

Regulations of Connecticut State Agencies

TITLE 31. Labor

Agency

Occupational Safety and Health Review Commission

Subject

Rules of Procedure

Inclusive Sections

§§ 31-376-1—31-376-61

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Rules of Procedure

SUBPART A

GENERAL PROVISIONS

Sec. 31-376-1. Definitions

(a) “Act” means the Connecticut Occupational Safety and Health Act Chapter 571, Public Act 73-379 as amended by Public Act 74-137.

(b) “Commission,” “person,” “employer,” and “employee” have the meanings set forth in Section 31-367 of the Act.

(c) “Commissioner” means the Commissioner of the Connecticut Labor Department or his duly authorized representative.

(d) “Secretary” means the Secretary of the Commission

(e) “Affected employee” means an employee of a cited employer who is exposed to an alleged hazard described in the citation as a result of his assigned duties.

(f) “Hearing Officer” means an employee of the Commission appointed by the Commission and designated to hear and make a determination on any proceeding and any motion in connection therewith.

(g) “Authorized employee representative” means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees.

(h) “Representative” means any person including an authorized employee representative, authorized by a party or intervenor to represent him in a proceeding.

(i) “Citation” means a written communication issued by the Commissioner to an employer pursuant to Section 31-375 of the Act.

(j) “Notification of proposed penalty” means a written communication issued by the Commissioner to an employer pursuant to Section 31-377 of the Act.

(k) “Day” means a calendar day.

(l) “Working day” means all days except Saturdays, Sundays, and State holidays.

(m) “Proceeding” means any proceeding before the Commission or Hearing Officer.

(Effective December 30, 1974)

Sec. 31-376-2. Scope of rules: Applicability of Connecticut rules of civil procedure

These rules shall govern all proceedings before the Commission and Hearing Officers. In the absence of specific provisions, procedures shall be in accordance with the Connecticut Rules of Civil Procedure.

(Effective December 30, 1974)

Sec. 31-376-3. Use of gender and number

(a) Words importing the singular number may extend and be applied to the plural and vice versa.

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(b) Words importing the masculine gender may be applied to the feminine gender.

(Effective December 30, 1974)

Sec. 31-376-4. Computation of time

(a) In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or State holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and State holidays shall be excluded in the computation.

(b) Where service of a pleading or document is by mail pursuant to Section 31-376-7 of this subpart, three days shall be added to the time allowed by these rules for the filing of a responsive pleading.

(Effective December 30, 1974)

Sec. 31-376-5. Extensions of time

Requests for extensions of time for the filing of any pleading or document must be received in advance of the date on which the pleading or document is to be filed.

(Effective December 30, 1974)

Sec. 31-376-6. Record address

The initial pleading filed by any person shall contain his name, address, and telephone number. Any change in such information must be communicated promptly in writing to the Hearing Officer or the Commission, as the case may be, and to all parties and intervenors. A party or intervenor who fails to furnish such information shall be deemed to have waived his right to notice and service under these rules.

(Effective December 30, 1974)

Sec. 31-376-7. Service and notice

(a) At the time of filing pleading or other documents a copy thereof shall be served by the filing party or intervenor on every other party or intervenor.

(b) Service upon a party or intervenor who has appeared through a representative shall be made only upon such representative.

(c) Unless otherwise ordered, service may be accomplished by postage prepaid first class mail or by personal delivery. Service is deemed erected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

(d) Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

(e) Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

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(f) Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in paragraph (c) of this section.

(g) In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of notice of the docketing of the notice of contest or petition for modification of the abatement period, post, where the citation is required to be posted, a copy of the notice of contest and a notice informing such affected employees of their right to party status and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this paragraph:

.....

(Name of employer)

Your employer has been cited by the Commissioner of Labor for violation of the Connecticut Occupational Safety and Health Act. The citation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission. Affected employees are entitled to participate in this hearing as parties under terms and conditions established by the Occupational Safety and Health Review Commission in its Rules of Procedure. Notice of intent to participate should be sent to:

Occupational Safety and Health Review Commission
177 Columbus Boulevard
New Britain, Connecticut 06050

All papers relevant to this matter may be inspected at:

.....

(Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the Commissioner of Labor for abatement of the violation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Commission.

(h) The authorized employee representative, if any, shall be served with the notice set forth in paragraph (g) of this section and with a copy of the notice of contest.

(i) A copy of the notice of the hearing to be held before the Hearing Officer shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of such hearing at or near the place where the citation is required to be posted.

