

TITLE 660. DEPARTMENT OF SECURITIES
CHAPTER 2. ORGANIZATION AND PROCEDURES OF DEPARTMENT OF SECURITIES
SUBCHAPTER 9. INDIVIDUAL PROCEEDING PRACTICES AND PROCEDURES

Subchapter 9. Individual proceeding practices and procedures

- 660:2-9-1. Hearings in general [AMENDED]
- 660:2-9-2. Initiation of individual proceedings [AMENDED]
- 660:2-9-3. Prehearing proceedings and processes [AMENDED]
- 660:2-9-4. Authority to subpoena witnesses [AMENDED]
- 660:2-9-6. Conduct of individual proceeding [AMENDED]
- 660:2-9-7. Record of hearing [AMENDED]
- 660:2-9-8. Final orders [AMENDED]

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660:2-9-1. Hearings in general

(a) **Authority.** Prior to the issuance of a final order in an individual proceeding, all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall be in writing and advise the parties of their right to a hearing and their obligation to file an answer, the time period within which a hearing must be requested, and the effect of a failure to file an answer and to request a hearing.

Deleted: If the person to whom notice is addressed does not request a hearing within twenty (20) days after the service of notice is effective, a final order may be issued.

(b) **Public hearing.** All hearings shall be open to the public but may not be recorded by the public or any respondent by any electronic means.

(c) **Hearings on summary orders.** The provisions of this Subchapter shall not apply to proceedings for summary orders. The procedures for hearings on summary orders shall be those set forth in:

- (1) Sections 1-306.D, 1-411.F, or 1-604.B of the Securities Act;
- (2) Section 814(D) of the Business Opportunity Act;
- (3) Sections 628(D), 634(C), or 660 of the Land Sales Act; and
- (4) Subsections (D) and (E) of Section 453 of the Take-over Act.

660:2-9-2. Initiation of individual proceedings

(a) **Request for hearing and answer.** The person to whom the notice of opportunity for hearing is addressed shall file with the Administrator a written answer within the time specified in the notice. The answer shall indicate whether the party requests a hearing and shall specifically admit or deny each allegation of the Department or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation. When a person intends in good faith to deny only a part of an allegation, the party shall specify so much of it as is true and shall deny only the remainder. A statement of a lack of information shall have the effect of a denial. Any allegation not denied shall be deemed admitted. Failure of a party to file an answer in compliance with this subsection shall result in the issuance of a final order against that party.

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(b) **Setting or denial of hearing.** Upon receipt of a written request for a hearing, the Administrator shall either promptly schedule a hearing or shall issue a written order denying a hearing.

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(c) **Time of notice.** Notice of all hearings shall be served by regular first class mail or by personal delivery within a time reasonable in light of the circumstances, in advance of the hearing, but not less than forty-five (45) days in advance thereof, to all parties. For good cause shown, any hearing may be rescheduled, provided all persons entitled to notice of such hearing are promptly advised thereof.

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(d) **Content of notice.** The notice of hearing shall contain the following information:

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- (1) the date, time, place and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a short plain statement of the matters asserted; and
- (4) a reference to the particular sections of the statutes and rules involved.

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(e) **Appointment of hearing officer.** The Administrator may delegate authority to a Hearing Officer to conduct an individual proceeding and prepare a proposed order for submission to the Administrator whenever deemed appropriate under the circumstances. The Administrator shall enter into a written contract with each Hearing Officer appointed, which shall govern the terms of appointment.

(f) **Authority of presiding officer.** The Administrator, or the Hearing Officer, shall have the authority to do all things necessary and appropriate to conduct the individual proceeding. The duties of the Administrator, or the Hearing Officer, include, but are not limited to, the following:

- (1) Administering oaths and affirmations;
- (2) Issuing subpoenas authorized by law and quashing or modifying any such subpoena;
- (3) Receiving relevant evidence and ruling upon the admission of evidence and offers of proof;
- (4) Regulating the course of a proceeding and the conduct of the parties and their counsel;
- (5) Holding prehearing and other conferences and requiring the attendance at any such conference of any party;
- (6) Recusing himself upon a motion of a party based on reasonable grounds, or upon his own motion;
- (7) Considering and ruling upon all procedural and other motions, subject to any limitations otherwise specified;
- (8) Requiring the filing of briefs, if so desired; and
- (9) Requiring the filing of proposed findings of fact and conclusions of law.

(g) **Submission of case on documentary record.** The Administrator, or the Hearing Officer, may elect not to hold a hearing if all parties agree to submit the case on the documentary record and waive their right to appear.

