter such order as shall be proper in the premises for the disposition of the matter. Such order shall be served pursuant to Section 100.40(b)(3).
- 2) At any time prior to the entering of Findings of Fact, Conclusions of Law and Decision by the Board, the parties to any proceeding may seek to terminate the matter by presenting to the Director a Consent Order to which they all acknowledge their consent by affixing their respective signatures. Upon the Director's signing such a Consent Order the entire proceedings shall cease without the necessity of any further action by the Board involved; and each party shall be deemed to have waived Administrative Review.

b) Rule-Making Proceedings

- 1) The Director shall give notice to all parties to any Rule-making hearing and other interested persons, as defined by these Rules, of the decision of the Board and the Department with regard to the subject matter of such hearing.
- 2) If, as a result of said hearing, a Rule is adopted, amended or rescinded, and also if, either prior to said adoption, amendment or rescission or within thirty (30) days from same, any interested person has requested that the Director issue a concise statement of the principal reasons for or against

the adoption, amendment or rescission of such Rule, incorporating therein the reasons for overruling such opposition to said adoption, amendment or rescission, such a statement shall be issued. All parties to said hearing and interested persons shall be served with a copy of the aforesaid statement as provided by Section 100.40(b) (3) of this Part.

- 3) The Director shall file in the office of the Secretary of State a certified copy of each Rule adopted by the Board. The adoption, amendment or rescission of any Rule shall be effective thirty (30) days after such filing, except that if a later date is specified in the Rule, the later date is the effective date.

Section 100.150 Copy of Rules on Appeal

The Department will include a copy of these Rules in the record on appeal from any order whenever requested to do so.

Section 100.160 Informal Action in Lieu of Adjudicatory Proceedings

Any matter may, with the permission or at the direction of the Board, be filed with the Director of the Office of Mines and Minerals in his capacity as executive officer of the Board, and the Director of the Office of Mines and Minerals, in said aforementioned capacity may, if he so elects, take up such matter by correspondence or informal conference with the person, firm, corporation or association, or their respective representative, in an endeavor to bring about an adjustment thereof. Such matter shall be set forth in writing and shall include the names and addresses of all persons involved, a brief statement of the matter, and the signature of the person bringing such matter to the attention of the Board. Such matter so filed will not initiate a formal proceeding, and will not arrest the running of any limitation period. The filing of any such matter shall be without prejudice to the right of the Department to file a complaint formally.

Section 100.170 Computation of Time

The time within which any act under this Part is to be done shall be computed by excluding the first day and including the last, unless the last day is Sunday or is a holiday as defined or fixed in any statute now or hereafter in force in this State, and then it shall also be excluded. If the day succeeding such Sunday or holiday is also a holiday or a Sunday, then such succeeding day shall also be excluded.

Section 100.180 Construction of Rules & Invalidity

- a) This Part shall not be construed to abrogate, modify or limit any rights, privileges or immunities granted or protected by the Constitution or laws of the United

States or the Constitution or laws of the State of Illinois. No Section, or paragraph headings contained herein shall be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any Article, Section, or sub-paragraph.

- b) If any Section, paragraph, sentence or clause of this Part shall be held by a court of competent jurisdiction to be invalid, such holding shall not affect the remaining parts thereof.

Section 100.190 Repeal of Prior Rules of Procedure

This Part shall become effective ten (10) days after a certified copy thereof shall be filed with the Secretary of State of the State of Illinois as provided by the statutes of the State of Illinois in such case made and provided, and shall supersede all other Parts covering subject matter embraced herein.