(j) A copy of the notice of the hearing to be held before the Hearing Officer shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in paragraph (c) of this section, if the employer has not been informed that the authorized employee representative has entered an appearance as of the

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date such notice is received by the employer.

(k) Where a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the statement filed in conformance with Section 31-376-20 of this part, serve a copy thereof on such authorized employee representative in the manner prescribed in paragraph (c) of this section and shall file proof of such service.

(l) Where a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and response filed in support thereof shall be provided to the employer for posting in the manner prescribed in paragraph (g) of this section.

(m) An authorized employee representative who files a notice of contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

(n) Where posting is required by this section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

(Effective December 30, 1974)

Sec. 31-376-8. Filing

(a) Prior to the assignment of a case to a Hearing Officer, all papers shall be filed with the Secretary. Subsequent to the assignment of a case to a Hearing Officer, and before the issuance of his decision, all papers shall be filed with the Hearing Officer. Subsequent to issuance of the decision of the Hearing Officer, all papers shall be filed with the Secretary.

(b) Unless otherwise ordered, all filings may be accomplished by first class mail.

(c) Filing is deemed effected at the time of mailing.

(Effective December 30, 1974)

Sec. 31-376-9. Consolidation

Cases may be consolidated on the motion of any party on the Hearing Officer's own motion, or on the Commission's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

(Effective December 30, 1974)

Sec. 31-376-10. Severance

Upon its own motion, or on the motion of any party or intervenor, the Commission or Hearing Officer may, for good cause, order any proceeding with respect to some or all issues or parties.

(Effective December 30, 1974)

Sec. 31-376-11. Trade secrets and other confidential information

(a) Upon application by any person in a proceeding where trade secrets or other matters may be divulged, the confidentiality of which is protected by Section 31-381 of the Act, the Hearing Officer shall issue such orders as may be appropriate to protect the confidentiality of such matters.

(b) Interlocutory appeal from an adverse ruling under this section shall be granted as of right.

(Effective December 30, 1974)

SUBPART B

PARTIES AND REPRESENTATIVES

Sec. 31-376-12. Party status

(a) Affected employees may elect to participate as parties at any time before the commencement of the hearing before the Hearing Officer, unless, for good cause shown, the Commission or the Hearing Officer allows such election at a later time. (See also 31-376-13 below.)

(b) Where a notice of contest is filed by an employee or by an authorized employee representative with respect to the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may elect party status at any time before the commencement of the hearing before the Hearing Officer. (See also 31-376-13 below.)

(Effective December 30, 1974)

Sec. 31-376-13. Intervention: Appearance by nonparties

(a) A petition for leave to intervene may be filed at any stage of a proceeding before commencement of the hearing before the Hearing Officer.

(b) The petition shall set forth the interest of the petitioner in the proceeding and show that that participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unnecessarily delay the proceeding.

(c) The Commission or the Hearing Officer may grant a petition for intervention to such an extent and upon such terms as the Commission or the Hearing Officer shall determine.

(Effective December 30, 1974)

Sec. 31-376-14. Representatives of parties and intervenors

(a) Any party or intervenor may appear in person or through a representative.

(b) A representative of a party or intervenor shall be deemed to control all matters respecting the interest of such party or intervenor in the proceeding.

(c) Affected employees who are represented by an authorized employee representative may appear only through such authorized employee representative.

(d) Nothing contained herein shall be construed to require any representative to be an

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attorney at law.

(e) Withdrawal of appearance of any representative may be effected by filing a written notice of withdrawal and by serving a copy thereof on all parties and intervenors.

(Effective December 30, 1974)

SUBPART C

PLEADINGS AND MOTIONS

Sec. 31-376-15. Form

(a) Except as provided herein, there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with Section 31-376-16 which shall include the Commission's docket number, if assigned, and a clear and plain statement of the relief that is sought, together with the grounds therefor.

(b) Pleadings and other documents (other than exhibits) shall be typewritten, double spaced, on letter size opaque paper (approximately 8½ inches by 11 inches). The left margin shall be 1½ inches and right margin 1 inch. Pleadings and other documents shall be fastened at the upper left corner.

(c) Pleadings shall be signed by the party filing or by his representative. Such signing constitutes a representation by the signer that he has read the document or pleading, that to the best of his knowledge, information and belief the statements made therein are true, and that it is not interposed for delay.

(d) The Commission may refuse for filing any pleading or document which does not comply with the requirements of paragraphs (a), (b), and (c) of this section.

