

Regulations of Connecticut State Agencies

TITLE 22a. Environmental Protection

Agency

Department of Environmental Protection

Subject

Rules of Practice

Inclusive Sections

§§ 22a-3a-1—22a-3a-6

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Sec. 22a-3a-1. Repealed

Repealed June 19, 1992.

Sec. 22a-3a-2. General

(a) Definitions

(1) As used in these Rules of Practice:

“Applicant” means a person who files an application with the Department.

“Application” means a request for a Department license or renewal thereof, for a modification of a Department license if the modification is sought by the licensee, for certification under Section 401 of the Clean Water Act, 33 U.S.C. Section 1341, or for a variance.

“Commissioner” means the Commissioner of Environmental Protection or his agent.

“Day” means calendar day.

“Department” means the Department of Environmental Protection.

“Office of Adjudications” means the Department’s Office of Adjudications.

“Order” means, unless otherwise indicated by the context, all or part of a Department order to enforce a statute, regulation or license, or of a notice to revoke, suspend, or modify a license, or of a notice under section 22a-6b of the General Statutes, or of a notice under section 22a-52 of the General Statutes, or any other Department action with respect to which there is an opportunity for hearing under the terms of an applicable statute or regulation. An order does not include a ruling as defined in this subsection.

“Petition” means a request for the Department to issue a declaratory ruling or to adopt, amend or repeal a regulation.

“Pleading” means a paper filed in a contested case other than an application, petition or document offered into evidence.

“Proceeding” means, unless otherwise indicated by the context, a licensing, a contested case, a regulation-making, a proceeding on a petition for a declaratory ruling, or any other matter which is a proceeding under law.

“Respondent” means a person to whom a Department order is issued.

“Ruling” means a decision or directive of the hearing officer, Director of Adjudications, or the Commissioner, other than a proposed final decision or final decision.

“Staff” means those employees acting in their official capacity or that bureau, division, unit, or section of the Department participating in a contested case.

(2) As used in these Rules of Practice, the following terms shall be defined as they are defined in section 4-166 of the General Statutes: contested case, final decision, hearing officer, intervenor, license, licensing, party, person, proposed final decision, proposed regulation, regulation, and regulation-making.

(b) Applicability, purpose, and construction

(1) These Rules of Practice govern practice in all Department proceedings unless otherwise provided by law, except that other procedural regulations of the Department which

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are more stringent than these Rules of Practice shall take precedence, and other procedural regulations of the Department which impose requirements in addition to those imposed by these Rules of Practice shall also apply. The purpose of these Rules of Practice is to secure the just and expeditious determination of proceedings, and they shall be interpreted liberally so as to further the purposes and policies of the statutes and regulations administered by the Commissioner.

(2) As used in this section, words in the singular include the plural, and words in the feminine include the masculine or neuter, and vice versa, as the case may be.

(3) These Rules of Practice shall apply on and after their effective date to every Department proceeding, whether such proceeding commenced before or after such effective date, except where application to a proceeding that commenced before such effective date would unavoidably result in unfairness to the Staff or any party or intervenor or would prejudice the public health, safety, or welfare or the environment.

(4) Notwithstanding any action of an agent of the Commissioner, the Commissioner shall retain authority to act under these Rules of Practice, including the authority to take any action a hearing officer may take. Any action of the Commissioner shall preempt the action of the hearing officer or other agent.

(5) Nothing in these Rules of Practice shall limit the Commissioner's authority under any statute or other regulation.

(c) Commencement and termination of proceedings

(1) A proceeding commences when (A) an application or petition is received by the Department, (B) the Commissioner issues notice under subdivision 22a-3a-4 (a) (5) of these Rules of Practice that he has on his own initiative initiated a declaratory ruling proceeding, (C) the Commissioner issues a notice under section 4-168 (a) of the General Statutes concerning a regulation-making which he has initiated on his own initiative, (D) the Commissioner issues an order, or (E) a proceeding commences under law.

(2) A proceeding terminates when (A) the Commissioner issues a final decision in a contested case, other than a decision remanding the matter to the hearing officer for further proceedings, provided that if a timely request for reconsideration under subdivision 22a-3a-6 (a) (1) of these Rules of Practice is made, the proceeding terminates when the Commissioner denies the request or issues a decision made after reconsideration, (B) the Commissioner issues a declaratory ruling pursuant to section 4-176 of the General Statutes, (C) the Commissioner decides not to issue a declaratory ruling pursuant to subsection (i) or to subdivision (4) or (5) of subsection (e) of section 4-176 of the General Statutes, (D) the Commissioner completes the adoption, amendment or repeal of a regulation pursuant to sections 4-168 through 4-172 of the General Statutes, (E) the Commissioner revokes an order, (F) the Commissioner rejects an application for insufficiency pursuant to subsection (e) of this section or any other provision of law, (G) the applicant or petitioner withdraws his application or petition, (H) the respondent withdraws his answer or request for hearing filed pursuant to subsection 22a-3a-6 (i) of these Rules of Practice, (I) the Commissioner disposes of a license application, unless an opportunity for hearing is provided with respect

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to such disposition, (J) the lawful time for filing an answer or request for hearing pursuant to subsection 22a-3a-6 (i) of these Rules of Practice has run without the filing of such answer or request, or (K) the Commissioner otherwise determines that the proceeding has terminated.

(d) Computation of time

In computing any period of time prescribed or allowed by these Rules of Practice or by an order, ruling, final decision, regulation, permit, approval, or other action of the Commissioner, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a Connecticut or federal holiday, in which case such period runs until the end of the next day which is not a Saturday, a Sunday, or a Connecticut or federal holiday.

(e) Insufficient applications and petitions

The Commissioner may reject an application or petition as insufficient if it does not meet the requirements of Section 22a-3a-4 (a) or 22a-3a-5 (a), respectively, of these Rules of Practice, or does not meet the requirements of any other applicable provision of law governing the form, contents, and filing of such application or petition, or is so manifestly insufficient as to make further processing impossible. Except as otherwise provided by law or in subsection 22a-3a-5 (c) of these Rules of Practice, a rejection under this subsection shall stop the running of any time period which by law begins to run when the Department receives an application or petition; any such period shall begin anew when the Department receives an amended application or petition. Nothing shall preclude the Commissioner from requiring additional information from an applicant or petitioner if the application or petition is not rejected under this subsection or is deemed sufficient.

(f) Smoking

Any person who, in violation of section 1-21b of the General Statutes, lights or carries a lighted cigarette, cigar, pipe, or similar device in any room in which a Department hearing is taking place will be excluded from the hearing room.

(g) Media

Any proceedings under these Rules of Practice which are open to the public may be recorded, photographed, broadcasted, or recorded for broadcast in accordance with the provisions of subsection (a) of section 1-21a of the General Statutes, provided the proceedings are not so disturbed as to impair any person's ability to hear or be heard or to present evidence or argument. In order to minimize disruption of the proceedings, the hearing officer or Commissioner may impose reasonable limits on any person engaged in recording, photographing, broadcasting, or recording for broadcast.

(h) Attendance

Any person who attends a hearing in connection with any proceeding but is not a party or a witness for a party and who does not intend to speak pursuant to subdivision 22a-3a-3 (e) (2) or 22a-3a-6 (t) of these Rules of Practice shall not be required to give his name or any other information or to satisfy any condition precedent to his attending the hearing.

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(i) Public access to documents

(1) Upon receipt of a request for public records under chapter 3 of the General Statutes, the Department will answer within the time allowed by law, provided that such answer may request further information, as appropriate, or indicate that a search for responsive documents is underway. The Department will complete a search for responsive documents as promptly as practicable, taking into consideration the Department's other obligations, the need to review records before release to determine whether they contain statutorily protected material, and the requester's circumstances. If the Department deems it appropriate, the Department may ask a person who has made a request to inspect documents under section 1-19 of the General Statutes to make an appointment for the inspection.

(2) An inspection of records in the Office of Adjudications shall be conducted in a manner that does not disrupt the conduct of a hearing.