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660:2-9-3. Prehearing proceedings and processes

(a) **Scheduling.** As soon as is practicable after the request for hearing is received, but in no event later than thirty (30) days after the request for hearing is received, the Administrator, or Hearing Officer, shall enter a scheduling order that is intended to expedite the disposition of the action and insure the fair, orderly and efficient conduct of the proceedings. The parties shall confer in person or by telephone and attempt to prepare a single agreed scheduling order to submit to the Administrator, or the Hearing Officer. If the proposed scheduling order is acceptable to the Hearing Officer no scheduling conference need be held. If the parties are unable to agree, the Hearing Officer shall issue an appropriate scheduling order or hold a scheduling conference in person or by telephone. The scheduling order should establish at least the following:

- (1) a schedule of discovery;
- (2) any limitations to be placed on discovery;
- (3) a preliminary list identifying all witnesses, documents and exhibits intended to be utilized at the hearing;
- (4) identification of any expert witness intended to be called;
- (5) the date for exchanging the documents and exhibits intended to be utilized at the hearing and the final list identifying all witnesses intended to be called at the hearing; and
- (6) such other matters as may aid in the disposition of the matter.

(b) **Discovery.** Discovery may be obtained by one or both of the following methods:

- (1) A party may serve a written request on any other party requiring the party to produce, within fifteen (15) days, for inspection and copying, any documents or tangible items that are relevant to the subject matter of the individual proceeding and are not privileged; and/or
- (2) A party may take the testimony of a witness by oral deposition at the expense of that party. A party desiring to take the deposition shall serve written notice to the witness and all other parties to the proceeding in accordance with 660:2-9-4. Such notice shall state the time and place for taking the deposition and shall be served in order to allow the adverse

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party sufficient time, by the usual route of travel, to attend, and three (3) days for preparation, exclusive of the date of service of the notice.

(c) Motions in general.

(1) Unless otherwise permitted by these rules or by the Administrator, or the Hearing Officer, motions shall:

- (A) be made in writing;
- (B) state concisely the question to be determined and be accompanied by any necessary supporting documentation; and
- (C) be served on all parties.

(2) A response to a written motion shall be filed on the earlier of ten (10) days after receipt of the motion, or the date of the hearing.

(3) The Administrator, or the Hearing Officer, may allow oral argument if it appears necessary to a fuller understanding of the issues presented.

(4) The filing or pendency of a motion does not alter or extend any time period prescribed by this Subchapter, or by an order of the Administrator or the Hearing Officer.

(d) Motions for summary decision. A party may move for summary decision as to any substantive issue in the case. The Administrator, or the Hearing Officer, may issue a summary decision if he finds that there is no genuine issue as to any material fact, and that the moving party is entitled to prevail as a matter of law.

(e) Prehearing conference

(1) Upon the request of a party or when the Administrator, or the Hearing Officer, believes it necessary or appropriate, a prehearing conference shall be held, as close to the time of hearing as is reasonable under the circumstances, to address the following matters:

- (A) simplification of issues;
- (B) the final list of witnesses and exhibits to be utilized at the hearing;
- (C) admissions and stipulations of fact;
- (D) stipulations regarding admission and authenticity of documents;
- (E) requests for official notice;
- (F) discovery disputes;
- (G) pending motions; and
- (H) other matters that will promote the orderly and prompt conduct of the hearing.

(2) At the conclusion of the prehearing conference, a ruling or order shall be entered reciting the action taken. The order shall control the subsequent course of the action unless modified by a subsequent order. The order shall be modified only to prevent manifest injustice.

(f) Failure to appear or participate. Failure to participate and cooperate in the preparation of a scheduling order or prehearing conference order, failure to comply with a scheduling order or prehearing conference order, failure to appear at any hearing or conference, failure to appear substantially prepared, or failure to participate in good faith may result in any of the following sanctions:

- (1) striking of any pleading;
- (2) a preclusion order;
- (3) staying the proceeding;
- (4) default judgment; or
- (5) such other order as the Administrator, or the Hearing Officer, may deem just and appropriate.

(g) Post prehearing conference. If additional exhibits are discovered after the prehearing conference order is issued or after the date final documents and exhibits are exchanged, the party intending to use them shall immediately notify all other parties and furnish copies of the additional exhibits to such parties. If additional witnesses are discovered, all other parties shall be notified immediately and furnished the nature of the testimony along with the names and addresses of the witnesses. These additional exhibits or the testimony of the additional witnesses shall not be admitted at the hearing without the agreement of all parties or without a

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showing to the Administrator, or the Hearing Officer, that manifest injustice would be created if the exhibit or witness testimony were not permitted.

