

Adopt Ins 200, effective 10-29-99 (Document #7121), and expired on 10-29-07, to read as follows:

CHAPTER Ins 200 PRACTICES AND PROCEDURES

Statutory Authority: RSA 400-A:15, I.

PART Ins 201 GENERAL INFORMATION

Ins 201.01 Scope. The rules in this chapter shall govern all proceedings before the department.

PART Ins 202 DEFINITIONS

Ins 202.01 Definitions.

(a) "Adjudicative proceeding" means the procedure to be followed in contested cases, as set forth in RSA 541-A.

[(b) "Alien insurer" means an insurer domiciled in any foreign country.]

[(c) (b) "Contested case" means "contested case" as defined in RSA 541-A:1 IV.

[(d) (c) "Commissioner" means the insurance commissioner.

[(e) (d) "Declaratory ruling" means "declaratory ruling" as defined in RSA 541-A:1, V.

[(f) (e) "Department" means the insurance department, an independent regulatory agency.

[(g) "Domestic insurance company" means an insurer domiciled in this state.]

[(h) (f) "Ex parte communications" means the transmittal of data or argument concerning the merits of the subject matter of any [hearing] adjudicative proceeding to or from [an] a hearing officer [or employee of the department] without [prior] notice to all parties to the adjudicative proceeding[s].

[(i) "Foreign insurance company" means an insurer domiciled in any state other than New Hampshire.]

[(j) (g) "Hearing" means the formal or informal receipt by the department of data or argument, or both, from persons.

[(k) (h) "Hearing officer" means the commissioner or the deputy commissioner or any natural person [any other member of the department] whom the commissioner has designated to preside over a hearing.

[(l)] (i) "License" means a formal authorization in the form of a document called a license issued by the licensing division or the examination division.

[(m)] (j) "Licensing" means "licensing" as defined in RSA 541-A:1, VIII.

[(n)] (k) "Motion" means any application by a party to a proceeding for an order relating to the proceeding.

[(o)] "Nonadjudicative processes" means "nonadjudicative processes" as defined in RSA 541-A:1, X.]

[(p)] (l) "Order" means "order" as defined in RSA 541-A:1, XI.

[(q)] (m) "Party" means "party" as defined in RSA 541-A:1, XII.

[(r)] (n) "Person" means "person" as defined in RSA 541-A:1, XIII.

[(s)] (o) "Proceeding" means any investigation, examination, hearing or adjudication in which the legal rights, duties or privileges of a person as set forth by statute or rule are determined by the department after opportunity for a hearing.

[(t)] (p) "Rule" means "rule" as defined in RSA 541-A:1, XV.

[(u)] (q) "Staff advocate" means any person designated by the [department] commissioner to act as the advocate for the department in an adjudicative proceeding.

PART Ins 203 APPEARANCES BEFORE THE DEPARTMENT

Ins 203.01 Hearing Officer; Appointment; Authority.

(a) All hearings shall be conducted by [a natural person appointed to serve as] a hearing officer.

(b) The commissioner or deputy commissioner shall act as hearing officer in any summary suspension hearing pursuant to Ins 204.04. For all other hearings, the commissioner or deputy commissioner shall act as hearing officer or the commissioner shall appoint a natural person to act as hearing officer.

(c) If the commissioner appoints a hearing officer, evidence shall be received solely by such hearing officer, who shall be charged with preparing a proposed written decision and proposed order with recommendations for the final disposition of the case or for any dispositive motion, as set forth in Ins 204.26.

(d) The commissioner may for any reason and at any time, without notice or hearing, replace the hearing officer.

[(b)] (e) A hearing officer shall as necessary:

- (1) Regulate and control the course of a hearing;
- (2) Facilitate an informal resolution of an appeal;
- (3) Administer oaths and affirmations;
- (4) Receive relevant evidence and exclude irrelevant, immaterial or unduly repetitious evidence;
- (5) Rule on procedural requests, including adjournments or postponements, at the request of a party or on the hearing officer's own motion;
- (6) Question any person who testifies;
- (7) Cause a complete record of any hearing to be made, as specified in RSA 541-A:31, VI; [and]

(8) Communicate with all parties to an adjudicative proceeding regarding scheduling or procedural matters in writing, in person, by fax, electronic mail or by telephone, in compliance with Ins 203.08; and

[(8)] (9) Take any other action consistent with applicable statutes and rules necessary to conduct the hearing and complete the record in a fair and timely manner.

Ins 203.02 Withdrawal of Hearing Officer.

