

TITLE 20
UNIVERSITY OF HAWAII
SUBTITLE 3
STATE POSTSECONDARY EDUCATION COMMISSION
CHAPTER 40
RULES OF PRACTICE AND PROCEDURE

Subchapter 1 Rules of General Applicability

- §20-40-1 Statement of policy
- §20-40-2 Definitions
- §20-40-3 The commission
- §20-40-4 Public records
- §20-40-5 Severability
- §20-40-6 Appearances before the commission
- §20-40-7 Filing of documents
- §20-40-8 Computation of time
- §20-40-9 Continuance or extension of time
- §20-40-10 Amendment of documents
- §20-40-11 Retention of documents by the commission
- §20-40-12 Counsel for the commission

Subchapter 2 Proceedings Before the Commission

- §20-40-13 General
- §20-40-14 Appearances in a proceeding
- §20-40-15 Commission decision
- §20-40-16 Consolidations

Subchapter 3 Rules Applicable to Rulemaking Hearings

- §20-40-17 Notice of proposed rulemaking
- §20-40-18 Conduct of rulemaking hearing
- §20-40-19 Commission action
- §20-40-20 Emergency rulemaking
- §20-40-21 Petitions for adoption, amendment or repeal of rules
- §20-40-22 Filing and publication

Subchapter 4 Declaratory Rulings

- §20-40-23 Petition for declaratory rulings

Subchapter 5 Rules Applicable to Contested Cases

- §20-40-24 Delegation of powers

§20-40-1

§20-40-25 Procedure
§20-40-26 Rules of evidence; official notice
§20-40-27 Examination of evidence
§20-40-28 Decisions and orders
§20-40-29 Consultation by officials

Historical Note: This chapter is based substantially upon "Rules of Practice and Procedure" promulgated by the State postsecondary education commission. [Eff. 11/12/79; R JUN 22 1981]

SUBCHAPTER 1

RULES OF GENERAL APPLICABILITY

§20-40-1 Statement of policy. The following rules shall govern the practice and procedure before the State postsecondary education commission under chapter 91, HRS. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-2 Definitions. (a) As used in the rules prescribed by the commission, unless the context specifically requires otherwise:

"Administrative officer" means the president of the University of Hawaii.

"Chairperson" means the chairperson of the commission.

"Commission" means the State postsecondary education commission and for purposes of this rule shall not include committees of the commission.

"Committee" shall mean all committees of the commission including the executive committee of the commission and the committee of the whole.

"Contested case" means a proceeding in which the legal rights, duties or privileges of specific parties are required by law to be determined by the commission after an opportunity for a hearing.

"Party" wherever used in these rules, shall mean each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party in a contested case.

"Persons" includes individuals, partnerships, corporations, association, or public or private organizations of any character other than agencies.

"Petitioner" refers to the party on whose behalf a petition or application is made in proceedings involving petitions or applications for permission or authorization which the commission may give under statutory or other authority delegated to it.

"Proceedings" as used in these rules, shall mean

the commission's elucidation of the relevant facts and applicable law, consideration thereof and action with respect to a particular subject within the commission's jurisdiction. It does not apply to rulemaking hearings, contested cases or committee meetings.

"Rule" as used in these rules means each agency statement of general or particular applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice requirements of the commission. The term does not include matters concerning only the operation and management of internal affairs of the commission not affecting private rights of or procedures available to the public nor does it include declaratory rulings issued pursuant to section 91-8, HRS, to intra-agency memoranda.

"Rulemaking hearings" as used in these rules, shall mean all meetings where proposed rules or amendments or repeal thereof are to be presented for public comment as provided by chapter 91, HRS. It shall not apply to commission meetings relating to the operation and management of internal affairs of the commission nor to hearings for contested cases.

"Secretary" means the secretary of the commission.

"University" means the University of Hawaii.

(b) Unless otherwise specifically stated, the terms used in rules promulgated by the commission pursuant to powers granted by statute shall have the meaning defined by such statute.

(c) A rule which defines a term without express reference to the statute or to the rules of a portion thereof, defines such terms for all purposes as used both in the statute and in the rules, unless the context otherwise specifically requires.

(d) Use of gender and number. Words importing the singular number may extend and be applied to several persons or things and words importing the plural may include the singular. Words importing the masculine gender may be applied to the feminine gender. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-3 The commission. (a) Office. The office of the commission is in the office of the secretary of the commission, situated in Honolulu, Hawaii. All communications to the commission shall be addressed to the "State Postsecondary Education Commission, University of Hawaii, State of Hawaii, Honolulu, Hawaii 96822," unless otherwise specifically directed.

(b) Hours. The office of the commission shall be open from 7:45 a.m. to 4:30 p.m. of each weekday except

holidays and unless otherwise provided by statute or executive order.

(c) Sessions. The commission shall meet annually and at such other times as required and may from time to time meet in each of the counties of Hawaii, Maui, and Kauai. The commission may meet in executive session, from which the public may be excluded as provided by chapter 92, HRS.

(d) Quorum and voting. A majority of the members to which the commission is entitled shall constitute a quorum at any proceeding or hearing. The concurrence of a majority of all the members to which the commission is entitled shall be necessary to make any action of the commission valid except for procedural action.

(e) Administrative officer. As stated in chapter 305H, HRS, the president of the University of Hawaii, as administrative officer of the commission, shall carry out the policies adopted by the commission.

(f) Unless otherwise provided in these rules, Robert's Rules of Order shall apply. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 80-1)

§20-40-4 Public records. (a) The term "public records" as used in this chapter is defined as in chapter 92, HRS.

(b) All public records of the commission shall be available for inspection during established office hours, subject to the limitations prescribed in chapter 92, HRS.

(c) All public records of the commission except as limited by chapter 92, HRS, shall be available to any person who requests them and pays the fees necessary, if any, as set by law.

(d) Requests for public information, for permission to inspect public records or for copies of public records will be handled with the regard for the dispatch of other public duties. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2, 92-50, 92-51, 92-52) (Imp: HRS §§305H-2, 91-2, 92-50, 92-51, 92-52)

§20-40-5 Severability. If any provision of these rules, or the application of them to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the rules which can be given effect without the invalid provision or application, and to this end the provisions of these rules are severable. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-6 Appearances before the commission. (a)

An individual may appear in his own behalf, a member of a partnership may represent the partnership, a bona fide officer of a corporation or association may represent the corporation or association, and an officer or employee of an agency of the State or a political subdivision of the State may represent such agency before the commission.

(b) A person may be represented by or with counsel or other duly qualified representative before the commission.

(c) When an individual acting in a representative capacity appears in person or signs a paper in practice before the commission, the personal appearance or signature shall constitute a representation to the commission that under the provisions of these rules and the law, the individual is authorized and qualified to represent the particular person on whose behalf the action is taken. The commission may at any time require any person appearing before the commission in a representative capacity to show his authority and qualification to act in such capacity.

[Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-7 Filing of documents. (a) All documents required to be filed with the commission shall be filed with the secretary. Such documents may be sent by mail or hand carried to the commission's office in Honolulu, Hawaii, within the time limit, if any, for such filing. The date on which the documents are actually received by the commission shall be deemed to be the date of filing.

(b) All documents must be signed by the party or a duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that he has read the document; that to the best of his knowledge, information, and belief every statement contained in the instrument is true and no such statements are misleading; and that it is not interposed for delay.

(c) The initial document filed by any person shall state on the first page thereof the name and mailing address of the person or persons who may be served with any documents filed. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-8 Computation of time. In computing any period of time prescribed by these rules or by order of the commission, provisions of section 1-29, HRS, shall apply. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-9 Continuance or extension of time.

Whenever a person or agency is required to take action within the period prescribed or allowed by these rules, by notice given thereunder or by an order or regulation, the chairperson may

- (1) Before the expiration of the prescribed period, with or without notice, extend such period; or
- (2) Upon motion, permit the act to be done after the expiration of a specified period where the failure to act is clearly shown to the chairperson to be the result of excusable neglect.

[Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-10 Amendment of documents.

If any document filed does not conform with the applicable rules of the commission as to the contents thereof, or is otherwise insufficient, the commission, on its own motion, or on motion of any interested person, may strike or dismiss such document or require its amendment. If amended, the document shall be effective as of the date of the original filing.

[Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-11 Retention of documents by the

commission. All documents filed with or presented to the commission may be retained in the files of the commission. However, the commission may permit the withdrawal of original documents upon submission of properly authenticated copies to replace documents.

[Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-12 Counsel for the commission.

