**Section 1001.250 Decisions and Orders**

a) Upon the completion of the presentation of evidence, if the petitioner is unable to present a preponderance of evidence rebutting the preliminary finding of the Secretary or otherwise exempting the petitioner from the purview of the statute, the hearing officer shall direct that an Order of Suspension be entered. However, if the petitioner rebuts by a preponderance of the evidence the preliminary finding of the Secretary or otherwise establishes that the petitioner is exempt from the purview of the statute, the hearing officer shall direct that an Order of Exoneration be entered and further direct that the petitioner be dismissed.

b) A copy of the Order entered pursuant to a hearing shall be served, as soon as practicable after entry of said Order, upon the petitioner in the same manner as provided in Section 1001.220(d) for the service of the Notice of Hearings.

c) Decision on Petitioner's Refusal or Non-Appearance

1) If the petitioner fails to appear at the hearing, the hearing officer shall go on the record, state the petitioner failed to appear and is held to be in default. However, an attorney, who has filed an appearance on behalf of the petitioner, may appear and present motions, and the provisions at Section 1001.220(g) shall be followed. If the attorney, in such a case, requests a continuance which is denied, the matter shall proceed and an appropriate order entered.

2) If a petitioner appears for a hearing and refuses to testify on the grounds that any answer of his/hers may tend to incriminate him/her, then the hearing officer shall take an adverse inference from the refusal to testify and shall consider the adverse inference in addition to other evidence in determining whether petitioner should be suspended or exonerated. If the petitioner appears and refuses to testify without asserting the right against self-incrimination, the hearing officer shall enter any appropriate order as is required by the evidence and this Part.

d) Except for evidence depositions admissible under the law of the State of Illinois, oral testimony shall be given greater weight by the hearing officer than a written statement that is unsubstantiated by oral testimony or other documentary evidence, on the same issue. In determining the weight to be accorded evidence, the hearing officer shall take into account the demeanor and/or credibility of the proponent of the evidence. The certification from the Illinois Department of Transportation regarding the dollar amount of damages shall be given greater weight than oral testimony that is unsubstantiated by written corroboration, unless the witness is qualified as an expert in the field.

e) Continuances and Withdrawals

1) Hearings before the Department of Administrative Hearings will be continued only pursuant to a motion: filed prior to or on the date of the hearing, made over the telephone less than 15 days prior to or on the date of the hearing, or made in person on the day of the hearing. The movant shall set forth the grounds for the motion, which are limited to unforeseen, unavoidable or uncontrollable circumstances, such as an Act of God, the recent discovery of new evidence, the sudden illness or death of the movant or a member of his/her immediate family, or of the movant's legal counsel, or if the movant is able to demonstrate some other real and compelling need for additional time. A Motion to Continue may be supported by evidence that tends to prove the grounds alleged, including sworn testimony taken at a motion hearing on the day of the hearing. The inability to obtain transportation to the hearing site or a petitioner's failure or inability to submit proof of compliance or otherwise fulfill the minimum requirements of the Illinois Safety Responsibility Law are not circumstances that will justify continuing a hearing.

2) A hearing shall not be continued "generally". A continuance, if granted, shall state a date certain upon which time and date the hearing shall reconvene. If a petitioner is not prepared to go forward after the first continuance, a request to withdraw should be submitted.

A) Motions to Continue filed at least 15 days prior to the date of the hearing specified in the Notice of Hearing or Notice of a continued hearing date will be given priority in re-scheduling over those motions filed or made less than 15 days prior to the date of the hearing or made on the day of the hearing. The Department will rule upon Motions to Continue filed at least 15 days prior to the date of the hearing and, when possible, notify the movant of its ruling prior to the date of the hearing. If the motion is denied, then the movant must appear at and proceed with the hearing or withdraw from the hearing.

B) Motions to Continue made in person on the day of the hearing or by telephone less than 15 days prior to the date of the hearing specified in the Notice of Hearing or Notice of a continued hearing date must also be filed in writing, and received or postmarked no more than 5 days after the date of the hearing. A Motion to Continue made in writing less than 15 days prior to the date of the hearing specified in the Notice of Hearing or Notice of a continued hearing date must be received or postmarked no more than 5 days after the date of the hearing. The Department cannot assure the movant that it will rule upon such motions prior to the date of the hearing.

C) A Motion to Continue made or filed by a petitioner waives the statutory requirement of § 2-118 of the Code that his/her hearing commence within 90 days from the date of his/her written request. Except to the extent provided in subsection (e)(3), these proceedings are considered joint and non-severable and, therefore, a Motion to Continue made by and granted to any petitioner is binding on all parties.

D) In all cases, it is also the responsibility of a movant who has not been notified of the Department's ruling to contact the Department on or before the day of the hearing to determine whether his/her motion has been ruled upon. A movant's failure to appear after a Motion to Continue is denied will result in the entry of an Order of Default.

3) The Department may also make or file a Motion to Continue for unforeseen, unavoidable or uncontrollable circumstances, an Act of God, the recent discovery of new evidence, the sudden illness or death of the hearing officer, the attorney representing the Secretary of State, a witness, or a member of the immediate family of the same, or if the Department is able to demonstrate some other real and compelling need for additional time.

4) A petitioner may withdraw from a hearing for any reason by making a motion on the day of the hearing or by filing a Motion to Withdraw at any time prior to the date and scheduled time of the hearing. Failure to do so will result in an Order of Default, unless other evidence taken pursuant to this subsection or § 1001.260 warrants the exoneration of the defaulted party. If an interested party or another petitioner appears for a hearing prepared to proceed, his/her testimony or documentary evidence will be taken and made part of the record, which will be admissible at any rehearing conducted pursuant to § 1001.260. Should the petitioner request another hearing, it must be done in writing and it will be treated as any other request for hearing. (See § 1001.220(a).)

5) A Motion to Continue or Withdraw made by any attorney on behalf of a petitioner will not be considered unless the attorney filed a written notice of appearance as provided in Section 1001.40.

(Source: Amended at 26 Ill. Reg. 9380, effective June 13, 2002)