(Effective December 30, 1974)

Sec. 31-376-16. Caption: Titles of cases

(a) Cases initiated by a notice of contest shall be titled:

Commissioner of Labor,

Complainant

V.

(Name of Contestant)

Respondent.

(b) Cases initiated by a petition for modification of the abatement period shall be titled:

(Name of Employer),

Petitioner

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V.

Commissioner of Labor,

Respondent.

(c) The titles listed in paragraphs (a) and (b) of this section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits filed).

(d) The initial page of any pleading or document (other than exhibits) shall show, at the upper right of the page, opposite the title, the docket number, if known, assigned by the Commission.

(Effective December 30, 1974)

Sec. 31-376-17. Notices of contest

The Commissioner shall, within 7 days of receipt of a notice of contest, transmit the original to the Commission, together with copies of all relevant documents.

(Effective December 30, 1974)

Sec. 31-376-18. Employer contests

(a) Complaint.

(1) The Commissioner shall file a complaint with the Commission no later than 20 days after receipt of the notice of contest.

(2) The complaint shall set forth all alleged violations and proposed penalties which are contested, stating with particularity: (i) The basis for jurisdiction; (ii) The time, location, place, and circumstances of each such alleged violation; and (iii) The considerations upon which the period for abatement and the proposed penalty on each such alleged violation is based.

(3) Where the Commissioner seeks in his complaint to amend his citation or proposed penalty, he shall set forth the reasons for amendment and shall state with particularity the change sought.

(b) Answer.

(1) Within 15 days after service of tile complaint, the party against whom the complaint was issued shall file an answer with the Commission.

(2) The answer shall contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied shall be deemed admitted.

(Effective December 30, 1974)

Sec. 31-376-19. Petitions for modification of abatement period

(a) An employer may file a petition for modification of abatement date when such employer has made a good faith effort to comply with the abatement requirements of a citation, but such abatement has not been completed because of factors beyond the employer's reasonable control.

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(b) A petition for modification of abatement date shall be in writing and shall include the following information:

(1) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

(2) The specific additional abatement time necessary in order to achieve compliance.

(3) The reasons such additional time is necessary including the unavailability of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

(4) All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

(c) A petition for modification of abatement date shall be filed with the Director of the Occupational Safety and Health Division of the Connecticut Labor Department who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

(1) A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near each location where the violation occurred. The petition shall remain posted for a period of ten (10) working days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

(2) Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Director. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

(3) The Commissioner or his duly authorized agent shall have the authority to approve any petition for modification of abatement date filed pursuant to subpara-graphs (b) and (c). Such uncontested petitions shall become final orders pursuant to Section 31-377 (a) and (c) of the Act.

(4) The Commissioner or his authorized representative shall not exercise his approval power until the expiration of fifteen (15) working days from the date the petition was posted pursuant to paragraphs (c) (1) and (2) of this section by the employer, and then the Commissioner shall respond within the next following ten (10) days. Failure to respond within ten (10) days shall be interpreted as an approval of the petition.

(d) Where any petition is objected to by the Commissioner or affected employees, such petition shall be processed as follows:

(1) The petition, citation and any objections will be forwarded to the Commission within three (3) working days after the expiration of the fifteen (15) day period set out in paragraph (c) (4).

(2) The Commission shall docket and process such petitions as expedited proceedings as provided in section 31-376-52.

(3) An employer petitioning for a modification of abatement period shall have the burden

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of proving that such employer has made a good faith effort to comply with the abatement requirements of the citation and that abatement has not been completed because of factors beyond the employer's control.

(4) Within ten (10) working days after the receipt of notice of the docketing by the Commission of any petition for modification of abatement date, each objecting party shall file a response setting forth the reasons for opposing the granting of a modification date different from that requested in the petition.

(Effective April 16, 1980)

Sec. 31-376-20. Employee contests

(a) Where an employee or authorized employee representative files a notice of contest with respect to the abatement period, the Commissioner shall, within 10 days from receipt of notice of contest, file a clear and concise statement of the reasons the abatement period prescribed by him is not unreasonable.

(b) Not later than 10 days after receipt of the statement referred to in paragraph (a) of this section, the contestant shall file a response.

(c) All contests under this section shall be handled as expedited proceedings as provided for in section 31-376-52.

(Effective April 16, 1980)

Sec. 31-376-21. Statement of position

At any time prior to the commencement of the hearing before the Hearing Officer, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file statement of position with respect to any or all issues to be heard.

(Effective December 30, 1974)

Sec. 31-376-22. Response to motions

Any partner intervener upon whom a motion is served shall have 10 days from service of motion to file a response.