(j) Recording of hearings

Hearings in all proceedings shall be recorded either stenographically or electronically. The recording of a hearing or any part thereof shall be transcribed by or through the Office of Adjudications (1) on request of any person, provided such person shall pay the cost of transcription and recording, or (2) in accordance with section 22a-6d of the General Statutes. Subject to the reasonable control of the hearing officer, the Staff, a party, or an intervenor may record any portion of a proceeding in which the hearing officer participates. Settlement discussions conducted by a referee under section 22a-3a-6 (j) do not constitute proceedings under these Rules of Practice and shall not be recorded unless all of the participants in such discussions consent to recording.

(k) Suspension and reconvening of hearings

Except as provided in subdivision (j) (2) and subparagraph (y) (3) (B) of section 22a-3a-6 of these Rules of Practice, the hearing officer or the Commissioner, as appropriate, may continue a hearing to another time and place.

(l) Investigative hearings

(1) The Commissioner may hold investigative hearings for the purpose of (A) investigating actual or potential noncompliance with any statute, regulation, license or order administered or issued by her, or (B) receiving information concerning any matter which reasonably may be the subject of regulation by the Department. The Commissioner shall provide reasonable notice of an investigative hearing.

(2) An investigative hearing shall be open to the public, and the provisions of subsections (d), (f), (g), (h), (i), (j), (k), (l), and (n) of this section shall apply. The hearing officer shall have the power to exclude evidence which is irrelevant, immaterial, or unduly repetitious, administer oaths in the manner specified in subsection 22a-3a-6 (r) of these Rules of Practice, take testimony, and subpoena witnesses and evidence. After an investigative hearing, the hearing officer shall prepare findings of fact, conclusions of law, or both, if the Commissioner so directs.

(m) Voluntary termination of proceedings

The Commissioner may revoke an order at any time before a final decision is issued,

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provided that he shall give notice to the staff, parties, and intervenors of his intent to revoke. Objections to revocation may be filed with the Commissioner within seven days of such notice. A respondent to an order may withdraw the answer or request for hearing at any time, an applicant may withdraw an application or a request for hearing at any time, and a petitioner for a declaratory ruling or a regulation-making may withdraw the petition at any time. Nothing herein shall preclude the Commissioner from revoking an order after a proceeding has terminated.

(n) Disruption of hearings

If any person disrupts a hearing or otherwise interferes with the orderly conduct of a hearing, the hearing officer may order such person to leave the hearing or may suspend the hearing and reconvene it at an appropriate place and time.

(o) Filing of documents

Except as provided in Section 22a-3a-6 (b) (7) of these rules, any document required or allowed to be filed with the commissioner by any statute, regulation, license, or order, including without limitation a petition for declaratory ruling and a petition for hearing under Section 22a-208a (e) of the General Statutes, shall be deemed filed on the date such document is received by the Commissioner.

(p) Electronic filing

Except as provided in § 22a-3a-6 (b) (8) of these Rules of Practice, no document submitted to the Department pursuant to an order, and no petition or application, may be electronically filed without the Commissioner's consent.

(Effective June 19, 1992)

Sec. 22a-3a-3. Regulation-making

(a) Advance notice of regulation-making

Any person may request that the Department provide advance notice by mail of regulation-making proceedings. A request for advance notice shall be for either (1) all regulation-makings initiated by the Department or (2) all regulation makings initiated by a particular Bureau of the Department. The fee for provision of advance notice of all Department regulation-makings shall be \$50.00 per person per calendar year or part thereof, and the fee for provision of advance notice of all regulation-makings of a particular Bureau shall be \$25.00 per person per calendar year or part thereof. A request for advance notice shall be accompanied by a check or money order for such amount payable to the Department of Environmental Protection, provided that the fee shall be waived when (1) the person making the request is an indigent individual or (2) in the Commissioner's judgment, the request is in the public interest because it is likely to contribute significantly to public understanding of the operations and activities of the Department and is not primarily in the commercial interest of the requester. A request for advance notice shall be made in writing and directed to the Director of Education and Publications in the Department's Bureau of Environmental Services. A request for advance notice shall be effective only for the calendar year in which it is made and shall expire on December 31.

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(b) Regulation-making record

The regulation-making record shall contain, though it need not be limited to, the items referred to in section 4-168b of the General Statutes.

(c) Petitions for regulation-making

Any person may, pursuant to section 4-174 of the General Statutes, petition the Commissioner in writing to adopt, amend, or repeal a regulation. The petition shall set forth the text of a proposed regulation or amendment and shall state with particularity the reasons for the petition. The petition shall be signed by the petitioner or by his attorney or other representative, if any, and shall contain the address and telephone number of the petitioner and of his attorney or other representative, if any. The petition shall be directed to the Commissioner and shall be delivered personally or by mail.

(d) Procedures for regulation-making

(1) Notice of intent to adopt, amend, or repeal a regulation shall be provided in accordance with sections 4-168 and 22a-6 of the General Statutes and any other applicable law. The Commissioner may provide any additional notice which he deems appropriate.

(2) If a hearing is held in a regulation-making, the hearing officer shall conduct the hearing so as to afford any interested person a reasonable opportunity to present oral or written comments. Any person who presents oral comments shall provide his name and address to the hearing officer. The hearing officer may exclude irrelevant and unduly repetitious comments, and may limit oral comments to a reasonable time period so that all those present may be heard. The hearing officer may question or request further information from any commenter.

(3) Whether or not a hearing is held, any person may file written comments on a proposed regulation. Written comments shall be filed within the time allowed in the notice published pursuant to subdivision (1) of this subsection or such additional time as may be allowed by the hearing officer. Written comments shall include the name, address, and telephone number of the commenter and his attorney or other representative, if any.

(4) Any person who does not comment orally or in writing but who wishes to receive notice pursuant to section 4-168 (d) of the General Statutes of the Department's action on the proposed regulation may file a written request for such notice with the hearing officer, including in the request his name and address.

(5) Following the submission of any timely oral and written comments, the Department shall prepare (A) the final wording of the proposed regulation, (B) a statement of the principal reasons in support of the Department's intended action, (C) a statement of the principal considerations raised in opposition to the Department's intended action in written and oral comments and the reasons for rejecting such considerations, and (D) a revised fiscal note, as necessary.

(6) The Department shall give notice as required by subsection (d) of section 4-168 of the General Statutes and proceed in accordance with sections 4-169 through 4-173 of the General Statutes.

(Effective June 19, 1992)

Sec. 22a-3a-4. Declaratory rulings

(a) Initiation of declaratory ruling proceedings

(1) Any person may petition the Commissioner in writing to issue a declaratory ruling as provided by section 4-176 of the General Statutes. The petition shall identify clearly and with particularity the facts and circumstances which give rise to the petition; any statute, regulation, or final decision of the Department at issue and the particular aspect of it to which the petition is addressed; and the question or questions as to which the declaratory ruling is sought.

(2) A petition for declaratory ruling shall be signed by the petitioner or by his attorney or other representative, if any, and shall contain the address and telephone number of the petitioner and of his attorney or other representative, if any. The petition shall be directed to the Commissioner and shall be delivered personally or by mail.

(3) Any petition for declaratory ruling filed with the Commissioner shall be accompanied by an affidavit that the petitioner has given notice of the substance of the petition, and of the opportunity to file comments and to request intervenor or party status under subdivision (c) (1) of this section, to all persons known by the petitioner to have an interest in the subject matter of the petition. Unless the Commissioner has provided for another method reasonably calculated to apprise interested persons of the petition, such notice shall be delivered to each such person personally or by mail, except that if there are more than fifty such persons, the petitioner may instead publish such notice in a newspaper of general circulation in the area where each such person resides or his principal place of business is located. The petitioner's affidavit shall contain the name and address of each person to whom the notice was personally delivered or mailed, the date of personal delivery or mailing, and, if applicable, the name of the newspaper(s) in which such notice was published, the date of publication, and the reasons why newspaper notice was published.