(a) Upon [individual] **the hearing officer's own** initiative or upon the motion or request of any party, a hearing officer shall, for good cause withdraw from any appeal.

(b) Good cause shall exist if a hearing officer has a direct interest in the outcome of the hearing or any connection with the parties that would be likely to improperly influence his or her judgment.

(c) Mere knowledge of the issues, the parties or any witness shall not constitute good cause for withdrawal.

Ins 203.03 Who May Appear. Any person may appear in a proceeding either in person or by a representative, or both.

Ins 203.04 Representatives.

(a) A representative shall be either an attorney-at-law, licensed in New Hampshire, or such other individual including officers or employees of the person, as the person appearing shall designate.

(b) Designation **of an attorney-at-law or other representative** shall **be filed at the earliest date practical. The designation shall be:**

- (1) Be in writing; and
- (2) Contain the following information:
 - a. Name, address and telephone number of designee;
 - b. Title or name of matter pending before department; and
 - c. Duration of designation.

(c) No such form need be filed by officers or employees of the person.

(d) An attorney from another jurisdiction shall be permitted to participate in the proceedings [**before the commissioner**] if the attorney is in good standing within his home jurisdiction.

(e) Nothing in this rule shall be interpreted as permitting the unauthorized practice of law; nor shall this rule be construed to restrict or limit the right of any person to conduct his own business with the department.

Ins 203.05 Right to Counsel. Any part in a proceeding may be represented by counsel. Parties shall retain counsel at their own expense and requests for appointment of counsel shall not be entertained.

Ins 203.[05]06 Prohibited Conduct and Representation.

(a) "Misconduct" means any act or non-act which would constitute misconduct of an "attorney-at law" as defined in the New Hampshire supreme court rules of professional conduct.

(b) The department shall, after notice and opportunity for hearing, upon a finding of misconduct as defined in [**Ins 203.05 (b)**] **this section**, prohibit an individual from acting as representative for any and all pending or future matters, or any combination thereof, before the department.

(c) Upon a finding of misconduct by any attorney admitted to practice in New Hampshire, the matter shall be referred to the New Hampshire supreme court, committee on professional conduct for such determination as they find appropriate.

Ins 203.[06] 07 Staff of Department.

(a) Staff **members** of the department **[shall only] are authorized to** participate in a proceeding as **[a] witnesses, technical assistants or advisors, or as otherwise provided in this chapter.**

(b) The staff advocate shall be that person authorized to represent the department in an **adjudicative** proceeding.

Ins 203.[07] **08 Ex Parte Communications, Adjudicative Proceedings.**

(a) **Once an adjudicative proceeding has commenced, [U] unless required for the disposition of ex parte matters authorized by law, no party shall [officials or employees of any agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not] communicate, directly or indirectly, with the hearing officer or any assistant or advisor to the hearing officer, concerning the merits of the case, [in connection with any issue before the agency, with any person or party,] except upon notice and opportunity for all parties to participate.**

(b) **[This] The notice and opportunity to participate** requirement shall not apply **[to]:**

(1) **[Communications between or among agency personnel, or between the agency and legal counsel; or] When a hearing officer has been appointed to receive evidence pursuant to Ins 203.01 (c) and ex parte communications between or among the commissioner and department staff are required for the proper administration of the business of the department;**

(2) **To ex parte [C] communications between or among the hearing officer and any assistant or advisor designated by the commissioner to assist the hearing officer; or [one or more personal assistants.]**

(3) **To ex parte communications with staff participating in the preparation of the final order after the commissioner has received, reviewed and determined whether to accept, reject or otherwise modify a proposed decision pursuant to Ins 204.26.**

(c) When the commissioner has appointed a hearing officer to receive evidence and enter a proposed decision pursuant to Ins 203.01 (c), there shall be no ex parte communications directly or indirectly between the hearing officer and the commissioner concerning the merits of the case.

PART Ins 204 PREHEARINGS, HEARINGS, APPEALS TO THE COMMISSIONER OF DEPARTMENT DECISIONS, RATEMAKING, SHOW CAUSE HEARINGS

Ins 204.01 Prehearings, Hearings, Adjudicative Proceedings, Contested Cases.

(a) In any matter before the department, other than rulemaking or a declaratory ruling, all motions, requests and actions shall be conducted pursuant to RSA 541-A:31 through 38.

(b) Hearings shall be conducted with the respondent, the department and any witnesses physically present before the hearing officer. A telephone hearing is permitted upon motion of any party if the hearing officer determines there is good cause and determines that conducting the hearing with one or more parties participating by telephone would be lawful and would promote the fair, accurate and efficient resolution of issues pending before the department. Good cause shall include, but is not limited to, the following:

(1) Excessive distance to the hearing location;

(2) Physical disability or impairment;

(3) Transportation difficulties; or

(4) Security concerns.