(Effective December 30, 1974)

Sec. 31-376-23. Failure to file

Failure to file any pleading pursuant to these rules when due, may, in the discretion of the Commission or Hearing Officer, constitute a waiver of the right to further participation in the proceedings.

(Effective December 30, 1974)

SUBPART D

PRE-HEARING PROCEDURES AND DISCOVERY

Sec. 31-376-24. Withdrawal of notice of contest

At any stage of a proceeding, a party may withdraw his notice of contest, subject to the approval of the Commission.

(Effective December 30, 1974)

Sec. 31-376-25. Pre-hearing conference

(a) At any time before a hearing the Commission or Hearing Officer, on their own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings.

(b) The Commission or Hearing Officer may issue a pre-hearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be part of the record.

(Effective December 30, 1974)

Sec. 31-376-26. Requests for admissions

(a) At any time after the filing of responsive pleadings, any party may request of any other party admissions of facts to be made under oath. Each admission requested shall be set forth separately. The matter shall be deemed admitted unless, within 15 days after service of the request, or within such shorter or longer time as the Commission or the Hearing Officer may prescribe, the party to whom the request is directed serves upon the party requesting the admission a specific written response.

(b) Copies of all requests and responses shall be served on all parties in accordance with the provisions of Section 31-376-7 (a) and filed with the Commission within the time allotted and shall be a part of the record.

(Effective December 30, 1974)

Sec. 31-376-27. Discovery depositions and interrogatories

(a) Except by special order of the Commission or the Hearing Officer, discovery depositions of parties, intervenors, or witnesses, and interrogatories directed to parties, intervenors, or witnesses shall not be allowed.

(b) In the event the Commission or the Hearing Officer grants an application for the conduct of such discovery proceedings, the order granting the same shall set forth appropriate time limits governing the discovery.

(Effective December 30, 1974)

Sec. 31-376-28. Failure to comply with orders for discovery

If any party or intervenor fails to comply with an order of the Commission or the Hearing

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Officer to permit discovery in accordance with the provisions of these rules, the Commission or the Hearing Officer may issue appropriate orders.

(Effective December 30, 1974)

**Sec. 31-376-29. Issuance of subpoenas: Petitions to revoke or modify subpoenas:
Right to inspect or copy data**

(a) Any member of the Commission shall, on the application of any party directed to the Commission, forthwith issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence, or documents, in his possession or under his control. Applications for subpoenas if filed subsequent to the assignment of the case to a Hearing Officer, shall be filed with the Hearing Officer. A Hearing Officer shall grant the application on behalf of any member of the Commission. Applications for subpoenas may be made ex parte. The subpoena shall show on its face the name and address of the party at whose request the subpoena was issued.

(b) Any person served with a subpoena, whether ad testificandum or duces tecum, shall within 5 days after the date of service of the subpoena upon him, move in writing to revoke or modify the subpoena if he does not intend to comply. All motions to revoke or modify shall be served on the party at whose request the subpoena was issued. The Hearing Officer or the Commission, as the case may be, shall revoke or modify the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation or in question in the proceedings or the subpoena does not describe with sufficient particularity the evidence whose production is required, or if for any other reason sufficient in law the subpoena is otherwise invalid. The Hearing Officer or the Commission, as the case may be, shall make a simple statement of procedural or other grounds for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed thereto, and any ruling thereon shall become a part of the record.

(c) Persons compelled to submit data or evidence at a public proceeding are entitled to retain, or on payment of lawfully prescribed costs, to procure copies of transcripts of the date or evidence submitted by them.

(d) Upon the failure of any person to comply with a subpoena issued upon the request of a party, the Commission by its counsel shall initiate proceedings in the appropriate district court for the enforcement thereof, if in its judgment the enforcement of such subpoena would be consistent with law and with policies of the Act. Neither the Commission nor its counsel shall be deemed thereby to have assumed responsibility for the effective prosecution of the same before the court.

(Effective December 30, 1974)

SUBPART E

HEARINGS

Sec. 31-376-30. Notice of hearing

Notice of the time, place, and nature of a hearing shall be given to the parties and intervenors at least 10 days in advance of such hearing, except as otherwise provided in Section 31-376-52.

(Effective December 30, 1974)

Sec. 31-376-31. Postponement of hearing

(a) Postponement of a hearing ordinarily will not be allowed.

(b) Except in the case of an extreme emergency or in unusual circumstances, no such request will be considered unless received in writing at least 3 days in advance of the time set for the hearing.

