

REGULATION NO. 82-1 (REVISED)

**VERMONT DEPARTMENT OF BANKING, INSURANCE, SECURITIES AND
HEALTH CARE ADMINISTRATION FINANCIAL REGULATION
HEARING ADMINISTRATIVE PROCEDURES**

SECTION

TABLE OF CONTENTS

1.01 Scope

1.02 Definitions

SECTION 2 1.03 Rules of Construction

1.04 General Procedures

A. Docketing

B. Initiation of Proceedings in a Contested Case Proceeding

SECTION 3 Appearances in Contested Cases

SECTION 4 C. Pleadings and Motions

D. Hearing Notice Requirements

E. Filing and

F. Service of Documents in Contested Cases

SECTION 5 G. Appearances

H. Answer to Contested Matters

SECTION 6 Intervention

SECTION 7 Proceedings Before a Hearing Officer

SECTION 8 Pre-hearing Conference

SECTION 9 Motions

SECTION 10 Evidence

SECTION 11 General Procedures for I. Defective Filings

J. Computation of Time

K. Remote Hearings

SECTION 12 Default

SECTION 13 L. Postponement or Continuance of Hearing

M. Motions

N. Briefs

O. Ex Parte Orders

SECTION 14 P. Harmless Error

Q. Relief from Order

R. Sanctions

S. Ex Parte Communication

T. Waiver of Rules

U. Informal Disposition

V. Default Judgment

W. Official Notice

X. Public Hearings

Y. Proposed Findings of Fact and Conclusions of Law

Z. Commissioner's Order

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1.05 Evidentiary Hearing Procedures

- A. Authority of Hearing Officer**
- B. Disqualification of Hearing Officer**
- C. Prehearing Conference**
- D. Intervention**
- E. Joinder**
- F. Consolidation of Hearings / Separate Hearings**
- G. Discovery**
- H. Subpoenas**
- I. Transcription**
- J. Conduct of Hearing**
- K. Witnesses**
- L. Evidence**
- M. Reopening or Rehearing**
- N. Informal Disposition**
- O. Waiver of Hearing**
- P. Hearing Officer’s Proposal for Decision**
- Q. Order of the Commissioner**
- R. Commissioner as Hearing Officer: Decision and Order**

1.06 Appeals

1.07. Petitions for Rule-making ——— Rulemaking

SECTION 15-1.08 Rulemaking Hearing Procedures

1.09. Petitions for Declaratory Rulings

SECTION 16-1.10. Petition to Describe an Existing Practice

SECTION 17 ——— Enlargement of Rules

SECTION 18-1.11. Conflict

SECTION 19-1.12. Severability

SECTION 20-1.13. Effective Date

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Section 1. ——— DEFINITIONS

(a) For the purposes of these rules:

1. "Department" means the Department of Banking, Insurance, Securities and Health Care Administration.

2. "Commissioner" **1.01 Scope**

This regulation establishes the procedures for administrative proceedings. This regulation supersedes and replaces Department Regulation No. 82-1 (REVISED).

1.02 Definitions

“Commissioner” means the Commissioner of Financial Regulation.

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“Contested Case Hearings” mean hearings held in contested cases (as defined in the Vermont Administrative Procedures Act). Such hearings are held in accordance with the General Procedures Section 1.04 and, when applicable, the Evidentiary Hearing Procedures Section 1.05. The Commissioner may appoint a Hearing Officer in any contested case hearing. Uncontested case hearings are hearings that are not required by law, and for which the Department will follow sufficient procedures to satisfy the purpose of the hearing, due process, and the public interest.

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~~“Department of Banking, Insurance, Securities and Health Care Administration or the Commissioner’s designee.”~~ 3. ” means the Vermont Department of Financial Regulation.

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“Docket Clerk” means the individual responsible for overseeing all administrative matters related to docketed proceedings, including, but not limited to, scheduling hearings, keeping a current service list, and maintaining the official repository for all filings.

“Evidentiary Hearing Procedures” mean those procedures required in contested cases requiring the presentation of evidence at a hearing. Some or all of these procedures may be used in any contested case if the Hearing Officer determines such use is necessary to satisfy the purpose of the hearing, due process, or the public interest.

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~~“Formal rule making proceedings” are those~~**“Rulemaking Proceedings” mean** proceedings required under 3 V.S.A. §§ 836-845 for the adoption of a rule or regulation by the Department.

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~~4. “Licensee”~~**“Hearing”** means any hearing conducted under the jurisdiction of the Department of Financial Regulation.

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~~“Hearing Officer” means the Commissioner or the person who is required to have a license or registration issued~~ designated by the Commissioner ~~to conduct a contested case hearing and associated proceedings.~~

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~~5. “General Procedures” mean those procedures generally applicable to administrative proceedings.~~

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“Order” means the whole or any part of a final decision of the Commissioner.