Ins 204.02 Waiver or Suspension of Procedural Rules. The [department] **hearing officer**, upon [its] **the hearing officer's** own initiative or upon the motion or petition of any interested person, shall suspend or waive any requirement or limitation imposed by this chapter not otherwise contrary to law, upon reasonable notice to affected persons, when the proposed waiver or suspension appears to be lawful and would be more likely to promote the fair, accurate and efficient resolution of issues pending before the [agency] **department** than would adherence to a particular rule or procedure.

Ins 204.03 Effect of Failure to Comply with the Rules. Failure to comply with the rules in this part shall result in the denial of any petition or motion so failing to comply, or the rejection of any document so failing to comply, or the issuance of an order adverse to the person so failing to comply.

Ins 204.04 Summary Suspension of Department Issued Licenses.

(a) In the case of summary suspensions, the following general provisions shall apply:

(1) When the commissioner finds that public health, safety, or welfare requires emergency action, and incorporates a finding to that effect in such order, summary suspension of a license shall be ordered, effective on the date specified in such order or upon service of a certified copy of such order on the licensee, whichever shall be later, pending proceedings for revocation or other action;

(2) An order of summary suspension shall be served prior to, simultaneously with, or after the commencement of **an adjudicative** proceeding seeking the suspension or revocation of a license; and

(3) The order of summary suspension shall be served upon the holder of a license, either by personal service, by certified mail, return receipt requested, telegram, or by some

other means for the purpose of directly informing the holder, and shall become effective either upon delivery or upon notice being received by the licensee.

(b) Notice and hearing, time limitations and other procedural requirements shall be as follows:

(1) Where an order of summary suspension has been issued and served prior to the institution of departmental disciplinary proceedings seeking the suspension or revocation of a license, a formal notice instituting such proceedings shall be served upon the licensee named therein and the hearing scheduled to commence within 10 working days. The licensee may make written application at any time for a hearing seeking relief from the suspension order and such hearing shall be held within 5 working days from the date of receipt of such request by the department. Such application for relief shall be determined within 5 working days after the close of the hearing relating to that issue;

(2) Where an order of suspension has been issued and served simultaneously with the service of the notice of disciplinary proceeding, such hearing shall be scheduled to commence at least 10 working days thereafter. The licensee may make written application at any time for a hearing seeking relief from the suspension order, and such hearing shall be held within 5 working days from the date of receipt of such request by the department. The determination of such application for relief shall be determined within 5 working days after the close of the hearing relating to the issue;

(3) In the event the order of suspension is issued and served after the disciplinary proceeding has commenced, the licensee may make written application at any time for a hearing seeking relief from the suspension order and such hearing shall be held within 5 working days from the date of receipt of such request by the department. The determination of such application for relief shall be determined within 5 working days after the close of the hearing relating to that issue; and

(4) The hearings in (b)(2) and (b)(3) above shall be conducted in an expeditious manner.

(c) The hearing officer shall render the decision in the disciplinary hearing within 10 days from the date of the close of such hearing and the receipt of the minutes pertaining to same. Failure to do so shall cause the order of summary suspension to be vacated.

(d) If a request is made by the licensee to submit a brief or memorandum in connection with the said disciplinary hearing and such request is granted, the aforesaid 10-day period to render a decision shall commence to run after receipt by the hearing officer of such brief or memorandum.

Ins 204.05 Burden and Standard of Proof.

(a) For purposes of this section, “proof by a preponderance” of the evidence means what is sought to be proved is more probable than not.

(b) In a hearing held to determine whether a certification, license, permit or other approval that has already been issued should be suspended, revoked, or not renewed, the department shall unless otherwise required by statute, present a prima facie case supporting its action in order to meet its burden of proof, after which the opposing party shall bear the burden of persuasion to present evidence to convince the hearing officer that the department's position should not be upheld; and

(c) The standards for meeting the burden of proof **and the burden of persuasion** shall be by a preponderance of the evidence.

(d) In a hearing held to determine whether an administrative fine should be imposed, the department shall bear the overall burden of proof by a preponderance of the evidence.

(e) In any hearing held to review a department decision not subject to paragraph (b) or (c) of this section, the burden of proof shall be on the person seeking to overturn the decision.

(f) The party asserting a proposition shall bear the burden of proving the truth of the proposition by a preponderance of the evidence.

