

Regulations of Connecticut State Agencies

TITLE 31. Labor

Agency

Department of Labor/Employment Security Board of Review

Subject

**Proceedings on Disputed Matters Pertaining to Unemployment Compensation
Claims**

Inclusive Sections

§§ 31-237g-1—31-237g-107

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Article I

General Provisions

Sec. 31-237g-1. Definitions; interpretations

(Statutory reference: 31-237a, 31-237f, 31-222c)

(a) As used in Secs. 31-237g-1 to 31-237g-60 of these regulations inclusive, unless the context clearly indicates otherwise:

(1) “Acting Chairman” means the person serving as Chairman in the absence of the Chairman of the Board of Review.

(2) “Address” means mailing address.

(3) “Administrator” means the Commissioner of the Connecticut Labor Department whose address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, and his designated representatives.

(4) “Agent State” means any state in which an individual files a claim for unemployment compensation benefits against another state.

(5) “Aggrieved” means that the given party’s interests with regard to the Unemployment Compensation laws are affected by the decision in question.

(6) “Amicus Curiae” means a person, organization or entity permitted to participate in a proceeding of potentially significant precedential value, for purposes of advocating the interests of a constituency which stands to be significantly affected by the decision issued in such proceeding or availing the Appeals Division of specialized knowledge or expertise on the subject involved in such proceeding.

(7) “Appeals Division” means the Employment Security Appeals Division of the Connecticut Labor Department consisting of the Board of Review, the Referees and all supporting staff employed in the Appeals Division for discharge of the Appeals Divisions’ responsibilities set forth in these regulations and the Connecticut General Statutes.

(8) “Attorney” means an attorney-at-law admitted to the Connecticut Bar.

(9) “Authorized Agent” means any individual, organization or business that is, pursuant to Section 31-237g-11(b) of these regulations, duly authorized by a party to represent such party in a proceeding before the Appeals Division, or that is required to register with the board pursuant to Sections 31-272-1 to 31-272-18 of the Regulations of Connecticut State Agencies.

(10) “Board” means the Employment Security Board of Review.

(11) “Chairman” means the Chairman of the Employment Security Board of Review, whose address is 38 Wolcott Hill Road, Wethersfield, Connecticut 06109.

(12) “Chief Referee” means the Chief Referee of the Referee Section.

(13) “Employment Security Division” means the Employment Security Division of the Connecticut Labor Department.

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(14) “Employment Security Office” means the Public Employment Bureau or any other place designated by the administrator for the filing of unemployment compensation claims pursuant to Section 31-240 of the General Statutes.

(15) “Interstate Appeal” means an appeal wherein a resident of a foreign state has filed a claim with the Connecticut Employment Security Division for unemployment compensation benefits pursuant to Connecticut law.

(16) “Intrastate Appeal” means an appeal wherein a Connecticut resident has filed a claim with the Connecticut Employment Security Division for unemployment compensation benefits pursuant to Connecticut law.

(17) “Liable State” means any state against which an individual files, through another state, a claim for unemployment compensation benefits.

(18) “Party” means the following parties to an appeal:

(A) the claimant whose unemployment compensation claim is involved;

(B) an individual whose potential claim for unemployment compensation benefits is at issue and who is made a party by the appeals division;

(C) any employer (1) against whom charges may be made or tax liability assessed due to a decision by the Administrator or the Appeals Division and who has appealed that decision or who is made a party by the appeals division; or (2) from whom the claimant’s separation is an issue in the appeal;

(D) the Administrator.

(19) “Referee” means an Employment Security Appeals Division Appeals Referee Trainee, Associate Appeals Referee, Principal Appeals Referee, or Chief Appeals Referee.

(20) “Referee Section” means the organizational unit consisting of the Referees and all supporting staff employed for the discharge of the responsibilities assigned Referees pursuant to these regulations and the Connecticut General Statutes.

(21) “Principal Referee” means a Principal Appeals Referee.

(22) “Staff Assistant” means the Staff Assistant to the Board as defined in Section 31-237e(b) of the General Statutes.

(b) As used in these regulations, unless the context clearly indicates otherwise, the present tense includes the past and future tenses, the future tense includes the present, each gender includes the other two genders, the singular includes the plural, the plural includes the singular.

(c) In regard to timeliness, unless otherwise specified in these regulations, the date on which a document is “filed” is the date on which such document is actually received by the office authorized and designated to receive such document, provided that a document filed by facsimile transmission (fax) or internet shall be considered received on a regular work day if the appeals division or administrator’s receiving fax machine or computer indicates that it was received no later than 11:59 PM on that day. A fax or internet transmission received on a weekend or legal holiday shall be considered received on the next regular work day. A party filing a document by fax shall retain its fax transmission receipt and the original copy of the document for inspection by the appeals division. A party filing a

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document by internet shall produce a hard copy for inspection when requested by the appeals division. Any document filed by fax or internet shall contain a certification pursuant to section 31-237G-10(a) (7) of these regulations describing how and when a copy of the document was provided to all other parties.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-2. Appeals Division

(Statutory reference: 31-237b, 31-237c, 31-237e, 31-237f, 31-237g, 31-249d)

(a) The Appeals Division controls the administrative appellate system for adjudicating appeals from determinations of the Administrator and consists of the Board of Review and the Referee Section. The Referee Section shall be subject to the Board's administrative direction, supervision and control. Subject to the provisions of Chapter 67 of the Connecticut General Statutes, the Board may appoint such employees in the Appeals Division as it deems necessary to carry out the responsibilities of the Appeals Division provided the Board shall appoint a Staff Assistant to the Board. In the performance of its duties the Appeals Division is autonomous and separate from the Administrator.

(b) The Board shall undertake such investigations as it deems necessary and consistent with the provisions of Chapter 567 of the Connecticut General Statutes. The Board shall consist of three members appointed by the Governor, one of which shall be designated as Chairman of the Board of Review. Such Chairman shall be in the classified service and devote full time to the duties of his office. The other two members appointed to serve during the appointing Governor's term of office shall be a representative of employers and a representative of employees and shall devote full time to the duties of their offices. The members of the Board representing employers and employees shall be selected as representatives based upon previous vocation, employment or affiliation. A member of the Board may be removed by the Governor for cause pursuant to the Connecticut General Statutes. Any vacancy on the Board shall be filled by appointment by the Governor. In the case of a disqualification of a Board member, or at any time a member of the Board is incapacitated to serve, an alternate member appointed by the governor shall serve in place of the board member, provided that the alternate member so appointed shall represent the same interest as the board member in whose place he serves. The board may, at its option, require alternate members to sit with it in the fulfillment of any function of the board. The Staff Assistant shall be qualified, by reason of his training, education and experience, to carry out the duties of the position, which include, but are not limited to, performing legal research for the Board, advising Referees on legal matters relating to procedural and substantive problems of hearings and appeals, assisting the Chairman in preparing legislative amendments to unemployment compensation law pertaining to appellate matters, serving as Acting Chairman of the Board in the Chairman's absence, and other related duties as required.

(c) No person serving as a Referee, Staff Assistant, member of the Board, or legal staff to the board shall appear for or on behalf of any party, other than himself, before any other

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Referee or before the Board. No person serving as a Referee, Staff Assistant or, member of the Board, or legal staff to the board shall appear in any court for or on behalf of any party, other than himself or the board, whose matter before the court consists of an appeal or other proceeding which commenced before one of the Referees or before the Board.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-3. Regulations; purpose of regulations

(Statutory reference: 31-237g, 31-238, 31-252)

(a) A copy of these regulations shall be available for purpose of inspection by the public at each Appeals Division and Employment Security office and each law library maintained by the Connecticut Judicial Department or a Connecticut Bar Association.

(b) The Board adopts these regulations for the purpose of providing a procedural framework for the fair and expeditious disposition of appeals before the Appeals Division in accordance with both the Connecticut General Statutes and the procedural promptness standards prescribed by the United States Department of Labor. These regulations shall govern such proceedings unless specifically otherwise provided by state or federal laws or regulations. These regulations formally repeal the obsolete regulations, 31-244-1 through 31-244-17, which governed proceedings before the former Unemployment Compensation Commissioners who were replaced by the Employment Security Appeals Division.

(c) The Board shall from time to time prescribe such forms as the Board deems necessary or useful for proper performance of the Appeals Division's duties.

(Effective June 23, 1986)

Sec. 31-237g-4. Chairman of the Board; Acting Chairman

(Statutory reference: 31-237d, 31-237f)

The Chairman of the Board is the executive head of the Appeals Division. The Chairman may delegate to any person employed in the Appeals Division such authority as the Chairman deems reasonable and proper for the effective administration of the responsibilities of the Appeals Division. In the absence of the Chairman, the Staff Assistant shall automatically serve as Acting Chairman.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-5. Referees; Chief Referee; Principal Referees

(Statutory reference: 31-237i, 31-237j)

(a) The Referee Section shall include such Referees as the Board deems necessary for the prompt processing of appeals and the performance of the duties set forth in these regulations and the Connecticut General Statutes. Each such Referee shall be appointed by the Board and shall be in the classified service of the State. Any vacancy in the office of Referee shall be filled through appointment by the Board. Each Referee shall have statewide jurisdiction and venue. Any Referee may, at any time, serve in place of any other Referee with regard to any appeal, provided the succeeding Referee shall review the entire file and

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hearing record of such appeal, including such records prepared by any preceding Referee, before issuing a decision addressing the merits of such appeal. In any case before the Referee Section, the Chief Referee, upon his own initiative or the request of any party, may direct that the appeal be heard and the decision issued by a panel of Referees. In any case before the Board the Board may delegate to a Referee the taking or hearing of evidence or such other matters as set forth in these regulations. A Referee may provide assistance and advice to the Board or any of its members in the discharge of their duties, except that no Referee shall provide advice in any matter before the Board in which that Referee was previously involved at the first level of appeal.

(b) The Chairman of the Board shall designate from among the Referees a Chief Referee. The Chief Referee shall be in the classified service. The Chief Referee shall be the administrative head of the Referee Section and may delegate to any Referee or any person employed in the Referee Section such authority as the Chief Referee deems reasonable and proper for the effective administration of his duties.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-6. Decisions of the Appeals Division; electronic index of Board decisions

(Statutory reference: 31-238, 31-249f, 31-252, 1-15)

(a) Final decisions of the Referees and the principles of law declared in their support shall be binding upon the Administrator and shall further be persuasive authority in subsequent Referee proceedings. Final decisions of the Board shall be binding as precedent in all subsequent proceedings involving similar questions.

(b) The Board shall provide the public electronic access to its decisions at each employment security and appeals division office through an indexing system that provides text retrieval. Such system shall enable the user to identify, read, and copy board decisions based upon the name of the parties; date of decision; citation to statutes, regulations, court cases, or prior board decisions; subject matter; and whether the decisions have been identified by the board as precedential.

(c) Any hard copy indexes, manuals, outlines or similar compilations of board decisions that the board maintains will be made available to the public at all appeals division and employment security offices and all libraries maintained by the Connecticut Judicial Department or the Connecticut Bar Association.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-7. Appeals Division records

(Statutory reference: 1-18d, 4-18d, 1-19(b) (2), 31-244a, 31-254)

(a) The Appeals Division shall maintain written file records summarizing all material requests, reports, notifications and decisions which occur pursuant to these regulations in an oral manner between the Appeals Division and any person outside the Appeals Division concerning any appeal before the Appeals Division, provided that any such person initiating such communication with the Appeals Division identifies himself or herself, the appeal

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name and number in question, and his or her relationship to such appeal. All oral requests which, pursuant to these regulations, are considered by the Appeals Division, shall be promptly decided and the person making such request shall be promptly notified of such decision. The file record summarizing all such oral communication shall indicate: the date and time such communication occurred; the name and case number of the appeal involved; the identity of the Appeals Division staff member involved; the name, telephone number, title and relationship to the appeal of the other person involved in such communication; the report, request, notification or decision in such communication; the response, if any, to such report, request, notification or decision. Except for communications dealing with procedural or scheduling matters, the Appeals Division shall not engage in any ex parte oral communication with any person outside the Appeals Division concerning the substantive merits of any particular appeal pending before the Appeals Division unless all parties either are permitted to simultaneously participate in such communication, or have waived their right to so participate. The Appeals Division shall document for the file record the attempt of any person to engage in such an ex parte oral communication on the substantive merits of any such appeal.

(b) Each document or item of written correspondence concerning an appeal before the Appeals Division shall immediately be: (1) date-stamped on the front page upon receipt by the Appeals Division or Employment Security office involved to indicate the date when, and the office where, such document or correspondence was actually received, (2) forwarded to the Appeals Division office involved, and (3) included in the appropriate appeal file upon receipt by such Appeals Division office. The written information, exhibits, data, and other documentary file records of any appeal before the Appeals Division shall, subject to the provisions of subsection (c) and (d) of this section and except for those items exempt from disclosure pursuant to the Freedom of Information Act, be available for inspection upon the premises of the Appeals Division office containing such material during regular Appeals Division hours. At any time subsequent to the decision on an appeal becoming final, any party to such an appeal, or the attorney or authorized agent for such party, may in writing request the return of any original documentary exhibits filed with the Appeals Division concerning such appeal and, subject to the provisions of subsection (c) hereunder, the Appeals Division shall return such original documents to the requesting party after insuring that duplicates of such documents are maintained in the file record. To facilitate a timely response, each such written request should be prepared in accordance with Section 31-237g-7(j) of these regulations, but any document which constitutes such a written request within the meaning of the Freedom of Information Act shall be acceptable.

(c) Except as provided in Section 31-237g-6(c) of these regulations, and subsection (d) of this provision hereinafter set forth, all written information, exhibits, data and other documentary file records of any appeal before the Appeals Division may be destroyed by the Appeals Division if the decision upon such appeal has become final, the appeal has been on file with the Appeals Division for no less than three years, and the destruction is done in accordance with the applicable federal and state records retention statutes.

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(d) The Appeals Division may, six months after the hearing on a case that has not been appealed to the board, erase the official tape hearing record and reuse such tape cassette cartridge for new appeal hearings, provided that such erasure is done in compliance with the applicable federal and state records retention statutes and a cassette tape duplicate of such official tape hearing record of any hearing held before the Appeals Division shall be promptly prepared and furnished to any person who, prior to such erasure, files with the Board a written request for such a cassette tape duplicate. To facilitate a timely response, each such written request should be prepared in accordance with Section 31-237g-7(j) of these regulations, but any document which constitutes such a written request within the meaning of the Freedom of Information Act shall be acceptable.

(e) Copies of any decision subject to inspection pursuant to Sections 31-237g-6(b) and 31-237g-6(c) of these regulations shall be promptly furnished by the Board to any person who files with the Board a written request for such decision copies. To facilitate a timely response each such written request should be (1) prepared in accordance with Section 31-237g-7(j) of these regulations; (2) specifically identify each such decision by name, case number and date of issuance, and (3) contain an agreement to pay the duplication charges authorized in subsection (i) below, but any document which constitutes such a written request within the meaning of the Freedom of Information Act shall be complied with. Requests for copies of nonexempt data contained in the appeals division's computer storage system will be honored in accordance with Section 1-19A(a) of the General Statutes.

(f) Copies of any documents subject to inspection pursuant to subsection (b) above shall be promptly furnished by such Appeals Division office to any person who files with such office a written request for such document copies. To facilitate a timely response each such written request should (1) be prepared in accordance with Section 31-237g-7(j) of these regulations, (2) specifically identify each such document, and (3) contain an agreement to pay the duplication charges authorized in subsection (i) below, but any document which constitutes such a written request within the meaning of the Freedom of Information Act shall be complied with.

(g) The Appeals Division may prepare or cause to be prepared by a commercial transcription service and furnish to any party, or the attorney or authorized agent for such party, a typed transcript of the official hearing record of any hearing held before the Appeals Division if an appeal is taken from the decision of the Referee or the Board and the Referee or the Board determines, upon its own motion or upon a written request filed during the pendency of such appeal by a party or the attorney or authorized agent for such party, that the ends of justice warrant and the administrative capabilities and obligations of the Appeals Division at that time feasibly permit the preparation and furnishing of such a transcript. Any such written request should (1) be prepared in accordance with Section 31-237g-7(j) of these regulations, (2) explain the good cause alleged to support the requirement of preparing and furnishing such a transcript, and (3) contain the requesting party's agreement to pay the actual cost of preparing the transcript. The cost for the preparation and furnishing of any transcript shall be set and paid in accordance with subsection (i) below.

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(h) The request, or inability, to (1) inspect the Appeals Division file pursuant to subsection (b) above, (2) obtain a cassette tape duplicate of the official cassette tape hearing record pursuant to subsection (d) above, (3) obtain duplicate copies of decisions pursuant to subsection (e) above, (4) obtain duplicate copies of documentary file records pursuant to subsection (f) above, or obtain a transcript pursuant to subsection (g) above, shall not stay or toll any time limitations relating to proceedings upon an appeal before the Appeals Division. However, a party, or the attorney or authorized agent for such party, may, pursuant to these regulations, request a postponement of proceedings or a limited extension of time in which to supply, based upon review of such requested file records, hearing records, decisions or transcript, further argument or information supplementing any appeal, motion, request or other correspondence which is timely filed concerning such appeal.

(i) Duplication charges for plain copies of decisions subject to inspection pursuant to Sections 31-237g-6(b) and (c) of these regulations or any documentary file record subject to inspection pursuant to subsection (b) above shall be set and paid in accordance with the appropriate provisions of the Connecticut General Statutes. The charge for preparing and furnishing duplicates of the official cassette tape hearing record shall be five dollars (\$5.00) per cassette tape cartridge, provided that if more than one cassette cartridge is needed to cover the hearing(s) involved the total charge for the duplication of such tapes shall not exceed ten dollars (\$10.00). Charges for the preparation of transcripts shall be the actual cost of preparing each such transcript. The party, attorney or authorized agent who pursuant to this section, files the request for a duplicate or transcript shall be responsible for payment to the Appeals Division of all duplication charges arising consequent to such request. Charges for copies of data maintained in the appeals division's computer storage system shall be in accordance with the applicable provisions of the General Statutes. The Appeals Division may require advance payment of any duplication charges or transcript preparation charges estimated to be ten dollars or more before preparing and furnishing such duplications or transcripts. Any provision of this subsection or the subsections above to the contrary notwithstanding, if the Appeals Division determines that the party requesting such decision or file record copies, official cassette tape duplicates or transcript is an indigent individual, or that waiver of such duplication charges would benefit the general welfare, then the Appeals Division may waive the duplication charges, or any part thereof.

(j) To facilitate a timely response, each request for Appeals Division records filed pursuant to this section should (1) be on a separate sheet or sheets of paper independent from other documents; (2) be typed or legibly printed; (3) be adequately titled at the top center of the document's first page so as to clearly reveal its intended purpose; (4) contain sufficient identifying information to describe the file involved including the case number; the claimant's name, address, zip code and social security number, if applicable; the employer's name, address, zip code and employment security registration number, if applicable; (5) show the name, address and identity (for example: "claimant," "employer," or "Administrator") of the party filing such document; (6) clearly specify the record or records being requested; (7) be signed by the party filing such document or the attorney or

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authorized agent for such party, but any document which constitutes such a written request within the meaning of the Freedom of Information Act shall be acceptable insofar as form is concerned.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-8. Administrator as a party

(Statutory reference: 31-237h, 31-249c)

The Administrator shall be deemed a party to any proceeding before the Appeals Division. The Appeals Division shall have access to all Employment Security records necessary for the performance of the Appeals Division's duties pursuant to these regulations and the Connecticut General Statutes. Copies of all documents and correspondence which the Administrator is entitled to concerning any proceeding before the Appeals Division shall, unless otherwise specified, be mailed or delivered to: "Administrator's Appeals Representative, Connecticut Department of Labor, Office of Program Policy, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109."