(4) Within thirty days after he receives a petition for declaratory ruling filed in accordance with subdivisions (1), (2), and (3) of this section, the Commissioner shall mail notice thereof to (A) any person who has requested notice under subsection (b) of this section, (B) any person who has been given status in the declaratory ruling proceeding as a party or an intervenor pursuant to subdivision (c) (1) of this section, and (C) any person to whom notice is required by any provision of law.

(5) The Commissioner may on his own initiative commence a proceeding for the issuance of a declaratory ruling as provided by section 4-176 of the General Statutes. At least sixty days before a hearing is held in such proceeding or, if no hearing is held, at least sixty days before he issues the declaratory ruling, the Commissioner shall mail notice of the proceeding to (A) all persons who have requested notice under subsection (b) of this section and (B) all persons known to have an interest in the subject matter of the declaratory ruling proceeding, except that if there are more than fifty such persons, the Commissioner may instead publish such notice in a newspaper of general circulation in the area where each such person resides or has his principal place of business. Such notice, whether mailed or published, shall provide information about the opportunity to file comments and to

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request intervenor or party status under subdivision (c) (1) of this section.

(b) Requests for notice of declaratory rulings

Any person may request that the Department provide notice of the filing of declaratory ruling petitions, or the commencement by the Commissioner on his own initiative of declaratory ruling proceedings, on a particular subject matter or matters. A request for such notice shall be made in writing and directed to the Director of Education and Publications in the Department's Bureau of Environmental Services, and shall contain a specific statement of the subject matter(s) with which the requester is concerned. A request under this subsection shall be effective only for the calendar year in which it is made and shall expire on December 31.

(c) Proceedings on declaratory rulings

(1) Following the receipt of a petition for declaratory ruling filed in accordance with subdivisions (1), (2), and (3) of subsection (a) of this section or the issuance of notice under subdivision (5) of such subsection that the Commissioner on his own initiative has commenced a declaratory ruling proceeding, any person may file a request to become a party or intervenor. Such a request, and disposition thereof, shall be governed by the provisions of subsection (k) of section 22a-3a-6 of these Rules of Practice.

(2) Whether or not a hearing is held in a proceeding for a declaratory ruling, any person may file written comments in connection with such proceeding. Comments shall be directed to the Commissioner, shall be signed by the commenter or by his attorney or other representative, if any, and shall contain the name and telephone number of the commenter and his attorney or other representative, if any. Unless the Commissioner provides otherwise, comments shall be filed within thirty days after receipt of mailed notice or publication of newspaper notice, under subdivision (a) (3), (4), or (5) of this subsection. Comments shall be delivered personally or by mail.

(3) Within sixty days after receipt of a petition for declaratory ruling filed in accordance with subdivisions (a) (1), (2), and (3) of this section or the issuance of notice under subdivision (a) (5) of this section that the Commissioner on his own initiative has commenced a proceeding for a declaratory ruling, the Commissioner shall take action in accordance with subsection (e) of section 4-176 of the General Statutes. The Commissioner's decision under such subsection, and any declaratory ruling subsequently issued, shall be sent by certified mail, return receipt requested, to (A) any person granted status as a party or intervenor under subdivision (1) of this subsection; (B) any person who filed comments under subdivision (2) of this subsection; and (C) the petitioner, if applicable.

(4) The Commissioner may direct that a hearing be held in a declaratory ruling proceeding when a fact or facts must be determined to make the declaratory ruling or when in his judgment a hearing is otherwise appropriate. A hearing in a declaratory ruling proceeding shall be governed by section 22a-3a-6 of these Rules of Practice.

(Effective June 19, 1992)

Sec. 22a-3a-5. Licenses

(a) Form and filing of applications

(1) Any application for a license shall be in such form as may be prescribed by the Commissioner and shall be in writing. In addition to any other information required by an application form or applicable statute or regulation, an application shall indicate: (A) the name, address and telephone number of the applicant and of his attorney or other representative, if any, (B) the license or licenses sought, (C) the statutes and regulations applicable to the application, (D) the applicant's proposal and the facilities, activities, and sites which are the subject of or are affected by the application, (E) any other information which the Commissioner may require for the purpose of reviewing the application in accordance with applicable statutory and regulatory criteria, (F) any additional information which the applicant considers relevant, and (G) an executive summary. The executive summary shall clearly and concisely summarize the information contained in the application.

(2) An application, including any attachments thereto, shall be certified by the applicant and by the individual or individuals responsible for actually preparing the application, each of whom shall state in writing: "I have personally examined and am familiar with the information submitted in this document and all attachments thereto, and I certify that based on reasonable investigation, including my inquiry of those individuals responsible for obtaining the information, the submitted information is true, accurate and complete to the best of my knowledge and belief. I understand that a false statement in the submitted information may be punishable as a criminal offense, in accordance with section 22a-6 of the General Statutes, pursuant to section 53a-157 of the General Statutes, and in accordance with any other applicable statute." The application and such copies thereof as the Commissioner may require shall be delivered personally or by mail and, unless the Commissioner requires differently, shall be directed to the Department Bureau which administers the program pertinent to the application.

(b) Hearings on applications

(1) A request under a statute or regulation for a hearing following the disposition of an application, and all actions in the proceeding subsequent to the filing of such request, shall be governed by Section 22a-3a-6 of these Rules of Practice. In an application proceeding in which a hearing is held because a statute or regulation requires a hearing or because the Department schedules a hearing on its own initiative, all actions in the proceeding subsequent to the scheduling of such hearing shall be governed by such section.

(2) Any public notice of hearing on an application issued by the Department shall indicate the place and times at which a copy of the application is available for public inspection.

(c) License renewals

(1) An application for renewal of a license shall be filed no later than 120 days before the expiration of the existing license, unless an earlier filing is required or a later filing allowed by an applicable statute or regulation. An application for a license renewal shall be made in accordance with the provisions of subsection (a) of this section, except that the

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applicant may, unless otherwise provided by law, include in the application a copy of material from his most recently approved application concerning the same subject matter.

(2) If an application for license renewal is untimely filed, the existing license shall expire on the expiration date established therein or, if no expiration date is established therein, on the expiration date established by an applicable statute or regulation.

(3) (A) An application for license renewal is insufficient if it does not comply with the requirements of subsection (a) of this section and the requirements of any other applicable provisions of law governing the form, contents, and filing of such application, or is so manifestly insufficient as to make further processing impossible. If an application for license renewal is timely but insufficient, the Commissioner shall send notice to the applicant describing the way in which the application is insufficient. If the applicant does not submit a sufficient application within thirty days of the mailing of such notice of insufficiency or within such other time as the Commissioner deems appropriate and specifies in writing, the existing license shall expire on the expiration date established therein or, if no expiration date is established therein, on the expiration date established by an applicable statute or regulation. If the applicant submits a sufficient application within thirty days of the mailing of the Commissioner's notice of insufficiency, or within the time specified by the Commissioner, the existing license shall continue in effect in accordance with section 4-182 (b) of the General Statutes.

(B) Notwithstanding the provisions of subparagraph (A) of this subdivision, if an application for license renewal is timely but insufficient, and the Commissioner does not send notice of insufficiency until after thirty days before the expiration date of the existing license, and the Commissioner's finds, in his sole discretion and in writing, that the applicant made best efforts to submit a sufficient application and did not contribute to any delay in the Commissioner's ability to process the application, the existing license shall continue in effect in accordance with section 4-182 (b) of the General Statutes; except that if such applicant fails to submit a sufficient application within thirty days of the mailing of the Commissioner's notice of insufficiency, the existing license shall expire on the thirty-first (31st) day after the mailing of such notice.

(d) Delicensing proceedings

(1) Unless otherwise provided by law, any Department proceeding to revoke, suspend or modify a license shall commence with issuance of notice to the licensee. Such notice shall be delivered personally or by certified mail, return receipt requested, and shall describe the basis for the revocation, suspension or modification and inform the licensee that he may within thirty days of issuance of the notice file a request for hearing. A request for hearing under this subdivision shall conform with the provisions of subsection 22a-3a-6 (i) of these Rules of Practice. Department delicensing proceedings shall be governed by section 22a-3a-6 of these Rules of Practice.