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1.03 Rules of Construction

The statutory definitions of ~~“other terms, including but not limited to “contested case”, “license”, “party”, “person”, “practice”, “procedure”, and “rule”~~, set forth in 3 V.S.A. § 801 are hereby adopted and made a part of ~~these rules.~~ **this regulation.**

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~~(b) Words importing the~~Unless doing so leads to results contrary to applicable law, singular ~~number~~ words may extend to and be applied to more than one person or thing and ~~words importing the~~ plural ~~number~~ words may be applied as if singular.

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Section 2. INITIATION OF PROCEEDINGS IN A CONTESTED CASE

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(a) The 1.04 General Procedures

(A) Docketing.

All contested cases, and such other matters as the Commissioner or Docket Clerk shall designate, will be assigned a docket number.

(B) Initiation of Proceedings.

(1) Initiation by the Department. The Department's petition or other pleading initiating a contested case shall be signed by the Petitioner, his or her attorney or authorized agent and shall must be filed with the Commissioner. All pleadings shall be drawn so as to fully and completely advise the Commissioner or Respondent(s) as to Docket Clerk.

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(2) Initiation by External Parties.

(a) In all other cases, a proceeding is initiated by filing a pleading with the Docket Clerk at the Commissioner's office as provided in Section 1.04 (E). An application that is treated as a contested case under the Vermont Administrative Procedures Act shall be considered a pleading for the purposes of initiating a proceeding.

(b) At the commencement of any proceeding, the party must file a statement identifying by name and address each person, party, or other entity entitled to notice of such proceeding. Such a filing must identify specifically any attorney representing the party in the matter.

(c) In the Commissioner's discretion, any written communication concerning a matter within the Commissioner's jurisdiction, may be treated as a pleading which initiates a contested case.

(3) Service of Initial Pleading. Service of the initial pleading or notice upon each party entitled to be served must be accomplished by delivery in person or by certified mail, return receipt requested, to the party's last known address, except in cases where a different manner of service is required by law.

(C) Pleadings and Motions.

(1) Every pleading or motion must describe in detail the order or relief sought, and shall include a statement of reasons and the legal authority on which the petition, charge or notice it is based. Except when otherwise specifically required by statute or regulation, pleadings need not be verified or accompanied by an affidavit. The pleading shall; and contain an attorney's attorney's certificate, or an affidavit of a party or authorized

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~~agent~~pro se representative, stating upon whom and the means by which the pleading or motion has been served.

- (2) Every pleading or motion must be signed by at least one attorney or pro se representative of record in accordance with the individual name of the attorney or pro se representative and must state such person's address and telephone number. The signature of an attorney or pro se representative of record constitutes a certificate by such person that to the best of the person's knowledge, information, and belief there are good grounds to support the motion or other pleading, and that it is not intended to delay the proceedings.

(D) Hearing Notice Requirements.

- (1) Proposed Notice of Hearing. The Commissioner may require any party who seeks relief to file a proposed Notice of Hearing. When the Department is the party seeking relief and a hearing is required by law, the Department shall file a proposed Notice of Hearing.
- (2) Content of Notice. A Notice of Hearing must clearly state the issues involved, the primary statutes and rules involved, the time, place and nature of the hearing, any remote or virtual options for attendance, and the legal authority and jurisdiction under which the hearing is to be held.
- (3) Service of Notice. Service is complete when the Notice of Hearing is served in person or deposited in the United States mail, postage prepaid, registered or certified, addressed to the last known address of the persons and parties involved, not less than ten (10) days before the date designated for the hearing, or as otherwise required by law.
- (4) Expenses. The expense of furnishing notice must be borne by the party on whose behalf or for whose benefit such notice is given.

(E) Filing.

- (1) Filing, manner and significance. A hard copy of all filings must be addressed to and delivered by United States mail, postage prepaid, or filed in person with the Department's Docket Clerk, 89 Main Street, Montpelier, Vermont 05620-3301 and an electronic copy shall be emailed to DFR.Docket.Clerk@Vermont.gov. The offices of the Department are open for filing, inspection, and copying of public documents from 7:45 a.m. to 4:30 p.m., Monday through Friday, except on National and State legal holidays and during states of emergency. Regardless of the method of delivery employed, filing occurs only upon the receipt of the hard copy by the Department's Docket Clerk, unless an alternate method has been authorized by the Commissioner. An initial filing may include a request

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that future filings in a particular matter be accepted via e-mail only and the Commissioner shall have discretion to grant such requests after an opportunity for each party to be heard on the request.

(2) *Number of copies.* Except as provided herein, or as otherwise authorized by the Commissioner, all filings must include an original and two copies of each document.

(3) *Form of Filings Generally.* Except as provided in ~~Section 4(b)~~1.04 (E)(4) or as ordered by the Commissioner, all filings must be printed on paper 8 1/2" x 11" in size. The name and docket number of the case, the page numbering of the filing and the date upon which it was prepared must appear in the upper right-hand corner of all filings. Page numbering must show both the number of the particular page and the total number of pages in the filing. Filings should be headed by a descriptive title. The Commissioner may refuse to accept for filing or, after filing, may reject any filing which fails to conform to the requirements of this regulation; provided, that if no substantial prejudice will occur to any other party, the filing party shall be afforded a reasonable opportunity to cure the defect, and such cure, if made, shall be deemed to relate back to the original date of filing.