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-9. Responsibilities of parties; notification upon change of address or name

(Statutory reference: §§ 31-237h, 31-249c)

It is the responsibility of each party to an appeal before the Appeals Division to keep the specific Appeals Division office involved notified of all changes of such party's name or address, and in the event that such party has, or in the exercise of ordinary prudence should have, reason to believe that it will be difficult for such party to timely receive any correspondence mailed to such party's address to either (1) make private arrangements to insure that such party receives immediate notification as to the content of such correspondence upon the arrival of same at the party's address, or (2) make adequate arrangements with, and acceptable to, the specific Appeals Division office involved, to enable such office to provide the party with timely notice, by telephone or otherwise, as to any aspect of the appeal proceedings.

(Effective January 1, 1988)

Sec. 31-237g-10. Responsibilities of parties; form of documents submitted to the Appeals Division

(a) Each motion, request or other written document filed with the Appeals Division pursuant to these regulations should, unless otherwise specified:

- (1) be on a separate sheet or sheets of paper independent from other documents;
- (2) be typed or legibly printed;
- (3) be adequately titled at the top center of the document's first page so as to clearly reveal its intended purpose pursuant to these regulations;
- (4) contain sufficient identifying information to describe the file involved including the

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case number; the claimant's name, address, zip code and social security number, if applicable; the employer's name, address, zip code and employment security registration number, if applicable;

(5) show the name and identity (for example: "claimant," "employer," or "Administrator") of the party filing such document;

(6) be signed by the party filing such document or the attorney or authorized agent for such party;

(7) describe on the last page when and how a copy of such document was provided to each other party, plus the attorney and authorized agent of record for each other such party, and, subject to the provisions of subsection (f) of this section, a copy of such document should be delivered or mailed postage prepaid to each other such party, attorney and authorized agent, including the Administrator, no later than the date that such document was filed with the Appeals Division. In the event, however, that any such document does not contain such a description of the manner in which a copy of such document was provided to the other parties and the Appeals Division determines that such document supplements or affects the case in a material way, the Appeals Division shall immediately provide a copy of such document to each other party and the attorney and authorized agent of record for each other such party. An appeal to the Referee, the Board or Superior Court need not contain such a description, and a copy of such appeal need not be delivered or mailed to each other party, attorney and authorized agent.

(b) Any document filed which is so incomplete or illegible as to render it impossible for the Appeals Division to determine the identity of the party submitting same shall be void and shall not be acted upon by the Appeals Division. Such correspondence shall be maintained by the Appeals Division in a void correspondence file.

(c) Subject to the provisions of Section 31-237g-34(c) and 31-237-49(c) of these regulations, any document filed from which the Appeals Division can determine the identity of the party submitting same but which is otherwise so incomplete, illegible, vague, unsigned or inadequately titled that the Appeals Division is unsure as to the purpose or legitimacy of such document shall, except as otherwise provided in these regulations, be treated and processed as the Appeals Division reasonably deems proper including, but not limited to, request by the Appeals Division for clarification and/or personal signature or other authorization and the setting of reasonable time limits for response to such requests.

(d) Any appeal, motion, request, or other document filed with the Appeals Division which cites any judicial or administrative decision or opinion for which a citation is not included to the Connecticut Reports, Connecticut Supplement, Connecticut Appellate Reports, Connecticut Law Journal, Connecticut Law Tribune, Commerce Clearing House Unemployment Insurance Reporter, Federal Reporter, Federal Supplement, The West Publishing Company Regional Reporters, United States Reports, Supreme Court Reporter or the identifying information provided for such decision or opinion in the Manual of Precedential Decisions or Index of Board Decisions prepared by the Board pursuant to Section 31-237g-6(b) and (c) of these regulations, shall include a complete copy of such

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decision or opinion with such document. The Appeals Division may refuse to consider or address any such decision or opinion for which such citation or complete copy is not so provided.

(e) It is the responsibility of each party, attorney and authorized agent in any appeal before the Appeals Division to immediately provide the specific Appeals Division office involved with written notification, including correction, if any identifying information listed on any correspondence issued by the Administrator or the Appeals Division concerning such party, attorney or authorized agent is inaccurate.

(f) Other provisions of these regulations to the contrary notwithstanding, the Appeals Division may, if it deems it necessary or advisable to protect the rights of all parties involved, in certain instances require that copies of certain documents filed with the Appeals Division be delivered or mailed via postage prepaid certified mail return receipt requested to the Appeals Division and each other party, attorney and authorized agent of record no later than the date that such document was filed with the Appeals Division.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-11. Representation by attorney or agent; authorization; notice; fees; amicus curiae

(Statutory reference: 31-272(b) (2))

(a) Any party to a proceeding before the Appeals Division may be represented by an attorney or an authorized agent, or both, provided that at any hearing before the Appeals Division, the Referee or the Chairman, as the case may be, may limit oral participation during such hearing to only one such representative of each party designated by that party. Any individual, corporation, partnership or other association may, subject to the provisions of subsection (e) hereinafter set forth, serve as a party's authorized agent provided that any authorized agent that represents a party for a fee shall comply with sections 31-272-1 to 31-272-18 of the Regulations of Connecticut State Agencies. The Appeals Division may refuse to provide a second hearing to any party who, without good cause, fails to obtain representation for the original hearing and thereafter alleges that a second hearing is necessary to allow such party the benefit of such representation.

(b) If the file record of any proceeding before the Appeals Division indicates that any party has been represented in such proceeding by an attorney or an authorized agent, or both, such representation shall be considered to be of record for the Appeals Division's purposes concerning such proceeding unless and until a written withdrawal of such representation signed by such party is filed with the specific Appeals Division office involved or a new representative is substituted. Except as otherwise herein provided, the Appeals Division may refuse to accept any document or other communication, written or oral, from any individual or entity on behalf of any party unless such communication to the Appeals Division is preceded or accompanied by a written statement personally signed by such party designating such individual or entity as authorized agent of record for such named party with regard to such proceedings before the Appeals Division. A written statement

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signed by an attorney announcing representation of a named party with regard to specifically identified proceedings before the Appeals Division shall constitute sufficient notification to the Appeals Division of such attorney's status as representative of record for that party during such proceedings.

(c) Whenever the file record of any proceeding before the Appeals Division indicates that a party is represented by an attorney or an authorized agent, or both, the Appeals Division shall mail to each such attorney and agent a copy of all correspondence, notices or decisions mailed to such party simultaneous with the mailing of such materials to the party. Notice to such attorney or agent shall constitute effective notice to such party.

(d) The cost of representation permitted by this section shall be the expense of the party obtaining such representation but no attorney or authorized agent shall charge or receive for representation of a claimant in proceedings before the Appeals Division more than the amount approved for same by the Referee or the Board, as the case may be, before whom the proceedings took place, provided the Appeals Division shall not be obligated to set such a specific approved fee for claimant representation unless: (1) during proceedings upon the appeal or at any time prior to the decision on the appeal becoming final, the claimant or the representative on the hearing record at a hearing before the Referee or by way of a written request filed with the Appeals Division pursuant to the guidelines set forth in Section 31-237g-10(a) of these regulations, requests the Appeals Division to set an approved fee; or (2) during proceedings upon the appeal or at any time prior to the decision becoming final, the Referee or the Board, as the case may be, on its own initiative, specifically includes the issue of an approved claimant representation fee among the matters to be decided concerning such appeal; or (3) within thirty (30) days following a claimant's receipt of the written charged expense for such representation, the claimant, in accordance with Section 31-237g-10(a) of these regulations, files with the Referee or the Board, as the case may be, a written objection to such charged expense. In the event that the claimant representation in question occurred solely before a Referee, the Referee shall possess initial jurisdiction over the issue of fees, but if such claimant representation occurred before both a Referee and the Board, then the Board shall possess jurisdiction over the entire issue of claimant representation fees. If the issue of an approvable claimant representation fee is raised and fully heard at an evidentiary hearing upon the appeal, the Appeals Division decision upon the appeal shall set an approved fee. If the issue of an approvable claimant representation fee is raised by the filing of a written objection to charged claimant representation fees or the filing of a written request for the setting of an approved fee and not otherwise covered at a hearing, the Referee or the Board, as the case may be, shall mail to both the claimant and the claimant representative involved notice of such matter and both the claimant and the representative shall have the right, and such notice shall advise them of the right, to file with such Referee or the Board, as the case may be, within ten (10) days of the mailing date of such notice, written argument on such matter, request for an evidentiary hearing concerning such matter and, in the case of such a matter before the Board, request for decision of such matter by the full, three-member Board. Following the expiration of such ten day time limit the

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Referee or the Board, as the case may be, may, on its own initiative or in response to a timely request therefor, schedule an evidentiary hearing upon such matter and, in such event, the hearing and subsequent decision on such fee issue shall occur pursuant to these regulations. If a hearing is not granted, the Referee or the Board shall, following the expiration of said ten day time limit, review such matter on the record and, pursuant to these regulations, issue a decision upon the matter which shall address any such written argument and requests timely filed with regard to same. In determining approvable fees for claimant representation, consideration will be given to several factors including, but not limited to, any initial fee arrangement mutually agreed to by the claimant and the representative, the time necessarily expended by the representative, the complexity and difficulty of the facts and issues involved, the skill of the service provided and the results obtained, in comparison to, and with special regard for, the amount of benefits involved, the remedial purposes of unemployment compensation and the financial resources of the claimant concerned. Except in extraordinary cases, an approvable fee may not exceed twenty percent of the benefits potentially payable to the claimant as a result of the claim under adjudication plus reasonable and necessary costs. In separation cases, the benefits potentially payable are the greater of either the sum of the claimant's weekly benefit amount multiplied by the average weekly duration of unemployment for the previous year as determined by the department of labor or the total benefits actually collected at the time of the request to the board to determine the amount of the attorney's fee. The time limitations and procedures specifically provided in this subsection for objections to charged claimant representation fees shall not affect, stay or toll the time limitations otherwise provided in these regulations for the disposition of appeals by the Appeals Division. The Appeals Division's decision on claimant representation fees may be appealed in accordance with the same time limits and procedures set forth in these regulations for the adjudication of appeals.

(e) Representation by an attorney or authorized agent shall not relieve any party of the responsibility to present at a duly scheduled hearing testimony from all individuals with actual personal knowledge of the facts involved. A represented party may be deemed to be bound by the representation afforded that party by the representative during proceedings before the Appeals Division.

(f) In any proceeding wherein the Appeals Division determines that the eventual decision will potentially be of significant precedential value, the Appeals Division may, upon its own motion or upon written request, permit any person, organization or entity which the Appeals Division reasonably determines represents a constituency which would be significantly affected by such decision or which has specialized knowledge or expertise on the subject involved, to serve as an amicus curiae for purposes of advocating the interests of such constituency or availing the Appeals Division of its knowledge on the subject during such proceeding for such duration and under such terms as the Appeals Division may reasonably provide. Each such request should be filed by means of a typed or legibly printed document which should (1) be clearly entitled at the top center "Request for Leave to Intervene as Amicus Curiae"; (2) describe why the requesting person, organization or entity would be

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qualified to serve as such an amicus curiae, the constituency if any, which would be represented and, if applicable, why such constituency would not otherwise be adequately represented unless such request was granted; (3) describe why the decision eventually issued in such proceeding will allegedly be of significant precedential value and (4) otherwise follow the guidelines set forth in Section 31-237g-10(a) of these regulations. If the Appeals Division grants such a request, notice of that decision will be issued in accordance with Section 31-327g-13 of these regulations and thereafter during the pendency of its authorized involvement such amicus curiae shall be entitled to the same notice due each party to such proceeding pursuant to these regulations including, but not limited to, Section 31-237g-10(a) and 31-237g-13. However, unless an amicus curiae becomes a representative of record for a party actually aggrieved by the eventual decision, such amicus curiae is without standing to exercise appeal rights with regard to such decision.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-12. Formal pleadings not permitted

(Statutory reference: 31-244a)

Except as provided in these regulations, formal pleadings or discovery proceedings such as allowed in other civil proceedings shall not be permitted in appeal proceedings before the Appeals Division.

(Effective June 23, 1986)

Sec. 31-237g-13. Notices from the Appeals Division

(a) A copy of each written decision or notice issued by the Appeals Division pursuant to these regulations shall, unless otherwise specified:

- (1) be typed;
- (2) be adequately titled at the top center of the document's first page so as to clearly reveal its intended purpose pursuant to these regulations;
- (3) list at the top center of the document's first page the address and telephone number of the specific Appeals Division office which issued the document;
- (4) include the following identifying information: the claimant's name, address and social security number, if applicable; the employer's name, address and registration number, if applicable; the names and addresses of all attorneys and authorized agents of record with an indication of the party so represented; the case number and the date that such decision or notice was mailed;
- (5) list the name and authority of the individual issuing such decision or notice;
- (6) with regard to decisions, clearly state the nature of the decision and contain an announcement of the appeal rights, if any, pertaining to such decision;
- (7) be mailed by the Appeals Division via first class mail postage prepaid simultaneously to all parties, attorneys, and authorized agents of record promptly following its preparation, provided that, upon request, any party, attorney or authorized agent may obtain any such copy at the office of the Appeals Division which issued the decision or notice on the same

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date that such copies are otherwise mailed to all parties, attorneys and authorized agents and in such instance the person receiving such hand-delivered copy shall sign a receipt for such delivery which shall become a part of the file record.

(Effective January 1, 1988; Amended October 27, 1997)

Article II

Appeals to the Referee

Sec. 31-237g-14. Appeal to the Referee; resources

(Statutory reference: 31-238, 31-241, 31-249c, 31-244a)

The Administrator shall provide, at each Employment Security Office, a copy of these regulations; electronic access to board decisions through an indexing system; any hard copy indexes, manuals, outlines or similar compilations of board decisions that the board maintains; and a sufficient supply of forms prescribed by the Board for the filing of appeals for use by parties desirous of appealing decisions of the Administrator or the Appeals Division.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-15. Appeal to the Referee; time and place for filing; jurisdiction of Referees

(Statutory reference: Secs. 31-241 and 31-237j)

(a) Except as otherwise provided by law, the Administrator's decision shall be final unless a party aggrieved by the decision files, within twenty-one days after the date such decision was mailed to such party's last-known address, an appeal to the Referee with an office of Employment Security, the Appeals Division or any similar employment security agency of any other state in which such party is located at the time of filing. The appeal rights of an employer shall be limited to the first notice such employer is given in connection with a claim which sets forth his appeal rights. Any appeal may be filed in person, by facsimile transmission (fax), by internet or by mail but to be acceptable as a timely filed appeal it must actually be received at such office no later than the twenty-first (21) calendar day following the date on which the Administrator's determination was mailed, must bear a legible United States postal service postmark which indicates that within such twenty-one day period it was placed in the possession of the postal authorities for delivery to the appropriate office, or must be received by fax or by internet as set forth in Section 31-237g-1(c) of these regulations. Posting dates attributable to private postage meters shall not be considered in determining the timeliness of appeals filed by mail. If said twenty-first (21) day falls on a day when the office in which the appeal was filed was not open for business, then such last day shall be extended to the next business day of such office. It is generally advisable, to the extent that it can be accomplished within the allotted twenty-one day period, to file such appeal with the specific Employment Security office which rendered the decision. Any appeal filed after the twenty-one day period has expired may be considered

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to be timely filed if the filing party shows good cause for the late filing.

(b) For purposes of this section, a party has good cause for failing to file an appeal within twenty-one (21) calendar days of the issuance of the Administrator's determination if a reasonably prudent individual under the same or similar circumstances would have been prevented from filing a timely appeal. In determining whether good cause has been shown, the Referee shall consider all relevant factors, including but not limited to:

(i) The extent to which the party has demonstrated diligence in its previous dealings with Administrator and the Employment Security Appeals Division;

(ii) Whether the party was represented;

(iii) The degree of the party's familiarity with the procedures of the Appeals Division;

(iv) Whether the party received timely and adequate notice of the need to act;

(v) Administrative error by the Administrator or Employment Security Appeals Division; or the failure of the Administrator, the Appeals Division, or any other party to discharge its responsibilities;

(vi) Factors outside the control of the party which prevented a timely action;

(vii) The party's physical or mental impairment;

(viii) Whether the party acted diligently in filing an appeal once the reason for the late filing no longer existed:

(ix) Where there is substantial prejudice to an adverse party which prevents such party from adequately presenting its case, the total length of time that the action was untimely;

(x) Coercion or intimidation which prevented the party from promptly filing its appeal.

(xi) Good faith error, provided that in determining whether good faith error constitutes good cause the Referee shall consider the extent of prejudice to any other party, any prior history of late filing due to such error, whether the appeal is excessively late, and whether the party otherwise acted with due diligence.

(c) The Referees shall have jurisdiction over appeals from all determinations made pursuant to chapter 567 of the Connecticut General Statutes, including appeals from determinations regarding employer tax liability, except those involving only a determination of the amount of contributions due made pursuant to Section 31-270 of the General Statutes, or pursuant to directives of the United States of America and the Secretary of Labor of the United States. Unless otherwise specifically provided by statute or regulation, the appeal period for all such determinations shall be as set forth in subsection (a) and (b) of this section.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-16. Processing of appeal to the Referee

(Statutory reference: 31-237h, 31-238, 31-249c, 31-244a)

(a) Each appeal to the Referee from a decision of the Administrator shall be filed by the use, pursuant to the instructions contained thereon, of the form prescribed for such purpose and available at each Employment Security office or by means of a document which clearly indicates a desire for appellate review of such decision and which should be prepared in

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substantial compliance with the guidelines set forth in Section 31-237g-10(a) of these regulations.

(b) Immediately upon receipt of an appeal to the Referee the Employment Security office involved shall:

(1) stamp the front page of the appeal, and the front page of all supplemental documentation accompanying the appeal, to indicate the date and the office where such appeal was filed;

(2) if necessary, forward such appeal, and all documentation accompanying the appeal, to the Employment Security office maintaining the file records concerning the Administrator's decision involved.

(c) Immediately upon receipt of an appeal to the Referee at the Employment Security office maintaining the file records concerning the Administrator's decision involved, such Employment Security office shall provide to such Appeals Division office as the Appeals Division shall direct to be the appropriate office for prompt processing of such appeal: the original appeal together with all the information, documentation and records which the Appeals Division reasonably requires for the prompt and proper disposition of the appeal by the Appeals Division. The Employment Security office involved shall maintain duplicate copies of all such documentary file records provided to the Appeals Division.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-17. Scheduling of hearing; intrastate; interstate; telephone hearing; notice of hearing

(Statutory reference: 31-237j, 31-242, 31-244a)

(a) Upon receipt of an intrastate appeal to the Referee Section from a determination of the Administrator, the Referee Section shall assign the appeal a case number and promptly schedule a hearing upon such appeal at a location and in a manner that is reasonably convenient for the parties. In the scheduling of such hearings primary consideration shall be given to the goal of prompt disposition of appeals, the normal hours, days of the week and locations established for conducting such hearings, the proximity of the hearing location to the Employment Security office where the initial claim for benefits was filed and the administrative limitations and needs of the Referee Section, but hearings may be scheduled at such times, dates, places and in such manner as the Referee Section deems necessary to give each party a reasonable opportunity for a fair hearing. To the extent practicable and reasonable under the circumstances of each intrastate appeal, in-person hearings, whereby all parties and witnesses are expected to be physically present at the same hearing location, shall be the preferred manner of scheduling and conducting intrastate hearings, but the Appeals Division may, on its own initiative or upon the timely request of a party made prior to the hearing which shows good cause therefor, make arrangements for conducting a telephone hearing on an intrastate appeal whereby some or all of the parties and witnesses testify by telephone, subject to the availability of sufficient telephone lines at the hearing location. If the referee determines that the ends of justice so require, the referee, during the

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course of the hearing, may take by telephone the testimony of any witness not physically present at the hearing. For purposes of this section, good cause includes, but is not limited to:

- (i) Excessive distance to the hearing location.
- (ii) Physical disability.
- (iii) Transportation difficulties.
- (iv) Security concerns.
- (v) The need for multiple witnesses, especially where the requesting party would be unduly burdened or where a particular witness is only needed for a discrete issue.
- (vi) Testimony will be taken only on a procedural issue or issue of marginal relevance.
- (vii) A party has previously suffered extreme inconvenience in connection with the scheduling of the hearing.