(2) In addition to any other reason provided by statute or regulation, the Commissioner may revoke, suspend, or modify a license for any of the following reasons:

(A) The licensee has violated a statute, regulation, water quality standard, license or

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order administered or issued by the Commissioner, or has committed any other violation of law relevant to the licensed activity.

(B) The licensee or a person on his behalf failed to disclose all relevant and material facts in the application for the license or during any Department proceeding associated with the application;

(C) The licensee or a person on his behalf misrepresented a relevant and material fact at any time, including, without limitation, in the application for the license or in a report or laboratory analysis submitted to the Department;

(D) The licensee failed to comply with a reasonable request by the Commissioner for any information related to the license, activity, or facility which is the subject of the license, or to the licensee's compliance with the license or any statute, regulation, water quality standard, or order administered or issued by the Commissioner.

(E) The activity authorized by the license is causing or is reasonably likely to cause air or water pollution or to endanger human health, safety, or welfare or the environment; or

(F) A change in pertinent law or technology.

(e) Clerical errors in licenses

At any time after the issuance of a license, the Commissioner may correct such license for clerical errors.

(Effective June 19, 1992)

Sec. 22a-3a-6. Contested cases

Part A—General

(a) Scope and applicability

This section governs proceedings in all contested cases. Except as otherwise provided in these Rules of Practice, all rights, obligations and privileges of a party under this part apply equally to the Staff, and the term “party” shall be deemed to include the Staff.

(b) Filing, service, and form of pleadings

(1) Except as otherwise provided in these Rules of Practice, the original of any pleading which is required or allowed to be filed under this section shall be filed in the Office of Adjudications.

(2) The first page of every pleading shall contain a caption identifying the respondent, applicant, or declaratory ruling petitioner and the number of the order, application, or declaratory ruling petition which is the subject of the proceeding.

(3) Every pleading shall be signed by the person filing or by his attorney or other representative, if any. The signature constitutes a representation by the signer that he has read the pleading, that to the best of his knowledge, information and belief the statements made therein are true and complete, and that the pleading is not filed for the purpose of delay or harassment.

(4) The initial pleading filed by any person shall contain the name, address and telephone number of the person filing and of his attorney or other representative, if any. Any change in this information shall, within seven days after such person becomes aware of such change,

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be communicated in writing to the Office of Adjudications and to all persons upon whom pleadings shall be served under subdivision (5) of this subsection.

(5) A copy of every pleading shall be served personally or by mail upon all parties and intervenors and upon any person who, to the knowledge of the pleader, has filed a request for status as a party or intervenor but whose request has not yet been disposed of Every pleading filed shall be accompanied by a certification in substantially the following form:

I (*name*) hereby certify that a copy hereof was (*personally delivered*)
(*mailed in a properly addressed, first-class postage pre-paid envelope*)
on (*date*) to the following persons at the following addresses:

(*signature of person making service*)

(6) Service of pleadings shall be complete upon personal delivery or mailing. When a pleading is served by mail, three days shall be added to any time allowed for the filing of a responsive pleading.

(7) The date of filing of any pleading required or allowed under this section shall be the date such pleading is received in the Office of Adjudications.

(8) No pleading shall be filed electronically without the consent of the hearing officer and the other parties and intervenors, and no pleading shall be served electronically on any party or other person without the consent of such party or person.

(9) The Office of Adjudications or a hearing officer may reject any filing for failure to comply with this subsection.

(c) Orders, rulings, and decisions

(1) Unless otherwise provided by law, an order, other than an order issued under section 22a-7 of the General Statutes, shall be served by personal delivery by a sheriff or other indifferent person or by certified mail, return receipt requested, or by first-class mail, or in the manner provided by law for service of civil process. An order issued under section 22a-7 of the General Statutes shall be served in accordance with the provisions of Public Act 91-301. A written ruling shall, unless distributed to all parties and intervenors at the hearing, pre-hearing conference, or oral argument, be issued by first-class mail, and three days shall be added to any time allowed for the filing of a pleading responding to a ruling which has been mailed.

(2) Unless otherwise provided by law, an order, ruling, proposed final decision, or final decision shall be deemed issued upon mailing or personal delivery.

(3) At any time after the issuance of an order, the Commissioner may correct such order for clerical errors.

(d) Powers and duties of hearing officer

(1) The hearing officer shall conduct a fair and impartial proceeding, assure that the

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relevant facts are fully elicited, adjudicate issues of law and fact, and prevent delay and harassment.

(2) In addition to any other powers provided by law, the hearing officer shall have the power to:

- (A) Determine the scope of the hearing;
- (B) Dispose of motions and requests and make all necessary or appropriate rulings;
- (C) Administer oaths and affirmations;
- (D) Subpoena witnesses and evidence, examine witnesses, and control the examination of witnesses;
- (E) Admit or exclude evidence and rule on objections to evidence;
- (F) Impose sanctions in accordance with subsection (e) of this section and subsection (n) of section 22a-3a-2 of these Rules of Practice;
- (G) Consolidate proceedings or portions thereof;
- (H) Issue proposed final decisions and, when authorized, final decisions; and
- (I) Do any other acts and take any other measures to administer this section, expedite proceedings, and maintain order.

(e) Sanctions

If a party or intervenor or the attorney or other representative of a party or intervenor fails to comply with these Rules of Practice or with a ruling of the Commissioner or hearing officer, the Commissioner or hearing officer may, on motion or on his own initiative, impose such sanctions as he deems just and appropriate under the circumstances, including but not limited to continuance of the proceeding, exclusion of testimony or other evidence, and the drawing of an adverse inference against the noncomplying party or intervenor.

(f) Burdens of Proof

Unless otherwise provided by law, in a proceeding on an order to enforce a statute, regulation or license and in a proceeding on a notice to revoke, suspend or modify a license, the Staff and other proponents of the order or notice shall have the burden of going forward with evidence and the burden of persuasion. In a proceeding on an application, the applicant and other proponents of the application shall have the burden of going forward with evidence and the burden of persuasion with respect to each issue which the Commissioner is required by law to consider in deciding whether to grant or deny the application. Each factual issue in controversy shall be determined upon a preponderance of the evidence.

(g) Representatives

A party or intervenor may appear in person or by an attorney or other representative. Attorneys shall conform to the standards of conduct and ethics required of practitioners before the courts of Connecticut.

(h) Motions

- (1) A motion is any request to a hearing officer or the Commissioner.
- (2) All motions shall (A) be in writing unless made orally on the record, (B) state with particularity the grounds therefor, and (C) set forth the relief or ruling sought.
- (3) Within seven days of service of a written motion or such other time as the hearing

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officer may prescribe, any party or intervenor may file a response supporting or opposing the motion. The movant shall have no right to reply except as permitted by the hearing officer.

(4) The movant shall have the burden of demonstrating that the relief or ruling sought in the motion should be granted.

Part B—Prehearing Procedures

(i) Answers and requests for hearing

(1) Whenever any statute, regulation, or order provides for the filing of an answer or request for hearing with respect to an order, the answer or request for hearing shall be filed with the Office of Adjudications within the time prescribed by the applicable statute; and if not prescribed therein, by an applicable regulation other than this section; and if not prescribed therein, by the order; and if not prescribed therein, within thirty days of issuance of the order. The respondent shall attach to the answer a copy of the order.

(2) Whenever any statute or regulation provides for the filing of a request for hearing concerning the Commissioner's disposition of an application, the request shall be filed with the Office of Adjudications within the time prescribed by the applicable statute; and if not prescribed therein, by an applicable regulation other than this section; and if not prescribed therein, within thirty days of the Commissioner's action. The requester shall attach to the request a copy of the Commissioner's letter or other document disposing of the application.

(3) An answer to an order shall be deemed a request for hearing unless the answer specifically states otherwise.

(4) An answer or request for hearing shall state specifically any findings to which the respondent objects and any other grounds for contesting the order or the Commissioner's disposition of the application. The hearing officer may require, or any party or intervenor may file a motion requesting, a more particular statement from the respondent or applicant if the answer or request for hearing does not give adequate notice of the grounds for contesting the order or the disposition of the application.