Ins 204.06 Motions and Replies Thereto.

(a) **Unless presented during an oral session of a proceeding, [M]motions and all replies thereto,** shall be in written form and filed with the hearing officer, unless made in response to a matter asserted for the first time at the hearing or on the basis of information which was not received in time to prepare a written motion.

(b) Oral motions and any oral objection to such motions shall be recorded in full in the record of the hearing. If the hearing officer finds that the motion requires additional information in order to be fully and fairly considered, the **[presiding] hearing** officer shall direct the moving party to submit the motion in writing, with supporting information, before any deadline established by the hearing officer.

[(c) Unless presented during an oral session of a proceeding, all motions and replies shall be in writing.]

[(d)] (c) All motions shall state clearly and concisely:

- (1) The purpose of the motion;
- (2) The relief sought by the motion;
- (3) The statutes, rules, orders, or other authority authorizing the relief sought by the motion; and
- (4) The facts claimed to constitute grounds for the relief requested by the motion.

[(e)] (d) Replies to motions shall state clearly and concisely:

- (1) The defense of the party filing the reply;
- (2) The action which the party filing the reply wishes the department to take on the motion;
- (3) The statutes, rules, orders, or other authority relied upon in defense of the motion; and
- (4) Any facts which are additional to or different from the facts stated in the motion.

[(f)] (e) A reply to a motion shall specifically admit or deny each fact contained in the motion. Failure to deny a fact contained in a motion shall constitute the admission of that fact for the purpose of the motion. In the event a party filing a reply to a motion lacks sufficient information to either admit or deny a fact contained in the motion, the party shall so state, specifically identifying such fact.

[(g) Failure of an opposing party to object to a motion shall not in and of itself constitute grounds for granting the motion.]

[(h)] (f) Motions shall be decided upon the writings submitted. Repetitious motions shall not be submitted.

[(i)] (g) Replies to motions shall be filed within 10 days after the filing of the motion. Failure to reply to a motion within the time allowed shall constitute a waiver of objection to the motion, **but shall not in and of itself constitute grounds for granting the motion.**

(h) All motions and all replies filed with the hearing officer shall be addressed to the "Clerk, New Hampshire Insurance Department."

[(j)] (i) The hearing officer shall rule upon a motion after full consideration of all objections and other factors relevant to the motion **in accordance with this chapter.**

Ins 204.07 Date of Issuance or Filing of Documents.

(a) All decisions, orders, notices or other written correspondence or documents issued by or at the direction of the department shall be **refut[e]ably** presumed to have been issued on the date noted on the document.

(b) All written documents governed by these rules shall be deemed to have been filed with or received by the department on the actual date of receipt by the department, as evidenced by a date stamp placed on the document by the department in the normal course of business.

Ins 204.08 Format of Documents.

(a) All correspondence, pleadings, motions or other documents filed under these rules shall:

(1) Include the title and docket number of the proceeding, if known;

(2) Be typewritten or clearly printed on durable paper 8 ½ by 11 inches in size;

(3) Be signed by the party or proponent of the document, or, if the party appears by a representative, by the representative; and

(4) Include a statement certifying that a copy of the document has been delivered to all parties to the proceeding in compliance with Ins 204.09.

(b) The signature on a document filed with the department shall constitute certification that:

(1) The signer has read the document:

(2) The signer is authorized to file it;

(3) To the best of the signer's knowledge, information and belief there are good and sufficient grounds to support it; and

(4) The document has not been filed for purposes of delay.

Ins 204.09 Delivery of Documents.

(a) Copies of all petitions, motions, exhibits, memoranda, or other documents filed by any party to a proceeding governed by this rule[s] shall be delivered by that party to all other parties to the proceeding.

(b) All **proposed and final** notices, orders, decisions or other documents issued by the hearing officer **or the commissioner** pursuant to this **[regulation] rule**, shall be delivered **[by the hearing officer]** to all parties to the proceeding.

(c) Delivery of all documents relating to a proceeding shall be made by personal delivery or by depositing a copy of the document, by first class mail, postage prepaid, in the United States mails, addressed to the party at the last address given to the department by the party. **Unless otherwise prohibited by this chapter or by law, upon the consent of any party, delivery by fax or electronic mail, in lieu of delivery by first class mail, is permitted.**

(d) Notwithstanding paragraphs (a) through (c) above, when a party appears by a representative, **[service] delivery** shall be upon the representative at the address stated on the appearance filed by the representative.

Ins 204.10 Computation of Time.

(a) Unless otherwise specified, all time periods referenced in this chapter shall be calendar days.