In any circumstance in which a party would be entitled to a postponement, the appeals division shall not deny the party the right to participate by telephone unless it offers the party a postponement.

(b) Upon receipt of an interstate appeal to the Referee Section from a determination of the Administrator, the Referee Section shall promptly schedule a telephone hearing upon such appeal whereby all parties are expected to participate simultaneously in the hearing by telephone. To the extent practicable and reasonable under the circumstances of each interstate appeal, telephone hearings shall be the preferred manner of scheduling and conducting interstate appeal hearings provided that any party to the appeal or its attorney or authorized agent may, after providing notice to the office of the appeals division which scheduled the appeal, appear in person at the hearing on the appeal. The notice of any telephone hearing shall inform the parties of their right to appear in person.

(c) Written notice of the day, date, time, manner and location of each hearing scheduled before a Referee shall be mailed to each party and the attorney and authorized agent of record for such party not less than five (5) days prior to the scheduled hearing date provided the parties may waive such notice and agree to a shorter period of time in advance of hearing for receiving such notice. Each such written notice shall:

- (1) be prepared in accordance with Section 31-237g-13(a) of these regulations;
- (2) list the telephone number of the Appeals Division office which issued the notice;
- (3) contain, or be accompanied by, a written statement which summarizes the basic rights and responsibilities of the parties pursuant to these regulations concerning such hearing;
- (4) provide notice of the issues which may be covered at such hearing and the sections of the Connecticut General Statutes or other law relating to such issues including a statement as to the legal authority and jurisdiction under which the hearing is to be held;
- (5) in the case of a telephone hearing, be accompanied by clearly identified copies of all pertinent Appeals Division records concerning such appeal.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-18. Rescheduling; postponements

(a) Due to existing requirements for the prompt disposition of unemployment compensation appeals, a hearing scheduled before a Referee may, for good cause, be rescheduled by the Appeals Division to another date, time or location only upon the initiative of the Appeals Division or upon a request from a party, or the attorney or authorized agent for such party, which reveals good cause for such request. Such a request need not be in writing, but shall be promptly made as far as possible in advance of the scheduled hearing and describe the good cause alleged for the request. Such a request should be made to the Appeals Division office which issued the notice of hearing. The Appeals Division may require that the reasons given in oral rescheduling requests be subsequently confirmed in writing or sworn affidavit by the party, attorney, or authorized agent who made the request. The appeals division may deny any request that is not based upon good cause or that is not timely made. Each authorized agent that represents parties for a fee shall comply with Section 31-272-4 of the Regulations of Connecticut State Agencies in making such a request. The Appeals Division shall, with regard to each such rescheduling request, promptly decide the request and record the following in the appeal file: (1) the person making such request; (2) the party on whose behalf the request was made; (3) the date and time such request was received; (4) the good cause alleged for such request; (5) the decision upon such request and the reasons therefor; (6) the manner in which such decision was conveyed to the requesting party; and (7) the name of the Appeals Division staff member involved with such communication. The Appeals Division's decision denying such a rescheduling request need not otherwise be in writing.

(b) Upon rescheduling any hearing, the Appeals Division shall:

(1) promptly make a reasonable effort to orally notify each party, attorney and authorized agent of record as to the rescheduling if it is reasonable to assume that mailed written notice of such rescheduling would not timely arrive, and record in the file record the date and time of such notification and the person to whom such notification was conveyed; and

(2) confirm such rescheduling with a written notice of rescheduling which shall be sent to all parties and list the following information: the party who made the request, the good cause alleged for the request, and, if known, the new day, date, time and place for the rescheduled hearing. If such notice indicates the new day, date, time and place of such hearing, such notice shall be in lieu of reissued notice otherwise required by Section 31-236g-17 of these regulations.

(c) Any party aggrieved by the Referee's decision on a rescheduling request may petition for review of such decision but only as a part of any subsequent petition which addresses the Referee's eventual decision on the appeal by way of either an appeal to the Board or a motion to the Referee to reopen, vacate, set aside or modify. However, any party which objects to a Referee's decision on a rescheduling request should, at the earliest opportunity, provide such objection in writing to the Appeals Division office involved and/or state such objection on the record at the hearing held subsequent to such request.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-19. Stipulations; official notice; consolidated proceedings

(a) The parties to a proceeding before a Referee may stipulate to agreement upon facts or procedures and the Referee may accept such stipulations if the Referee determines such stipulations to be consistent with the actual facts, the law and these regulations.

(b) The Referee may take official notice of judicially cognizable facts and generally recognized, technical, or scientific facts within the Referee's specialized knowledge. Any facts officially noticed shall be specifically identified as such in the Referee's decision. Any party who (1) is aggrieved by a Referee's decision which incorporates a fact which was officially noticed by the Referee but not specifically addressed at the Referee's hearing and (2) disputes such fact officially noticed may, pursuant to Sections 31-237g-34 and 31-237g-35 of these regulations, file a Motion to Reopen such case for purposes of scheduling a further evidentiary hearing on such case. If the Motion is timely filed and specifically alleges such conditions, the Referee shall grant such Motion.

(c) For good cause, any number of proceedings before the Referee may, at the initiative of the Referee or at the request of a party, be consolidated for hearing, review or decision provided that the referee notifies the parties of his intention to consolidate and the reasons therefor and provides the parties a reasonable opportunity to object. A referee's decision to consolidate is not separately appealable but is subject to a motion to reopen or may be made an additional ground for appeal from the referee's final decision on the merits. For purposes of this subsection, good cause includes but is not limited to:

(1) the facts and circumstances of each case are substantially similar, (2) the legal issues are related (3) such consolidation will not unduly complicate the issues involved, (4) consolidation will aid the referee in creating a more complete record or resolving complex or significant issues of law, and (5) no substantial right of any party will be significantly prejudiced.

(d) The board may request that a party sign a written stipulation which (1) waives such party's claim to an individual and separate hearing, review and decision; (2) appoints one or more individuals or entities to serve as representatives of such party for purposes of any hearing or review held; and (3) binds such party by the representation so afforded during such proceedings.

Any stipulation for consolidation signed by a claimant at the time of his filing a claim for benefits or subsequent thereto which recites that the stipulation shall remain in effect during the pendency of any appeal before the Referee or Board shall be valid.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-20. Request for remand by Administrator

(a) After an appeal to the Referee is filed, the Referee may, upon the written request of the Administrator, remand the appeal to the Administrator for purposes of reconsideration by the Administrator provided the request is prepared in accordance with Section 31-237g-10(a) of these regulations and the request is received by the Appeals Division office involved prior to the mailing of the Referee's decision on such appeal. Such a remand may issue

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without any hearing before the Referee. The general provisions of Section 31-237g-34(a) of these regulations to the contrary notwithstanding, a Referee's decision on a request for remand by the Administrator is not subject to appeal but may be subject to a motion to reopen.

(b) A Referee's decision remanding an appeal pursuant to subsection (a) above shall be prepared and delivered in accordance with Section 31-237g-13 of these regulations and shall include a reference to the request approved, but need not otherwise comply with Section 31-237g-33(b) of these regulations. In granting such a request for remand, the Referee may retain jurisdiction of the appeal. If the Referee retains jurisdiction, upon the issuance of a new determination by the Administrator, the Referee shall provide all parties to the appeal an opportunity to be heard and shall thereafter issue a decision affirming, reversing or modifying the Administrator's determination, provided that the Referee shall not issue a decision if all parties to the appeal consent to the withdrawal of the appeal. If the Referee does not retain jurisdiction, the Administrator's new determination shall inform the aggrieved party of its right to file a new appeal from the determination.

(c) A Referee's decision denying a request for remand by the Administrator shall state the reason for such denial and be either separately prepared and delivered in accordance with Section 31-237g-13 (a) or incorporated in the Referee's decision on the appeal.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-21. Subpoenas

(Statutory reference: 31-245, 31-246, 31-247)

(a) The Referee may, upon his own initiative or at the request of a party filed pursuant to this section, issue subpoenas to compel the attendance of witnesses at any hearing before the Referee for the purpose of providing testimony or physical evidence, or both, if the Referee determines that his issuance of such subpoena is necessary to fairly adjudicate the appeal. Service of such subpoenas shall be made in accordance with Connecticut law and, unless otherwise arranged with the requesting party, the Appeals Division shall take responsibility for service of each subpoena issued by a Referee.

(b) Any party may request the Referee to issue a subpoena to compel the attendance at the Referee's hearing of any proposed witness for the purpose of providing testimony or physical evidence, or both. Such a request need not be in writing, but shall be promptly made as far as possible in advance of the scheduled hearing. In the absence of a properly issued subpoena, attendance at a Referee's hearing by any party or other person is not mandatory. Therefore it is the responsibility of each party which intends or desires to examine or cross-examine any other party or person to request the issuance of a subpoena to insure the attendance of such other party or person at the Referee's hearing. The Appeals Division may require that the reasons given in oral subpoena requests be subsequently confirmed in writing or sworn affidavit by the party, attorney, or authorized agent who made the request. Each request should:

(1) reveal the name of each such witness and the location, or locations, where each

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witness can be served;

(2) identify and describe all physical evidence requested and indicate why it is believed that the witness in question has control of such material;

(3) explain why each such witness and item of physical evidence is necessary to the Referee's adjudication of the appeal;

(4) indicate why such witness or physical evidence will be unavailable unless the requested subpoena is issued by the Referee.

(c) The Referee shall promptly decide each such subpoena request and notify the requesting party of the decision. Notice of such decision need not be in writing, but such notification shall be recorded in the appeal file. The Appeals Referee may discuss such request with the opposing party or the proposed witness, or both, for purposes of obtaining the attendance of such proposed witness at the hearing by stipulation in lieu of subpoena. The Referee may refuse to grant a request for issuance of such a subpoena from a party who is, at the time such request is made, represented by an attorney with independent subpoena authority sufficient to issue such a subpoena. Any party aggrieved by the Referee's decision on a subpoena request may petition for review of such decision, but only as a part of any subsequent petition which addresses the Referee's eventual decision on the appeal by way of either an appeal to the Board or a motion to the Referee to reopen, vacate, set aside or modify.

(d) If any person refuses to obey a subpoena issued by the Referee, the Referee may request the Attorney General to make application to the Superior Court for an order requiring such person to appear before the Referee to provide testimony or the physical evidence in question.

(e) Subject to the approval of the Chairman of the Board, witnesses appearing before a Referee pursuant to a subpoena issued by the Referee shall be allowed fees as provided by Connecticut law in civil actions.

(f) If the Referee determines that the fair adjudication of an appeal before such Referee requires the issuance of a subpoena in a jurisdiction beyond Connecticut, such Referee shall so inform the Chairman of the Board of Review and the Chairman shall thereupon request the appropriate authorities of such jurisdiction to issue the subpoena, or to take such other action as will reasonably resolve the need for same.

(Effective June 23, 1986)

Sec. 31-237g-22. Responsibility of party to present testimony and evidence

(a) It is the responsibility of each party to present at the hearing before the Referee all witnesses, testimony, evidence and argument material to such party's contentions concerning the appeal. Testimony and evidence personally presented at the hearing by individuals with actual personal knowledge of the facts in question is preferred, provided the weight to be afforded such testimony and evidence shall be determined by the Referee with consideration to the circumstances of each appeal. Any party, who, without good cause, fails to present at the hearing all testimony, evidence and oral argument material to such party's contentions

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concerning the appeal may be deemed to have assented to the Referee's decision of the appeal solely on the basis of the credible testimony, evidence and oral argument presented at such hearing and the records already on file. The Appeals Division may refuse to provide, by reopening, remand or otherwise, a further hearing for purposes of presenting testimony, evidence or oral argument not presented at the Referee's hearing duly scheduled in any case wherein it is determined that, through the exercise of due diligence by the party involved, such testimony, evidence or argument could have been presented at such hearing and there was no good cause for such party's failure to do so.

(b) Immediately upon receipt of the written notice of a telephone hearing, it shall be the responsibility of each party to such telephone hearing, in addition to the other responsibilities applicable to such hearings, to:

(1) pursuant to the provisions of Section 31-237g-10(a) of these regulations, mail directly to the Appeals Division office which issued the notice and to each other party all proposed documentary evidence or written materials which such party wishes to introduce during such hearing;

(2) pursuant to Section 31-237g-17(b) (2) notify the appeals division if it intends to appear in person;

(3) arrange to have all witnesses that such party intends to introduce at such hearing present at either (A) the Appeals Division office conducting the hearing or (B) the location where such party will be participating by telephone in the hearing, or (C) such location as the notice directs will be acceptable;

(4) contact the Appeals Division office which issued the notice if such party is unable to satisfactorily arrange to have that party's witnesses at any of the locations specified in subsection (3) above.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-23. Responsibility of party to provide interpreter

(Statutory reference: 17-137k, 17-137p)

(a) Except as hereinafter provided in subsection (b), if any party or witness that such party expects to present at a hearing before the Referee cannot adequately speak or understand spoken English, it shall be the responsibility of such party to provide at the hearing, at such party's own expense, a proficient interpreter who is capable of completely and accurately interpreting for such person. The Referee may refuse to permit or consider testimony from any person who cannot adequately speak or understand spoken English and for whom a capable interpreter has not been supplied.

(b) If a deaf person is involved in any hearing before the Referee and a capable interpreter for such person is not otherwise supplied, the Referee shall request the Commission on the Deaf and Hearing Impaired to appoint a qualified interpreter for such deaf person throughout such proceeding and shall continue the hearing until such interpreter is available to interpret for such deaf person. The Appeals Division shall reimburse the Commission on the Deaf and Hearing Impaired for the actual cost, including travel expenses, of any interpreter so

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supplied.

(c) The Referee may refuse to accept or consider as evidence any document written in a language other than English unless such document is interpreted at the hearing by an acceptable interpreter or it is accompanied by a correct English translation with proof satisfactory to the Referee that such translation is a correct translation of the original document.

(Effective January 1, 1988)

Sec. 31-237g-24. Disqualification of Referee

(Statutory reference: 31-242)

(a) A Referee shall voluntarily disqualify himself and withdraw from participating in any proceeding or decision on an appeal if such Referee has any interest in the appeal or in the business of any party to the appeal or in the business of any attorney or authorized agent for such party.

(b) A challenge to the interest of the Referee may be made by any party to the appeal, or the attorney or authorized agent for such party, by way of a request to the Referee to disqualify himself. Such a request may be oral or written but each request shall specifically describe all reasons for the request. Each such request shall be made as soon as the alleged interest on the part of the Referee is reasonably discoverable and, in all cases, prior to the mailing of the Referee's decision on the appeal. The Referee shall promptly decide each such request. Such decision need not be in writing but if the request is granted, the Referee shall so notify all parties and no further proceedings shall occur with regard to such file until a different Referee is substituted to decide the appeal. If the request is denied, the requesting party shall be notified and thereby have the option of either proceeding with the case before the Referee involved or immediately electing to file a challenge to the interest of such Referee with the Chairman of the Board and the requesting party shall be so notified of such option at the time such party is notified of the denial of the initial request. If the requesting party elects to then proceed with the case rather than file such a challenge, that party is not deemed to have waived any claim that such party may have concerning interest on the part of the Referee but may make such claim an additional ground of appeal from the final decision of the referee on the merits. If the requesting party elects to respond to the denial of such request by filing a challenge to the interest of the Referee with the Chairman, that party shall so inform the Referee and, within ten (10) days of the date of the Referee's denial of the request, file with the Chairman a written document which shall be titled "Challenge to the Interest of the Referee," prepared and delivered in accordance with Section 31-237g-10(a) of these regulations, and specifically describe all reasons for such challenge. Any requesting party who elects to file such a challenge but fails to timely file such challenge may be deemed to have waived such challenge. If a requesting party elects to file such a challenge, no further proceedings shall occur with regard to such file until such challenge is decided by the Chairman or otherwise waived. The Chairman shall promptly decide each such challenge on the basis of the written challenge and issue a written

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decision thereon provided the Chairman may schedule an evidentiary hearing upon such challenge before issuing such decision. If the Chairman grants the challenge, the appeal shall be transferred to another Referee. If the Chairman denies the challenge, proceedings on the appeal shall recommence before the Referee involved. The party that filed the challenge may petition for review of a decision by the Chairman denying such challenge but only as a part of any subsequent petition which address the Referee's eventual decision on the appeal by way of either an appeal to the Board or a motion to the Referee to reopen, vacate, set aside or modify.

(c) The mere fact that a Referee may have already heard an appeal does not, in itself, constitute sufficient interest in the proceedings which would preclude such Referee from hearing such appeal again upon remand from higher authority. The mere fact that a Referee may have previously decided a case involving one or more parties to an appeal pending before that Referee does not, in itself, constitute sufficient interest in the proceedings which would preclude such Referee from hearing the pending appeal.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-25. Withdrawals; dismissals

(Statutory reference: 31-242)

(a) The appealing party may request withdrawal of his appeal to the Referee and upon receipt of such a request the Referee shall issue a decision dismissing such appeal pursuant to the request provided (1) the request is in writing, (2) the request is voluntary and signed by the appealing party or the attorney or authorized agent for such party, (3) the request is received by the Appeals Division office involved prior to the Referee's issuing a decision on such appeal, and (4) prior to issuing a dismissal decision pursuant to such request the Referee may make inquiry, at hearing or otherwise, to determine if such request was voluntarily made with knowledge of the consequences involved. A withdrawal request received by the referee after the issuance of the decision on the appeal may be treated by the referee as a motion to reopen his decision.

(b) A dismissal decision issued pursuant to a withdrawal request shall be issued in accordance with Sections 31-237g-13 and 31-237g-34 (c) of these regulations and shall include a reference to the withdrawal request granted, but need not otherwise comply with Section 31-237g-33 (b) of these regulations. Such a dismissal decision shall become final in accordance with Section 31-237g-34 (a) of these regulations. If a withdrawal request is not granted by the Referee, the Referee shall continue with the normal adjudication of the appeal but shall, in the Referee's subsequent decision on the appeal, state the reason for the Referee's refusal to grant such withdrawal request.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-26. Failure to timely appear at hearing; dismissal

(a) A party shall be deemed to have failed to timely appear at a scheduled hearing before the Referee when such party fails to appear at the location of the hearing within 10 minutes

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after the scheduled time for such hearing. For purposes of this section, a party to a telephone hearing shall appear by telephoning the designated Appeals Division telephone hearing number within ten (10) minutes after the scheduled time for such hearing unless such party otherwise appears in person at the Appeals Division office conducting such hearing. A party may be deemed to have appeared if any attorney, authorized agent or witness appears on behalf of such party within such 10 minutes. Unless otherwise stipulated with the consent of the Referee, the Referee's watch or timepiece shall be the sole instrument by which timely appearance at the hearing is determined.

(b) If the appealing party fails to timely appear at a scheduled hearing, the Referee may, following a review of the existing record:

(1) issue a decision dismissing such appeal, pursuant to subsection (f) hereunder, due to the failure of the appealing party to prosecute the appeal, if no error is apparent on the face of the record; or

(2) proceed with the hearing and take the testimony, evidence and argument put forward by those present, if any, consider the documentary record established by the Administrator, and issue a decision on the merits of the appeal if the Referee determines that good cause exists for doing so. Good cause may include but need not be limited to the following:

(A) a non-appealing party present expressly requests to so proceed, provided that in such instance the Referee shall advise the requesting party that in the event that another hearing is scheduled on the case it will be advisable for such party to again appear and participate at such further hearing;

(B) the Referee determines, with or without the appearance of any party at the hearing, that the documentary record established by the Administrator does not support the Administrator's decision appealed from;

(C) the appealing party has appeared for the hearing more than 10 minutes past the scheduled starting time but the Referee determines that it will nevertheless be administratively feasible to proceed with the hearing;

(3) reschedule or continue the hearing if the Referee reasonably determines that good cause exists for doing so.