(c) No postponement in excess of 30 days shall be allowed without Commission approval.

(Effective December 30, 1974)

Sec. 31-376-32. Failure to appear

(a) Subject to the provisions of paragraph (c) of this section, the failure of a party to appear at a hearing shall be deemed to be a waiver of all rights except the rights to be served with a copy of the decision of the Hearing Officer and to request Commission review pursuant to Section 31-376-48.

(b) Requests for reinstatement must be made, in the absence of extraordinary circumstances, within 5 days after the scheduled hearing date.

(c) The Commission or the Hearing Officer, upon a showing of good cause, may excuse such failure to appear. In such event, the hearing will be rescheduled.

(Effective December 30, 1974)

Sec. 31-376-33. Payment of witness fees and mileage: Fees of persons taking depositions

Witnesses summoned before the Commission or the Hearing Officer shall be paid the same fees and mileage that are paid witnesses in the courts of Connecticut, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of Connecticut. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

(Effective December 30, 1974)

Sec. 31-376-34. Reporter's fees

Reporter's fees shall be borne by the Commission, except as provided in Section 31-376-

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33.

(Effective December 30, 1974)

Sec. 31-376-35. Transcript of testimony

Hearings shall be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, duly certified by the reporter, shall be filed with the Hearing Officer before whom the matter was heard. The Hearing Officer shall promptly serve notice upon each of the parties and intervenors of such filing.

(Effective December 30, 1974)

Sec. 31-376-36. Duties and powers of hearing officers

It shall be the duty of the Hearing Officer to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The Hearing Officer shall have authority with respect to cases assigned to him, between the time he is designated and the time he issues his decision, subject to the rules and regulations of the Commission, to:

- (a) Administer oaths and affirmations;
- (b) Issue authorized subpoenas;
- (c) Rule upon petitions to revoke subpoenas;
- (d) Rule upon offers of proof and receive relevant evidence;
- (e) Take or cause depositions to be taken whenever the needs of justice would be served;
- (f) Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;
- (g) Hold conferences for the settlement or simplification of the issues;
- (h) Dispose of procedural requests or similar matters, including motions referred to the Hearing Officer by the Commission and motions to amend pleadings; also to dismiss complaints or portions thereof, and to order hearings reopened or, upon motion, consolidated prior to issuance of his decision;
- (i) Make decisions in conformity with pertinent Connecticut codes.
- (j) Call and examine witnesses and to introduce into the record documentary or other evidence;
- (k) Request the parties at any time during the hearing to state their respective positions, concerning any issue in the case or theory in support thereof;
- (l) Adjourn the hearing as the needs of justice and good administration require;
- (m) Take any other action necessary under the foregoing and authorized by the published rules and regulations of the Commission.

(Effective December 30, 1974)

Sec. 31-376-37. Disqualification of hearing officer

- (a) A Hearing Officer may withdraw from a proceeding whenever he deems himself

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disqualified.

(b) Any party may request the Hearing Officer, at any time following his designation and before the filing of his decision, to withdraw on ground of personal bias or disqualification, by filing with him promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(c) If, in the opinion of the Hearing Officer, the affidavit referred to in paragraph of this section is filed with due diligence and is sufficient on its face, the Hearing Officer shall forthwith disqualify himself and withdraw from the proceeding.

(d) If the Hearing Officer does not disqualify himself and withdraw from the proceeding, he shall so rule upon the record, stating the grounds for his ruling and shall proceed with the hearing, or, if the hearing has closed, he shall proceed with the issuance of his decision, and the provisions of Section 31-376-47 shall thereupon apply.

(Effective December 30, 1974)

Sec. 31-376-38. Examination of witnesses

Witnesses shall be examined orally under oath. Opposing parties shall have the right to cross-examine any witness whose testimony is introduced by an adverse party.

(Effective December 30, 1974)

Sec. 31-376-39. Affidavits

An affidavit may be admitted as evidence in lieu of oral testimony if the matters therein contained are otherwise admissible and the parties agree to its admission.

(Effective December 30, 1974)

Sec. 31-376-40. Deposition in lieu of oral testimony; application; procedures; form; rulings

(a) An application to take the deposition of a witness in lieu of oral testimony shall be in writing and shall set forth the reasons such deposition should be taken, the name and address of the witness, the matters concerning which it is expected he will testify and the time and place proposed for the taking of the deposition, together with the name and address of the person before whom it is desired that the deposition be taken (for purposes of this section, hereinafter referred to as "the officer"). Such application shall be filed with the Commission or the Hearing Officer, as the case may be, and shall be served on all other parties and intervenors not less than 7 days prior to the time when it is desired that the deposition be taken. Where good cause has been shown, the Commission or the Hearing Officer shall make and serve on the parties and intervenors an order which specifies the name of the witness whose deposition is to be taken and the time, place, and designation of the officer before whom the witness is to testify. Such officer may or may not be the officer specified in the application.

