

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

**Part A—General**

**(a) Scope and applicability**

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

**(b) Filing, service, and form of pleadings**

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

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

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

(4) The initial pleading filed by any person shall contain the name, address and telephone number of the person filing and of his attorney or other representative, if any. Any change in this information shall, within seven days after such person becomes aware of such change, be communicated in writing to the Office of Adjudications and to all persons upon whom pleadings shall be served under subdivision (5) of this subsection.

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

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(*signature of person making service*)

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

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

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

party or other person without the consent of such party or person.

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

**(c) Orders, rulings, and decisions**

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

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

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

**(d) Powers and duties of hearing officer**

(1) The hearing officer shall conduct a fair and impartial proceeding, assure that the relevant facts are fully elicited, adjudicate issues of law and fact, and prevent delay and harassment.

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

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

**(e) Sanctions**

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

**(f) Burdens of Proof**

Unless otherwise provided by law, in a proceeding on an order to enforce a statute,

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

**(g) Representatives**

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

**(h) Motions**

(1) A motion is any request to a hearing officer or the Commissioner.

(2) All motions shall (A) be in writing unless made orally on the record, (B) state with particularity the grounds therefor, and (C) set forth the relief or ruling sought.

(3) Within seven days of service of a written motion or such other time as the hearing officer may prescribe, any party or intervenor may file a response supporting or opposing the motion. The movant shall have no right to reply except as permitted by the hearing officer.

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

**Part B—Prehearing Procedures**

**(i) Answers and requests for hearing**

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

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

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

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

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

**(j) Scheduling hearings and settlement conferences**

(1) (a) Unless when issuing an order or disposing of an application the Commissioner also issues notice of a scheduled hearing date on such order or application, the Director of the Office of Adjudications shall, upon the filing of an answer or request for hearing under subdivision (i) (1) or (2) of this section, solicit comments from the parties and intervenors concerning an appropriate date and, with respect to an application, location for hearing. Upon receipt of comments the Director shall set a date for hearing, taking into consideration the threat to the environment or public health posed by the violations or conditions alleged in the order and the parties' and intervenors' schedules.

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

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

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

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

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

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

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

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

**(k) Intervention**

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

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

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

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

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

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

(5) Unless otherwise provided by the hearing officer, any objections to a request for party

or intervenor status shall be filed within seven days of the date the objecter learns of the request.

(6) The ruling on a request for status as a party or intervenor shall be provided to the person filing the request, all parties and intervenors, and any person who has filed a request for status as a party or intervenor status but whose request has not yet been disposed of. A request under this subsection shall be construed liberally so as to further the policies and purposes of the Connecticut Environmental Protection Act, sections 22a-14 through 22a-20 of the General Statutes, and the statutes and regulations administered by the Department.

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

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

**(l) Disposition of proceeding by agreement**

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

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

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

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



Commissioner.

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

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

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

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

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

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

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

**(m) Notices to appear and subpoenas for hearing**

(1) A party or intervenor may compel the appearance at a hearing of, or the production

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

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

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

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

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

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

(5) Upon notice to the parties and intervenors, the hearing officer may on his own initiative issue a notice or subpoena requiring the appearance of a party, intervenor, or other person or the production of documents at a hearing. The form and service of such notice or subpoena shall be as described in subdivision (1) or (4), as the case may be, of this subsection, and such notice or subpoena shall be subject to the provisions of subdivision (6) of this subsection.



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

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

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

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

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

**(n) Discovery**

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

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

(3) (A) Except as provided in subparagraph (B) of this subdivision, a party or intervenor may serve upon any other party or intervenor a request to inspect, copy, photograph or otherwise reproduce designated documents (including but not limited to writings, drawings, graphs, charts, photographs, audio or video recordings, or computer records) which are relevant and material to the subject of the proceeding, which are in the possession, custody or control of the party, intervenor, or other person upon whom the request is served, and which can be provided by the disclosing party, intervenor, or person with substantially greater facility than they could otherwise be obtained by the party or intervenor seeking disclosure. The request shall clearly designate the documents to be inspected and copied and shall specify a reasonable place and manner of making the inspection and copies. A copy of the request shall be concurrently filed in the Office of Adjudications and served on all other parties and intervenors. Unless the parties and intervenors agree otherwise or the

hearing officer provides otherwise, the cost of copying documents shall be borne by the party or intervenor requesting discovery. Nothing in this section shall be construed to require that a party or intervenor conduct any analysis or other manipulation of computer data.