(c) If the appealing party appears at a scheduled hearing, but any non-appealing party fails to appear, the Referee shall proceed with the hearing and take the testimony, evidence, and argument put forward by those present, consider the documentary record established by the Administrator and thereafter issue a decision on the merits of the appeal provided that the Referee may reschedule the hearing if the Referee determines that good cause exists for doing so.

(d) When any party, attorney or authorized agent realizes that such party, attorney or agent will likely not timely appear at a scheduled hearing, it is the responsibility of such party, attorney or agent to immediately report such fact, and the reason therefor, to the Appeals Division office involved. The Appeals Division shall record such report, and the time it was received, in the file of such case. Such report shall be part of the record in the case. The Referee may refuse to grant a motion to reopen, vacate, set aside or modify filed

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on behalf of any party which failed to timely reveal good cause for the failure of such party, or that party's representative, to timely appear at the scheduled hearing or to provide timely notice to the appeals division of its inability to appear. The failure of an authorized agent that represents parties for a fee to comply with this subsection may be deemed a violation of Section 31-272-4 of the Regulations of Connecticut State Agencies.

(e) When a party, attorney, authorized agent or witness presents himself to a Referee at the location of a scheduled hearing at a time subsequent to the disposition of that hearing, the Referee shall record in the file of such case the name of such person, the time of such late arrival, and the reason given, if any, for such late arrival.

(f) A Referee decision dismissing an appeal due to the failure of the appealing party to appear at the scheduled hearing and prosecute the appeal may consist of a short-form decision which shall conform with Section 31-237g-13 and 31-237g-34(c) of these regulations, include a statement of the time allowed for appearance at the scheduled hearing, a statement that the appealing party failed to so timely appeal, and an announcement of the Referee's decision dismissing such appeal pursuant to subsection (b) (1) above. Such decision need not otherwise comply with Section 31- 237g-20(b) of these regulations. Any appealing party whose appeal was dismissed pursuant to this section may, pursuant to Section 31- 237g-34 of these regulations, file a motion to reopen, vacate, set aside or modify such dismissal decision, or file an appeal to the Board from such decision.

(g) For purposes of this section, good cause shall include such factors listed in Section 31-237g-15(b) of these regulations as may be relevant to a party's failure to appear.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-27. Untimely appeal; lack of aggrievement; moot appeal; dismissal

In any case where the Referee's jurisdiction over the appeal appears to be the preliminary issue due to questions concerning the timeliness of the filing of the appeal, the aggrievement of the appealing party, mootness of the appeal, or any other reason, the Referee shall schedule a hearing upon the appeal but may (1) limit the hearing to such jurisdictional issues and thereafter issue a written decision limited to such issues, provided the Referee shall schedule a further hearing to take evidence and testimony on the remaining issues in the event that the decision rules that the Referee has jurisdiction over the appeal, or (2) schedule a full hearing on all coverable issues and thereafter issue a decision, provided that if the Referee rules that the Referee lacks jurisdiction, the decision shall be limited to the issue of jurisdiction.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-28. Hearing record

(Statutory reference: 31-244a)

(a) The Referee shall prepare or arrange to have prepared, by cassette tape recording or other means susceptible to transcription, a complete hearing record of all proceedings at any hearing before the Referee. Such hearing record shall be the official hearing record.

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(b) Any party or witness at a hearing before the Referee may arrange for the preparation of a private record of such hearing provided:

(1) the Referee may at any time refuse to permit or may order such person to discontinue the preparation of such private record if the Referee deems the preparation of such private record to limit the fairness or effectiveness of the hearing on the condition that the Referee state on the hearing record the Referee's reasons for such order; and

(2) such private record of the hearing may not, except upon the stipulation of all parties and the consent of the Referee, be allowed to contravene, supplement or otherwise affect the official hearing record prepared by the Referee.

(c) The Referee may permit limited discussions to occur off the hearing record for good cause. If the Referee permits any such proceedings to occur off the record, the Referee shall, prior to going off the record, announce such fact, including the reason therefor, and immediately upon thereafter resuming proceedings on the record the Referee shall summarize the essentials of such off-the-record discussions.

(Effective June 23, 1986)

Sec. 31-237g-29. Rights of parties at hearing

Subject to the authority and control of the Referee and such rights otherwise provided in these regulations, each party at a hearing before the Referee shall have the right to:

(a) present a brief opening statement as to such party's position concerning such appeal;

(b) testify on any matter relevant and material to the issues involved;

(c) introduce evidence and exhibits relevant and material to the issues involved, provided that Sections 31-237g-22(b) and 31-237g-30(k) of these regulations concerning telephone hearings shall govern the introduction of documentary evidence at such a telephone hearing;

(d) call and examine any party or witness on any matter relevant and material to the issues involved;

(e) cross-examine any opposing party or witness on any matter relevant and material to the issues involved even if such matter was not covered in direct examination of such party or witness;

(f) impeach any party;

(g) impeach any witness regardless of which party first called such witness to testify;

(h) examine evidence, object to the introduction of evidence, object to questions or the responses to questions, and object to any aspect of the conduct of the hearing, provided the reason for any such objection is specified at the time of the objection;

(i) rebut the evidence and testimony against such party;

(j) present oral argument on the issues involved;

(k) briefly summarize such party's position concerning the appeal at the conclusion of testimony.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-30. Conduct of hearing

(Statutory reference: 31-242, 31-244a, 31-245, 31-254, 1-19 (b) (2), 1-18a (e) (5))

(a) The Referee shall hear the case *de novo*, and shall not be bound by the previous decision of the administrator. The Referee shall conduct and control the hearing informally and shall not be bound by the ordinary common law or statutory rules of evidence or procedure. The Referee shall make inquiry in such manner, through oral testimony and written and printed records, and take any action consistent with the impartial discharge of his duties, as is best calculated to ascertain the relevant facts and the substantial rights of the parties, furnish a fair and expeditious hearing, and render a proper and complete decision. The Referee may, at any time, examine or cross-examine any party or witness, and require such evidence as the Referee determines to be necessary for a proper and complete decision. The Referee may, at any time, indicate on the record that the testimony being presented is not being supplied by a person with actual personal knowledge of the facts in question. The Referee shall determine the order for presentation of evidence and he may exclude testimony and evidence which he determines to be incompetent, irrelevant, unduly repetitious, or otherwise improper, provided that, before excluding any such evidence, the referee shall permit the offering party an opportunity to describe the evidence and to explain its reliability and importance to the case. When a party is not represented by an attorney, the Referee shall, as he deems necessary in the interests of justice, advise such party as to his rights, aid him in examining and cross-examining witnesses, help him in presenting evidence and otherwise render such assistance as is compatible with the impartial discharge of the Referee's duties.

(b) The Referee shall have authority to administer oaths and affirmations. All testimony at the hearing before the Referee shall be under oath or affirmation which shall be included on the hearing record. Any interpreter participating in such hearing shall so interpret under the separate oath for interpreters which shall also be included on the hearing record. Upon administering such oath or affirmation, the Referee may require the interpreter to interpret, to the extent possible, word for word in the first person as the person being interpreted for so communicates.

(c) The hearing shall be confined to the issues which the notice of hearing issued pursuant to Section 31-237g-17(e) of these regulations indicates may be covered at the hearing. The hearing may also cover, at the discretion of the Referee, any separate issue which the parties are prepared and willing to go forward on and on which they expressly waive right to notice of.

(d) At the commencement of the hearing, the Referee shall, on the hearing record:

- (1) announce the title and case number of the appeal;
- (2) announce the commencement time, date and location of the hearing;
- (3) announce the identity of the Referee and indicate that the Referee is a member of the Appeals Division which is separate and independent from the Administrator;
- (4) identify all parties, representatives and witnesses present, indicate on whose behalf each such representative or witness is appearing, and verify the mailing addresses of all

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such parties and representatives;

(5) explain the procedure to be followed at the hearing, including a statement as to the Referee's full authority over the conduct of the hearing.

(6) explain the *de novo* nature of the hearing, provided it is explained that the Administrator's records shall be considered as evidence;

(7) indicate that the hearing will be taped and that the official record thus obtained will be kept during the pendency of the appeal;

(8) indicate that the hearing will likely be the only full evidentiary hearing granted in the case due to the fact that further appellate review is generally limited to a review of the record created at such hearing and therefore all parties in attendance should take pains to insure that they present at such hearing all testimony and evidence that they believe is material to the issues involved;

(9) summarize the rights and responsibilities of the parties at the hearing pursuant to these regulations;

(10) indicate that a written decision upon the appeal will be mailed by the Referee to all parties and representatives with reasonable promptness following the close of the hearing, and advise the parties as to the appeal rights of the party aggrieved by such decision;

(11) advise the claimant to continue to file benefit claims as instructed by the Administrator in order to preserve the claimant's rights during the pendency of the appeal;

(12) summarize the case history of the appeal and indicate the issues which appear to be involved;

(13) indicate which party has the burden of proof, if any, with regard to the issues involved;

(14) announce that the Appeals Division has statutory power to authorize and limit the fees payable for representation of a claimant in such proceedings and that if either the claimant or such representative so requests, the Appeals Division shall rule on that matter.

(e) The relevant Administrator's documents in the file record shall be considered as evidence by the Referee subject to the right of any party to object to the introduction of such documents or any part of such documents. The Referee shall itemize and summarize such records and allow such parties, and the attorneys and authorized agents for such parties, to inspect such documents and offer evidence and testimony in rebuttal to the information or contentions contained in those documents. All documents and records which the Referee accepts into evidence shall be clearly and separately labeled by the Referee to indicate the party submitting same and shall be included in the file record. Documentary evidence may be received in the form of legible photocopies. Physical evidence shall also be labeled and placed in the file record if practicable, or otherwise described in detail by the Referee on the hearing record. Any party which seeks to introduce at the hearing documents, records or other written evidentiary materials should, at the time of introduction, supply each other party and the Referee with a copy of such written material.

(f) Hearings shall be open to the public unless, consistent with the Freedom of Information Act and other applicable provisions of the Connecticut General Statutes, the

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Referee finds sufficient cause for a closed hearing. The Referee, upon the referee's own initiative or upon the request of any party, may sequester a witness from the hearing room if the Referee deems such sequestration to promote the effective conduct of the hearing. Whenever the hearing is closed or reopened to the public, or a witness is excluded or readmitted to the hearing room, the Referee shall so indicate upon the hearing record along with the Referee's reason for such action. If a party, attorney or authorized agent, appears at the hearing after the commencement of the hearing, the Referee shall note on the record the time of the late arrival, and may summarize the proceedings up to that point before proceeding with the hearing.

(g) The Referee shall not permit improper behavior or tactics, including the intentional disregard of these regulations or the proper instructions of the Referee, which are disruptive of the fair, orderly or effective conduct of the hearing. Any person, attorney or authorized agent other than a party who engages in such improper conduct shall be warned by the Referee, on the hearing record, against continuing such behavior, and if such person thereafter persists in such proscribed conduct the Referee may, if the Referee reasonably deems it necessary, expel such person from the hearing provided that the Referee indicates on the hearing record his reason for such action. Any party that engages in such improper conduct shall be warned by the Referee, on the hearing record, against continuing such behavior, and if such party thereafter persists in such behavior the Referee may, if the Referee reasonably deems it necessary, (1) proceed with the hearing under such instructions and conditions as the Referee deems fair and appropriate; (2) recess or reschedule the hearing; or (3) close the hearing and issue a decision based upon the testimony and evidence received, provided that the Referee indicates on the hearing record his reason for such action.

(h) A hearing before the Referee may, at the initiative of the Referee or the oral or written request of a party, be briefly recessed or continued to another time, date, or place if the Referee determines that good cause exists for such recess or continuance. Such good cause shall be stated on the record. Unless waived by all parties present, notice of a continuance shall be issued by the Referee pursuant to Section 31-237g-17 of these regulations.

(i) The Referee may permit any party, or the attorney or authorized agent of record for such party, to file with the Referee at the hearing written argument concerning such appeal, provided a copy of such argument is delivered to each other party present at such hearing. Such written argument may supplement, but not serve in lieu of, testimony and evidence presented under oath and subject to cross-examination at the hearing duly scheduled upon an appeal.

(j) At the conclusion of the hearing the Referee shall announce on the record both the fact and time of such conclusion. The Referee may, prior to the conclusion, at the Referee's own initiative or upon the request of a party for good cause shown, on the record grant a limited extension of time, prior to the issuance of the Referee's decision, for the filing by a party of (1) written argument and/or (2) additional documentary evidence. In granting a request for the filing of additional documents, the Referee shall describe the significance and identity of such documents; require that the documents be provided to all other parties

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at the same time as they are filed with the Referee; and permit all other parties a reasonable time in which to object to the inclusion of such documents in the record, file argument or evidence in rebuttal, or request a further hearing. All such written materials filed pursuant to this subsection should be filed in accordance with Section 31-237g-10 (a) of these regulations or as the Referee prescribes.

(k) Telephone hearings shall be conducted in accordance with the provisions of the subsections above, provided that the Referee shall also determine, at the commencement of the hearing, if the Appeals Division and each party, attorney or authorized agent in attendance has received copies of the file records supplied by the Appeals Division and all documentary evidence and materials supplied by any party. If any party seeks to introduce at such telephone hearing any documentary evidence or material of which the Appeals Division or any other party has not, at the time of the hearing, yet received a copy, the Referee may require a specific identification of such material and an explanation of the alleged importance of such documentary evidence or material to the appeal involved. If as a result of such explanation the Referee determines that such material is important to the appeal the Referee may: (1) if practicable, permit such documentary evidence or material to be read into the record provided that, pursuant to the guidelines of Section 31-237g-10 (a), such documentary evidence or material shall thereafter be filed with the Referee and all other parties in accordance with the time limitation that the Referee may reasonably direct; (2) if the Referee deems it necessary and appropriate, reschedule the hearing; (3) take such other action as the Referee deems appropriate. Any party who takes exception to such written materials filed after the hearing and is aggrieved by the Referee's subsequent decision on the appeal may file, pursuant to Section 31-237g-35 of these regulations, a motion to reopen, vacate or set aside such decision for purposes of requesting the opportunity to file other written materials in rebuttal or the opportunity for a further hearing on the matter.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-31. Transfer to the Board

(Statutory reference: 31-248a)

(a) At any time during the pendency of an appeal to the Referee and prior to the Referee's decision on such appeal becoming final, the Board may, on its own motion or the written request of a party or the Referee filed with the Board within such time period, transfer such appeal to the Board. Any appeal transferred to the Board shall thereafter be treated and processed as an appeal to the Board provided that an appeal transferred to the Board prior to a hearing before a Referee shall thereafter be scheduled for an evidentiary hearing prior to the issuance of the Board's decision upon such transferred appeal. Any such request shall be filed with the office of the Referee Section where such appeal is pending and promptly thereafter forwarded by such office to the Board.

(b) Any written request pursuant to subsection (a) above should be prepared pursuant to Section 31-237g-10(a) of these regulations and should describe all good cause alleged for

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such transfer, which good cause may include, but need not be limited to, one or more of the following reasons:

(1) the existence in such case of substantially complex questions of fact or law which will require extensive testimony and/or consideration;

(2) the ultimate decision issued in such case will have significant precedential value;

(3) the case in question is a consolidated proceeding or the particular facts and circumstances involved in the instant case are representative of a significant number of substantially similar cases;

(4) the continuation of the case at the referee level may result in substantial harm or prejudice to the party;

(5) where a case involving related issues or parties is before the board, it would benefit the board to consider the cases together and no substantial harm or prejudice will result to any party.

(c) The filing of any written request pursuant to subsection (a) and (b) above shall not stay or toll any time limitation applicable to such appeal before the Referee. The Board shall promptly issue a written decision upon each such request. The general provisions of 31-237g-49(a) of these regulations to the contrary notwithstanding, a Board decision on a transfer request is not subject to appeal rights but may be subject to a motion to the board to reopen.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-32. Certifications to the Board

(Statutory reference: 31-249f)

(a) If, in any proceeding before the Administrator, the Administrator has serious doubt as to the correctness of any applicable principles previously declared by a Referee or the Board, or if there is an apparent inconsistency or conflict in applicable final decisions of comparable authority, the Administrator may certify to the Board the findings of fact in such case, together with the question of law involved, and withhold decision pending receipt of the certification decision by the Board. Each such certification by the Administrator should be prepared and delivered in accordance with Section 31-237g-10(a) of these regulations. The Board shall treat and process each such certification pursuant to these regulations in the same manner as an appeal and issue to the Administrator and the parties to such proceeding a written decision certifying the Board's answer to the question submitted, provided the Board shall grant any request for a Board hearing on the law which is timely-filed concerning such certification. The general provisions of Section 31-237g-49(a) of these regulations to the contrary notwithstanding, there shall be no appeal with regard to the Board's certification decision. However, any party aggrieved by the Administrator's determination may object to the Board's certification decision as part of its appeal from the Administrator's determination.

(b) If, in any proceeding before the Referee, the Referee has serious doubt as to the correctness of any applicable principles previously declared by a Referee or the Board, or

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if there is an apparent inconsistency or conflict in applicable final decisions of comparable authority, the Referee may, subsequent to the hearing, certify to the Board the Referee's findings of fact in such case together with the question of law involved. The Referee shall withhold decision pending receipt of the certification decision by the Board. Each such certification by a Referee shall be prepared and delivered in accordance with Section 31-237g-13(a) of these regulations. The Board shall (1) treat and process each such certification pursuant to these regulations in the same manner as an appeal and issue the Referee and the parties to such proceeding a written decision certifying the Board's answer to the question submitted provided the Board shall grant any request for a Board hearing on the law which is timely-filed concerning such certification; or (2) pursuant to Section 31-237g-31 of these regulations transfer to itself the entire proceeding and render a decision upon the entire case. The general provisions of Section 31-237g-49(a) of these regulations to the contrary notwithstanding, there shall be no appeal rights with regard to the Board's certification decision. Unless the Board transfers the proceeding to itself, the Referee shall issue a decision in such proceeding promptly following receipt of the Board's certification decision. Such Referee's decision shall be subject to the appeal rights normally applicable to such a decision by the Referee. Any party aggrieved by the Referee's decision may object to the Board's certification decision as part of its appeal from the Referee's decision.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-33. Decision of the Referee; content and form

(Statutory reference: 31-242, 31-249e)

(a) Each appeal to the Referee shall be reviewed, and a decision thereon prepared, with reasonable promptness following the close of the scheduled hearing. Except for dismissal decisions issued pursuant to Section 31-237g-25, 31-237g-26 and 31-237g-27 of these regulations, the Referee's decision shall affirm, reverse or modify the Administrator's decision or for good cause remand any issue properly before the referee to the Administrator for such further proceedings as the Referee reasonably instructs. In remanding the case to the Administrator the Referee may retain jurisdiction. If the Referee retains jurisdiction, upon the issuance of a new determination by the Administrator, the Referee shall provide all parties to the appeal an opportunity to be heard and shall thereafter issue a decision affirming, reversing or modifying the Administrator's determination, provided that the Referee shall not issue a decision if all parties to the appeal consent to the withdrawal of the appeal. If the Referee does not retain jurisdiction, the Administrator's new determination shall inform the aggrieved party of its right to file a new appeal from the determination.

The general provisions of Section 31-237g-34(a) of these regulations to the contrary notwithstanding, a Referee's decision remanding an appeal to the Administrator is not separately appealable to the Board, but may be subject to a motion to reopen or may be made an additional ground for appeal from the Referee's final decision on the Administrator's new determination. The Referee's decision on an appeal shall rule upon each relevant issue necessary to the decision, provided (1) the notice of hearing issued

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pursuant to Section 31-237g-17 of these regulations indicated that such issue could be covered at the hearing, or (2) the parties present waived notice of such issue and stipulated to coverage of such issue at the hearing.