The attorney general or a representative, in the capacity as counsel for the commission, may be present at all proceedings, hearings or contested cases governed by these rules. The attorney general or a representative shall be designated as counsel for the commission.

[Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 28-4)

SUBCHAPTER 2

PROCEEDINGS BEFORE THE COMMISSION

§20-40-13 General. (a) The commission may on its own motion, or on petition of any interested person, group, organization or agency, hold such proceedings as it may deem necessary from time to time for the purpose of obtaining information necessary or helpful in the carrying out of its duties. For such purposes, it may call witnesses and call for the production of documents and other relevant statements. Procedures to be followed by the commission, shall, unless specifically prescribed in these rules, be such as in the opinion of the commission will best serve the purposes of such proceedings.

(b) Notice of any proceeding before the commission shall comply with section 92-7, HRS. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-14 Appearances in a proceeding. (a) No person shall be permitted to appear before the commission to speak on any matter which has been brought before a committee of the commission or which is listed as an exception under section 92-5, HRS, or which is not treated as a public record or not available to inspection under sections 92-50 and 92-51, HRS. This rule may be waived by a two-thirds vote of all commission members present at the meeting in question.

(b) Subject to the limitations of subsection (a) above, any person who wants to appear before the commission to present testimony must make a request to the secretary at least twenty-four hours prior to the meeting of the commission unless waived by a two-thirds vote of all commission members present at the meeting in question.

A written copy of such testimony must be submitted prior to the meeting unless waived by a two-thirds vote of all commission members present at the meeting in question.

The commission, upon two-thirds vote of all members present, shall have the authority to limit or terminate any testimony which it determines to be repetitious or made solely for purposes of delay. This rule shall not limit, however, the powers of the commission or its chairperson under section 20-40-3(f). [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-15 Commission decision. All final decisions of the commission in a proceeding shall be available for public inspection in the office of the commission or may be obtained upon request and upon

payment of charges, if any. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-16 Consolidations. The commission, upon its own initiation or upon motion, may consolidate for consideration or for other purposes two or more issues which involve substantially the same persons, or issues which are the same or closely related, if it finds that such consolidations will be conducive to the proper dispatch of its business and will not unduly delay the proceeding. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

SUBCHAPTER 3

RULES APPLICABLE TO RULEMAKING HEARINGS

§20-40-17 Notice of proposed rulemaking. (a) When pursuant to a petition therefor, or upon its own motion, the commission proposes to issue, amend or repeal a rule, notice of proposed rulemaking will be published in accordance with chapters 91 and 92, HRS.

(b) A notice of the proposed issuance, amendment, or repeal of a rule shall include:

- (1) A statement of the date, time and place where the public hearing will be held.
- (2) Reference to the authority under which the issuance, amendment, or repeal of a rule is proposed.
- (3) A statement of the substance of the proposed rulemaking.

[Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-18 Conduct of rulemaking hearing. (a) Public hearing. Unless otherwise specifically directed by the commission, all rulemaking hearings shall be held at Honolulu when the entire State or a major portion thereof is affected by the proposed issuance, amendment, or repeal of a rule. However, the commission may hold such hearings on a neighbor island if a written request for such a hearing is received by the commission within the time specified in the public notice. In all cases, however, written testimony may be received by the commission in accordance with these rules.

When a matter affects only a county other than Oahu, then the hearing shall be held in that county.

(b) Presiding officer. Each such rulemaking hearing shall be presided over by the chairperson or a

member of the commission as designated by the chairperson. The hearing shall be conducted in such a way as to afford interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and so as to obtain a clear and orderly record. The presiding officer shall have authority to administer oaths or affirmations and to take all other actions necessary to the orderly conduct of the proceeding.

(c) Continuance of rulemaking hearing. Each such hearing shall be held at the time and place set in the notice of hearing, but may be continued by the presiding officer from day to day or adjourned to a later date or to a different place without notice other than the announcement at the hearing.

(d) Order of hearing. At the commencement of the hearing, the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Evidence shall then be received with respect to the matters specified in the notice of hearing in such order as the presiding officer shall prescribe.

(e) Conduct of hearing. All interested persons shall be given reasonable opportunity to submit written or oral testimony or evidence with respect to the matters specified in the notice of hearing. The conduct of the hearing and filing of all documents shall be in accord with sections 20-40-6 through 20-40-12. The presiding officer shall confine the testimony to the questions before the hearing and is empowered to confine the testimony so as to keep order. Every person testifying may be subject to questioning by any member of the commission or its counsel, but questioning by private persons shall not be permitted unless the presiding officer expressly permits it.

(f) Transcript of the testimony. Unless otherwise specifically ordered by the commission or the presiding officer, testimony given at the hearing need not be reported verbatim. All supporting written statements and data offered in evidence at the hearing, and which are deemed by the presiding officer to be authentic and relevant, shall be received in evidence and made a part of the record. Unless the presiding officer finds that the furnishing of copies is impracticable, an original and fourteen copies of the exhibits shall be submitted. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-3)

§20-40-19 Commission action. At the final public hearing, the commission may make its decision or announce the date when its decision shall be made. The

commission will consider all relevant comments and material of record before taking final action in a rulemaking hearing. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-20 Emergency rulemaking. Notwithstanding the foregoing rules, if the commission finds that an imminent peril to public health, safety, or morals requires adoption, amendment or repeal of a rule upon less than twenty days notice of hearing, and states in writing its reason for such finding, it may proceed without prior notice of hearing or upon such abbreviated notice and hearing as it finds practicable to adopt an emergency rule to be effective for a period not longer than one hundred twenty days without renewal. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-3)

§20-40-21 Petitions for adoption, amendment or repeal of rules. (a) Scope. Any interested persons, organization or agency may petition the commission for the issuance, amendment, modification or repeal of any rule as defined in this chapter.

(b) Form and contents. Petitions for rulemaking shall conform to the requirements of section 20-40-7. Such petition for rulemaking shall set forth the text of any proposed rule or amendment desired or shall specify the rule the repeal of which is desired and state concisely the nature of the petitioner's interest in the subject matter and the reasons for seeking the issuance, amendment or repeal of the rule and shall include any facts, views, arguments and data deemed relevant by petitioner. The commission may also require the petitioner to serve other persons, organizations or agencies known to be interested in the proposed rulemaking. No request for the issuance, amendment, modification or repeal of a rule which does not conform to the requirements set forth above will be considered by the commission.

(c) Procedure. The commission shall within thirty days following the filing of the petition either deny the petition in writing or initiate public rulemaking procedures. No public hearing, oral argument or other form of proceedings will be held directly on any such decision, but if the commission determines that the petition discloses sufficient reasons in support of the relief requested to justify the institution of public rulemaking proceedings, the procedures to be followed will be as set forth in sections 20-40-17 through 20-40-19. Where the commission determines that the petition does not

disclose sufficient reasons to justify the institution of public rulemaking procedures, or where the petition for rulemaking fails in material respect to comply with the requirements of these rules or where the petition does not concern a rule, the commission shall deny the petition and the petitioner will be so notified together with the grounds for such denial. The provisions of this section shall not operate to prevent the commission, on its own motion, from acting on any matter disclosed in any petition. [Eff. JUN 22 1981 (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-6)

§20-40-22 Filing and publication. (a) The commission, after obtaining the approval of the governor of any rule, shall file certified copies of the rule with the lieutenant governor.

(b) The commission shall also keep a compilation of all such rules adopted by the commission which are still in effect. Such compilation shall be supplemented, revised and made available to the public as provided by these rules and chapters 91 and 92, HRS. [Eff. JUN 22 1981 (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-4, 91-5)

SUBCHAPTER 4

DECLARATORY RULINGS

§20-40-23 Petition for declaratory rulings. (a) Form and contents. On petition of an interested person, the commission may issue a declaratory order as to the applicability of any statutory provision or of any rule or order of the commission. Petitions for the issuance of such orders shall state clearly and concisely the controversy or uncertainty, shall cite the statutory authority involved, shall include a complete statement of the facts and the reasons or grounds prompting the petition, together with full disclosure of petitioner's interest and shall conform to the requirements of section 20-40-7.

(b) Additional data and supporting authorities. The commission, upon receipt of the petition, may require the petitioner to file additional data or a memorandum of legal authorities in support of the position taken by the petitioner.

(c) Dismissal. The commission may, without notice or hearing, dismiss a petition or declaratory ruling which fails in material respect to comply with the requirements of this chapter.