(b) Computation of any period of time referred to in these rules shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.

(c) If the last day of the period so computed falls on a Saturday, Sunday or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday, or legal holiday.

(d) Except where the time has been fixed by statute, the [department] **hearing officer** shall for good cause, upon request or upon [its] **the hearing officer's** own initiative, enlarge or shorten the time provided for the filing of any document[, **or advance or postpone the time and date set for any hearing**]. Good cause shall include the unavailability of **information**, parties, witnesses or attorneys [**necessary to conduct the hearing**], the likelihood that **[a hearing] the filing** will not be necessary because the parties **[have reached] anticipate** a settlement or any other circumstances that demonstrate that a postponement would assist in resolving the case fairly.

Ins 204.11 Role of Complainants in Enforcement or Disciplinary Hearings. Unless called as witnesses or granted intervenor status [**under Ins 201.08**], a person who initiates an adjudicative proceeding by complaining to the department about the conduct of a party shall have no role in enforcement or disciplinary hearings.

[Ins 204.12 Right to Counsel. Any party in an adjudicatory proceeding may be represented by counsel, but an attorney appearing on behalf of a party shall first file a letter announcing the fact of representation at the earliest date practical. Parties shall retain counsel at their own expense and requests for appointment of counsel shall not be entertained.]

Ins 204.[13]12 Continuances.

(a) **[Any party to a hearing may make an oral or written request that the hearing be postponed to a later date or time.] The hearing officer shall for good cause, upon request or upon the hearing officer's own initiative, advance or postpone the time and date set for any hearing.**

(b) If a postponement is requested by a party to the hearing, it shall be granted if the hearing officer determines that good cause has been demonstrated.

(c) Good cause shall include the unavailability of parties [**or**], witnesses **or attorneys** necessary to conduct the hearing, **the likelihood that the hearing will not be necessary because the parties anticipate settlement or any other circumstances that demonstrate that a postponement would assist in resolving the case fairly.**

[(c)] (d) If the **[later]** date, time and place **of the continued hearing** are known **[at the time of the hearing that is being postponed]**, the date, time and place shall be stated on the record. If the **[later]** date, time and place **of the continued hearing** are not known **[at the time of the hearing that is being postponed]**, the hearing officer shall issue a written scheduling order stating the date, time and place of the postponed hearing as soon as possible.

Ins 204.**[14]**13 Prehearing Conferences.

(a) At any time following the notice of hearing of an adjudicatory proceeding, the hearing officer, upon motion, or upon his or her own initiative shall direct all interested parties to attend one or more prehearing conferences to aid in the disposition of the proceeding.

(b) There may be considered at a prehearing conference:

- (1) Opportunities and procedures for settlement;
- (2) Opportunities and procedures for simplification of the issues;
- (3) Possible amendments to the pleadings;
- (4) Possible admissions of fact and of documents to avoid unnecessary proof;
- (5) Possible limitations on the number of witnesses;
- (6) Possible changes to the standard procedures which would otherwise govern the proceedings;
- (7) The distribution of written testimony, if any, and exhibits to the parties;
- (8) Possible consolidation of the examination of witnesses by the parties; and
- (9) Any other matters which might contribute to the prompt and orderly conduct of the proceeding.

(c) The department shall cause prehearing conferences to be recorded unless all parties wish to discuss possible settlement off the record or the hearing officer determines that the prehearing process is best served by conducting discussions and conferences off the record. Matters decided at a prehearing conference shall be reflected in an appropriate order.

Ins 204.**[15]**14 Discovery and Disclosure.

(a) Any party wishing discovery against another party, shall, by motion, seek leave to do so and shall identify the exact type of discovery requested.

(b) Discovery shall be permitted when:

(1) It appears that the parties cannot adequately address the factual issues at the time fixed for the presentation of evidence without an opportunity to acquire data pursuant to discovery;

(2) The requested method of discovery is reasonable and will not cause material unfairness or unreasonable expenses to any party; and

(3) The requested discovery will not unreasonably delay the proceeding.

Ins 204.**[16]**15 Subpoenas.

(a) Subpoenas for the attendance of witnesses at or the production of evidence in adjudicatory proceedings shall be issued only upon the order of the commissioner or pursuant to authority delegated by the commissioner. Subpoenas shall issue on the initiative of the commissioner or in response to a motion. A party requesting a subpoena shall attach a copy of the proposed subpoena to its motion. The requesting party shall be responsible for the service of the subpoena and payment of any witness fee and mileage expenses which may be required.