(b) Each Referee decision on an appeal pursuant to subsection (a) above shall be prepared and issued in accordance with Section 31-237g-13(a) of these regulations and shall also list the date and location of each hearing held together with the names and identities of all persons in attendance at such hearing and the relationship of each such person to the appeal. Except for dismissal decisions issued pursuant to Sections 31-237g-25, 31-237g-26 and 31-237g-27 of these regulations, each such decision shall include: (1) a case history of the appeal which indicates, but need not be limited to, the Referee's jurisdiction over the case; (2) the Referee's findings of fact; (3) the reason for the Referee's conclusions of law; (4) the Referee's ultimate decision on the appeal. The findings of fact and the reasons for the Referee's conclusions of law shall be stated separately, but the case history and the findings of fact may be combined under the general heading of "Findings of Fact," and the conclusions of law may be joined with the ultimate decision under the general heading of "Decision," provided said ultimate decision shall be clearly stated. The Referee's findings of fact shall contain all findings of fact necessary to the resolution of each issue involved, and shall be based exclusively on the evidence and testimony in the file and hearing record and on matters officially noticed, and matters stipulated to with the Referee's approval. The Referee's conclusions of law shall cite and summarize the specific statutory and/or regulatory law involved, and shall indicate the reasons why the application of such law to the facts found results in the ultimate decision stated. The ultimate decision may include a statement as to the action to be taken by the Administrator, if any, as a consequence of such ultimate decision.

(c) The written general statement of appeal rights pertaining to such Referee's decision required by Section 31-237-13(a) of these regulations shall include, but need not be limited to, the following provisions under these regulations concerning appeals to the Board of Review:

- (1) the time and place for filing such an appeal;
- (2) the form and content of such an appeal;
- (3) the option to submit written argument in support of such appeal;
- (4) the option to request decision of such appeal by the full Board;
- (5) the option to request scheduling of a Board hearing on such appeal; and
- (6) the availability, at each Employment Security and Appeals Division office, of forms, the Manual of Precedential Decisions, and a copy of these regulations as reference for preparation of an appeal.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-34. Decision of the Referee; final date; motion and appeal distinguished
(Statutory reference: 31-248)

- (a) A Referee's decision on an appeal shall become final on the twenty-second (22nd)

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calendar day after the date on which a copy of such decision was mailed to the parties unless prior to said twenty-second day:

(1) a party aggrieved by the decision files either (A) an appeal to the Board of Review or (B) a motion to the Referee to reopen, vacate, set aside or modify such decision; or

(2) the Referee, on his own motion, reopens, vacates, sets aside or modifies such decision in accordance with the terms of Section 31-237g-35 of these regulations.

(b) Every motion or appeal pursuant to this section shall be filed at any office of Employment Security, the Appeals Division or any Employment Security office of any other state in which the filing party is located at the time of filing. Each such motion or appeal may be filed in person, by facsimile transmission (fax), by internet or by mail but to be acceptable as timely filed, it must be actually received at such office within the twenty-one (21) calendar days allowed by law, must bear a legible United States postal service postmark which indicates that within such twenty-one day period it was placed in the possession of the postal authorities for delivery to the appropriate office, or must be received by fax or by internet as set forth in Section 31-237g-1(c) of these regulations. Posting dates attributable to private postage meters shall not be considered in determining the timeliness of appeals filed by mail. If the last day for filing such a motion or appeal falls on a day when the office where such appeal was actually filed was not open for business, such last day shall be extended to the next business day of such office. It is generally advisable, to the extent that it can be accomplished within the allotted twenty-one day period, to file such appeal or motion with the specific Appeals Division office which rendered the decision. Any appeal or motion filed after the twenty-one day period has expired may be considered timely filed if the filing party shows good cause for the late filing.

(c) For purposes of this section, a party has good cause for failing to file an appeal within twenty-one (21) calendar days of the issuance of the Referee's decision if a reasonably prudent individual under the same or similar circumstances would have been prevented from filing a timely appeal. In determining whether good cause has been shown, the Board shall consider all relevant factors, including but not limited to:

(i) The extent to which the party has demonstrated diligence in its previous dealings with the Administrator and the Employment Security Appeals Division;

(ii) Whether the party was represented;

(iii) The degree of the party's familiarity with the procedures of the appeals division;

(iv) Whether the party received timely and adequate notice of the need to act;

(v) Administrative error by the Administrator or Employment Security Appeals Division; or the failure of the Administrator, the Appeals Division, or any other party to discharge its responsibilities;

(vi) Factors outside the control of the party which prevented a timely action;

(vii) The party's physical or mental impairment;

(viii) Whether the party acted diligently in filing an appeal once the reason for the late filing no longer existed;

(ix) Where there is substantial prejudice to an adverse party which prevents such party

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from adequately presenting its case, the total length of time that the action was untimely;

(x) Coercion or intimidation which prevented the party from promptly filing its appeal.

(xi) Good faith error, provided that in determining whether good faith error constitutes good cause, the Board shall consider the extent of prejudice to any other party, any prior history of late filing due to such error, whether the appeal is excessively late, and whether the party otherwise acted with due diligence.

(d) An appeal to the Board from a Referee's decision on an appeal generally has consequences different from a motion to the Referee to reopen, vacate, set aside or modify such a decision. An appeal to the Board may, regardless of its title, be treated and processed by the Referee as such a motion for purposes of granting the motion by way of reopening, vacating, setting aside or modifying such a decision, solely in order to grant the relief requested. A clearly titled motion to the Referee to reopen, vacate, set aside or modify such a decision shall be treated and processed by the Referee as such motion, except as provided in section 31-237g- 35(b). If a Referee does so process a document which purports to be an appeal to the Board as a motion to reopen, the Referee shall immediately so notify the Board and provide the Board with a copy of both the document in question and the Referee's written response to such document. After an appeal to the Board is processed as such an appeal, no motion to the Referee to reopen, set aside or modify the appealed decision shall thereafter be accepted or acted upon by the Referee. However, after a motion to the Referee to reopen, vacate, set aside or modify the decision is filed with the Referee, both a Referee's decision denying such a motion and the Referee's preceding decision on the appeal may be appealed to the Board within twenty-one (21) calendar days following the mailing date of the Referee's decision denying such motion. The Referee shall refuse to accept both such a motion and an appeal filed simultaneously with regard to the same Referee decision and in such event the Referee shall accept and process whichever remedial petition the Referee deems proper and the remaining petition shall, except as otherwise provided in these regulations, be void. Whenever possible, the Referee shall treat and process an appeal or motion in such a way as to preserve the right of the appealing party to seek further review by the Board.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-35. Motion to the Referee to reopen, vacate, set aside, or modify

(Statutory reference: 31-248)

(a) The Referee may, within the time limits set forth in Section 31-237g-34 above, reopen, vacate, set aside or modify a decision on an appeal if the Referee determines, for good cause shown, that new evidence or the ends of justice so require. Each motion to reopen, vacate, set aside or modify a Referee's decision on an appeal shall be filed by means of a typed or legibly printed statement which should:

(1) be clearly entitled at the top center of the front page "Motion to the Referee to Reopen," "Motion to the Referee to Vacate," "Motion to the Referee to Set Aside," or "Motion to the Referee to Modify," as the case may be;

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(2) describe all the reasons and good cause for such motion and, if new evidence is alleged as such a reason, the following should be further specified:

(A) the identity and nature of such alleged new evidence;

(B) the reason why such alleged new evidence was not presented at the hearing previously scheduled; and

(C) the reason why such alleged new evidence is material to the case;

(3) otherwise follow the guidelines set forth in Section 31-237g- 10(a) of these regulations.

(b) Any such motions may be filed upon the same Referee decision by any party, but all such motions by such party shall be filed simultaneously and should be filed by means of separate documents and no such motion by any party shall be permitted or accepted by the Referee with regard to the Referee's decision denying a preceding motion filed by such party. The Referee may process any subsequent motion as an appeal to the Board.

(c) No hearing shall be held upon such motions unless the Referee determines that good cause exists for such a hearing, except that no such motion shall be dismissed as untimely without a hearing if the motion recites a reason for the untimely filing that would constitute good cause pursuant to Section 31-237g-15 of these regulations. The Referee shall, with reasonable promptness, review each such motion and issue a written decision thereon. The Referee's decision on any such motions shall be prepared and delivered in accordance with Section 31-237g-13(a) of these regulations and shall include a statement as to the reasons for the decision. In any case wherein a further hearing is not scheduled as a consequence of a Referee's decision reopening, vacating, setting aside or modifying a Referee's decision, the Referee shall provide all non-moving parties to such case with (1) a copy of such motion, together with all supplemental documentation filed in support of such motion, and (2) a reasonable opportunity to file a written response to such motion prior to the Referee's issuance of a new decision in the case.

(d) The Referee may deny any such motion based upon the allegations of new evidence if the Referee determines that the new evidence is unnecessarily duplicative or is not likely to affect the result in the case, or that the exercise of reasonable diligence by the moving party would have resulted in the presentation of such evidence at the hearing previously scheduled and the moving party does not otherwise show good cause for such party's failure to present such evidence.

(e) Any party aggrieved by a decision of a Referee with regard to any such motion may appeal to the Board within twenty-one calendar days of the mailing of such decision as set forth in Section 31-237g-34(b) and (c).

(Effective January 1, 1988; Amended October 27, 1997)

Article III

Appeals to the Board

Sec. 31-237g-36. Appeal to the Board; form; processing

(Statutory reference: 31-249, 31-249a)

(a) Each appeal to the Board from a Referee's decision on an appeal should be filed by the use, pursuant to the instructions contained thereon, of the form prescribed by the Board for such purpose and made available by the Administrator at each Employment Security office, or by means of a document which should:

(1) be entitled, at the top center of the first page: "APPEAL TO THE BOARD OF REVIEW";

(2) be prepared in accordance with Section 31-237g-10 (a) of these regulations.

(b) Immediately upon receipt of an appeal to the Board of Review the Employment Security office involved shall:

(1) stamp the front page of the appeal and the front page of all supplemental documentation accompanying the appeal to indicate the date and the office where such appeal was filed;

(2) forward such appeal, and all the documentation accompanying the appeal to the Appeals Division office maintaining the file records concerning the Referee's decision involved.

(c) Immediately upon receipt of an appeal to the Board of Review at the Appeals Division office maintaining the file records concerning such Referee's decision, the Referee shall, without undue delay, either (1) treat and process such appeal petition as a motion to the Referee to reopen, vacate, set aside or modify such decision, or (2) treat and process such appeal petition as an appeal to the Board of Review. If the Referee treats such petition as an appeal to the Board of Review, the Appeals Division office involved shall immediately thereafter provide the Board with the original appeal and all accompanying documentation, a copy of the Referee's decision involved, the originals of all other written file records in such case including exhibits and other documentary or physical evidence, and the original official cassette tape hearing record for each hearing held, if any.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-37. Appeal to the Board; recommended content; reasons

Each appeal should clearly describe all reasons for the appeal. Any disagreement with the Referee's findings of fact, procedural conduct of the hearing, or stated conclusions of law should be specified, and the alleged importance to the case of each such disagreement should be explained. The Board shall review the file record in consideration of every timely-filed appeal, and thereafter issue a written decision addressing the factual and legal claims stated in such appeal.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-38. Appeal to the Board; optional content; written argument

Each appeal may include, under the separate heading of “WRITTEN ARGUMENT,” such further statements, summarizations or written argument that such party wishes the Board to consider concerning such appeal. The Board shall consider all such arguments contained in each timely-filed appeal prior to issuing a decision on such appeal. Such written argument may supplement, but not serve in lieu of, testimony and evidence presented under oath at the hearing duly scheduled upon an appeal, and in no event will evidentiary allegations contained in written argument be considered or treated by the Board as testimony or evidence.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-39. Appeal to the Board; optional content; request for decision by the full Board

Each appeal may include, under the separate heading of “REQUEST FOR DECISION BY THE FULL BOARD,” a statement requesting that the full three-member Board decide the appeal, and the full three-member Board shall decide each timely-filed appeal containing such specific request.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-40. Appeal to the Board; optional content; request for Board hearing; supplementing the record

(Statutory reference: 31-249)

(a) The Board usually decides appeals on the basis of the record established before the Referee, and does not generally conduct further hearings to take additional evidence or testimony, rehear evidence and testimony already presented to a Referee, or hear oral argument. However, if the Board determines that the ends of justice so require, the Board may order that a further hearing be scheduled before the Board or a Referee for such purposes as the Board may direct. Circumstances in which the Board may reach such a determination on any appeal may include, but are not limited to, the following:

- (1) the findings of fact contained in the decision appealed from are silent, incomplete, or erroneous on factual issues material to the review of the case;
- (2) the existence of substantially complex, significant or unusual issues of fact or law which are material to the review of the case;
- (3) the procedural conduct of the Referee’s hearing appears to have materially denied any party a fair hearing;
- (4) for good cause shown, evidence or testimony material to the case was not presented at the hearing previously scheduled;
- (5) the case is a consolidated proceeding;
- (6) the ultimate decision will have significant precedential value.

(b) Each appeal may include, under the separate heading of “request for board hearing,” a statement requesting the Board to order the scheduling of a further hearing. Each such

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request should:

(1) describe any evidence or testimony that the requesting party desires to introduce at such hearing, explain the importance of such evidence or testimony for review of the case and state how such evidence is likely to affect the outcome of the case;

(2) indicate whether the evidence or testimony described in (1) above was presented at the hearing previously scheduled and (A) if such evidence or testimony was so presented, explain why an additional hearing is necessary, and (B) if such evidence was not so presented, explain why it was not;

(3) if the opportunity for oral argument is alleged as a reason for such request, explain why such oral argument is alleged to be necessary for review of the case;

(4) describe each other reason, if any, why the ends of justice require the scheduling of a further hearing.

(c) The Board may refuse to grant a request for a Board hearing from any party who fails to show good cause for such party's failure to introduce the evidence, testimony or oral argument described in subsection (b) at the hearing previously scheduled.

(d) If the Board grants a request for a Board hearing, advance notice of the hearing, and the attendant rights and responsibilities of the parties concerning such hearing, shall be mailed to the parties pursuant to the applicable provisions of these regulations. If the Board denies such request, the Board decision on the appeal shall specifically indicate denial of such request.

(e) In any case in which the Board deems the record on review to be incomplete or deficient, the Board, on its own motion or at the request of any party, may notify the parties of its intent to supplement the record and may request any party to provide to the Board such evidence or argument as the Board may direct. In any case in which the Board supplements the record, it shall allow all parties a reasonable opportunity to object to the filing of additional evidence or argument, offer evidence or argument in rebuttal, or request a further evidentiary hearing.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-41. Untimely appeal; lack of aggrievement; moot appeal; dismissal

Upon receipt of any appeal over which the Board determines it has no jurisdiction due to (1) the untimely filing of the appeal; (2) lack of aggrievement on the part of the appealing party; (3) mootness of the appeal; or (4) any other reason, the Board shall assign such appeal a case number and, unless the Board determines that a hearing is necessary, thereafter issue a decision dismissing such appeal. The Board's determination of such jurisdictional issues may be based solely upon review and consideration of the records concerning such jurisdictional issues. Such dismissal decisions shall contain findings of fact and conclusions of law concerning the jurisdictional issues involved and otherwise comply with Section 31-237g-48 except that such dismissal decisions need not comply with subsections 31-237g-48(b) (4), 31-237g-48(b) (6), or 31-237g-48(b) (7). The Board may, at any time during the pendency of an appeal before it, issue, pursuant to this section of these

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regulations, a decision dismissing the appeal if the Board determines such appeal to be moot.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-42. Timely appeal to the Board; notice of appeal

(a) Upon receipt by the Board of a timely filed appeal from a Referee's decision, the Board shall assign such appeal a case number and promptly mail to all parties a written notice of appeal which shall acknowledge the Board's receipt of such appeal, provide a copy of such appeal to the non-appealing parties, and contain an announcement of the rights of each party pursuant to subsection (b) below.

(b) Any party may, within ten (10) days following mailing of the notice of appeal pursuant to subsection (a), file with the Board written argument in accordance with Section 31-237g-38, a request for decision of such appeal by the full Board in accordance with Section 31-237g-39, or a request for a Board hearing in accordance with Section 31-237g-40. All such correspondence should be prepared and delivered in accordance with Section 31-237g-10 (a) of these regulations. Any such documents timely filed with the Board shall be included and treated in the Board's review and consideration of the appeal. Any such documents filed beyond such time period will also be considered if it is possible to do so before issuance of the Board's decision.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-43. Withdrawals; dismissal

(a) The appealing party may request withdrawal of his appeal to the Board and the Board may issue a decision dismissing such appeal pursuant to such withdrawal request provided (1) the request is in writing, (2) the request is voluntary and signed by the appealing party or the attorney or authorized agent for such party, (3) the request is received by the Board prior to the Board's issuing a decision on such appeal, (4) the Board does not find the decision appealed from to be clearly inconsistent with the law or precedent, and (5) prior to issuing a dismissal decision pursuant to such request, the Board may make inquiry, at hearing or otherwise, to determine if such request was voluntarily made with knowledge of the consequences. A withdrawal request received by the board after the issuance of a decision on the appeal may be treated by the board as a motion to reopen its decision.

(b) A dismissal decision issued pursuant to a withdrawal request shall be issued in accordance with Section 31-237g-13 of these regulations and shall include a reference to the withdrawal request approved and the authority for such approval but need not otherwise comply with Section 31-237g-48 (b) of these regulations. Such dismissal decision shall become final in accordance with Section 31-237g-49 (a) of these regulations. If a withdrawal request is not approved by the Board, the Board shall continue with the normal adjudication of the appeal but shall, in the Board's subsequent decision on such appeal, state the reasons for the Board's refusal to approve such withdrawal request.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-44. Stipulations; official notice; consolidated proceedings

(a) The parties to a proceeding before the Board may stipulate to facts or procedures, and the Board may accept such stipulations if the Board determines such stipulations to be consistent with the actual facts, the law and these regulations.

(b) The Board may take official notice of judicially cognizable facts and generally recognized, technical, or scientific facts within the Board's specialized knowledge. Any facts officially noticed shall be specifically identified as such in the Board's decision. Any party who (1) is aggrieved by a Board decision which incorporates a fact which was officially noticed by the Board but not specifically addressed at a hearing and (2) disputes such fact officially noticed may, pursuant to Sections 31-237g-49 and 31-237g-50 of these Regulations, file a motion to reopen such case for purposes of scheduling a further evidentiary hearing on such case. If the motion is timely filed and specifically alleges such conditions, the Board shall grant such motion.

(c) For good cause, any number of proceedings before the Board may, at the initiative of the Board or at the request of a party, be consolidated for hearing, review or decision, provided that the board notifies the parties of its intention to consolidate and the reasons therefor and provides the parties a reasonable opportunity to object. A board decision to consolidate is not separately appealable but is subject to a motion to reopen or may be made an additional ground for appeal from the board's final decision on the merits. For purposes of this subsection, good cause includes, but is not limited to:

(1) the facts and circumstances of each case are substantially similar, (2) the legal issues are related, (3) such consolidation will not unduly complicate the issues involved, (4) consolidation will aid the board in creating a more complete record or resolving complex or significant issues of fact or law, and (5) no substantial right of any party will be significantly prejudiced.

(d) The board may request that a party sign a written stipulation which (1) waives such party's claim to an individual and separate hearing, review and decision; (2) appoints one or more individuals or entities to serve as representatives of such party for purposes of any hearing held; and (3) binds such party by the representation so afforded during such proceeding.