(d) Request for hearing. Although in the usual

course of disposition of a petition for a declaratory ruling no formal hearing will be granted to the petitioner or to a party in interest, the commission may at its discretion order such proceeding set down for hearing. Any petitioner or party in interest, who desires a hearing on a petition for declaratory ruling, shall set forth in detail in a request the reasons why the matters alleged in the petition, together with supporting affidavits or other written evidence will not permit the fair and expeditious disposition of the petition. In addition, to the extent that such request for hearing is dependent upon factual assertion, the petitioner shall accompany the request with an affidavit establishing such facts. In the event a hearing is ordered by the commission, sections 20-40-24 and 20-40-25 shall govern the proceedings.

(e) Declaratory ruling on commission's own motion. Notwithstanding the other provisions of this chapter, the commission may, on its own motion or upon request but without notice or hearing, issue a written declaratory order to terminate a controversy or to remove uncertainty. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-7, 91-8)

SUBCHAPTER 5

RULES APPLICABLE TO CONTESTED CASES

§20-40-24 Delegation of powers. The commission shall have the power to delegate the power to hear contested cases. The decision of said delegate shall be deemed to be the decision of the commission but may be subject to review by the commission on its own motion. [Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-25 Procedure. (a) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

- (b) The notice shall include a statement of:
- (1) The date, time, place, and nature of hearing.
 - (2) The legal authority under which the hearing is to be held.
 - (3) The particular sections of the statutes and rules involved.
 - (4) An explicit statement in plain language of the issues involved and the facts alleged by the commission in support thereof; provided that, if the commission is unable to state such issues and facts in detail at the time the notice is served, the initial notice may

be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished.

(5) The fact that any party may retain counsel if so desired.

(c) Opportunities shall be afforded all parties to present evidence and argument on all issues involved.

(d) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(e) For the purpose of decisions, the record shall include:

(1) All pleadings, motions, intermediate rulings.

(2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed.

(3) Offers of proof and rulings thereon.

(4) Proposed findings and exceptions.

(5) Report of the officer who presided at the hearing.

(6) Staff memoranda submitted to members of the commission in connection with their consideration of the case.

(f) It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.

(g) No matters outside the record shall be considered by the agency in making its decision except as provided in this chapter.

(h) Any contested cases provided for by rules established by the commission shall, at a minimum, reflect the rules of procedure and evidence set forth in the rules of this subchapter. Any contested case hearing procedure required by federal or State law or regulation shall take precedence over the procedures established by this subchapter or by any rule or regulation established by the commission.

[Eff. JUN 22 1981] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-9)

§20-40-26 Rules of evidence; official notice. In contested cases: (a) Any oral or documentary evidence may be received but the hearing board or officer shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The hearing board

or officer shall give effect to the rules of privilege recognized by law.

(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request, parties shall be given an opportunity to compare the copy with the original.

(c) Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence.

(d) The hearing board or officer may take notice of judicially recognizable facts. In addition, they may take notice of generally recognized technical or scientific facts within their specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

(e) Any documents filed in a contested case, other than evidence, shall conform to the requirements of section 20-40-7. In addition, all such documents shall be written in ink, typewritten, mimeographed or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8-1/2" x 14" in size except that tables, charts, and other documents may be larger, folded to the size of the documents to which they are attached. [Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-10)

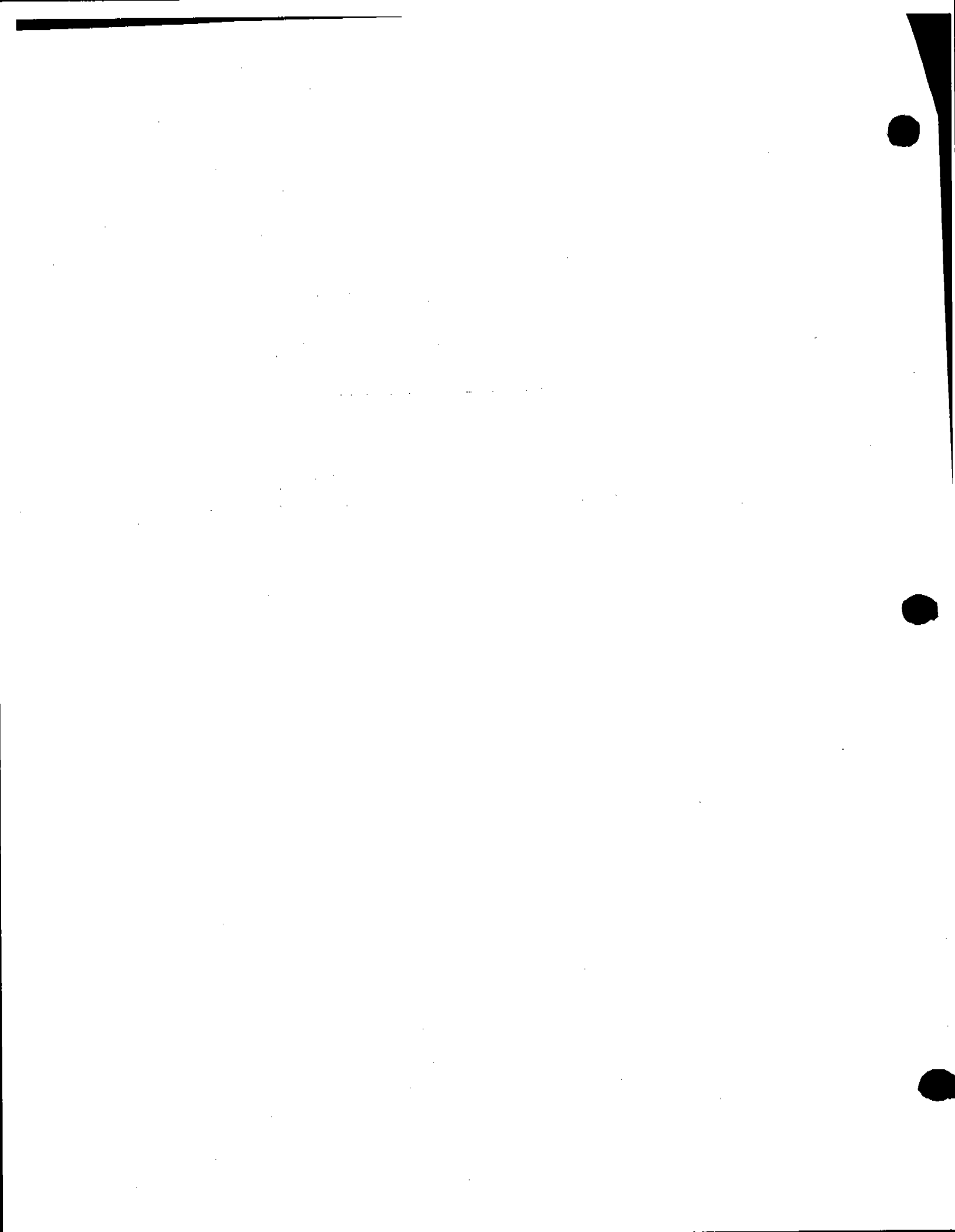
§20-40-27 Examination of evidence. Whenever in a contested case the official who is to render the final decision has not heard and examined all of the evidence, the decision, if adverse to a party to the proceeding other than the commission itself, shall not be made until a proposal for decision containing a statement of reasons and including a determination of each issue of fact or law necessary to the proposed decision has been served upon the parties. An opportunity will be afforded to each party adversely affected to file exceptions and present argument to the official who is to render the decision, who shall personally consider the whole record or such portions thereof as may be cited by the parties.