(b) Such deposition may be taken before any officer authorized to administer oaths by the laws of the State of Connecticut.

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(c) At the time and place specified in the order, the officer designated to take such deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing, and the testimony of the witness shall be reduced to typewriting by the officer or under his direction. All objections to questions or evidence shall be deemed waived unless made at the examination. The officer shall not have power to rule upon any objection, but he shall note them upon the deposition. The testimony shall be subscribed by the witness in the presence of the officer who shall attach his certificate stating that the witness was duly sworn by him, that the deposition is a true record of the testimony and exhibits given by the witness, and that the officer is not of counsel or attorney to any of the parties nor interested in the proceeding. If the deposition is signed by the witness because he is ill, dead, cannot be found, or refuses to sign it, such fact shall be included in the certificate of the officer and the deposition may be used as fully as though signed. The officer shall immediately deliver an original and four copies of the transcript, together with his certificate, in person or by registered mail to the Secretary at the Review Commission.

(d) The Hearing Officer shall rule upon the admissibility of the deposition or any part thereof.

(e) All errors or irregularities in compliance with the provision of this section shall be deemed waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, discovered.

(f) If the parties so stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken may be used as other depositions.

(Effective December 30, 1974)

Sec. 31-376-41. Exhibits

(a) All exhibits offered in evidence, shall be numbered and marked with a designation identifying the party or intervenor by whom the exhibit is offered.

(b) In the absence of objection by another party or intervenor, exhibits shall be admitted into evidence as a part of the record, unless excluded by the Hearing Officer pursuant to Section 31-376-42.

(c) Unless the Hearing Officer finds it impractical, a copy of each such exhibit shall be given to the other parties and intervenors.

(d) All exhibits offered, but denied admission into evidence, shall be identified as in paragraph (a) of this section and shall be placed in a separate file designated for rejected exhibits.

(Effective December 30, 1974)

Sec. 31-376-42. Rules of evidence

Hearings before the Commission and its Hearing Officers shall be in accordance with

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Chapter 54 of the Connecticut General Statutes, Uniform Administrative Procedure Act.

(Effective December 30, 1974)

Sec. 31-376-43. Burden of proof

(a) In all proceedings commenced by the filing of a notice of contest, the burden of proof shall rest with the Commissioner.

(b) In proceedings commenced by a petition for modification of the abatement period, the burden of establishing the necessity for such modification shall rest with the petitioner.

(Effective December 30, 1974)

Sec. 31-376-44. Objections

(a) Any objection with respect to the conduct of the hearing, including any objection to the introduction of evidence or a ruling by the Hearing Officer, may be stated orally or in writing, accompanied by a short statement of the grounds for the objection, and shall be included in the records. No such objection shall be deemed waived by further participation in the hearing.

(b) Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record of the proceeding.

(Effective December 30, 1974)

Sec. 31-376-45. Interlocutory appeals; special; as of right

(a) Unless expressly authorized by these rules, rulings by the Hearing Officer may not be appealed directly to the Commission except by its special permission. Unless otherwise provided by these rules, all such rulings shall become a part of the record.

(b) Request to the Commission for special permission to appeal from such ruling shall be filed in writing within 5 days following receipt of the ruling and shall state briefly the grounds relied on.

(c) Interlocutory appeal from a ruling of the Hearing Officer shall be allowed as of right where the Hearing Officer certifies that: (1) the ruling involves an important question of law concerning which there is substantial ground for difference of opinion; and (2) an immediate appeal from the ruling will materially expedite the proceedings. Such appeal shall also be allowed in the circumstances set forth in Section 31-376-11.

(d) Neither the filing of a petition for interlocutory appeal, nor the granting thereof as provided in paragraphs (b) and (c) of this section, shall stay the proceedings before the Hearing Officer unless such stay is specifically ordered by the Commission.

(Effective December 30, 1974)

Sec. 31-376-46. Filing of briefs and proposed findings with the hearing officer; oral argument at the hearing

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing.