Any stipulation for consolidation signed by a claimant at the time of his filing a claim for benefits or during a proceeding before the Referee which recites that the stipulation shall remain in effect during the pendency of any appeal before the Board shall be valid.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-45. Disqualification of Board members; assignment of alternative members

(Statutory reference: 31-237f; P.A. 87-468)

(a) A Board member shall voluntarily disqualify himself and withdraw from participating in any proceeding or decision on an appeal before the Board if such member has any direct or indirect interest in such appeal.

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(b) A challenge to the interest of any Board member may be made by any party to the proceeding, or the attorney or authorized agent for such party, by a written petition which should (1) be prepared and filed with the Board in accordance with Section 31-237g-10 (a) of these regulations; (2) be entitled “Challenge to the Interest of a Member of the Employment Security Board of Review”; and (3) state the grounds for such challenge. Unless the challenge is terminated by voluntary disqualification, upon receipt by the Board of Review of such a petition, the Board shall mail the original petition to the clerk of the appropriate Superior Court and shall mail copies of such petition to each other party to the proceeding. Such challenge may be claimed for short calendar and shall be decided by the Superior Court. If the challenge is upheld, the Administrator shall so advise the Governor, and the Governor shall, in accordance with Section 31-237f of the Connecticut General Statutes, assign an alternate member appointed pursuant to Section 31-237c of the Connecticut General Statutes, provided the Staff Assistant shall, as Acting Chairman, substitute for the Chairman. Until such challenge is withdrawn, decided or otherwise terminated in accordance with this section, no proceedings shall occur at the Board with regard to such file.

(c) Whenever a Board member is disqualified pursuant to subsection (a) or (b) of this section, an alternate Board member, appointed pursuant to Section 31-237c of the Connecticut General Statutes and Section 31-237g-2(b) of these regulations, shall serve in place of such Board member.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-46. Extension of time to file written argument

(a) The Board lacks authority to waive or extend the statutory time limits for the filing of appeals or motions to the Board, and is furthermore obligated to adjudicate appeals promptly. However, after an appeal, motion, request or similar correspondence is timely filed to the Board, and before a decision upon such appeal, motion, request or correspondence is issued, the Board, on its own initiative, or upon the request from a party to such proceeding or the attorney or authorized agent for such party, may grant a limited extension of time in which to file further written argument on such appeal, motion, request or correspondence if the Board determines that good cause exists for granting such extension. Such requests need not be in writing, but shall explain all reasons alleged for the request and should state the proposed limit for the time extension requested. The decision on such request shall be recorded in the file record but need not otherwise be in writing.

(b) In the event that an extension request filed pursuant to subsection (a) above is granted, the party involved shall file such written argument in accordance with the provisions of Section 31-237g-10(a) of these regulations.

(c) Any request to supplement the record shall be governed by Section 31-237g-40(e) of these regulations.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-47. Review and decision by the Board

(a) If the Board determines that a hearing is necessary upon any appeal before the Board, such a hearing shall be scheduled and proceedings conducted in accordance with the provisions of Sections 31-237g-52–31-237g-60 of these regulations prior to the review and consideration of the appeal in accordance with subsection (b) through (d) of this section provided in any case before the Board, the Board may delegate to a Referee or other qualified employee of the appeals division the taking or hearing of evidence in accordance with the applicable provisions of these regulations.

(b) Any appeal, motion or request to the Board may be reviewed and considered by any member of the Board, provided the decision on each appeal, motion, or request to the Board shall, unless otherwise specified in these regulations, issue by a majority vote of the Board except that the full Board shall decide each appeal wherein a request for decision by the full Board was timely filed, or by statute, the full Board is required to decide such appeal. In any case before the Board, the Board or any of its members may have the assistance and advice of any Referee, legal intern, staff member, Staff Assistant, or any other person duly authorized by the Chairman except that no such person shall provide advice in any matter before the Board in which that person previously participated at the Referee level.

(c) Except as provided in Section 31-237g-41 and 31-237g-42 of these regulations, each appeal to the Board shall be reviewed in accordance with this section without undue delay following the expiration of time specifically allowed, pursuant to these regulations, for the exercise of rights concerning such appeal. Except as provided in subsection (d) below, each appeal shall be reviewed on the basis of the records in the appeal file including, but not limited to (1) the records obtained from the Administrator; (2) all appeals and accompanying materials filed with the Appeals Division; (3) all timely filed written arguments concerning such appeals; (4) all documents and exhibits admitted into evidence at a hearing before the Appeals Division. The Board's review, consideration and decision of an appeal need not, however, be limited to the issues or claims raised by the parties to such appeal.

(d) The tape or transcript of any hearing before the Referee on an appeal before the Board may be reviewed prior to the issuance of the Board's decision on such appeal, provided such tape or transcript of the Referee's hearing shall be reviewed prior to the issuance of the Board's decision on any appeal in which the appealing party alleges that a material question exists concerning the Referee's findings of fact or the procedural conduct of the hearing held before the Referee. In addition, if a hearing was held by a referee at the direction of the Board, the hearing record of such hearing and the record of any preceding hearing held by the Appeals Division on such appeal shall be reviewed prior to the issuance of the Board decision.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-48. Decision of the Board: content and form; remand to Administrator or Referee

(a) Each appeal to the Board shall be decided with reasonable promptness following

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review. Except for a dismissal decision issued pursuant to Section 31-237g-41 or 31-237g-43, the Board's decision shall affirm, reverse, or modify the preceding decision or remand the case to the Referee or the Administrator for such further proceedings as the Board in such decision instructs. Upon such a remand to the Referee, unless otherwise specifically stated in the decision, the Board shall not retain jurisdiction of such appeal, and the rights and responsibilities attaching to the subsequent decision of the Referee shall be the rights and responsibilities normally applicable to such a decision. In remanding the case to the Administrator, the Board may retain jurisdiction. If the Board retains jurisdiction, upon the issuance of a new determination by the Administrator, the Board shall provide all parties to the appeal an opportunity to be heard and shall thereafter issue a decision affirming, reversing, or modifying the Administrator's determination, provided that the Board shall not issue a decision if all parties to the appeal consent to the withdrawal of the appeal. If the Board does not retain jurisdiction, the administrator's determination shall inform the aggrieved party of its right to file a new appeal from the determination. The general provisions of Section 31-237g-49 (a) of these regulations to the contrary notwithstanding, a Board decision remanding an appeal to the Referee or the Administrator shall not be separately appealable to the Superior Court, but may be made an additional ground for appeal from the final decision of the Referee or the Board on the merits of the case. An aggrieved party may, however, file a motion to reopen a decision remanding an appeal to the Referee or the administrator. Where an appeal involves multiple issues, some of which are subject to the Board's order of remand and others of which have been finally resolved by the Board's decision, the aggrieved party does not waive its right to object to the Board's decision on the issues finally resolved and may raise any such objection in the event of further appeal to the Board from the Referee's decision on remand. Unless the Board specifically so directs, a decision of the Board remanding an appeal to the administrator or the Referee shall not automatically vacate the preceding decision of the Referee.

(b) Each Board decision on an appeal shall be prepared and issued in accordance with section 31-273g-13 of these regulations and shall also list the date and location of any hearings held by the Board together with the names and identities of all persons attending such hearing. Except as otherwise provided in Section 31-237g-41, 31-237g-11 (b) and 31-237g-43 of these regulations, each Board decision shall also include:

- (1) a citation to the law involved;
- (2) a case history summarizing the proceedings prior to the date of the Board's decision;
- (3) a statement indicating whether the Board has reviewed the file record of such appeal;
- (4) a statement indicating whether the Board reviewed the tape or transcript of the Referee's hearing prior to issuing the decision;
- (5) the Board's decision on all timely-filed requests for a Board hearing on such appeal;
- (6) a statement of the Board's findings of fact which may adopt the Referee's findings of fact;
- (7) reasons for the Board's decision which shall address the legal and factual claims stated in the appeal, timely-filed written argument, and oral argument presented at any

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hearing before the Board;

(8) citations to any specific precedents used to support the decision;

(9) the ultimate decision which may include a statement as to the action to be taken by the Administrator, if any, as a consequence of such ultimate decision;

(10) the signature, or reproduction thereof, of at least one member of the Board in favor of the decision and the name of each concurring member;

(11) a statement that the full Board reviewed and decided such appeal if request for decision by the full Board was timely-filed or by statute the full Board was otherwise required to review and decide such appeal.

(c) The Board's decision on an appeal may include any dissenting or concurring opinion which any member of the Board may wish to provide.

(d) If the Board determines that any appeal or motion to the Board was frivolous, the Board may in its decision on such appeal or motion, include a recommendation to the Administrator that, in the event of an appeal to Superior Court from such Board decision, the Administrator move the Court to rule such appeal to be frivolous and tax costs accordingly.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-49. Decision of the Board; final date; motions and appeal distinguished
(Statutory reference: 31-249a)

(a) The Board's decision on an appeal shall become final on the thirty-first (31st) calendar day after the date on which a copy of such decision was mailed to the parties unless, prior to said thirty-first day:

(1) a party aggrieved by the decision files (A) an appeal to the Superior Court on such decision, or (B) a motion to the Board to reopen, vacate, set aside or modify such decision; or

(2) the Board, on its own motion, reopens, vacates, sets aside or modifies such decision in accordance with the terms of Section 31- 237g-50 of these regulations.

(b) Every motion or appeal pursuant to this section shall be filed at any office of Employment Security, the Appeals Division, or any employment security office of any other state in which the filing party is located at the time of filing. Each such motion or appeal may be filed in person, by facsimile transmission (fax), by internet or by mail, but to be acceptable as timely-filed it must be actually received at such office within the thirty (30) calendar days allowed by law, must bear a legible United States postal service postmark which indicates that within such thirty-day period it was placed in the possession of the postal authorities for delivery to the appropriate office, or must be received by fax or by internet as set forth in section 31-237g-1(c) of these regulations. Posting dates attributable to private postage meters shall not be considered in determining the timeliness of appeals filed by mail. If the last day for filing such a motion or appeal falls on a day when the office where such appeal was actually filed was not open for business, such last day shall be extended to the next business day of such office. Any appeal or motion filed after the thirty

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day period has expired may be considered timely if the filing party shows good cause for the late filing.

(c) A party has good cause for failing to file a motion to reopen within thirty (30) calendar days of the issuance of the Board's decision if a reasonably prudent individual under the same or similar circumstances would have been prevented from filing a timely motion to reopen. In determining whether good cause has been shown, the Board shall consider all relevant factors, including but not limited to:

(i) The extent to which the party has demonstrated diligence in its previous dealings with the Administrator and the Employment Security Appeals Division;

(ii) Whether the party was represented;

(iii) The degree of the party's familiarity with the procedures of the Appeals Division;

(iv) Whether the party received timely and adequate notice of the need to act;

(v) Administrative error by the Administrator or Employment Security Appeals Division; or the failure of the Administrator, the Appeals Division, or any other party to discharge its responsibilities;

(vi) Factors outside the control of the party which prevented a timely action;

(vii) The party's physical or mental impairment;

(viii) Whether the party acted diligently in filing a motion to reopen once the reason for the late filing no longer existed;

(ix) Where there is substantial prejudice to an adverse party which prevents such party from adequately presenting its case, the total length of time that the action was untimely;

(x) Coercion or intimidation which prevented the party from promptly filing its motion.

(xi) Good faith error, provided that in determining whether good faith error constitutes good cause the Board shall consider the extent of prejudice to any other party, any prior history of late filing due to such error, whether the motion is excessively late, and whether the party otherwise acted with due diligence.

(d) If a party alleges good cause for failing to file an appeal to the Superior Court within thirty (30) calendar days of the Board's decision, the Superior Court shall determine whether the appealing party has shown good cause by reference to the reasonably prudent individual standard contained in subsection (c) of this section together with all relevant factors pertaining to good cause, including but not limited to those factors cited therein. The Board, in certifying the record of proceedings to the Superior Court, shall include a proposed decision on the timeliness of any such appeal.

(e) An appeal to the Superior Court from the Board's decision on an appeal generally has consequences different from a motion to the Board to reopen, vacate, set aside or modify such a decision. An appeal to the Superior Court may, regardless of its title, be treated and processed by the Board as such a motion for purposes of granting the motion by way of reopening, vacating, setting aside, or modifying the Board's decision, solely in order to grant the relief requested. After an appeal to the Superior Court is processed as such an appeal, no motion to the Board to reopen, vacate, set aside, or modify the appealed decision shall thereafter be accepted or acted upon by the Board. After a motion to the Board to

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reopen, vacate, set aside or modify the decision is filed with the Board, both a Board decision denying such a motion and the preceding Board decision on the appeal may be appealed to the Superior Court within thirty (30) days following the mailing date of the Board decision denying such motion. In the event that such a motion and an appeal are filed simultaneously, the Board shall accept and process whichever remedial petition it deems proper and the remaining petition shall, except as otherwise provided in these regulations, be void. Whenever possible, the Board shall treat and process an appeal or motion in such a way as to preserve the right of the appealing party to seek further review by the Superior Court.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-50. Motion to the Board to reopen, vacate, set aside, or modify; motion for articulation

(Statutory reference: 31-249a)

(a) The Board may reopen, vacate, set aside or modify a Board decision on an appeal if the Board determines, for good cause shown, that new evidence or the ends of justice so require. Each motion to reopen, vacate, set aside or modify a Board decision on an appeal shall be filed by means of a typed or legibly printed statement which should:

(1) be clearly entitled at the top center of the front page “Motion to the Board to reopen,” “Motion to the Board to vacate,” “Motion to the Board to set aside,” or “Motion to the Board to modify,” as the case may be, and otherwise comply with Section 31-237g-10(a) of these regulations;

(2) describe all reasons and good cause for such motion and, if new evidence is alleged as such a reason, the following should be further specified:

(A) the identity and nature of such alleged new evidence;

(B) the reason why such alleged new evidence was not presented at the hearing previously scheduled;

(C) the reason why such alleged new evidence is material to the case.

(b) Any such motion may be filed regarding the same Board decision by any party, but all such motions by such party shall be filed simultaneously and should be filed by means of separate documents and no such motion by any party shall be permitted or accepted by the Board with regard to the Board decision upon a preceding motion filed by such party. The Board may process any such subsequent motion as an appeal to the Superior Court.

(c) No hearing shall be held upon such motions unless the Board determines that good cause exists for such a hearing. The Board shall with reasonable promptness review each such motion and issue a written decision thereon. The Board’s decision on any such motions shall be prepared and delivered in accordance with Section 31-237g-13(a) of these regulations and shall include a statement as to the reasons for the decision. In any case wherein a further hearing is not scheduled as a consequence of a Board decision reopening, vacating, setting aside or modifying a Board decision, the Board shall provide all non-moving parties to such case with (1) a copy of such motion, together with all supplemental

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documentation filed in support of such motion, and (2) a reasonable opportunity to file a written response to such motion prior to the Board's issuance of a new decision in the case.

(d) The Board may deny any such motion based upon the allegations of new evidence if the Board determines that the new evidence is unnecessarily duplicative or is not likely to affect the outcome of the case, or that the exercise of reasonable diligence by the moving party would have resulted in the presentation of such evidence at the hearing previously scheduled and the moving party does not otherwise show good cause for such party's failure to present such evidence.

(e) Any party aggrieved by a decision of the Board with regard to any such motion may appeal to Superior Court within thirty calendar days of the mailing of such decision as set forth in subsections (b), (c), and (d) of Section 31-237g-49.

(f) If the Board's decision is so imprecise, incomplete, ambiguous, or contradictory that the Board's ultimate decision, the extent of the relief granted, or the instructions for further proceedings upon remand cannot clearly be determined, any party or the Referee may file with the Board a motion for articulation of its decision. The Board's articulation shall set forth the original intention of the Board and shall not in any way alter the substance of the Board's original decision. An articulation by the Board is not a new decision and does not afford any party further right of appeal. Therefore, a party which is aggrieved by a decision of the Board and which wishes to have the substance of that decision changed should file a motion to the Board to reopen pursuant to Section 31-237g-50 of these regulations. A motion for articulation may be filed at any time, even after the Board's decision has become final.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-51. Appeal to Superior Court

(Statutory reference: 31-249b)

(a) Each appeal petition to the Superior Court from the Board's decision on an appeal shall be filed by the use, pursuant to the instruction contained thereon, of a form prescribed by the Board for such purpose and made available by the Administrator at each Employment Security office, or by means of a document which shall:

- (1) state the grounds on which judicial review of the Board's decision is sought;
- (2) consist of the original petition plus five (5) copies; and should
- (3) be clearly entitled at the top center of the front page "appeal to superior court from decision of the employment security board of review" and otherwise prepared in accordance with Section 31-237g-10(a) of these regulations.

(b) Following the Board's receipt of such appeal, the Chairman shall, pursuant to the existing law, cause the original appeal petition and the appeal record to be certified to the appropriate Superior Court. Such record shall consist of all pertinent file records concerning such appeal including:

- (1) the relevant Administrator's record in the file;
- (2) all appeals and accompanying materials filed with the Appeals Division;
- (3) all written notices and decisions of the Appeals Division;

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(4) all written requests, motions, argument or material correspondence timely-filed or considered concerning such appeal;

(5) the Appeals Division record of oral requests, reports, notifications and decisions made pursuant to these regulations concerning such appeal;

(6) all documents and exhibits admitted into evidence by the Appeals Division;

(7) all other evidentiary material accepted by the Appeals Division.

(c) Each such certification to the Superior Court pursuant to subsection (b) above shall have, as a cover sheet, a notice of such certification which itemizes the appeal record thus certified. Such notice shall be prepared and delivered in accordance with Section 31-237g-13(a) of these regulations and each copy of such notice mailed to the parties, attorneys and authorized agents of record shall include a copy of the appeal to the Superior Court.

(d) Any party who objects to the inclusion or exclusion of documents in the record certified to the Superior Court may file with the Board a request to correct the certification. The Board, upon notice to the parties, shall issue a written decision on such request and shall certify to the court the request, any objection to the request, the Board's decision, and any correction to the record originally certified.

(e) Upon request of the Superior Court, the Board shall prepare and certify to the Court a transcript of the hearing before the Referee and/or the Board, as the court may direct.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-51a. Motion to correct findings

(Statutory Reference: 31-249b; Practice Book Secs. 515A–518)

(a) A party seeking to have the findings of fact of the Board corrected must file a motion to correct findings of fact with the Board. Such motion must be filed within two weeks of the Board's filing of the record of an appeal to the Superior Court. A party may, within such two-week period, seek an extension of time for the filing of such a motion, and the Board shall grant an extension where the moving party indicates that it has filed with the Superior Court a request that the Board prepare a transcript of the hearings before the Referee and the Board or otherwise demonstrates good cause for its request. The Board shall deny an untimely request for an extension of time unless the moving party demonstrates good cause for failing to file its request within the two-week period. For purposes of this provision, good cause shall include such factors listed in Section 31-237g-49 of these regulations as may be relevant. The moving party should indicate in and attach to its motion such portions of the evidence, including relevant portions of the transcript, which support each correction sought.

(b) Upon receipt of a motion to correct findings, the Board shall provide each adverse party notice of the filing of the motion. Each adverse party shall have seven (7) calendar days from the mailing of the Board's notice in which to file with the Board objections to the motion to correct. Any objecting party may file with the Board additional evidence which it believes is relevant and material to the motion to correct.

(c) Upon expiration of the time provided for filing objections, the Board shall issue a

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written decision on the motion to correct. The Board shall certify to the Court the motion, any objection thereto, and the Board's decision. If the Board denies the motion to correct in whole or in part, and the denial is made an additional ground of appeal to the Court, the Board shall certify to the Court all evidence and transcripts, not previously certified, which the Board deems relevant and material.

(d) Any party to the appeal may file claims of error concerning the Board's decision on a motion to correct the finding. Such claims shall be filed with the Court within two weeks from the date on which the Board's decision on the motion to correct was mailed to the party making the claim and shall contain a certification that a copy thereof has been served on the Board and on each other party to the appeal in accordance with Sec. 120 of the Practice Book.