[Eff. JUN 22 198] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)

§20-40-28 Decisions and orders. Every decision and order adverse to a party to the proceeding, rendered by the commission in a contested case, shall be in writing or stated in the record and shall be

accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the agency shall incorporate in its decision a ruling upon each proposed finding so presented. Parties to the proceeding shall be notified by delivering or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or to the party's attorney of record. [Eff. JUN 22 1981 (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-12)]

§20-40-29 Consultation by officials. No official of the commission who renders a decision in a contested case shall consult any person on any issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law. [Eff. JUN 22 1981 (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-13)]



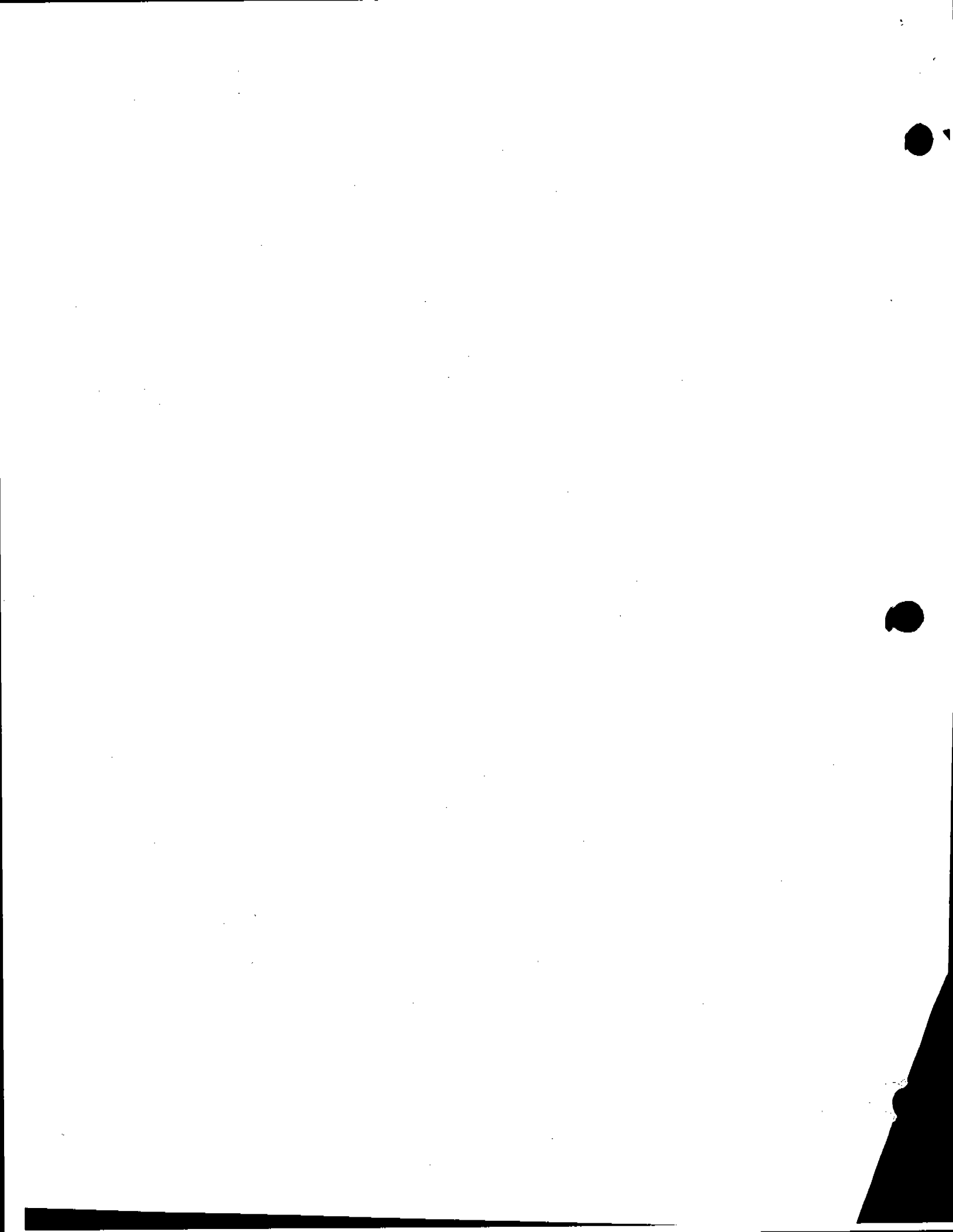
STATE POST-SECONDARY EDUCATION COMMISSION

Amendments to Chapters 20-40 and 20-41 and
Adoption of Chapter 20-42, Hawaii Administrative Rules

(12/16/94)

SUMMARY

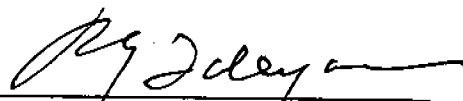
1. The heading of chapter 20-40 is amended.
2. §20-40-2 is amended.
3. §20-40-4 is amended.
4. §20-40-14 is amended.
5. §§20-40-24 to 20-40-29 are amended.
6. The heading of chapter 20-41 is amended.
7. §20-41-3 is amended.
8. A new chapter 20-42, Hawaii Administrative Rules, entitled "Hawaii State Postsecondary Review Program", is adopted.



STATE POST-SECONDARY EDUCATION COMMISSION

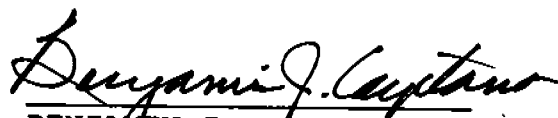
Amendments to the heading of chapter 20-40, §§20-40-2, 20-40-4, 20-40-14, 20-40-24, 20-40-25, 20-40-26, 20-40-27, 20-40-28, 20-40-29, heading of chapter 20-41, §20-41-3, and addition of a new chapter 20-42, Hawaii Administrative Rules, were adopted on April 21, 1995, following public hearings held on April 17, 18, 19, and 20, 1995, after public notice was given in The Honolulu Advertiser on March 10, 1995.

The amendments and addition shall take effect ten days after filing with the Office of the Lieutenant Governor.



ROY Y. TAKEYAMA
Chairperson
State Post-Secondary
Education Commission

APPROVED:




BENJAMIN J. CAYETANO
Governor
State of Hawaii
Dated: July 6, 1995

APPROVED AS TO FORM:



Deputy Attorney General

JUL 14 1995
~~JUL 24 1995~~ 

Filed

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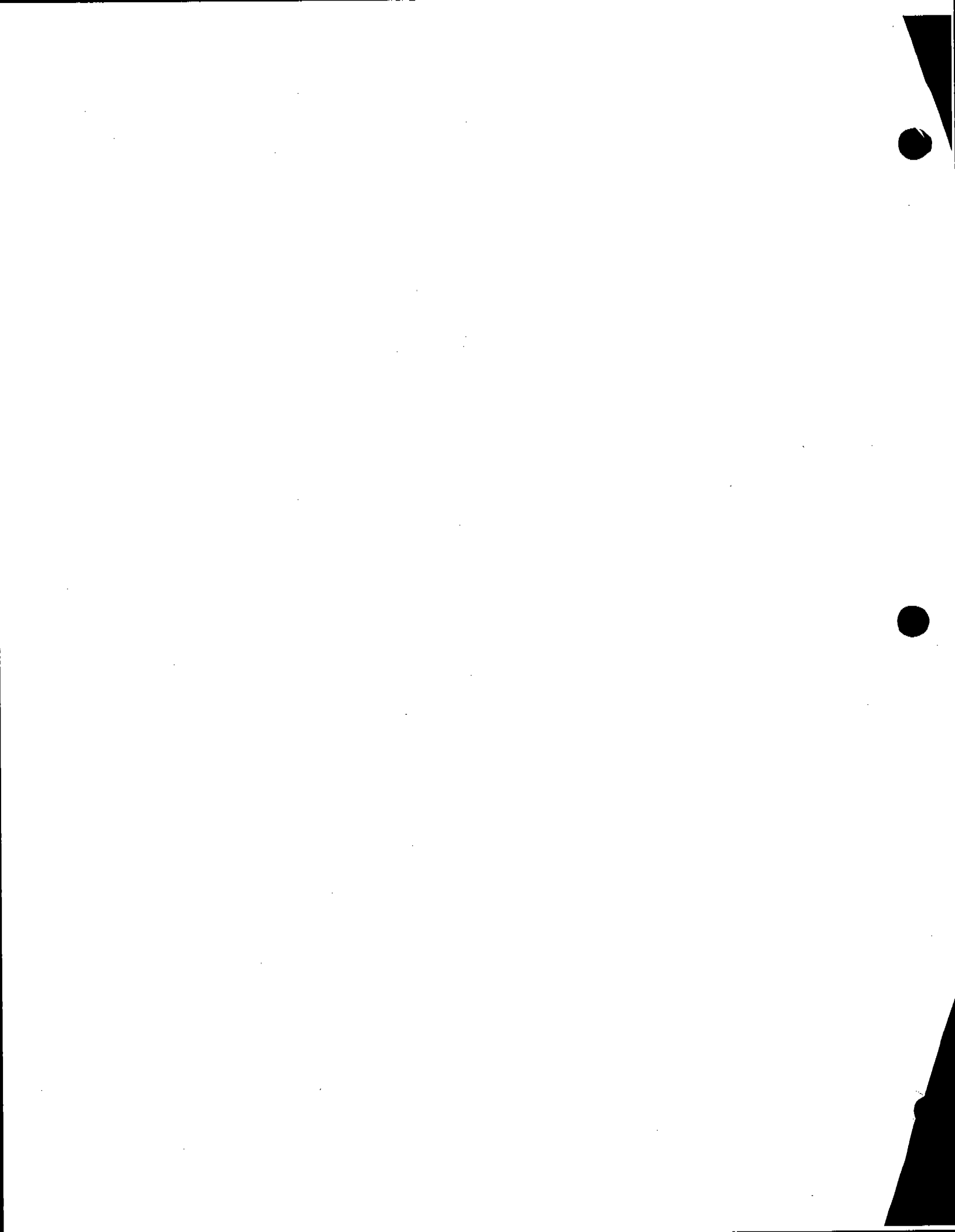
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TITLE 20
UNIVERSITY OF HAWAII
SUBTITLE 3
STATE POST-SECONDARY EDUCATION COMMISSION
CHAPTER 40
RULES OF PRACTICE AND PROCEDURE