(5) An application by a respondent to the Commissioner pursuant to section 4-177(b) of the General Statutes for a more definite and detailed statement shall be made no later than the date by which the answer or request for hearing must be filed under subdivision (1) of this subsection. The filing of such an application shall not stop the running of the time period under such subdivision for filing an answer or request for hearing. The respondent may amend his answer or request for hearing within twenty days after the Commissioner issues a more definite and detailed statement.

(j) Scheduling hearings and settlement conferences

(1) (a) Unless when issuing an order or disposing of an application the Commissioner also issues notice of a scheduled hearing date on such order or application, the Director of the Office of Adjudications shall, upon the filing of an answer or request for hearing under subdivision (i) (1) or (2) of this section, solicit comments from the parties and intervenors concerning an appropriate date and, with respect to an application, location for hearing.

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Upon receipt of comments the Director shall set a date for hearing, taking into consideration the threat to the environment or public health posed by the violations or conditions alleged in the order and the parties' and intervenors' schedules.

(B) Upon scheduling the hearing, the Director of the Office of Adjudications shall mail notice of the time, place, and nature of the hearing to all parties and intervenors and to any person who has filed a request for status as a party or intervenor but whose request has not yet been disposed of.

(C) Upon scheduling the hearing, the Director of the Office of Adjudications may schedule a settlement conference. Any settlement conference shall be conducted by a referee. The purpose of the settlement conference is to determine whether the dispute can be resolved without a hearing and to facilitate such a resolution.

(D) If the referee determines during the settlement conference that resolution of the dispute without a hearing is likely, he may recommend to the assigned hearing officer that the scheduled hearing be continued to afford the parties an opportunity to submit to the hearing officer a proposed consent order or agreed draft decision under subdivision (2) or (3) of this section.

(E) Each party and intervenor shall appear at any settlement conference which is scheduled. If any party or intervenor fails without good cause to appear, the referee may proceed with the conference.

(F) At least one of the attorneys or other representatives for each party and intervenor participating in the settlement conference shall have authority to enter into agreements and stipulations regarding all matters that the participants should reasonably anticipate may be discussed at the settlement conference.

(G) If no appearance is made by or on behalf of a party or intervenor at the settlement conference, or if a party or intervenor or his attorney or other representative is substantially unprepared or is unauthorized to participate fully in the conference or fails to participate in good faith, the referee may recommend to the hearing officer or, if a hearing officer has not been assigned, to the Director of the Office of Adjudications that the hearing officer or Director impose sanctions in accordance with subsection (e) of this section. Upon a recommendation of the referee, the hearing officer or Director may issue an appropriate ruling.

(H) Nothing in this subsection shall preclude the referee from meeting, whether on request or on his own initiative, with the parties and intervenors at any time for the purpose of facilitating settlement, and nothing in this subsection shall preclude the parties from filing a proposed consent order or an agreed draft decision at any time pursuant to subsection (I) of this section.

(2) Neither a settlement conference nor a hearing shall be continued at the request of a party or intervenor except upon motion demonstrating that there is good cause for a continuance. In ruling on such a motion, the hearing officer or, if a hearing officer has not been assigned, the Director of the Office of Adjudications shall consider whether a continuance would prejudice the public health, safety or welfare or the environment. Any

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continuance granted shall be for a specific length of time.

(k) Intervention

(1) A person shall be granted status as an intervening party if:

(A) A statute, including but not limited to sections 22a-19 and 22a-99 of the General Statutes, confers a right to such status, provided that any conditions for party status specified in such statute have been satisfied; or

(B) Such person has filed a written request stating facts which demonstrate that (i) his legal rights, duties or privileges will or may reasonably be expected to be affected by the decision in the proceeding, (ii) he will or may reasonably be expected to be significantly affected by the decision in the proceeding, or (iii) his participation is necessary to the proper disposition of the proceeding.

(2) A person may be granted status as an intervenor if such person has filed a written request stating facts which demonstrate that his participation is in the interests of justice and will not impair the orderly conduct of the proceeding.

(3) A request for status as a party or intervenor under this subsection shall be filed no later than five days before the date of the hearing, if one has been scheduled, except that such five-day requirement may be waived by the hearing officer or the Commissioner, as appropriate, at any time before or after the commencement of the hearing for good cause shown. The request shall be served upon all parties and intervenors and any person known to have filed a request for status as a party or intervenor but whose request has not yet been disposed of.

(4) If a request for status as a party or intervenor is filed before an answer or request for hearing has been filed or the proceeding has been referred by the Staff to the Office of Adjudications, the Commissioner shall rule on the request; if the request is filed after an answer or request for hearing has been filed or the proceeding has been referred to the Office of Adjudications but before a hearing officer has been assigned, the Director of the Office of Adjudications shall rule on the request; if the request is filed after a hearing officer has been assigned, the hearing officer shall rule on the request; if the request is filed after a proposed final decision has been rendered but before a final decision has been rendered, the Commissioner shall rule on the request; if the request is filed after a motion for reconsideration under subsection (z) of this section has been made but before the Commissioner has disposed of such motion, the Commissioner shall rule on the request.

(5) Unless otherwise provided by the hearing officer, any objections to a request for party or intervenor status shall be filed within seven days of the date the objecter learns of the request.

(6) The ruling on a request for status as a party or intervenor shall be provided to the person filing the request, all parties and intervenors, and any person who has filed a request for status as a party or intervenor status but whose request has not yet been disposed of. A request under this subsection shall be construed liberally so as to further the policies and purposes of the Connecticut Environmental Protection Act, sections 22a-14 through 22a-

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20 of the General Statutes, and the statutes and regulations administered by the Department.

(7) The hearing officer or Commissioner, as appropriate, may restrict the participation in the proceeding of a person granted intervenor status under subdivision (2) of this section, although only to the extent necessary to promote justice and the orderly conduct of the proceeding. If a request for intervenor status under subdivision (2) of this subsection is granted, the hearing officer or Commissioner, as appropriate, shall in his ruling on the request define (A) the issues with respect to which the intervenor may participate and (B) the intervenor's rights to discovery, to introduce evidence and offer argument, and to cross-examine witnesses. The hearing officer or Commissioner, as appropriate, may amend his initial ruling concerning an intervenor's participation.

(8) Except for good cause shown, a person granted status as a party or intervenor under this subsection is bound by the hearing officer's and Commissioner's rulings issued as of the time such person filed his request for party or intervenor status. After his request has been granted, such person shall have the same rights, obligations, and privileges as all other parties and intervenors.

(l) Disposition of proceeding by agreement

(1) The Department encourages disposition of proceedings by agreement when the agreement is consistent with the policies and purposes of relevant provisions of law. Settlement discussions among parties shall not affect the obligation to file a timely answer or request for hearing.

(2) With respect to an order, after the respondent has filed a timely answer or request for hearing pursuant to subdivision (i) (1) of this section, the proceeding may be disposed of by agreement, in whole or in part, only as follows:

(A) (1) The Staff and the respondent shall file a proposed consent order, signed by at least the respondent, which sets out the terms of the agreement between the Staff and the respondent.

(ii) If no person has been granted status as a party or intervenor under subsection (k) of this section, or if a person has been granted such status but does not object to the proposed consent order, the hearing officer shall either (1) accept the proposed consent order, or (2) reject it and proceed with the hearing or as is otherwise appropriate; provided that if the hearing was scheduled because of a public request therefor or for the purpose of allowing public comment, the hearing officer shall not act on the proposed consent order until after the hearing. If the hearing officer accepts the proposed consent order and is authorized to render a final decision, he shall issue the proposed consent order as his final decision; if the hearing officer accepts the proposed consent order and is not authorized to render a final decision, he shall refer the proposed consent order, with his recommendation, to the Commissioner.