The appellant shall include his or her claims of error in the appeal petition unless they are filed subsequent to the filing of that petition, in which case they shall be set forth in an amended petition.

(Effective January 1, 1988; Amended October 27, 1997)

Article IV

Hearings Before the Board

Sec. 31-237g-52. Scheduling; telephone hearings; notice of hearing

(Statutory reference: 31-244a, 31-249)

(a) If the Board determines that a hearing should be held by the Board, it shall promptly schedule such hearing at its office or such other location as the Board may deem appropriate, and at a date and time reasonable and suitable to the Board. In the scheduling of such hearings primary consideration shall be given to the goal of prompt disposition of appeals, the normal hours, days of the week and locations established for conducting such hearings, and the administrative limitations and needs of the Board, but hearings may be scheduled at such times, dates, places and in such manner as the Board deems necessary to give each party a reasonable opportunity for a fair hearing. Hearings before the Board may be scheduled and conducted for such limited purposes as the Board may direct, and the Board may limit the hearing exclusively to oral argument.

(b) To the extent practicable and reasonable under the circumstances of each intrastate appeal, in-person hearings, whereby all parties and witnesses are expected to be physically present at the same hearing location, shall be the preferred manner of scheduling and conducting intrastate hearings, but the Board may, on the initiative of the Board or upon the timely request of a party made prior to the hearing which shows good cause therefor, make arrangements for conducting a telephone hearing on an intrastate appeal whereby the testimony of some or all of the parties and witnesses is taken by telephone, subject to the availability of sufficient telephone lines at the hearing location. If, during the course of the hearing, the board determines that the ends of justice so require, the board may take the testimony of any witness not present at the hearing by telephone. For purposes of this

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section, good cause includes but is not limited to:

- (i) excessive distance to the hearing location.
- (ii) physical disability.
- (iii) transportation difficulties.
- (iv) security concerns.
- (v) The need for multiple witnesses, especially where the requesting party would be unfairly burdened or where a particular witness is only needed for a discrete issue.
- (vi) Testimony will be taken only on a procedural issue or issue of marginal relevance.
- (vii) A party has previously suffered extreme inconvenience in connection with the scheduling of the hearing.

In any circumstances in which a party would be entitled to a postponement, the appeals division shall not deny the party the right to participate by telephone unless it offers the party a postponement.

(c) To the extent practicable and reasonable under the circumstances of each interstate appeal, telephone hearings shall be the preferred manner of scheduling and conducting interstate appeal hearings provided that any party to the appeal or its attorney or authorized agent may, after providing notice to the board, appear in person at the hearing on the appeal.

(d) Written notice of the day, date, time, manner and location of each hearing scheduled by the Board shall be mailed to each party, and the attorney or authorized agent of record for such party, not less than five (5) days prior to the scheduled hearing date, provided the parties may waive such notice or agree to a shorter period of time in advance of hearing for receiving such notice. Each such written notice shall:

- (1) be prepared in accordance with Section 31-237g-13(a) of these regulations;
- (2) list the telephone number of the Appeals Division office which issued the notice;
- (3) contain, or be accompanied by, a written statement as to the purpose of the hearing and the basic rights and responsibilities of the parties pursuant to these regulations concerning such hearing;
- (4) provide notice of the issues which may be covered at such hearing and the sections of the Connecticut General Statutes or other law relating to such issue including a statement as to the legal authority and jurisdiction under which the hearing is to be held;
- (5) in the case of a telephone hearing, be accompanied by clearly identified copies of all pertinent Appeals Division records concerning such appeal.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-53. Rescheduling; postponements

(a) A hearing scheduled by the Board may, for good cause, be rescheduled to another date, time or location at the initiative of the Board or upon the request of a party or the attorney or authorized agent for such party, which reveals good cause for such request. Such a request need not be in writing but shall be promptly made as far as possible in advance of the hearing and shall describe the good cause alleged for the request. Such a request should be made to the office which issued the notice of hearing. The Board may request that the

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reasons given in oral rescheduling requests be subsequently confirmed in writing or sworn affidavit by the party, attorney or authorized agent who made the request. The Board shall, with regard to each such rescheduling request, promptly decide upon the request and record the following in the appeal file: (1) the person making such request; (2) the party on whose behalf the request was made; (3) the date and time such request was received; (4) the good cause alleged for such request; (5) the decision upon such request and the reasons therefor; (6) the manner in which such decision was conveyed to the requesting party; and (7) the name of the Appeals Division staff member involved with such communication. The Board may deny any request that is not based upon good cause or that is not timely made. The Board decision denying such a rescheduling request need not otherwise be in writing.

(b) Upon granting any such rescheduling request, the Board shall:

(1) promptly make a reasonable effort to verbally notify each party, and attorney or authorized agent of record for such party, as to the rescheduling if it is reasonable to assume that mailed written notice of such rescheduling would not timely arrive, and record the date and time of such notification and the person to whom such notification was conveyed; and

(2) confirm such rescheduling with a written notice of rescheduling which shall be sent to all parties and list the following information: the party who made the request, the good cause alleged for the request, and, if known, the new day, date, time and place for the rescheduled hearing; if such notice indicates the new day, date, time and place of such hearing, such notice shall be in lieu of reissued notice otherwise required by Section 31-237g-52 of these regulations.

(c) Any party aggrieved by the Board's decision on a rescheduling request may petition for review of such decision but only as a part of any subsequent petition which addresses the Board's eventual decision on the appeal by way of either an appeal to Superior Court or a motion to the Board to reopen, vacate, set aside or modify.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-54. Subpoenas

(Statutory reference: 31-245, 31-246, 31-247)

(a) The Chairman may, at his own initiative, upon the request of either of the other two Board members, or at the request of a party filed pursuant to this section, issue subpoenas to compel the attendance of witnesses at any hearing before the Board for the purpose of providing testimony or physical evidence, or both, if the Chairman determines that the issuance of such subpoena is necessary to fairly adjudicate the appeal, provided the Chairman shall in no event be required to issue a subpoena if the Chairman determines that the issuance of same would constitute an abuse of process or be otherwise improper. Service of such subpoenas shall be made in accordance with Connecticut law and, unless otherwise arranged with the requesting party, the Board shall take responsibility for service of each subpoena issued by the Chairman. If a Referee is delegated to conduct a Board hearing, the Referee shall have such subpoena authority with regard to such hearing as is set forth in Section 31-237g-21 of these regulations.

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(b) Any party may request the Chairman to issue a subpoena to compel the attendance at the hearing of any proposed witness for the purpose of providing testimony or physical evidence, or both. Such a request need not be in writing, but shall be promptly made as far as possible in advance of the scheduled hearing. In the absence of a properly issued subpoena, attendance at a Board hearing by any party or other person is not mandatory and therefore it is the responsibility of each party which intends or desires to examine or cross-examine any other party or person to request the issuance of a subpoena to insure the attendance of such other party or person at the Board's hearing. The Chairman may require that the reasons given in oral subpoena requests be subsequently confirmed in writing or sworn affidavit by the party, attorney, or authorized agent who made the request.

Each request should:

(1) reveal the name of each such witness and the location, or locations, where each witness can be served;

(2) identify and describe all physical evidence requested and indicate why it is believed that the witness in question has control of such material;

(3) explain why each witness and item of physical evidence is necessary to the Board's adjudication of the appeal;

(4) indicate why such witness or physical evidence will be unavailable unless the requested subpoena is issued by the Chairman.

(c) The Chairman shall promptly decide such subpoena requests and notify the requesting party of the decision. Notice of such decision need not be in writing, but such notification shall be recorded in the appeal file. The Appeals Division may discuss such request with the opposing party or the proposed witness, or both, for purposes of obtaining the attendance of such proposed witness at the hearing by stipulation in lieu of subpoena. The Chairman may refuse to grant a request for issuance of such a subpoena from a party that is, at the time such request is made, represented by an attorney with independent subpoena authority sufficient to issue such a subpoena. Any party aggrieved by the Chairman's decision on a subpoena request may petition for review of such decision, but only as a part of any subsequent petition which addresses the Board's eventual decision on the appeal by way of either an appeal to Superior Court or a motion to the Board to reopen, vacate, set aside or modify.

(d) If any person refuses to obey a subpoena issued by the Board the Chairman may request the Attorney General to make application to the Superior Court for an order requiring such person to appear before the Board to provide testimony or the physical evidence question.

(e) Subject to the approval of the Chairman, witnesses appearing before the Board pursuant to a subpoena issued by the Chairman pursuant to this section shall be allowed fees as provided by Connecticut Law in civil actions.

(f) If the Chairman determines that the fair adjudication of an appeal before the Board requires the issuance of a subpoena in a jurisdiction beyond Connecticut, the Chairman shall thereupon request the appropriate authorities of said jurisdiction to either issue such

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subpoena or take such other action as will reasonably resolve the need for same.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-55. Failure to timely appear at hearing

(a) A party shall be deemed to have failed to timely appear at a scheduled hearing before the Board when such party fails to appear at the location of the hearing within 10 minutes of the scheduled time for such hearing. For purposes of this section, a party to a telephone hearing shall appear by telephoning the designated Appeals Division telephone hearing number within ten (10) minutes of the scheduled time for such hearing unless such party otherwise appears in person at the Appeals Division office conducting such hearing. A party may be deemed to have appeared if an attorney, authorized agent or witness appears on behalf of such party within such 10 minutes. Unless otherwise stipulated with the consent of the Board, the watch or timepiece of the Chairman, or the person to whom the Chairman has pursuant to these regulations delegated the authority to conduct the hearing, shall be the sole instrument by which timely appearance at the hearing is determined.

(b) If any party fails to appear the Board may:

(1) proceed with the hearing and take the evidence and argument put forward by the parties present; or

(2) reschedule or continue the hearing if the Board reasonably determines that good cause exists for doing so, which good cause may include but need not be limited to defective notice of hearing; or

(3) decide the case on the basis of the existing record without proceeding with the hearing except that if the appearing party shows good cause for proceeding with the hearing, the Board shall take the evidence and argument put forward by the parties present.

(c) When any party, attorney or authorized agent realizes that such party, attorney or agent will likely be unable to timely appear at a scheduled hearing before the Board, it is the responsibility of such party, attorney or agent to immediately report such fact, and the reason therefor, to the office of the Board. The Appeals Division shall record such report and the time it was received, in the file of such case. Such report shall be part of the record of the case. The Board may refuse to grant a motion to reopen, vacate, set aside or modify filed on behalf of any party which failed to timely reveal good cause for the failure of such party, or that party's representative, to timely appear at the scheduled hearing or to give timely notice to the Appeals Division of its inability to appear.

(d) When any party, attorney, authorized agent or witness presents himself to the Board at the location of a scheduled hearing at a time subsequent to the disposition of that hearing, the Board shall record in the file of such case the time and reason given, if any, for such late arrival.

(e) For purposes of this section, good cause shall include such factors listed in section 31-237g-34 of these regulations as may be relevant to a party's failure to appear.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-56. Responsibility of party to present testimony and evidence

(a) Subject to the Board's right to determine the scope of the hearing and to control the admission of testimony and evidence, it is the responsibility of each party to present at the hearing before the Board all witnesses, testimony, evidence, and argument material to such party's contentions concerning the appeal. Testimony and evidence personally presented at the hearing by individuals with actual personal knowledge of the facts in question is preferred, provided the weight to be accorded such testimony and evidence shall be determined by the Board with consideration to the circumstances of each appeal. Any party, who, without good cause, fails to present at the hearing all testimony, evidence and oral argument material to such party's contentions concerning the appeal may be deemed to have assented to the Board's decision of the appeal solely on the basis of the credible testimony, evidence and oral argument presented at such hearing and the records already on file. The Board may refuse to provide, by reopening, remand or otherwise, a further hearing for purposes of presenting testimony, evidence or oral argument not presented at the Board's hearing duly scheduled in any case wherein it is determined that, through the exercise of due diligence by the party involved, such testimony, evidence or argument could have been presented at such hearing and there was no good cause for such party's failure to do so.

(b) Immediately upon receipt of the written notice of a telephone hearing, it shall be the responsibility of each party to such telephone hearing, in addition to the other responsibilities applicable to the hearing, to:

(1) pursuant to the provisions of Section 31-237g-10(a) of these regulations, mail directly to the Appeals Division office which issued the notice, all proposed documentary evidence or written materials which such party wishes to introduce during such hearing;

(2) Pursuant to Section 31-237g-52(c) notify the Board if it intends to appear in person;

(3) arrange to have all witnesses that such party intends to introduce at such hearing present at either (A) the Appeals Division office conducting the hearing, or (B) the location where such party will be participating by telephone in the hearing, or (C) such location as the notice directs will be acceptable;

(4) contact the Appeals Division office which issued the notice if such party is unable to satisfactorily arrange to have that party's witnesses at any of the locations specified in subsection (3) above.

(Effective January 1, 1988; Amended October 27, 1997)

Sec. 31-237g-57. Responsibility of party to provide interpreter

(Statutory reference: 17-137k, 17-137p)

(a) Except as hereinafter provided in subsection (b), if any party or witness that such party expects to present at a hearing before the Board cannot adequately speak or understand spoken English, it shall be the responsibility of such party to provide at the hearing, at such party's own expense, a proficient interpreter who is capable of completely and accurately interpreting for such person. The Board may refuse to permit or consider testimony from any person who cannot adequately speak or understand spoken English and for whom a

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capable interpreter has not been supplied.

(b) If a deaf person is involved in any hearing before the Board and a capable interpreter for such person is not otherwise supplied, the Board shall request the Commission on the Deaf and Hearing Impaired to appoint a qualified interpreter for such deaf person. The Appeals Division shall reimburse the Commission on the Deaf and Hearing Impaired for the actual cost, including travel expenses, of any interpreter so supplied.

(c) The Board may refuse to accept or consider, as evidence, any document written in a language other than English unless such document is interpreted at the hearing by an acceptable interpreter or it is accompanied by a correct English translation with proof satisfactory to the Board that such translation is a correct translation of the original document.

(Effective January 1, 1988)

Sec. 31-237g-58. Hearing record

(Statutory reference: 31-244a)

(a) The Board shall prepare or arrange to have prepared, by cassette tape recording or other means susceptible to transcription, a complete hearing record of all proceedings at any hearing before the Board. Such hearing record shall be the official hearing record.

(b) Any party or witness at a hearing before the Board may arrange for the preparation of a private record of such hearing provided:

(1) the Chairman may at any time refuse to permit or may order such person to discontinue the preparation of such private record if the Chairman deems the preparation of such private record to limit the fairness or effectiveness of the hearing on the condition that the Chairman state on the record the Chairman's reasons for such order;

(2) such private record of the hearing may not, except upon the stipulation of all parties and the consent of the Chairman, be allowed to contravene, supplement or otherwise affect the official hearing record prepared by the Board.

(c) The Chairman may permit limited discussions to occur off the hearing record for good cause. If the Chairman permits any such proceedings to occur off the record, the Chairman shall, prior to going off the record, announce such fact, including the reason therefor, and immediately upon thereafter resuming proceedings on the record the Chairman shall summarize the essentials of such off-the-record discussions. For purposes of this section the term Chairman shall include any person to whom the Chairman has, pursuant to these regulations, delegated the authority to conduct the hearing.

(Effective June 23, 1986)

Sec. 31-237g-59. Rights of parties at hearings

Subject to the authority and control of the Chairman, such rights otherwise provided in these regulations, and the limited purposes for which the hearing may be scheduled, parties to a hearing before the Board shall have the right to:

(a) present a brief opening statement as to such party's position concerning such appeal;

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- (b) testify on any matter relevant and material to the issues involved;
- (c) introduce evidence and exhibits relevant and material to the issues involved, provided that the provisions of these regulations concerning telephone hearings shall govern the introduction of documentary evidence at such a telephone hearing;
- (d) call and examine any party or witness on any matter relevant and material to the issues involved;
- (e) cross-examine any opposing party or witness on any matter relevant and material to the issues involved even if such matter was not covered in direct examination of such party or witness;
- (f) impeach any party;
- (g) impeach any witness regardless of which party first called such witness to testify;
- (h) object to questions, the introduction of evidence, or the conduct of the hearing, provided the reason for any such objection is specified at the time of the objection;
- (i) rebut the evidence and testimony against such party;
- (j) present oral argument on the issues involved;
- (k) briefly summarize such party's position concerning the appeal at the conclusion of testimony. For purposes of this section, the term Chairman shall include any person to whom the Chairman has, pursuant to these regulations, delegated the authority to conduct the hearing.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-60. Conduct of hearing

(Statutory reference: 31-245)

(a) The Chairman shall conduct and control the meeting. For purposes of this section the term Chairman shall include any person to whom the Chairman has, pursuant to these regulations, delegated the authority to conduct the hearing. The Board shall not be bound by the ordinary common law or statutory rules of evidence or procedure. Subject to the purposes of the hearing, the Board shall make inquiry in such manner, through oral testimony and written and printed records, and take any action consistent with the impartial discharge of its duties, as is best calculated to ascertain the relevant facts and the substantial rights of the parties, furnish a fair and expeditious hearing, and render a proper and complete decision. Subject to the Chairman's control of the hearing, the Board may, at any time, examine or cross-examine any party or witness, and require such evidence as the Board determines to be necessary for a proper and complete decision. The Chairman may, at any time, indicate on the record that the testimony being presented is not being supplied by a person with actual personal knowledge of the facts in question. Subject to the Chairman's control of the hearing, the Staff Assistant or other legal staff of the board may participate in the hearing. The Chairman shall determine the order for presentation of evidence, and he may exclude testimony and evidence which he determines to be incompetent, irrelevant, unduly repetitious, or otherwise improper. When a party is not represented by an attorney, the Chairman shall, as he deems necessary in the interests of justice, advise such party as

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to his rights, aid him in examining and cross-examining witnesses, help him in presenting evidence, and otherwise render such assistance as is compatible with the impartial discharge of the Chairman's duties.

(b) The Chairman has authority to administer oaths and affirmations. All testimony at the hearing before the Board shall be under oath or affirmation which shall be included on the hearing record. Any interpreter participating in such hearing shall so interpret under the separate oath for interpreters which shall also be included on the hearing record. Upon administering such oath or affirmation, the Chairman may require the interpreter to interpret, to the extent possible, word for word in the first person as the person being interpreted for so communicates.

(c) The hearing shall be confined to the purposes and issues listed on the notice of hearing issued pursuant to Section 31-237g-52(e) of these regulations. The hearing may also cover, at the discretion of the Chairman, any separate issue which the parties are prepared and willing to go forward on and on which they expressly waive right to notice of.

(d) At the commencement of the hearing the Chairman shall, on the hearing record:

- (1) announce the title and case number of the appeal;
- (2) announce the commencement time, date and location of the hearing;
- (3) announce the identity of the Board and staff members present;
- (4) identify all parties, representatives and witnesses present, indicate on whose behalf each such representative or witness is appearing, and verify the mailing addresses of all such parties and representatives;
- (5) explain the procedure to be followed at the hearing, including an advisement as to the Chairman's full authority over the conduct of the hearing;
- (6) indicate that the hearing will be taped and that the official record thus obtained will be kept during the pendency of the appeal;
- (7) summarize the rights and responsibilities of the parties at the hearing pursuant to these regulations;
- (8) indicate that a written decision upon the appeal will be mailed by the Board to all parties and representatives with reasonable promptness following the close of the hearing and advise the parties as to the appeal rights of any party aggrieved by such decision;
- (9) advise the claimant to continue to file benefit claims as instructed by the Administrator in order to preserve the claimant's rights during the pendency of the appeal;
- (10) summarize the case history of the appeal and indicate the issues which appear to be involved.

(11) announce that the Board has statutory power to authorize and limit the fees payable for representation of a claimant in such proceedings and that if either the claimant or such representative requests, the Board shall rule on that matter.