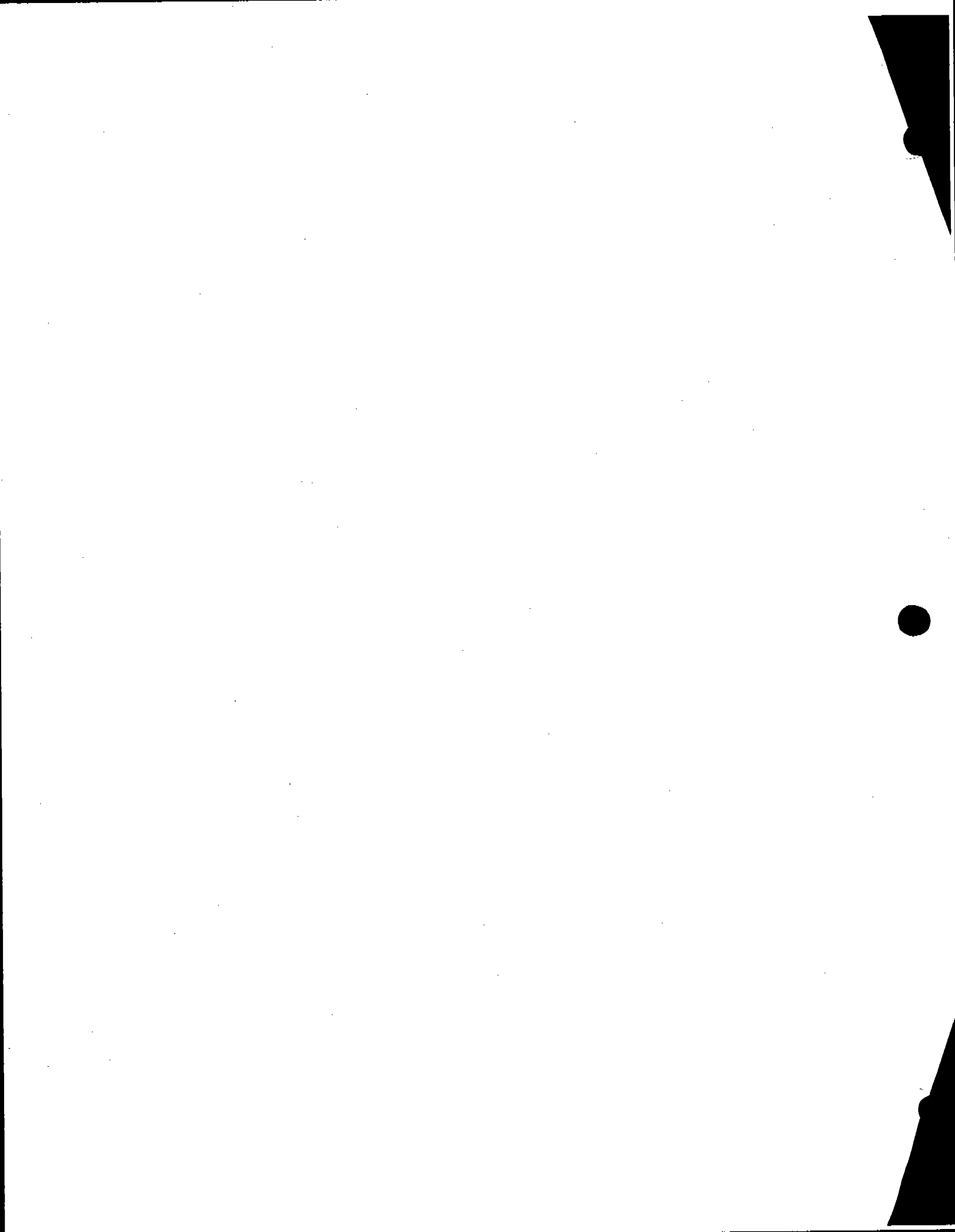


§20-40-2 Definitions. (a) As used in the rules prescribed by the commission, unless the context specifically requires otherwise:

"Commission" means the State post-secondary education commission and for purposes of this rule shall not include committees of the commission.

"SPRE" means the commission acting as the State of Hawaii's State Postsecondary Review Entity, as defined in 34 C.F.R. §667.4, pursuant to HRS §305H-12 and chapter 20-42.

*** [Eff 6/22/1981; am JUL 24 1995]
(Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 305H-11 to 305H-16, 91-2)

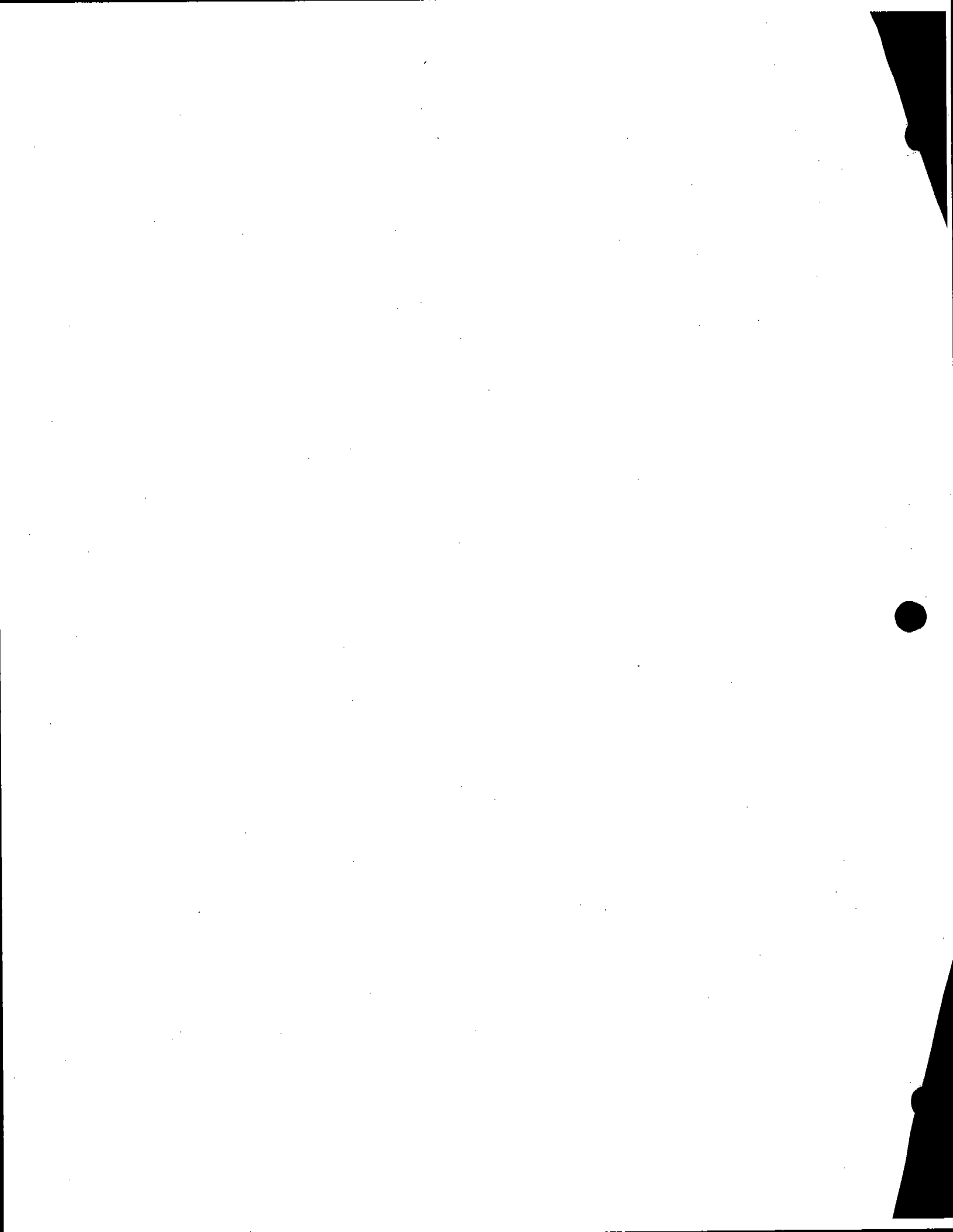


§20-40-4 Government records. (a) The term "government records" as used in this chapter is defined as in chapter 92F, HRS.