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

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

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

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

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

(8) If a party or intervenor upon whom a request for discovery has been served neither objects to the request nor complies with it in good faith, or does not obey a ruling on an objection made under subdivision (4) of this subsection, the hearing officer may impose sanctions in accordance with subsection (e) of this section. Except for good cause shown, the hearing officer shall not enforce multiple discovery requests by the same party or intervenor.

(9) A party or intervenor may move the hearing officer to issue a subpoena requiring that a person who is not a party or intervenor produce documents for the purpose of discovery. Such motion shall include the name and address of the person to whom the

subpoena is to be directed and a description of the documents to be subpoenaed, and shall state the reason for the motion. A motion under this subdivision prepared by an attorney shall include a draft of the subpoena requested. Any party or intervenor making a motion under this subdivision shall serve a copy of such motion upon the person who is the subject of the requested subpoena and shall give notice in the motion that such person may, within seven days of service thereof, file an objection to issuance of the subpoena. Unless the hearing officer finds that the material sought is irrelevant and immaterial, he shall issue the subpoena and mail or deliver it to the party or intervenor requesting it, which party or intervenor shall arrange for its service. Except for good cause shown, a subpoena issued under this subdivision shall be ineffective unless it is received by the person to whom it is directed no later than five days before the date prescribed for production of the documents. A subpoena issued under this subdivision shall contain the information described in subdivisions (m) (4) and (7) of this section, shall be served in accordance with subdivision (m) (8) of this section, and may be quashed, modified, or subjected to a protective order in accordance with subdivision (m) (6) of this section. The Commissioner may enforce a subpoena issued under this subdivision in accordance with subdivision (m) (9) of this section.

**(o) Preservation of evidence**

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

**(p) Prehearing conferences**

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

- (A) Clarify and simplify the factual issues for hearing, identify the legal issues in dispute, and determine whether any legal issues should be briefed before the hearing;
- (B) Stipulate to facts and the admissibility of testimony and other evidence;
- (C) Identify and, as appropriate, limit witnesses to be called and documents to be offered at the hearing, and identify the matters about which each witness will testify;
- (D) Mark exhibits to be admitted or offered into evidence;
- (E) Dispose of pending motions and disputes about discovery; and
- (F) Take such other actions as may aid in the orderly and expeditious disposition of the proceeding.

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

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

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

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

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

**(q) Advance submission of proposed evidence**

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

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

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

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

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

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

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

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

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

(D) Any other or additional material.

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

### **Part C—Hearing Procedures**

#### **(r) Oaths**

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

#### **(s) Evidence, objections, offers of proof**

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

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

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

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

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

#### **(t) Speakers**

Any person who is not a party or intervenor nor called by a party or intervenor as a witness may make an oral or written statement at the hearing. Such a person shall be called a speaker. If the hearing officer is going to consider a speaker's statement as evidence or if the speaker wants his statement to be considered as evidence, the hearing officer shall

require that the statement be made under oath or affirmation and shall permit the parties and intervenors to cross-examine the speaker and to challenge or rebut the statement. A speaker may decline to be cross-examined, but the hearing officer shall strike from the record any comments by such speaker relating to the subject on which he declines to be cross-examined. The hearing officer may control the time and duration of a speaker's presentation, and may exclude irrelevant, immaterial, or unduly repetitious comments by a speaker. A speaker shall not be entitled to cross-examine parties, intervenors, or other speakers or to object to evidence or procedure.

**(u) Failure to appear**

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

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

(3) If a party or intervenor does not appear at an oral argument scheduled upon his request, such request shall be deemed withdrawn and any right to oral argument waived. Such party may, within no more than 14 days after the scheduled oral argument date, move the Commissioner to reschedule oral argument. The motion shall be denied unless the movant demonstrates that there was compelling reason for the failure to appear, and the Commissioner may proceed to issue the final decision.

**(v) The record**

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

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

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



**Subpart D—Post-hearing Procedures**

**(w) New evidence**

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

**(x) Post-hearing legal submissions**

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

**(y) Proposed final decisions and final decisions**

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

(2) At any time after issuance of a proposed final decision but before oral argument held pursuant to subdivision (3) of this subsection, the hearing officer may correct such decision for clerical errors and for errors of fact or law.

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

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

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

(D) After the issuance of the proposed final decision, the filing of any exceptions and

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

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

**(z) Reconsideration**

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

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

(Effective June 19, 1992)