(B) If any person granted status as a party or intervenor under subsection (k) of this section objects to the proposed consent order, he shall, within seven days of service thereof, file his objection in writing or make it orally on the record, stating with particularity the

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grounds for the objection. With respect to an intervenor's objection, the hearing officer shall determine whether to hold a hearing on the objection. With respect to a party's objection, the hearing officer shall hold a hearing on the objection, unless it is manifestly frivolous. If the hearing officer, over the objection of a party or intervenor, issues the proposed consent order or refers it to the Commissioner, the hearing officer shall prepare a final decision or proposed final decision containing findings of fact and conclusions of law.

(3) With respect to an application, after the applicant has filed a timely request for hearing pursuant to subparagraph (i) (2) of this section or the Department has on its own initiative scheduled a hearing, the proceeding may be disposed of by agreement only as follows:

(A) (i) The Staff and applicant shall file an agreed draft decision, signed by at least the applicant, which sets out the terms of the agreement between the Staff and the applicant, including the full text of a draft license if a license is proposed to be issued or an existing license modified.

(ii) If no person has been granted status as a party or intervenor under subsection (k) of this section, or if a person has been granted such status but does not object to the agreed draft decision, the hearing officer shall either (1) accept the agreed draft decision, or (2) reject it and proceed with the hearing or as is otherwise appropriate; provided that if the hearing was scheduled because of a public request therefor or for the purpose of allowing public comment, the hearing officer shall not act on the agreed draft decision until after the hearing. If the hearing officer accepts the agreed draft decision, he shall issue it as his proposed final decision or final decision.

(B) If any person granted status as a party or intervenor under subsection (k) of this section objects to the agreed draft decision, he shall, within seven days of service thereof, file his objection in writing or make it orally on the record, stating with particularity the grounds for the objection. With respect to an intervenor's objection, the hearing officer shall determine whether to hold a hearing on the objection. With respect to a party's objection, the hearing officer shall hold a hearing on the objection, unless it is manifestly frivolous. If the hearing officer, over the objection of a party or intervenor, accepts the agreed draft decision, the hearing officer shall include findings of fact and conclusions of law in his proposed final decision or final decision.

(4) Upon the filing of a proposed consent order or agreed draft decision, the hearing officer may require that the Staff, the respondent, and any other parties and intervenors answer questions relating to such order or decision.

(5) In a hearing held on the hearing officer's initiative under subparagraph (2) (A) (ii) or (3) (A) (ii) of this subsection or because of the objection of a party or intervenor under subparagraph (2) (B) or (3) (B) of this subsection, the parties and intervenors may raise any relevant issues.

(m) Notices to appear and subpoenas for hearing

(1) A party or intervenor may compel the appearance at a hearing of, or the production of documents at a hearing by, another party or intervenor by serving upon such party or

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intervenor a notice to appear or produce. The notice, if a notice to produce, shall state with particularity the documents which are to be produced. A copy of a notice served under this subdivision shall be filed concurrently with the Office of Adjudications. Except for good cause shown, a notice under this subdivision shall be ineffective unless it is received by the person or Staff to whom it is directed at least five days before the time designated in the notice to appear or produce.

(2) A party or intervenor may compel the appearance at a hearing of, or the production of documents at a hearing by, any person who is not a party or intervenor by the issuance of a subpoena in accordance with the following:

(A) If the party or intervenor is represented by an attorney, the attorney may issue such subpoena pursuant to section 51-85 of the General Statutes. To prevent harassment or unnecessary inconvenience to a subpoenaed witness, the hearing officer may exclude the testimony of such a witness if he did not receive the subpoena at least five days before the time designated therein to appear or produce.

(B) If the party or intervenor is not represented by an attorney, he may move the hearing officer to issue a subpoena requiring the appearance of the person or the production of the documents at the hearing. Except for good cause shown, such a motion shall be filed no later than 14 days before the hearing commences. Such a motion shall include the name and address of the person and a description of any documents to be subpoenaed, and shall state the reason for the motion. Unless the requested subpoena would be subject to quashing under subdivision (10) of this subsection and unless the hearing officer finds that the testimony or documents sought are clearly inadmissible, he shall issue the subpoena and mail or deliver it to the party or intervenor requesting it, which party or intervenor shall arrange for its service. Except for good cause shown, a subpoena issued under this subparagraph shall be ineffective unless it is received by the person to whom it is directed no later than five days before the hearing commences.

(3) Notwithstanding the provisions of subdivisions (1) and (2) of this subsection, in a proceeding on a cease and desist order pursuant to section 22a-7 of the General Statutes, the hearing officer shall, except for good cause shown, allow testimony from, or admit into evidence documents produced by, a witness to whom a notice or subpoena to appear or produce was directed under this subsection so long as such witness received the notice or subpoena at least 18 hours before the time designated in the notice or subpoena to appear or produce.

(4) A subpoena issued by the hearing officer shall contain the name of the Department and the title of the proceeding, and shall command the person to whom it is directed to appear to produce specified documents at a designated time and place.

(5) Upon notice to the parties and intervenors, the hearing officer may on his own initiative issue a notice or subpoena requiring the appearance of a party, intervenor, or other person or the production of documents at a hearing. The form and service of such notice or subpoena shall be as described in subdivision (1) or (4), as the case may be, of this

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subsection, and such notice or subpoena shall be subject to the provisions of subdivision (6) of this subsection.

(6) On motion made or on his own initiative, the hearing officer may: (A) quash, modify, or issue a protective order with respect to a subpoena to appear or produce issued by the hearing officer or a notice to appear if such notice or subpoena is unreasonable or requests evidence that is irrelevant or immaterial or (B) condition denial of the motion on such terms as he deems appropriate.

(7) A subpoena to appear or produce issued by the hearing officer shall advise that such subpoena may be quashed, modified, or subjected to a protective order in accordance with subdivision (6) of this subsection.

(8) A notice to appear or produce shall be personally served by a sheriff or other indifferent person or by certified mail, return receipt requested. A subpoena to appear or produce issued by the hearing officer shall be personally served by a sheriff or other indifferent person.

(9) If any party or intervenor fails to comply with a notice to appear or produce the hearing officer may impose sanctions in accordance with subsection (e) of this section. If any person fails to comply with a subpoena issued by the hearing officer, the Commissioner may apply to the superior court for enforcement of the subpoena in accordance with section 4-177b of the General Statutes.

(10) A subpoena issued by the hearing officer or a notice to appear directed to any state commissioner personally or to his deputy shall be quashed unless there is a clear showing by the party or intervenor who served the notice to appear or on whose behalf the subpoena was issued that such commissioner or deputy has personal knowledge of relevant and material facts, that no Department employee or other person has knowledge of such facts, and that it would work an injustice if the commissioner or deputy did not testify.

(n) Discovery

(1) A party or intervenor may obtain discovery only if provided in this subsection. Nothing in this subsection shall require the disclosure of materials protected from disclosure under section 1-19 of the General Statutes or any other provision of law.

(2) Discovery under this subsection may commence after (A) the filing of an answer or request for hearing with respect to an order, (B) the filing of a request for hearing with respect to an application, (C) the scheduling by the Department on its own initiative of a hearing on an application, or (D) the scheduling of a hearing on a petition for declaratory ruling.

(3) (A) Except as provided in subparagraph (B) of this subdivision, a party or intervenor may serve upon any other party or intervenor a request to inspect, copy, photograph or otherwise reproduce designated documents (including but not limited to writings, drawings, graphs, charts, photographs, audio or video recordings, or computer records) which are relevant and material to the subject of the proceeding, which are in the possession, custody or control of the party, intervenor, or other person upon whom the request is served, and which can be provided by the disclosing party, intervenor, or person with substantially

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greater facility than they could otherwise be obtained by the party or intervenor seeking disclosure. The request shall clearly designate the documents to be inspected and copied and shall specify a reasonable place and manner of making the inspection and copies. A copy of the request shall be concurrently filed in the Office of Adjudications and served on all other parties and intervenors. Unless the parties and intervenors agree otherwise or the hearing officer provides otherwise, the cost of copying documents shall be borne by the party or intervenor requesting discovery. Nothing in this section shall be construed to require that a party or intervenor conduct any analysis or other manipulation of computer data.