(b) All government records of the commission shall be available for inspection during established office hours, subject to the limitations prescribed in chapter 92F, HRS.

(c) All government records of the commission except as limited by chapter 92F, HRS, shall be available to any person who requests them and pays the fees necessary, if any, as set by law.

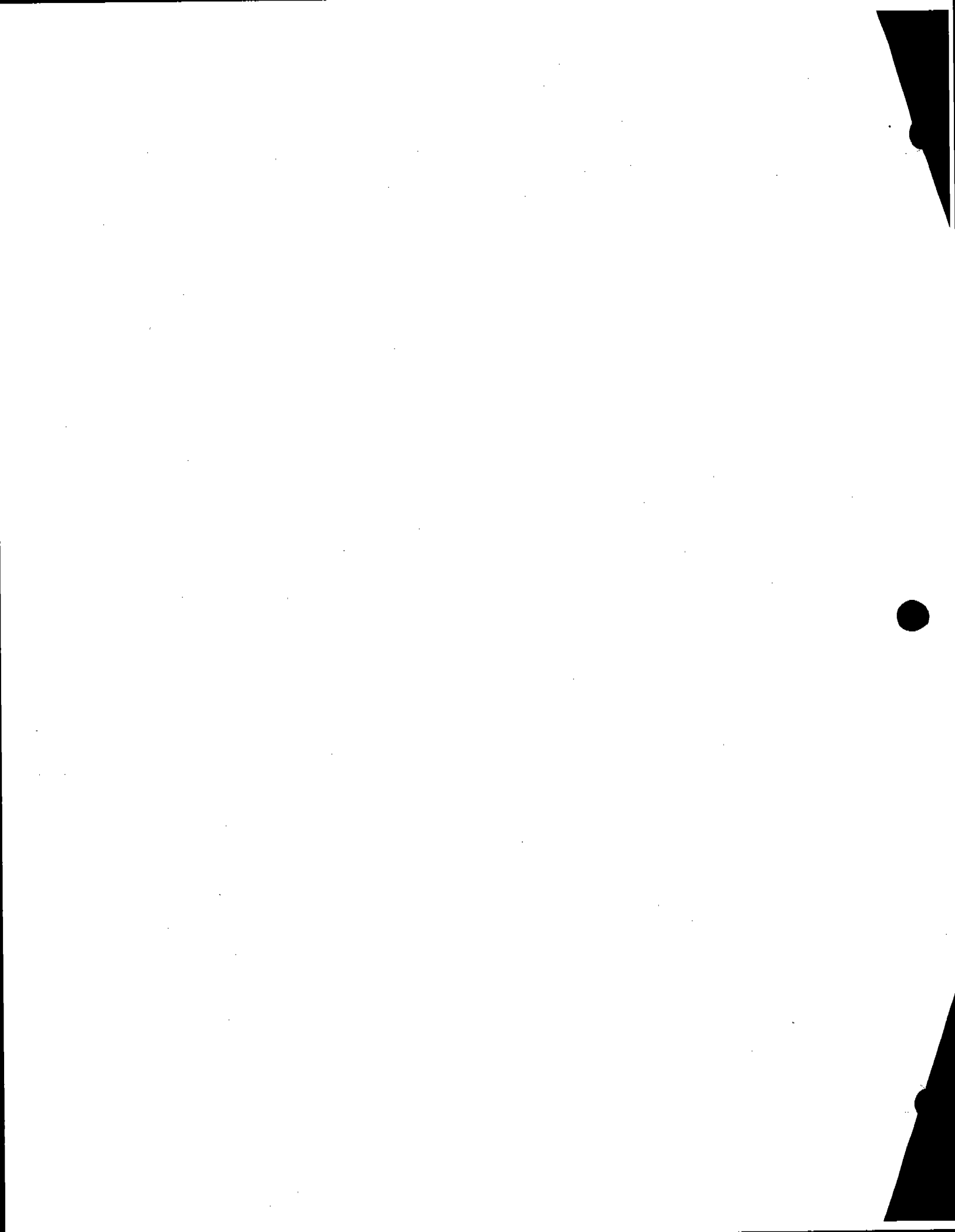
(d) Requests for public information, for permission to inspect government records or for copies of government records will be handled with the regard for the dispatch of other public duties. [Eff 6/22/81; am JUL 24 1995] (Auth: HRS §§305H-2, 91-2, chapter 92F) (Imp: HRS §§305H-2, 91-2, chapter 92F)



§20-40-14 Appearances in a proceeding. (a) Any person shall be afforded an opportunity to present oral testimony to the commission at a meeting on any agenda item.

(b) In order to ensure an orderly and efficient meeting, any person who wants to appear before the commission to present testimony is requested to notify the secretary of the commission at least twenty-four hours prior to the meeting of the commission and, if possible, submit a written copy of the testimony to the secretary prior to the meeting.

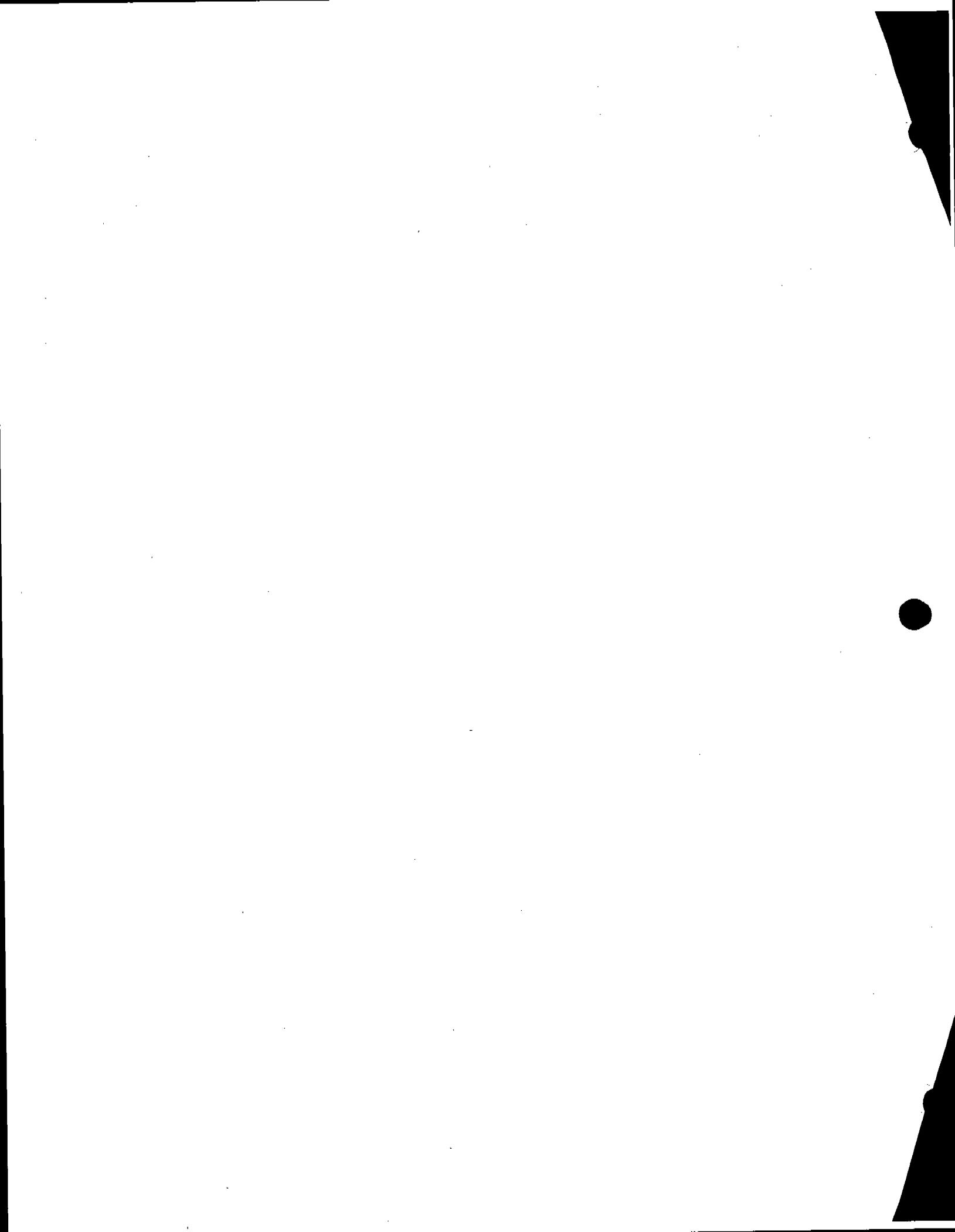
(c) The chairperson of a meeting shall have the authority to limit or terminate any testimony which the chairperson determines to be repetitious or made solely for purposes of delay. Further, the chairperson of the meeting shall have authority to remove any person who wilfully disrupts the conduct of a meeting and to impose other reasonable conditions to ensure an orderly and efficient meeting. This rule shall not limit, however, the powers of the commission or its chairperson under section 20-40-3(f). [Eff 6/22/81; am JUL 24 1995] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)