Any party shall be entitled, upon request made before the close of the hearing, to file a brief, proposed findings of fact and conclusions of law, or both, with the Hearing Officer. The Hearing Officer may fix a reasonable period of time for such filing, but such initial period may not exceed 20 days from the receipt by the party of the transcript of the hearing.

(Effective December 30, 1974)

SUBPART F

POST HEARING PROCEDURES

Sec. 31-376-47. Decisions and reports of hearing officers

(a) Upon completion of any proceeding, the Hearing Officer shall prepare a decision which shall include findings of fact, conclusions of law, and an order. When a hearing is held, the decision shall comply with sections 4-179, 4-180 and 4-181 of the Connecticut General Statutes. Copies of the decision shall be mailed to all parties. Thereafter, the hearing officer shall file with the secretary of the commission at its offices at 177 Columbus Boulevard, New Britain, Connecticut, a report consisting of his decision, the record in support thereof, and any petitions for discretionary review of his decision, or statements in opposition to such petitions, that may be filed in accordance with section 31-376-48. The hearing officer shall file his report on the day following the close of the period for filing petitions for discretionary review, or statements in opposition to such petitions, but no later than the twenty-first day following the date of the mailing of the decision to the parties.

(b) Promptly upon receipt of the hearing officer's report, the secretary shall docket the case and notify all parties of that fact.

On or after the date of docketing of the case, all pleadings or other documents that may be filed in the case shall be addressed to the secretary.

In the event no commission member directs review of a decision on or before the thirtieth day following the date of docketing of the hearing officer's report, the decision of the hearing officer contained therein shall become a final order of the commission.

(Effective April 16, 1980)

Sec. 31-376-48. Discretionary Review; petitions for; statements in opposition

(a) A party aggrieved by the decision of a Hearing Officer may submit a petition for discretionary review. An aggrieved party that fails to file a petition for such review by the commission may be foreclosed from court review of any objection to the hearing officer's decision.

(1) Except as provided in subdivisions (2) and (3) of this section, any petition must be received by the hearing officer at his office on or before the twentieth day following his mailing of a copy of the decision to the parties.

(2) When there is no objection by any party, when an expedited proceeding has been directed pursuant to section 31-376-52, or for other good cause, the hearing officer is empowered to prescribe a shorter time for filing petitions for discretionary review following

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the mailing of his decision.

(3) Petitions for review of a hearing officer's decision may be filed directly with the secretary subsequent to the filing of the hearing officer's report. Such petitions will be considered to the extent that time and resources permit. Parties filing such petitions should be aware that any action by a commission member directing review must be taken within thirty (30) days following the filing of the hearing officer's report.

(4) In the case of proposed settlements or other proposed dispositions by consent of all parties, petitions for discretionary review shall not be allowed, except for good cause shown.

(b) A petition should contain a concise statement of each portion of the decision and order to which exception is taken and may be accompanied by a brief of points and authorities relied upon. The inclusion of precise citations to the record or legal authorities, as the case may be, will facilitate prompt review of the petition.

(c) Failure to act on such petition within the review period shall be deemed a denial thereof.

(d) Statements in opposition to petitions for discretionary review may be filed at the times and places specified in this section for the filing of petitions for discretionary review. Any statement shall contain a concise statement on each portion of the petition to which it is addressed.

(e) An original and three copies of any petition or statement shall be filed with the commission.

(Effective April 16, 1980)

Sec. 31-376-48a. Review by the commission

(a) Review is a matter of sound discretion of a member of the Commission.

(b) In exercising discretion, a Commission member will consider assertions of the following:

(1) A finding of material fact is not supported by a preponderance of the evidence.

(2) The decision is contrary to law or to the duly promulgated rules or decisions of the Commission.

(3) A substantial question of law, abuse of discretion, or policy is involved.

(4) A prejudicial error of procedure was committed.

(c) When a petition for discretionary review is granted, review shall be limited to the issues specified in the petition, unless the order for review expressly provides differently.

(d) At any time within 30 days after the filing of a decision of a Hearing Officer, a case may also be directed for review by a member upon his own motion upon any ground that could be raised by a party, but the issues would normally be limited to novel questions of law or policy or questions involving conflict in Hearing Officers' decisions. Any direction for review shall state the issues with particularity. Except in extraordinary circumstances, the Commission's power to review is limited to issues of law or fact raised by the parties in the proceedings for which the review is being requested.

(Effective April 16, 1980)

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Sec. 31-376-49. Stay of final order

(a) Any party aggrieved by a final order of the Commission may, while the matter is within the jurisdiction of the Commission, file a motion for a stay.

(b) Such motion shall set forth the reasons a stay is sought and the length of the stay requested.