(h) Service and filing of papers. Service of papers upon a party shall be made by personal delivery, regular first class mail, facsimile transmission or electronic mail. All papers required to be served by a party shall be filed with the Administrator within the applicable time for service. When a Hearing Officer is appointed, a person making a filing with the Administrator shall promptly provide to the Hearing Officer a copy of such filing. Papers filed with the Administrator shall be accompanied by a certificate stating the name of the person or persons served, the date of service, the method of service and the mailing address, facsimile telephone number or electronic mail address to which service was made, if not made in person.

(i) Signature and certification. Every filing of a party represented by counsel shall be signed by at least one counsel of record and shall state that counsel's business address and telephone number. A party who is not represented by counsel shall sign his individual name and state his address and telephone number on every filing. The signature of a counsel or party shall constitute a certification that:

- (1) the person signing the filing has read the filing;
- (2) to the best of his knowledge, information, and belief, formed after reasonable inquiry, the filing is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication; and

(3) If a filing is not signed, the Administrator, or the Hearing Officer, shall strike the filing, unless it is signed promptly after the omission is called to the attention of the party making the filing.

(j) Computation of time. A paper is filed when it is received by the Administrator. Unless otherwise specifically provided by the Securities Act or this Subchapter, computation of any time period prescribed by this Subchapter, or by an order of the Administrator or the Hearing Officer, begins with the first day following the act or event that initiates the time period. The last day of the time period so computed is included unless it is a Saturday, Sunday, state holiday, or any other day when the Department's office is not open for public business, in which event the period runs until the end of the next business day. If a notice or other filing is served by mail and the party served is entitled or required to take some action within a prescribed time period after service, the date of mailing is the date of service, and three (3) days shall be added to the prescribed time period.

660:2-9-4. Authority to subpoena witnesses

(a) Subpoenas. Any party to a hearing shall have the right to have subpoenas issued to require the attendance and testimony of witnesses at a designated time and place, or to require the production of documents and tangible items in the possession or under the control of the witness at a designated time and place. A party requesting the issuance of a subpoena shall submit the proposed subpoena in writing to the Administrator, or the Hearing Officer. The proposed subpoena shall contain the name and address of the person to be subpoenaed; the name, address and telephone number of the party requesting the subpoena; and if the production of documents or tangible items is sought, a particular description of such documents or tangible items. Where it appears to the Administrator, or the Hearing Officer, that the subpoena sought may be unreasonable, oppressive, excessive in scope, unduly burdensome, or not relevant, he may, in his discretion, as a condition precedent to the issuance of the subpoena, require the party seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If after consideration of all the circumstances, the Administrator, or the Hearing Officer, determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, unduly burdensome or not relevant, he may refuse to issue the subpoena, or issue the subpoena only upon such conditions as fairness requires.

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(b) **Service.** Service of the subpoena shall be by personal delivery or by certified mail with a return receipt requested and delivery restricted to the person named in the subpoena. ~~The party requesting the subpoena shall be responsible for, and bear the cost of, service.~~ Appropriate service shall be made at least three (3) calendar days before the person is required to appear.

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(c) **Return of service.** The party requesting the subpoena shall promptly file a return of service with the Administrator including a certificate signed by the person making service.

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(d) **Objection to subpoena.** A person who has been served with a subpoena may object to the subpoena by filing a motion to quash with the Administrator within ten (10) days of service of the subpoena or by the date the person is ordered to appear, whichever is earlier.

(e) **Enforcement of subpoenas.**

(1) If a person under subpoena fails to appear as required, or fails to produce the documents or tangible items set forth in the subpoena, a party may apply to the Administrator for enforcement of the subpoena.

(2) An application to the Administrator for enforcement of a subpoena shall be made immediately upon the failure to comply with the subpoena or within such other time period as the Administrator may establish.

(3) Upon a timely request by a party for enforcement of a subpoena, the Administrator may apply to the district court of Oklahoma County or the district court in any other county where service can be obtained to enforce the subpoena as authorized by the Securities Act. ~~(f) Fees.~~

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~~Non-party witnesses~~ subpoenaed pursuant to this section shall be paid the same fees and mileage as are paid witnesses in the courts of the state of Oklahoma. Such fees shall be paid by the party requesting that the subpoena be issued at the time their testimony is completed.