SUBCHAPTER 5

RULES APPLICABLE TO CONTESTED CASES

§20-40-24 Delegation of powers. The commission shall have the power to delegate the power to hear contested cases to a designated hearing officer. The proposed decision of the hearing officer shall be subject to review by the commission pursuant to the process set forth in section 20-40-27. [Eff 6/22/81; am JUL 24 1995] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2)



§20-40-25 Procedure. (a) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.

(b) The notice shall include a statement of:

(1) The date, time, place, and nature of hearing.

(2) The legal authority under which the hearing is to be held.

(3) The particular sections of the statutes and rules involved.

(4) An explicit statement in plain language of the issues involved and the facts alleged by the commission or SPRE in support thereof; provided that, if the commission or SPRE is unable to state such issues and facts in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved, and thereafter upon application a bill of particulars shall be furnished.

(5) The fact that any party may retain counsel if so desired.

(c) At least fifteen days before the hearing, a written notice of hearing shall be provided to all parties to the proceeding by certified mail, return receipt requested. Proof of receipt shall be evidenced by the delivery date indicated on the United States Postal Service return receipt card (green card).

(d) Opportunities shall be afforded all parties to present evidence and argument on all issues involved.

(e) Any procedure in a contested case may be modified or waived by stipulation of the parties and informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(f) For the purpose of decisions, the record shall include:

(1) All pleadings, motions, intermediate rulings.

(2) Evidence received or considered, including oral testimony, exhibits, and a statement of matters officially noticed.

(3) Offers of proof and rulings thereon.

(4) Proposed findings and exceptions.

(5) Report of the officer who presided at the hearing.

(6) Staff memoranda submitted to members of the commission in connection with their consideration of the case.

(g) It shall not be necessary to transcribe the record unless requested for purposes of rehearing or court review.

(h) No matters outside the record shall be considered by the commission and the hearing officer in making a decision, except as provided in this chapter.

(i) Any contested case provided for by rules established by the commission shall, at a minimum, reflect the rules of procedure and evidence set forth in the rules of this subchapter. Any contested case hearing procedure required by federal or State law or regulation shall take precedence over the procedures established by this subchapter or by any rule or regulation established by the commission.

[Eff 6/22/81; am JUL 24 1995] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-9, 91.9.5)

§20-40-26 Rules of evidence; official notice.

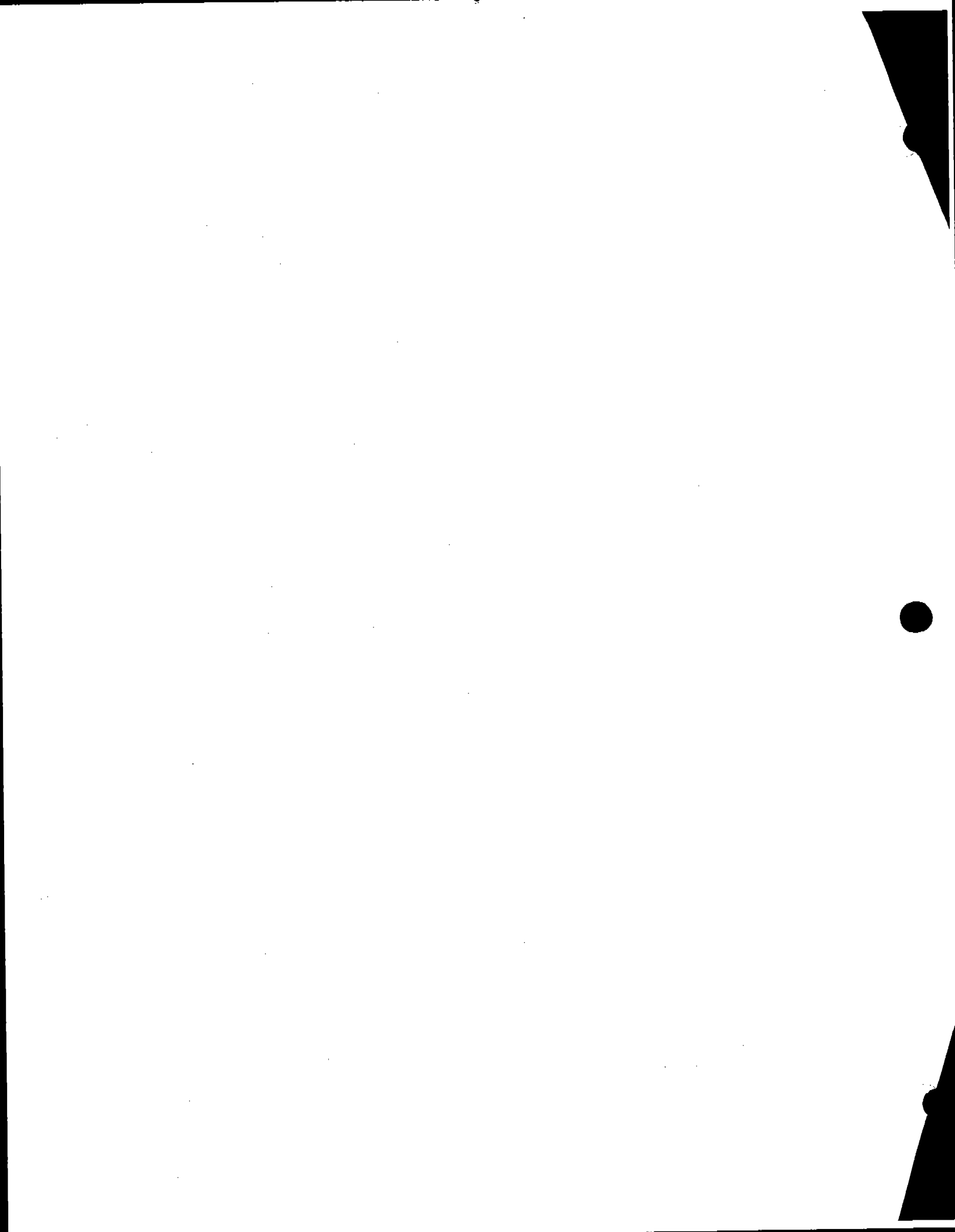
(a) Any oral or documentary evidence may be received but the commission and hearing officer shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The commission and hearing officer shall give effect to the rules of privilege recognized by law.

(b) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request, parties shall be given an opportunity to compare the copy with the original.