(c) The Commission may order such stay for the period requested or for such longer or shorter period as it deems appropriate.

(Effective December 30, 1974)

Sec. 31-376-50. Oral argument before the commission

(a) Oral argument before the Commission ordinarily will not be allowed.

(b) In the event the Commission desires to hear oral argument with respect to any matter it will advise all parties to the proceeding of the date, hour, place, time allotted, and scope of such argument at least 10 days prior to the date set.

(Effective December 30, 1974)

SUBPART G

MISCELLANEOUS PROVISIONS

Sec. 31-376-51. Settlement

(a) Settlement is encouraged at any stage of the proceedings where such settlement is consistent with the provisions and objectives of the Act.

(b) Settlement agreements submitted by the parties shall be accompanied by an appropriate proposed order.

(c) Where parties to settlement agree upon a proposal, it shall be served upon represented and unrepresented affected employees in the manner set forth in Section 31-376-7. Proof of such service shall accompany the proposed settlement when submitted to the Commission or the Hearing Officer.

(Effective December 30, 1974)

Sec. 31-376-52. Expedited proceeding

(a) Upon application of any party or intervenor or upon his own motion, any Commissioner may order an expedited proceeding. Contests arising under section 31-376-19 and 31-376-20, shall be placed on a special docket and treated as expedited proceedings before the commissioners or a hearing officer. Cases arising under these sections which are directed for review before the commission shall also be placed on a special docket for review, and shall be treated as expedited proceedings under this section.

(b) When such proceeding is ordered, the Secretary shall notify all parties and intervenors.

(c) The Hearing Officer assigned in an expedited proceeding shall make necessary rulings with respect to time for filing of pleadings and with respect to all other matters,

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without reference to times set forth in these rules, shall order daily transcripts of the hearing, and shall do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

(Effective April 16, 1980)

Sec. 31-376-53. Standards of conduct

All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the State of Connecticut.

(Effective December 30, 1974)

Sec. 31-376-54. Ex parte communication

(a) There shall be no ex parte communication, with respect to the merits of any case not concluded, between the Commission, including any member, officer, employee, or agent of the Commission who is employed in the decisional process, and any of the parties or intervenors.

(b) In the event such ex parte communication occurs, the Commission or the Hearing Officer may make such orders or take such action as fairness requires. Upon notice and hearing, the Commission may take such disciplinary action as is appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited expert communication.

(Effective December 30, 1974)

Sec. 31-376-55. Restrictions as to participation by investigative or prosecuting officers

In any proceeding noticed pursuant to the rules in this part, the Commissioner shall not participate or advise with respect to the report of the Hearing Officer or the Commission decision.

(Effective December 30, 1974)

Sec. 31-376-56. Inspection and reproduction of documents

(a) Subject to the provisions of law restricting public disclosure of information, any person may, at the offices of the Commission, inspect and copy any document filed in any proceeding.

(b) Costs shall be borne by such person.

(Effective December 30, 1974)

Sec. 31-376-57. Restrictions with respect to former employees

(a) No former employee of the Commission or the Commissioner (including a member of the Commission or the Commissioner) shall appear before the Commission as an attorney or other representative for any party in any proceeding or other matter, formal or informal, in which he participated personally and substantially during the period of his employment.

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(b) No former employee of the Commission or the Commissioner (including a member of the Commission or the Commissioner) shall appear before the Commission as an attorney or other representative for any party in any proceeding or other matter, formal or informal, for which he was personally responsible during the period of his employment, unless 1 year has elapsed since the termination of such employment.

(Effective December 30, 1974)

Sec. 31-376-58. Amendments to rules

The Commission may at any time upon its own motion or initiative, or upon written suggestion of any interested person setting forth reasonable grounds therefor, amend or revoke any of the rules contained herein.

(Effective December 30, 1974)

Sec. 31-376-59. Special circumstances: Waiver of rules

In special circumstances not contemplated by the provisions of these rules, or for good cause shown, the Commission may, upon application by any party or intervenor, or on its own motion, after 3 days notice to all parties and intervenors, waive any rule or make such orders as justice or the administration of the Act requires.

(Effective December 30, 1974)

Sec. 31-376-60. Penalties

(a) All penalties assessed by the Commission are Civil.

(b) The Commission has no jurisdiction under Section 31-382 (e), (f), and (g) of the Act and will conduct no proceeding thereunder.

(Effective December 30, 1974)

Sec. 31-376-61. Official seal occupational safety and health review commission

Reserved.