(b) The person to whom the subpoena is directed may, within 10 days after service of the subpoena, or before the date specified in the subpoena for compliance therewith, whichever is earlier, file a motion to quash or modify the subpoena. If the **[department] commissioner** denies the motion to quash or modify, in whole or in part, the person to whom the subpoena is directed shall comply with the subpoena, or any modification thereof, within the balance of time prescribed in the subpoena, not considering the elapsed time between the filing of the motion to quash or modify and the service of the ruling thereon, unless the **[department] commissioner** expressly provides additional time to comply.

(c) A subpoena shall be served by any person who is 18 years of age or older and in the manner authorized for service of subpoenas in the New Hampshire Superior Court. The fact of service shall be written on the reverse of the original copy of the subpoena by the person making service. The original copy shall be immediately returned to the commissioner or commissioner's designee who authorized the subpoena by the person making service.

(d) Should any person fail to comply with a subpoena issued pursuant to this section, the **[department] commissioner** shall employ any remedy authorized by this title or the law of New Hampshire, or shall direct an interested party to seek judicial enforcement.

Ins 204.**[17]**16 Inquiry by Hearing Officer. The hearing officer in an adjudicative proceeding shall question witnesses and make such inquiry of witnesses, parties or counsel, as **[he or she] the hearing officer** believes appropriate **to promote the fair, accurate and efficient resolution of issues pending before the department.**

Ins 204.**[18]**17 Proposed Findings of Fact and Conclusions of Law.

(a) Any party may request leave to submit proposed findings of fact and conclusions of law, but the submission of such findings is a matter reserved to the hearing officer's discretion.

(b) The hearing officer may direct any party to submit proposed findings of fact and conclusions of law. **[If such an order is issued, the hearing officer shall include individual rulings upon such proposed findings or conclusions as part of his/her final decision.]**

Ins 204.**[19]18** Transcripts. The entirety of all oral proceedings shall be recorded verbatim. **Upon the written request to the commissioner by any party, or upon the department's own initiative, such record shall be transcribed and the requesting party shall pay all reasonable costs for such transcription.**

Ins 204.**[20]19** Record. The record in a contested case shall include all of the following that are applicable in that case:

- (a) Any prehearing order;
- (b) All pleadings, motions, objections and rulings;
- (c) Evidence received or considered;
- (d) A statement of matters officially noticed;
- (e) Proposed findings and exceptions;
- (f) Any decision, opinion or report by the officer presiding at the hearing;
- (g) The tape recording or stenographic notes or symbols prepared for the hearing officer, together with any transcript of all or part of the hearing considered before final disposition of the **adjudicative** proceeding;
- (h) Staff memoranda or data submitted to the hearing officer, except **advisory** memoranda **[or data]** prepared and submitted **to the hearing officer** by **staff of the department or others designated by the commissioner to act as advisor or assistant to the hearing officer** **[legal counsel or personal assistant upon request of the hearing officer for personal legal advice not going to the substantive merits of the hearing]**.
- (i) Matters placed on the record after an ex parte communication.

Ins 204.**[21]20** Reopening the Record.

(a) At any time prior to the issuance of the decision on the merits, the hearing officer, on the hearing officer's own motion or on the motion of any party, shall reopen the record to receive relevant, material and non-duplicative testimony, evidence, arguments or exhibits not previously received.

(b) Requests to reopen the record made after one or more parties have left the hearing shall be made in writing.

(c) If the hearing officer determines that such testimony, evidence, arguments or exhibits are necessary to a full consideration of the issues which form the subject of the hearing, the record shall be reopened to accept the offered items.

(d) The hearing officer shall give written notice of such further proceedings if the parties are no longer present. The hearing officer shall also specify a date by which other parties shall respond to or rebut the newly received evidence.

Ins 204.[22]21 Reconsideration on the [Department's] Commissioner's Own Motion. Within 30 days of any final order, [T] the [department shall at any time] commissioner based upon the existing record, may reconsider, revise or reverse any final action on [its] the commissioner's own motion. If reconsideration is based upon the existing record, prior notice shall not be given to the parties. If the [department] commissioner believes further argument or data should be considered, an appropriate order providing the parties with notice and an opportunity to be heard shall be issued before any revision is made in the department's previous action.

Ins 204.[223]22 Stay of Department Orders.

(a) A stay of department action shall be specifically requested. The mere filing of a motion for reconsideration shall not operate as a stay of any order, but a motion for stay may be combined with a motion for reconsideration.