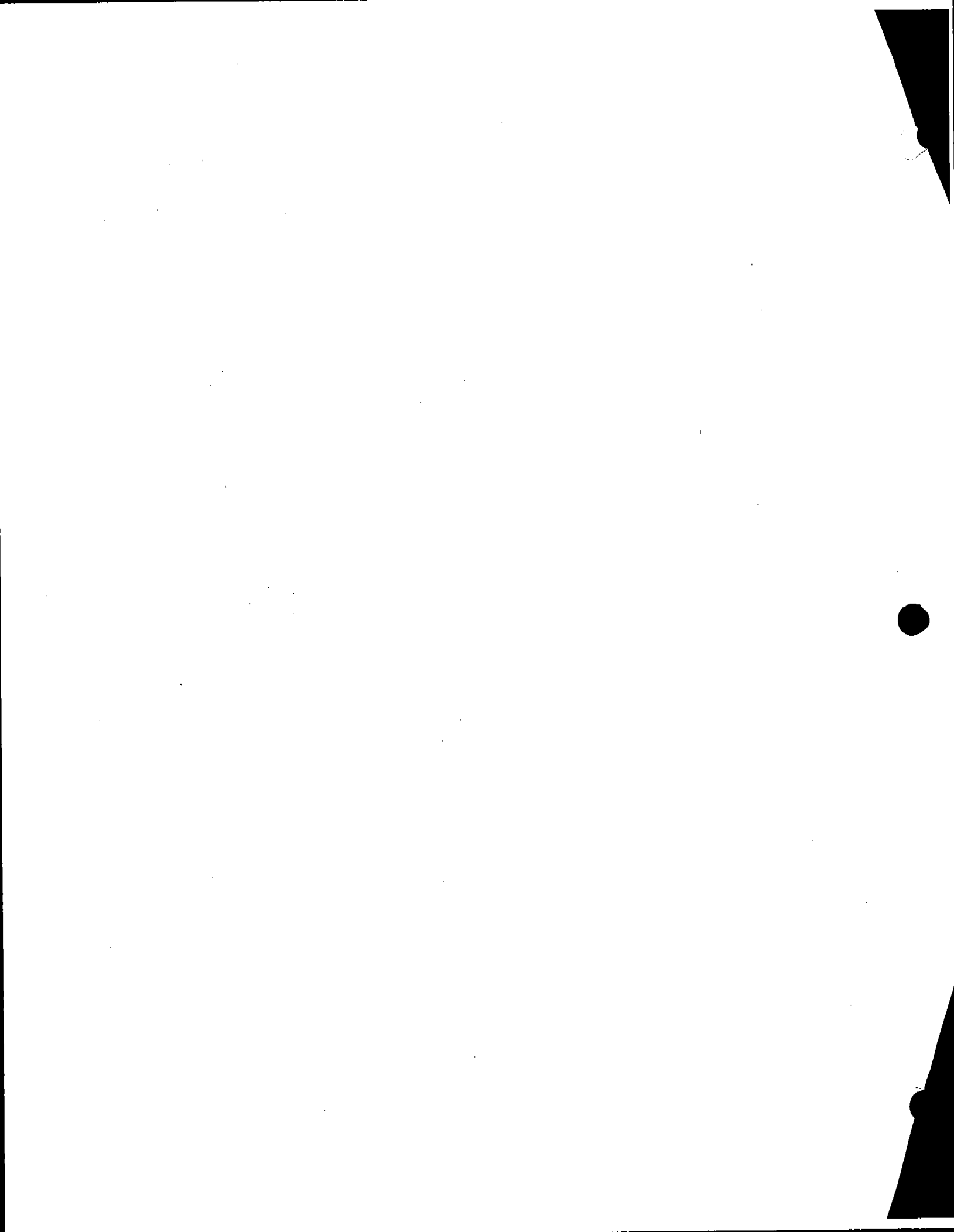
(c) Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence.

(d) The commission and hearing officer may take notice of judicially recognizable facts. In addition, they may take notice of generally recognized technical or scientific facts within their specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed.

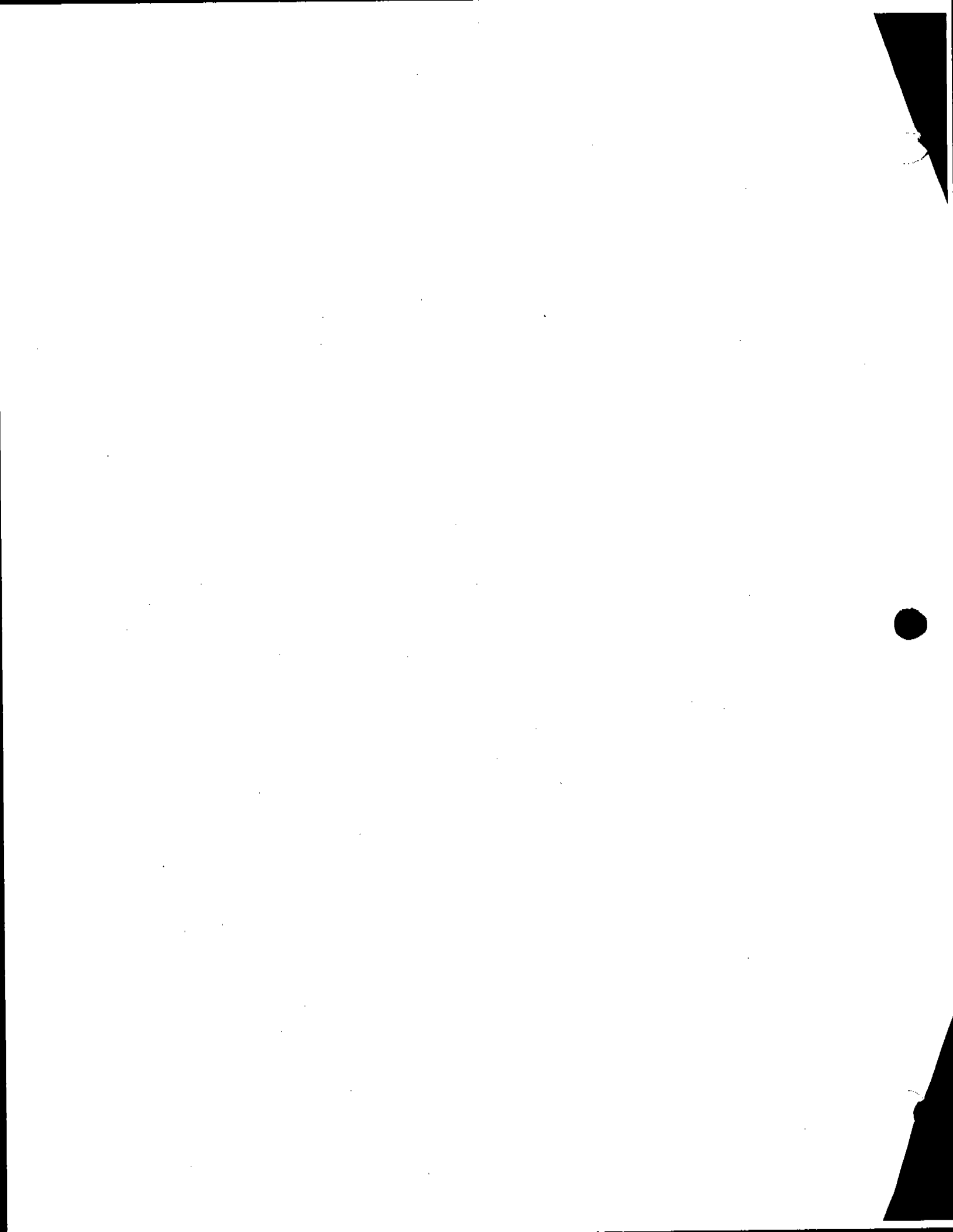
(e) Any document filed in a contested case, other than evidence, shall conform to the requirements of section 20-40-7. In addition, all such documents shall be written in ink, typewritten, mimeographed or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8-1/2" x 14" in size except that tables, charts, and other documents may be larger, folded to the size of the documents to which they are attached. [Eff 6/22/81; am JUL 24 1995]
 (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-10)



§20-40-27 Examination of evidence. Whenever in a contested case the hearing is not held by the commission, but delegated to a hearing officer, and the commission has not heard and examined all of the evidence, the decision shall not be made until a proposal for decision containing a statement of reasons and including a determination of each issue of fact or law necessary to the proposed decision has been served upon the parties. An opportunity will be afforded to each party to the proceeding adversely affected by the proposed decision, other than the commission or SPRE itself, to file exceptions to the proposed decision and present argument to the commission. The members of the commission shall personally consider the whole record of the contested case or such portions thereof as may be cited by the parties. [Eff 6/22/81; am JUL 24 1995] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-11)



§20-40-28 Decisions and orders. Every decision and order rendered by the commission in a contested case, shall be in writing or stated in the record and shall be accompanied by separate findings of fact and conclusions of law. If any party to the proceeding has filed proposed findings of fact, the commission shall incorporate in its decision a ruling upon each proposed finding so presented. Parties to the proceeding shall be notified by delivering or mailing a certified copy of the decision and order and accompanying findings and conclusions within a reasonable time to each party or to the party's attorney of record. [Eff 6/22/81; am JUL 24 1995] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-12)



§20-40-29 Consultation by officials. No official or member of the commission who renders a decision in a contested case shall consult any person on any issue of fact except upon notice and opportunity for all parties to participate, save to the extent required for the disposition of ex parte matters authorized by law. [Eff 6/22/81; am JUL 24 1995] (Auth: HRS §§305H-2, 91-2) (Imp: HRS §§305H-2, 91-2, 91-13)