(B) A party or intervenor may serve a discovery request upon another party or intervenor who is not represented by counsel only with the hearing officer's prior approval. A motion to the hearing officer seeking such approval shall (i) include a copy of the proposed discovery request, which request shall conform to the provisions of subparagraph (A) of this subdivision, and (ii) demonstrate that such request is genuinely necessary and appropriate to achieve a just and expeditious resolution of the proceeding.

(4) A party or intervenor upon whom a request for discovery is served shall either (A) comply with the request within 14 days of service thereof or (B) file an objection to the request or any part thereof within seven days of service thereof. It shall not be ground for objection that the documents sought will be inadmissible at hearing if they appear reasonably calculated to lead to the discovery of admissible evidence. Compliance with a request for discovery shall consist, at the discretion of the complying party or intervenor, either of allowing inspection and copying or of providing the requester with clean, legible copies of the originals, together with an affidavit by a person with knowledge stating that the copies are true and accurate copies of the originals. Objection to certain parts of a request for discovery shall not relieve the objecting party or intervenor of the obligation to comply with those parts of the request to which he has not objected. An objection shall state with particularity the grounds therefor. The party or intervenor making the request, and any other party or intervenor, may file a response to an objection within five days of service thereof. If the hearing officer overrules an objection, compliance with the request shall be made at a time set by him.

(5) All evidentiary privileges recognized at common law or provided by the General Statutes, as well as the work product privilege as set forth in Chapter 8 of the Connecticut Superior Court Rules, shall apply to discovery under this subsection.

(6) Whether compliance with a request to inspect and copy documents is made by providing copies of documents or by allowing inspection and copying, the complying party or intervenor shall at the time of compliance furnish the requesting party or intervenor with an affidavit by a person with knowledge stating that the documents produced constitute a full and complete response to the request.

(7) If at any time after complying with a request for discovery, the complying party or intervenor determines that there are additional or new documents responsive to the request, within five days of such time he shall supplement his prior document production.

(8) If a party or intervenor upon whom a request for discovery has been served neither

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objects to the request nor complies with it in good faith, or does not obey a ruling on an objection made under subdivision (4) of this subsection, the hearing officer may impose sanctions in accordance with subsection (e) of this section. Except for good cause shown, the hearing officer shall not enforce multiple discovery requests by the same party or intervenor.

(9) A party or intervenor may move the hearing officer to issue a subpoena requiring that a person who is not a party or intervenor produce documents for the purpose of discovery. Such motion shall include the name and address of the person to whom the subpoena is to be directed and a description of the documents to be subpoenaed, and shall state the reason for the motion. A motion under this subdivision prepared by an attorney shall include a draft of the subpoena requested. Any party or intervenor making a motion under this subdivision shall serve a copy of such motion upon the person who is the subject of the requested subpoena and shall give notice in the motion that such person may, within seven days of service thereof, file an objection to issuance of the subpoena. Unless the hearing officer finds that the material sought is irrelevant and immaterial, he shall issue the subpoena and mail or deliver it to the party or intervenor requesting it, which party or intervenor shall arrange for its service. Except for good cause shown, a subpoena issued under this subdivision shall be ineffective unless it is received by the person to whom it is directed no later than five days before the date prescribed for production of the documents. A subpoena issued under this subdivision shall contain the information described in subdivisions (m) (4) and (7) of this section, shall be served in accordance with subdivision (m) (8) of this section, and may be quashed, modified, or subjected to a protective order in accordance with subdivision (m) (6) of this section. The Commissioner may enforce a subpoena issued under this subdivision in accordance with subdivision (m) (9) of this section.

(o) Preservation of evidence

The hearing officer may provide by any appropriate means, including the taking of oral testimony by deposition, for the preservation of relevant and material evidence when the hearing officer determines that there is a serious likelihood that such evidence will be unavailable at the time of the hearing. The hearing officer may issue subpoenas as necessary to carry out the provisions of this subsection.

(p) Prehearing conferences

(1) The Department encourages prehearing conferences to simplify the hearing and aid in a speedy and fair disposition of the proceeding. To those ends, a hearing officer may, on motion or on his own initiative, schedule and hold a prehearing conference among the parties and intervenors to:

- (A) Clarify and simplify the factual issues for hearing, identify the legal issues in dispute, and determine whether any legal issues should be briefed before the hearing;
- (B) Stipulate to facts and the admissibility of testimony and other evidence;
- (C) Identify and, as appropriate, limit witnesses to be called and documents to be offered

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at the hearing, and identify the matters about which each witness will testify;

(D) Mark exhibits to be admitted or offered into evidence;

(E) Dispose of pending motions and disputes about discovery; and

(F) Take such other actions as may aid in the orderly and expeditious disposition of the proceeding.

(2) The prehearing conference shall, unless impracticable, be held at least fourteen (14) days before the hearing commences.

(3) Each party and intervenor shall appear at the pre-hearing conference. If any party or intervenor fails without good cause to appear, the hearing officer may proceed with the conference and may make decisions concerning all matters for which the conference was scheduled, which decisions shall bind all parties and intervenors.

(4) At least one of the attorneys or other representatives for each party and intervenor participating in the prehearing conference shall have authority to enter into stipulations and to make admissions regarding all matters that the participants should reasonably anticipate may be discussed at the prehearing conference.

(5) After the prehearing conference, the hearing officer may, and at the request of any party or intervenor shall, issue a prehearing conference order reciting the actions taken at the prehearing conference. The prehearing conference order shall, unless modified by the hearing officer on the record, control the subsequent course of the proceeding. A prehearing conference order shall be modified only for good cause.

(6) If no appearance is made by or on behalf of a party or intervenor at a prehearing conference, or if a party or intervenor or his attorney or other representative is substantially unprepared or is unauthorized to participate fully in the conference or fails to participate in good faith, or if a party or intervenor or his attorney or other representative fails to obey a prehearing conference order, the hearing officer may impose sanctions in accordance with subsection (e) of this section or may grant an appropriate continuance to any party or intervenor prejudiced by the disobedience, or both.

(q) Advance submission of proposed evidence

(1) In a proceeding on an application the applicant shall, regardless whether a prehearing conference is held and unless an earlier filing is required by the hearing officer or a later filing is allowed for good cause shown, file no later than 15 days before the hearing:

(A) A copy of all documents, including the application and any amendments thereto, which the applicant plans to offer into evidence at the hearing;

(B) A list of witnesses the applicant plans to call at the hearing and a summary of the matters about which each witness will testify; and

(C) For each expert witness the applicant plans to call, a resume and a statement of the facts and opinions about which the expert will testify and a summary of the grounds for each opinion.

At the time the applicant files the foregoing papers, he shall serve a copy thereof on all

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parties and intervenors.

(2) In any proceeding the hearing officer may, on motion or his own initiative, direct any party or intervenor to file before the hearing the following materials, provided that a party or intervenor planning to offer written testimony on direct examination shall be required to file such testimony no later than ten days before the hearing:

(A) A copy of all documents which the party or intervenor plans to offer into evidence at the hearing;

(B) A list of witnesses the party or intervenor plans to call at the hearing and a summary of the matters about which each witness will testify;

(C) For each expert witness the party or intervenor plans to call, a resume and a statement of the facts and opinions about which the expert will testify and a summary of the grounds for each opinion; and

(D) Any other or additional material.

(3) Upon objection by a party or intervenor, the hearing officer shall not admit into evidence any document or testimony which was not submitted or identified before the hearing in accordance with subdivision (1) or a ruling under subdivision (2) of this subsection unless the party or intervenor offering the document or testimony demonstrates good cause for the failure to submit or identify it earlier. If the hearing officer admits such document or testimony, he may grant an appropriate continuance to any party or intervenor prejudiced thereby.

Part C—Hearing Procedures

(r) Oaths

The hearing officer shall administer the oath or affirmation, in accordance with chapter 4 of the General Statutes, to each witness, including a speaker who gives sworn testimony pursuant to subsection (t) of this section, before any evidence is taken from such witness.