(b) The [department] commissioner, acting on [its] the commissioner's own motion, shall stay the effect of any final order with or without issuing a corresponding order to reconsider or reopen the proceeding.

(c) Consent agreements shall be encouraged and shall provide a legitimate conclusion to the hearing process. When the consent agreement is issued the signatories to it shall thereby waive their right to a motion to reconsider. Intervenors shall have no standing to contest the consent agreement.

Ins 204.[24]23 Consolidation. Whenever it shall appear to the department, upon motion or its own initiative, that 2 or more proceedings involve substantially similar or substantially related issues, the department shall, as fairness and efficiency permit, consolidate those proceedings for hearing, or decision, or both.

Ins 204.[25]24 Severance. Whenever it shall appear to the department, upon motion or its own initiative, that injury to the substantial rights of a party or undue delay might be thereby avoided, the department shall, as fairness and efficiency permit, sever one or more issues from a proceeding, and dispose of those issues in another proceeding.

Ins 204.[26]25 Limiting Number of Witnesses. To avoid unnecessary cumulative evidence in any proceeding, the [commissioner or] hearing officer may limit the number of witnesses or the time for testimony upon a particular issue in the course of any hearing.

Ins 204.[27]26 Findings and Orders.

[(a) The basis for decision shall be made as follows:

(1) All decisions rendered by the hearing officer shall be made on the basis of the evidence of record only and the hearing officer shall rule upon each proposed finding;

(2) All decisions shall be rationally supportable on the basis of the evidence presented in the hearing or in the possession of the department; and

(3) A written decision setting forth findings of fact, and conclusions drawn by the hearing officer, shall be provided.

(b) Departmental orders shall be issued as follows:

(1) After conclusion of the hearing, unless otherwise set by law, the hearing officer shall issue an order stating the action to be taken by the department and the reason therefor. Said order shall be sent to the affected person through the United States mail, or by personal delivery; and

(2) Said order shall constitute a final action on the part of the department.]

(a) If the commissioner has appointed a natural person to preside at a hearing as hearing officer pursuant to Ins 203.01 (c):

(1) The hearing officer shall submit to the commissioner, within 35 days after the termination of a hearing, a proposed decision and order including a proposed decision and order on any dispositive motion. Any such proposed decision and order shall be delivered to all parties.

(2) The parties may file exceptions and supporting memorandum of law for review by the commissioner within 20 days from the date the proposed decision and order is delivered pursuant to (a)(1) above. Replies to exceptions and legal memoranda may be filed within 10 days from the date of the filing of the document prompting the reply.

(3) Requests for oral argument on exceptions to the proposed order shall be filed with the commissioner within 20 days from the date the proposed decision and order is delivered, and the commissioner shall issue an order granting or denying such request within 10 days.

(4) After receipt of all written and oral testimony, the commissioner shall issue a final decision and order, accepting, rejecting or modifying the proposed decision and order.

(5) If the commissioner issues a final decision and order that rejects or otherwise modifies the proposed decision and order:

a. The commissioner's factual determinations in any final order shall be based upon a review of the record;

b. The record shall provide a reasonable basis supporting the rejection or modification of the findings and rulings of the hearing officer.

c. The final decision shall adequately explain the grounds for the commissioner's decision.

d. The commissioner shall review all evidence in the record and resolve any evidentiary conflicts by applying the commissioner's own expertise and technical judgment.

(6) The final order shall comply with all requirements set forth in (c) of this section.

(b) If the commissioner or deputy commissioner has presided over the hearing:

(1) The commissioner or deputy commissioner shall issue a final decision and order consistent with the requirement of (c) of this section.

(c) The final decision and order shall:

(1) Be issued within 90 days of the termination of the hearing pursuant to RSA 400-A:23, II.;

(2) Be made on the basis of the evidence of record presented at the hearing and rationally supportable by such evidence. No factual information received or known that is not evidence of record shall be considered;

(3) Be in writing or stated in the record;

(4) Include findings of fact and conclusions of law, separately stated; and

(5) Be the final action of the Department.

[(c)] **(d)** Request for rehearings and appeals **from a final action** shall be made in writing and shall be made pursuant to the provisions of RSA 541.

Ins 204.**[28]27** Record Retention. The department shall keep a decision or order on file in its records for at least 6 years following the date of the final decision or the date of the decision on

any appeal, unless the director of the division of records management and archives of the department of state sets a different retention period pursuant to rules adopted under RSA 5:40.

PART Ins 205 PETITION FOR DECLARATORY RULING

Ins 205.01 Petitions.