(e) The Chairman shall itemize and summarize the records on file concerning such appeal, and allow the parties, and the attorneys and authorized agents for such parties, to inspect such documents and offer evidence and testimony in rebuttal to the information or contentions contained in those documents. All documents and records which the Chairman

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accepts into evidence shall be clearly and separately labeled by the Chairman to indicate the party submitting same and shall be included in the file record. Documentary evidence may be received in the form of legible photocopies. Physical evidence shall also be labeled and placed in the file record if practicable, or otherwise described in detail by the Chairman on the hearing record. Any party which seeks to introduce at hearing documents, records or other written evidentiary materials should, at the time of introduction, supply each other party and each member of the Board with a copy of such written material.

(f) Hearings shall be open to the public unless, consistent with the Freedom of Information Act and other applicable provisions of the Connecticut General Statutes, the Chairman finds sufficient cause for a closed hearing. The Chairman may sequester a witness from the hearing room if the Chairman deems such sequestration to promote the effective conduct of the hearing. Whenever the hearing is closed or reopened to the public, or a witness is excluded or readmitted to the hearing room, the Chairman shall so indicate upon the hearing record along with the Chairman's reason for such action. If a party, attorney or authorized agent, appears at the hearing after the commencement of the hearing the Chairman shall note the time of the late arrival, and may summarize the proceedings up to that point before proceeding with the hearing.

(g) The Chairman shall not permit improper behavior or tactics, including the intentional disregard of these regulations or the proper instructions of the Chairman, which are disruptive to the fair, orderly or effective conduct of the hearing. Any person, attorney or authorized agent other than a party who engages in such improper conduct shall be warned by the Chairman, on the hearing record, against continued such behavior and if such person thereafter persists in such proscribed conduct the Chairman may, if the Chairman deems it necessary, expel such person from the hearing. Any party that engages in such improper conduct shall be warned by the Chairman, on the hearing record, against continued such behavior and if such party thereafter persists in such behavior the Chairman may, if the Chairman deems it necessary, (1) proceed with the hearing under such instructions and conditions as the Chairman deems fair and appropriate; (2) recess or reschedule the hearing; or (3) close the hearing and issue a decision based upon the testimony and evidence received.

(h) A hearing before the Chairman may, at the initiative of the Chairman, or the oral or written request of a party, be briefly recessed or continued to another time, date, or place if the Chairman determines that good cause exists for such recess or continuance. Such good cause shall be stated on the record. Unless waived by all parties present, notice of a continuance shall be issued by the Board pursuant to Section 31-237g-52 of these regulations.

(i) The Chairman may permit any party, or the attorney or authorized agent of record for such party, to file with the Board at the hearing written argument concerning such appeal provided a copy of such argument is delivered to each other party present at such hearing. Such written argument may supplement but not serve in lieu of testimony and evidence presented under oath at the hearing duly scheduled upon an appeal, and in no case will evidentiary allegations contained in such written argument be considered or treated by the

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Board in the same fashion as such testimony or evidence of record.

(j) At the conclusion of the hearing the Chairman shall announce on the record both the fact and time of such conclusion. The Chairman may, prior to such conclusion, at the Chairman's own initiative or upon the request of a party for good cause shown, on the record grant a limited extension of time, prior to the issuance of the Board's decision, for the filing by a party of additional documents or written argument provided the significance and identity of such documents are described at the time of the granting of such extension and each other party present is advised of its right to request a reasonable amount of time following the submittal of such documents in which to file a written rebuttal. Any such party which requests such opportunity for rebuttal shall be permitted a reasonable amount of time, as determined by the Chairman, to do so. All such written materials thereafter filed following the hearing should be filed in accordance with Section 31-237g-10 (a) of these regulations or as the Chairman prescribes.

(k) Telephone hearings shall be conducted in accordance with the provisions of the subsections above, provided that the Chairman shall also determine, at the commencement of the hearing, if the Appeals Division and each party, attorney or authorized agent in attendance has received copies of the file records supplied by the Appeals Division and all documentary evidence and materials supplied by any party. If any party seeks to introduce at such telephone hearing any documentary evidence or material which the Appeals Division or any other party has not, at the time of the hearing, yet received a copy, the Chairman may require a specific identification of such material and an explanation of the alleged importance of such documentary evidence or material to the appeal involved. If as a result of such explanation the Chairman determines that such material is important to the appeal the Chairman may: (1) if practicable, permit such documentary evidence or material to be read into the record provided that, pursuant to the provisions of Section 31-237g-10 (a) such documentary evidence or material shall thereafter be filed with the Board and the other parties in accordance with the time limitation that the Chairman may reasonably direct; (2) if the Chairman deems it necessary, take such other action as the Chairman deems appropriate. Any party who takes exception to such written materials filed after the hearing and is aggrieved by the Board's subsequent decision on the appeal may file, pursuant to Section 31-237g-50 of these regulations, a motion to reopen, vacate or set aside such decision for purposes of requesting the opportunity to file other written materials in rebuttal or the opportunity for a further hearing on the matter.

(Effective June 23, 1986; Amended October 27, 1997)

Sec. 31-237g-61—31-237g-100. Reserved

Rules of Procedure for Declaratory Ruling

Sec. 31-237g-101. Definitions

For purposes of sections 31-237g-101 through 31-237g-107:

(a) "Administrator" means the Commissioner of Labor, whose address is 200 Folly

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Brook Boulevard, Wethersfield, Connecticut 06109, and his/her designated representatives.

(b) “Appeals Division” means the Employment Security Appeals Division of the Connecticut Labor Department, consisting of the Board of Review, the Referee Section, and all support staff employed in the Appeals Division for discharge of the Appeals Divisions’ responsibilities as set forth in chapter 567 of the Connecticut General Statutes.

(c) “Authorized agent” means any person who is, pursuant to section 31-237g-11 (b) of the Regulations of Connecticut State Agencies, duly authorized by a party to represent such party in a proceeding before the Appeals Division.

(d) “Board” means the Employment Security Board of Review.

(e) “Chairman” means the Chairman of the Employment Security Board of Review, whose address is 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109.

(f) “Contested case” means a proceeding, in which the legal rights, duties or privileges of a party are required by statute to be determined by the Board after an opportunity for hearing or in which a hearing is in fact held, but does not include proceedings on a petition for a declaratory ruling under section 4-176 of the Connecticut General Statutes or hearings referred to in section 4-168 of the Connecticut General Statutes. Any matter which may come before the Appeals Division under chapter 567 of the Connecticut General Statutes, including matters brought pursuant to section 31-237j (a) of the Connecticut General Statutes, is a contested case.

(g) “Intervenor” means a person, other than a party, granted status as an intervenor by the Board in accordance with the provisions of sections 4-176 (d) or 4-177a (b) of the Connecticut General Statutes and section 31-237g-105 (d) of these regulations.

(h) “Party” means each person (A) whose legal rights, duties or privileges are required by statute to be determined by the Board and who is named or admitted as a party, (B) who is required by law to be a party in a Board proceeding, or (C) who is granted status as a party in accordance with the provisions section 4-177a (a) of the Connecticut General Statutes and section 31-237g-105 (c) of these regulations. The Administrator is a party to any proceeding before the Board.

(i) “Person” means any individual, partnership, corporation, association, governmental subdivision, agency, or public or private organization of any character, but does not include the Board of Review.

(j) “Referee” means an Employment Security Appeals Referee.

(Effective March 30, 1990)

Sec. 31-237g-102. Scope of regulations on declaratory rulings

(a) Appropriate Subjects for Declaratory Rulings.

Sections 31-237g-101 to 31-237g-107, inclusive, set forth the rules of the Employment Security Board of Review governing the form and content of petitions for declaratory rulings and agency proceedings on such petitions. Petitions for declaratory rulings may be filed as to: (1) the validity of any regulation, or (2) the applicability to specified circumstances of a provision of the Connecticut General Statutes, a regulation, or a final decision on a matter

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within the jurisdiction of the Board. Any petition for a declaratory ruling not addressed to one of these two categories will be rejected in writing by the Board as not being the proper subject for a declaratory ruling.

(b) **When Declaratory Rulings not Favored.** The Board of Review may, in its discretion, issue a declaratory ruling regarding the applicability of a statute, regulation, or final decision to specified circumstances. However, such declaratory rulings are generally not appropriate because of their impact on the adjudication process and thus are disfavored. In those instances in which a declaratory ruling is appropriate, a ruling by the Administrator rather than the Board may be less disruptive of the adjudicatory process and may provide an adequate remedy. Before deciding to issue a declaratory ruling, the Board will consult with the Administrator about the appropriate agency to issue the ruling. If the Board decides to issue a declaratory ruling, the Administrator shall be a party to the proceeding since its interests will be affected by any declaratory ruling issued.

(c) **Declaratory Rulings on the Board's Initiative.** The Board of Review may, on its own initiative, decide to issue a declaratory ruling. Notice of the Board's intent will be provided to those persons identified in section 31-237g-104 (a) of these regulations.

(Effective March 30, 1990)

Sec. 31-237g-103. Form and content of petitions

(a) **General.** All petitions for declaratory rulings must be addressed to the Board of Review and either mailed or hand delivered to the Board's office. All petitions must be signed by the person filing the petition, unless represented by an attorney or authorized agent, in which case the agent or attorney may sign the petition. The petition must include the address and telephone number of the person filing the petition and of the agent or attorney, if applicable.

(b) **Petitions on Validity of Regulations.** A petition for a declaratory ruling on the validity of a regulation must contain the following:

- (1) the section number and text of the regulation;
- (2) the specific basis for the claim of invalidity of the regulation;
- (3) any argument by the petitioner in support of the claim of invalidity, with a suggested remedy;
- (4) a detailed statement addressing the factors listed in section 31-237g-107 (b) of these regulations; and
- (5) a statement of the reason the petition is filed with the Board of Review. Any petition which merely requests a ruling on the validity of the regulation but which does not contain a detailed claim of invalidity, will be rejected by the Board as incomplete.

(c) **Petitions on Applicability of Statute, Regulation, or Final Decision to Specified Circumstances.** A petition seeking a declaratory ruling on the applicability of a statute, regulation, or final decision on a matter within the jurisdiction of the Board to specified circumstances must contain the following:

- (1) the specific statute, regulation, or final decision upon which the ruling is sought;

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(2) a brief explanation of why the particular statute, regulation, or final decision is within the jurisdiction of the Board;

(3) a statement of the reason the petition was filed with the Board rather than the Administrator;

(4) a detailed description of the specified circumstances upon which the petition is based;

(5) any argument by the petitioner as to why the particular statute, regulation, or final order either is or is not applicable to the specified circumstances; and

(6) a detailed statement addressing the factors listed in section 31-237g-107 (b) of these regulations.

Any petition failing to identify the statute, regulation or final decision in question or failing adequately to describe the specified circumstances will be rejected by the Board as incomplete.

(d) **Notice by Petitioner.** The petitioner, or his authorized agent or attorney, shall append to the petition for a declaratory ruling a listing of all persons, with addresses and telephone numbers, who may have an interest in the declaratory ruling sought to be issued and shall mail a copy of the petition to all such persons. The petitioner or his agent or attorney must certify that a copy of the petition was mailed to all such persons together with this statement: "Should you wish to participate in the proceedings on this petition, or receive notice of such proceedings or the declaratory ruling issued as a result of this petition, you should contact the Board of Review within thirty (30) days of the date of this petition."

(Effective March 30, 1990)

Sec. 31-237g-104. Notice by board of receipt of petition

(a) **Persons to Receive Notice.** In addition to the notice required to be given by the petitioner in section 31-237g-103 (d) of these regulations, the Board shall, within thirty (30) days after the receipt of such petition, provide written notice of the filing of the petition (1) to all persons required by law to receive notice, (2) to all persons who have requested notice of the filing of such petitions on the subject matter of the petition, (3) to all persons who have requested notice of the filing of any petitions with the agency, (4) the petitioner and (5) the Administrator. The notice required by this section shall not be required where the agency has rejected the filing of a petition as inappropriate or incomplete in accordance with section 31-237g-102 or subsections (b) or (c) of section 31-237g-103 of these regulations. If the Board initiates a declaratory ruling proceeding, notice containing the specific statute, regulation, or final decision and the issue under consideration will be given to the persons indicated above.

(b) **Content of Notice.** The notice issued by the Board will advise recipients that a person may file a motion to become a party or intervenor within forty-five (45) days of the date of filing of the petition. If a motion sets forth facts demonstrating that the proposed party satisfies the requirements of section 31-237g-105 (c) of these regulations, the Board may grant the motion to become a party. If the motion satisfies the requirements of section 31-237g-105 (d) of these regulations, the Board may grant intervenor status. The notice will

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contain a statement that, within ten (10) days of the issuance of the Board's notice, a party or intervenor may request a hearing on the subject matter of the petition for a declaratory ruling. Such a request should describe the evidence or argument proposed to be introduced into the record and should explain the significance of such evidence or argument to the proceeding. The notice will also provide that any party or intervenor will have ten (10) days following the issuance of the notice to submit written argument. Any party or intervenor may request an extension of the time for filing written argument or request additional time in which to file a rebuttal. Argument filed beyond the time allowed will be considered if it is possible to do so before the Board issues its decision.

(Effective March 30, 1990)

Sec. 31-237g-105. Procedural rights of persons with respect to declaratory rulings

(a) **Petitioner as Party.** The petitioner is automatically a party to any proceeding on the petition by virtue of having filed the petition and need not seek designation as a party from the Board.

(b) **Administrator as Party.** The Administrator is automatically a party to any declaratory ruling proceeding before the Board and need not seek designation as a party from the Board.

(c) **Additional Parties.** Any person, whether or not in receipt of notice of the petition, may file a motion to become a party within forty-five (45) days from the date of filing of the petition. If the motion to become a party sets forth facts demonstrating that the person's legal rights, duties or privileges will be specifically affected by the declaratory ruling to be issued, the Board may grant the motion and designate the person as a party. The Board will issue a ruling on such motion to the person filing the motion, the parties, and any intervenors. A copy of the notice provided in section 31-237g-104 (a) of these regulations will be included with any ruling granting a person the status of a party. Pursuant to section 31-237g-104 (b) of these regulations, persons granted the status of a party are entitled to request a hearing and to submit written argument.

(d) **Intervenors.** Any person, whether or not in receipt of notice of the petition, may file a motion to become an intervenor within forty-five (45) days from the date of filing of the petition. If the motion sets forth facts demonstrating that the proposed intervenor's participation is in the interest of justice and will not disrupt the orderly conduct of the proceedings, the agency may grant the motion and designate the person as an intervenor. In addition, any person whose motion for designation as a party is denied may be granted intervenor status if the granting of such status is in the interest of justice and will not disrupt the orderly conduct of the proceedings. The Board will issue a ruling on such motion to the person filing the motion, the parties, and any intervenors. A copy of the notice provided in section 31-237g-104 (a) of these regulations will be included with any ruling granting a person the status of intervenor. Pursuant to section 31-237g-104 (b) of these regulations, persons designated as intervenors are entitled to submit written argument or request a hearing. The Chairman may restrict the rights of an intervenor in the proceeding so as to

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promote the orderly conduct of the proceeding.

(Effective March 30, 1990)

Sec. 31-237g-106. Board proceedings on petition

(a) **Board Action.** Within sixty (60) days after the filing of a complete petition for a declaratory ruling, but, in any case, no sooner than thirty (30) days after the filing of the petition, the Board shall do one of the following, in writing:

(1) issue a declaratory ruling, in accordance with the request in the petition, containing the names of all parties to and intervenors in the proceeding, the particular facts upon which the ruling is based, and the reasons for the conclusions contained therein;

(2) order that the matter be the subject of a hearing as a contested case;

(3) notify the parties and intervenors that a declaratory ruling will be issued by a date certain;

(4) decide not to issue a declaratory ruling and initiate regulation making proceedings;
or

(5) decide not to issue a declaratory ruling, stating the reasons for its action.

(b) **Notice.** A copy of the Board's action taken in accordance with subsection (a) of this section shall be delivered to the petitioner and all other parties either in person or by United States mail, certified or registered, postage prepaid, return receipt requested. Copies of the Board's action will be sent to any intervenor by first class mail.

(c) **Hearing.** Notice of a hearing ordered pursuant to subdivision (2) of subsection (a) of this section shall be given to parties and intervenors in accordance with the application procedures set forth in section 31-237g-52 of the Regulations of Connecticut State Agencies. The hearing will be conducted in accordance with the applicable procedures set forth in section 31-237g-44 and section 31-237g-54 through section 31-237g-60 of the Regulations of Connecticut State Agencies. The chairman may limit the participation of any intervenor in the hearing.

(d) **Record.** The Board will keep a record of the proceedings, which shall include:

(1) written notices related to the case;

(2) all petitions, pleadings, motions, argument, and intermediate rulings;

(3) evidence received or considered;

(4) the official tape recording of any hearing, including any objections, rulings, and offers of proof; and

(5) the final decision.

(Effective March 30, 1990)

Sec. 31-237g-107. Content, form, and effect of declaratory rulings

(a) **Decision, Content and Form.** Each declaratory ruling will contain:

(1) citations to the law involved;

(2) the Board's decision on any timely-filed request for a hearing;

(3) a statement of facts stipulated or found by the Board, when necessary for the decision;

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(4) the reasons for the decision, including a response to the legal claims raised by the parties;

(5) citations to specific precedents used to support the decision; and

(6) any dissenting or concurring opinion filed by any member of the Board.

(b) **Decision Not to Issue a Ruling.** In the event the Board declines to exercise its discretion to issue a declaratory ruling, the Board will issue a decision dismissing the petition and indicating the reasons for the decision. The factors considered by the Board in determining whether to exercise its discretion to issue a declaratory ruling include, but are not limited to:

(1) whether the subject matter will become an issue in controversy in the foreseeable future and adjudication under the provisions of the Unemployment Compensation Act will be necessary;

(2) whether the ruling involves solely a question of law or is dependent on the particular factual circumstances. If the ruling is dependent upon the factual circumstances, the likelihood that an evidentiary hearing will be necessary to issue a ruling;

(3) whether the facts necessary to resolve the matter are developed and the matter is ripe for a declaratory ruling;

(4) the particular interests affected by the ruling; the petitioner's purpose for obtaining a ruling; and the number of persons directly affected;

(5) the number of persons in substantially similar circumstances;

(6) whether the decision will have significant precedential value;

(7) the complexity of the legal and factual issues presented;

(8) the potential impact of the ruling on the normal adjudicatory process under the Unemployment Compensation Act;

(9) whether the normal adjudicatory process, including such alternative procedures as certification of questions of law to the Board by the Administrator or Referee, provides a suitable alternative to a declaratory ruling;

(10) whether a declaratory ruling would be more appropriately issued by the Administrator or by the Board;

(11) whether the administrative costs and burdens of a declaratory ruling are justified by the scope of the interests affected, and the availability of any alternative forum; and

(12) the Board's interest in clarifying the law, resolving inconsistency, or correcting erroneous decisions or interpretations.

(c) **Effective Date, Appeal Date.** Declaratory rulings shall be effective when personally delivered or mailed, or on such later date specified by the Board in the ruling. For the purposes of any appeal to the Superior Court from a declaratory ruling, the date of personal delivery or mailing shall control.

(d) **Effect of Declaratory Ruling.** Pursuant to Conn. Gen. Stat. section 4-176 (h), a declaratory ruling is a final decision in a contested case for the purposes of any appeal. Appeals from a declaratory ruling are governed by Conn. Gen. Stat. section 4-183, and not the provisions of chapter 567 of the Connecticut General Statutes.

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(e) **Failure to Act.** If the Board does not issue a declaratory ruling on a complete petition within 180 days after the filing of the petition, or later if agreed to by the parties, the Board shall be deemed to have decided not to issue a ruling. Thereafter, the petitioner may seek a declaratory judgment in Superior Court pursuant to section 4-175 of the Connecticut General Statutes.

(Effective March 30, 1990)