(s) Evidence, objections, offers of proof

(1) Evidence shall be received in accordance with section 4-178 of the General Statutes. The hearing officer shall not admit any evidence which is irrelevant, immaterial, unduly repetitious, untrustworthy, or unreliable.

(2) Subject to the reasonable control of the hearing officer, all parties shall have the right to cross-examine any witness, including any speaker who gives sworn testimony pursuant to subsection (t) of this section.

(3) The hearing officer may admit into evidence, in lieu of oral testimony on direct examination, a written statement of fact or opinion prepared by a witness, other than a speaker who gives sworn testimony pursuant to subsection (t) of this section, provided that any requirements for prehearing submission of documents have been satisfied. The admissibility of the contents of the statement shall be subject to the same evidentiary rules as if such contents were presented as oral testimony. Before any such statement is read or admitted into evidence, the witness shall provide a copy of the statement to the hearing

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officer, the court reporter if there is one, and all parties and intervenors. The witness presenting the statement shall swear to or affirm the statement and shall be subject to cross-examination on the contents thereof.

(4) Any objection to the admission of evidence shall be supported by a concise statement of the grounds therefor. The hearing officer's ruling on the objection shall be part of the record.

(5) Whenever evidence is excluded, the party or intervenor offering the evidence may make an offer of proof. An offer of proof for excluded testimony shall consist, at the discretion of the hearing officer, of either the excluded testimony or a summary thereof. An offer of proof for excluded documents shall consist of the insertion in the record of the documents excluded. At the discretion of the hearing officer, an offer of proof may be subject to cross-examination.

(t) Speakers

Any person who is not a party or intervenor nor called by a party or intervenor as a witness may make an oral or written statement at the hearing. Such a person shall be called a speaker. If the hearing officer is going to consider a speaker's statement as evidence or if the speaker wants his statement to be considered as evidence, the hearing officer shall require that the statement be made under oath or affirmation and shall permit the parties and intervenors to cross-examine the speaker and to challenge or rebut the statement. A speaker may decline to be cross-examined, but the hearing officer shall strike from the record any comments by such speaker relating to the subject on which he declines to be cross-examined. The hearing officer may control the time and duration of a speaker's presentation, and may exclude irrelevant, immaterial, or unduly repetitious comments by a speaker. A speaker shall not be entitled to cross-examine parties, intervenors, or other speakers or to object to evidence or procedure.

(u) Failure to appear

(1) If an applicant or declaratory ruling petitioner fails to appear at a scheduled hearing, the application or petition shall be deemed withdrawn and any right to a hearing waived. If a respondent to an order fails to appear at a scheduled hearing, the respondent's answer or request for hearing filed under subdivision (i) (1) of this section shall be deemed withdrawn and any right to a hearing waived. The applicant, petitioner, or respondent may, within no more than 14 days after the scheduled hearing date, move the hearing officer to reopen the proceeding; the motion shall be denied unless the movant demonstrates that there was compelling reason for his failure to appear.

(2) If a respondent does not appear at a scheduled hearing and does not file a timely motion to reopen, the order shall become final on the fifteenth day after the scheduled hearing date. If a respondent does not appear at a scheduled hearing and files a timely motion to reopen but the motion is denied, the order shall become final upon the issuance of the denial of the motion.

(3) If a party or intervenor does not appear at an oral argument scheduled upon his request, such request shall be deemed withdrawn and any right to oral argument waived.

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Such party may, within no more than 14 days after the scheduled oral argument date, move the Commissioner to reschedule oral argument. The motion shall be denied unless the movant demonstrates that there was compelling reason for the failure to appear, and the Commissioner may proceed to issue the final decision.

(v) The record

(1) In addition to the items specified in section 4-177 (d) of the General Statutes, for the purposes of a Department proceeding the record shall include: (A) any briefs or exceptions filed before or after issuance of the proposed final decision and (B) any correspondence between the hearing officer or Commissioner and any party, intervenor, or other person concerning the proceeding.

(2) The evidentiary record shall be maintained separately from the rest of the record. The evidentiary record shall consist, in addition to the recording of the hearing, of all documents offered into evidence (exhibits), regardless whether they are admitted. Exhibits which are not admitted shall be marked “for identification.”

(3) The Department shall not deem a transcript of a hearing to be part of the record, and shall not transmit a transcript of a hearing to the superior court in the event of an appeal from a Department proceeding, unless such transcript was prepared by or through the Office of Adjudications and the sealed original of which transcript, if not prepared by the Office of Adjudications, was delivered directly by the transcriber to the Office of Adjudications.

Subpart D—Post-hearing Procedures

(w) New evidence

Unless the hearing officer or the Commissioner, as appropriate, rules otherwise, after the hearing no further evidence shall be admitted unless it is relevant and material and there was good cause for the failure to offer it at the hearing. Whenever new evidence is admitted after the hearing, the other parties and intervenors shall be allowed an opportunity to respond to the evidence, including, if appropriate, an opportunity to cross-examine the person offering the evidence. Nothing in this subsection shall affect the provisions and requirements of subsection (z) of this section.

(x) Post-hearing legal submissions

The hearing officer may require or allow the parties and intervenors to file post-hearing briefs and proposed findings of fact and conclusions of law. Any assertions of fact in such briefs and findings should be supported by reference to specific portions of the evidentiary record.

(y) Proposed final decisions and final decisions

(1) After the hearing and the filing of any post-hearing legal submissions, the hearing officer shall, unless he has been designated by the Commissioner to issue a final decision, issue a written proposed final decision in accordance with section 4-179 of the General Statutes. If the hearing officer has been designated to issue a final decision, he shall do so in writing in accordance with section 4-180 of the General Statutes.

(2) At any time after issuance of a proposed final decision but before oral argument held

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pursuant to subdivision (3) of this subsection, the hearing officer may correct such decision for clerical errors and for errors of fact or law.

(3) (A) Unless otherwise specified by the Commissioner, within 15 days after personal delivery or mailing of the proposed final decision any party or intervenor may file with the Commissioner exceptions thereto. Exceptions shall state with particularity the party's or intervenor's objections to the proposed final decision, and may not raise legal issues or, subject to subsection (w) of this section, factual issues which could have been, but were not, raised at the hearing. Exceptions may be accompanied by a request for oral argument.

(B) Upon receipt of timely-filed exceptions or on his own initiative, the Commissioner shall send notice to all parties and intervenors of the date by which they may file briefs concerning the proposed final decision. Upon receipt of a timely request for oral argument or on his own initiative, the Commissioner shall schedule oral argument and send notice of the time and place thereof to all parties and intervenors; such notice shall also specify the date by which the parties and intervenors may file briefs concerning the proposed final decision. Any assertions of fact in briefs filed pursuant to this subparagraph should be supported by reference to specific portions of the evidentiary record. The date for filing briefs or for oral argument shall not be continued at the request of any party or intervenor except upon motion demonstrating that there is good cause for a continuance and that a continuance will not prejudice public health, safety, or welfare or the environment.

(C) Unless the Commissioner rules otherwise, oral argument shall be limited to the issues raised in timely-filed exceptions. The Commissioner may control the oral argument so as to allow all parties and intervenors a reasonable opportunity to present argument.

(D) After the issuance of the proposed final decision, the filing of any exceptions and briefs, and presentation of any oral argument, the Commissioner shall issue a written final decision in accordance with section 4-180 of the General Statutes. In his final decision the Commissioner may affirm, modify, or reverse the proposed final decision, in whole or in part, or may remand to the hearing officer for further proceedings, including the taking of further evidence.

(E) If in a final decision the Commissioner remands for further proceedings, such proceedings shall be governed by this section.

(z) Reconsideration

(1) On motion made or his own initiative, the Commissioner may reconsider, reverse, modify, or correct a final decision in accordance with section 4-181a of the General Statutes. In addition, the Commissioner may open a final decision upon a showing that (A) the final decision was prejudiced by fraud, misrepresentation, or other misconduct of a party or intervenor or (B) there is other compelling reason for opening the final decision.

(2) Any Department proceedings required by a ruling under subdivision (1) of this subsection shall be conducted in accordance with this section.

(Effective June 19, 1992)