(a) Any person may request a declaratory ruling from the department on matters within its jurisdiction by filing an original and 4 copies of the petition. Such petition for declaratory ruling shall set forth the following information:

(1) The exact ruling being requested, including any rule or statute implicated;

(2) The statutory and factual basis for the ruling, including any supporting affidavits or memoranda of law;

(3) A statement as to how the language of the rule or statute applies to the circumstances of the petitioner's case.

(b) Any petition for declaratory ruling which does not contain the information required in (a) above shall be inadequate.

Ins 205.02 Action on Petitions.

(a) If examination of a petition for declaratory ruling reveals that other persons would be substantially affected by the proposed ruling, the department shall require service of the petition on such persons and advise them that they may file a reply.

(b) The petitioner and any persons served with notice of the petition shall provide such further information or participate in such evidentiary or other proceedings as the department may direct after reviewing the petition and any replies received.

(c) The commissioner shall act on the petition as follows:

(1) Issue a written ruling within 30 days after receipt of all information or the conclusion of any evidentiary or other proceeding;

(2) Reject the petition if:

a. It is inadequate;

b. It involves a hypothetical situation or otherwise seeks advice as to how the commissioner would decide a future case;

c. It does not implicate the legal rights or responsibilities of the petitioner;

d. It is beyond the scope of the commissioner's statutory authority.

e. There is pending legislation or rulemaking, a pending administrative or judicial proceeding, or a pending investigation or examination that will address the petition; or

f. Other procedural options are available to the interested parties or the department.

PART Ins 206 RULEMAKING

Ins 206.01 How Adopted. A rule of the department or any amendment or repeal thereof shall be adopted by the commissioner after notice and opportunity for hearing in accordance with RSA 541-A. Rules may be proposed by any person pursuant to RSA 541-A:4, or by the agency.

Ins 206.02 Manner for Adoption.

(a) The department shall commence rulemaking by drafting a proposed rule or by accepting as a proposed rule the draft of a rule proposed by any person pursuant to Ins 205 and Ins 206.03.

(b) With respect to any proposed rule, the department shall conduct rulemaking and adoption proceedings pursuant to RSA 541-A.

Ins 206.03 Petitions to Department for Rulemaking.

(a) Petitions from interested persons requesting adoption, amendment or repeal of a rule shall be received and disposed of in the following manner:

(1) Petitions shall be submitted to the commissioner by letter;

(2) Petitions shall contain the following:

a. The date of the petitioning;

b. The petitioner's name, address and telephone number; and

c. The name and address of any other person or organization petitioner represents;

(3) The petitioner shall sign the petition;

(4) The petitions shall be typed or printed in a legible fashion;

(5) If possible, petitioner shall cite the rule and its provisions and specify any changes desired if repeal or amendment is sought, and shall provide the text or approximate text of the proposed rule if promulgation is sought;

(6) The petitioner shall include a detailed and complete statement of the petitioner's reasons in support of the requested action;

(7) If the commissioner determines that any petition is deficient in any respect, the commissioner shall, within 10 working days of receipt of said petition, notify the petitioner, in writing, of the specific deficiencies and allow the petitioner to amend the petition; and

(8) Within 30 days of receipt of a petition or amended petition for rulemaking that meets the requirements of (a)(1)-(6), the commissioner shall grant the petition and initiate rulemaking proceedings in accordance with RSA 541-A:4 if the commissioner determines that the department has authority to take the proposed action and the proposed action is:

a. Consistent with state and federal law and policy; and

b. Necessary to the efficient and effective implementation of the rules that are within the jurisdiction of the department.

Ins 206.04 Public Hearings.

(a) Pursuant to the provisions of RSA 541-A, the department shall conduct a public hearing on all proposed rules.

(b) The public hearing shall afford all interested persons opportunity to testify.

(c) The department shall provide a period of at least 10 days after the hearing to afford all interested persons the opportunity to submit data, views, or arguments in writing or electronic format.

Ins 206.05 Request for Notice of Intended Department Rulemaking Action.

(a) Pursuant to the provisions of RSA 541-A, the department shall maintain a current listing of all persons having made a request for advance notice of the rulemaking proceedings.

(b) The department shall charge a fee of \$.25 per page as the copy fee for proposed department rules.

PART Ins 207 EXPLANATION OF THE RULE

Ins 207.01 Explanation of the Rule. The department shall provide, if requested by any person at any time before 30 days after the final adoption of the rule, an explanation of the rule. The explanation shall include:

(a) A concise statement of the principal reasons for and against the adoption of the rule in its final form; and

(b) An explanation of why the department overruled the arguments and considerations against the rule.

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