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660:2-9-6. Conduct of hearings

(a) **Order of proceeding.** The hearing shall proceed as follows:

(1) The Administrator, or the Hearing Officer, shall call the hearing to order;

(2) the Administrator, or the Hearing Officer, shall briefly explain the purpose and nature of the hearing;

(3) the Administrator, or the Hearing Officer, may allow the parties to present preliminary matters;

(4) the Administrator, or the Hearing Officer, may allow the parties to make opening statements;

(5) the Administrator, or the Hearing Officer, shall state the order of presentation of evidence;

(6) witnesses shall be sworn or put under affirmation to tell the truth; and

(7) the Administrator, or the Hearing Officer, may allow the parties to present summations and closing argument.

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(b) **Rules of evidence.** The rules of evidence need not be strictly followed or observed by the Administrator, or the Hearing Officer, during the hearing in order to obtain a full and fair disclosure of facts relevant to the matters at issue. However, the admissibility of evidence shall be governed by the provisions of Section 310 of the Administrative Procedures Act.

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(c) **Official notice.** Notice may be taken by the Administrator, or the Hearing Officer, of judicially cognizable facts. In addition, notice may be taken of generally recognized practices, procedures and facts relating to the securities industry. Parties shall be notified either before or during the hearing of the material noticed and they shall be afforded an opportunity to contest the material so noticed. The Administrator, or the Hearing Officer, shall utilize his experience, technical competence and specialized knowledge in evaluating the evidence presented.

Deleted: (b) **Photocopies.** Documentary evidence may be received in the form of copies if the original is not readily available and no party or interested person has objected to the authenticity of the document or asserted it has been altered. Upon such objection or assertion, the Administrator, or the Hearing Officer, may require the original to be produced.¶

(d) **Examination of witnesses.**

(1) Witnesses shall testify under oath or affirmation. If the Administrator, or the Hearing Officer, determines that a witness is hostile or unresponsive, the Administrator, or the Hearing Officer, may authorize the party calling the witness to proceed as if the witness were under cross-examination.

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(2) A party may conduct direct examination or cross-examination of a witness without strict adherence to formal rules of evidence, particularly, the rules on hearsay, in order to obtain a full and fair disclosure of facts relevant to the matters at issue.

(3) Upon request by any party, the Administrator, or the Hearing Officer, may exclude witnesses other than parties from the hearing room when those witnesses are not testifying. A party that is not a natural person may designate an individual as its representative to remain in the hearing room, even though the individual may also be a witness. An expert witness who is to render an opinion based on the testimony given at the hearing may remain in the hearing room during all testimony. The Administrator, or the Hearing Officer, may order the witnesses, parties, their counsel, and any person under their direction not to disclose to any sequestered witness the substance of the testimony, exhibits, or other evidence introduced during the absence of the witness.

(4) No witness shall testify by telephone or other electronic means unless by agreement of the parties.

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660:2-9-7. Record of individual proceeding

(a) Requirement to record. Oral proceedings shall be electronically recorded. Copies of the recordings shall be provided by the Department at the request of any party to the proceeding. Costs of transcription of the recordings shall be borne by the party requesting transcription and shall be paid directly to the person transcribing the proceeding. Parties to any proceeding may have the proceedings transcribed by a court reporter at their own expense.

(b) Content of record. The record in any hearing shall include the following:

- (1) all pleadings, motions, intermediate rulings and orders;
- (2) all evidence received or considered, including a statement of matters officially noted;
- (3) questions and offers of proof, objections and rulings thereon;
- (4) proposed findings of fact, conclusions of law, and exceptions;
- (5) the proposed order of the Hearing Officer;
- (6) all other evidence or data submitted to the Administrator, or the Hearing Officer, in connection with their consideration of the case provided all parties have had access to such evidence; and
- (7) the final order of the Administrator.

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660:2-9-8. Final orders

A final order in any individual proceeding shall be in writing. A final order shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, upon request, a party submits proposed findings of fact, the order shall include a ruling upon each proposed finding. Parties shall be notified either personally or by certified mail, return receipt requested, of any final order.

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if there is objection to the admission of any exhibit or witness, a list of the specific grounds for each objection. Absent proper objection, a listed exhibit or the testimony of a listed witness is admitted when offered at the hearing.

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Each party and the Administrator, or the Hearing Officer, shall approve the prehearing order and the order shall supersede the previous scheduling order and shall govern the hearing unless modified only to prevent manifest injustice.

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(3) The Administrator, or the Hearing Officer, may conduct the prehearing conference by telephone. Upon notice to the participants, all or part of the prehearing conference may be recorded.

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shall be deemed admitted unless written objection is filed prior to or at the commencement of the hearing by the party objecting. If a written objection is filed,