~~— (b) Where a statute provides an opportunity for a hearing if a hearing is requested by a licensee, the licensee's request for a hearing shall be considered the pleading which initiates the contested case.~~

~~— (c) In the Commissioner's discretion, any written communication concerning a matter within the Commissioner's jurisdiction, may be treated as a pleading initiating a contested case.~~

~~— (d) The contested case will be assigned a docket number by the Docket Clerk for the Department which shall appear on the first page of all pleadings and papers filed in the proceeding.~~

~~Section 3. APPEARANCES IN CONTESTED CASES~~

~~— (a) Upon the filing of a pleading initiating a contested case, the name and address of the attorney or person who has signed the pleading will be entered on the docket of the department.~~

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~~———— (b) Any party to a contested case may appear for himself or herself or may be represented by an attorney admitted to practice in the State of Vermont. An attorney not admitted to practice in the State of Vermont may appear for a party with permission of the Commissioner. A party may also be represented by an authorized agent with permission of the Commissioner.~~

~~———— (c) All parties shall file a notice of appearance, in writing, indicating whether the party will be represented by an attorney(s), authorized agent(s), or whether the party will be appearing pro. se. Said notices shall be filed with the Commissioner and served under Section 4 of this regulation at least 10 days prior to the hearing. When an authorized agent or attorney has entered an appearance for a party in a contested case, he or she shall remain as representative or counsel for the party until granted leave to withdraw by the Commissioner.~~

Section 4. FILING AND SERVICE OF DOCUMENTS IN CONTESTED CASES

~~———— (a) Filing of pleadings, documents and papers in contested cases shall be deemed to occur when the pleading, document or paper is received by the Commissioner.~~

~~———— (b) Service of the initial pleading, charge, or notice upon each party entitled to be served shall be accomplished by delivery in person as set forth in subparagraph(d) below or by certified mail, return receipt requested, to the party's last known address except in cases where a different manner of service is required by law.~~

~~———— (c) All motions, pleadings and correspondence filed by a party subsequent to the initial pleading in a contested case shall be served upon all other parties in the case. Service made to or by an attorney or authorized agent shall be considered, in all respects, notice to or from the party represented by the attorney or authorized agent.~~

~~———— (d) Service of all motions, pleadings and correspondence upon an attorney, authorized agent, or party shall be made by delivering a copy to him or her, by mailing it to his or her last known address, or service by facsimile transmission. Delivery of a copy means handing it to the attorney, authorized agent, or party, or leaving it at his or her office with the person in charge thereof or leaving it at his or her dwelling house or usual place of abode with a person of suitable age and discretion then residing therein. Service by mail shall mean first class mail or an equivalent service through a mailing company, in a sealed and properly addressed and stamped envelope with the return address of the sender listed thereon. Service by mail is deemed complete upon placing the mail in a proper United States post office receptacle, a mailing company receptacle, or with a postal or mailing company agent.~~

Section 5. ANSWER TO CONTESTED MATTERS

~~(a)~~ (4) *Special rules for certain exhibits.* Exhibits need not comply with the printing or size requirement of Section 1.04 (E)(3) when their purpose or content makes it impracticable to do so, but in all cases where it is not manifestly impracticable to do so, exhibits must be so designed that they can be folded to a size 8 1/2" x11". The identity and page number of any exhibit which measures, or which is folded to measure 8 1/2" x 11", must appear in the upper right-hand corner when the exhibit is positioned with the 8 1/2" sides as its top and bottom. The identification and page number must be set out horizontally when the exhibit is positioned in the manner described in the preceding sentence. The Commissioner may refuse to accept for filing, or after filing, may at any time reject any exhibit which fails to conform to the requirements of this regulation, provided, that if no substantial prejudice will occur to any other party, the filing party must be offered a reasonable opportunity to cure the defect, and such cure, if made, shall be deemed to relate back to the original date of filing.

(F) Service.

- (1) In addition to any other requirement imposed by law, every filing must on the same day on which it is filed, be served by the party filing the same upon every other party who has filed a notice of appearance.
- (2) Whenever under this regulation service is required to be made on a party, it must be made upon the attorney or pro se representative whose appearance has been filed on behalf of such party.
- (3) For all filings, except the initial pleading, service may be made by mailing a copy of the filing, first class postage prepaid, to the person whose notice of appearance is on file; but service may also be made by personal delivery or by any other means authorized by the party entitled to service or authorized by the Commissioner.

(G) Appearances.

- (1) Attorney Notice of Appearance. Attorneys must file a written notice of appearance with respect to any matter in which they are representing a party.
- (2) Pro Se Representative Notice of Appearance.
 - (a) Any individual may be a pro se representative in a particular matter. For purposes of these rules a person engaged in self-representation shall be known as a pro se representative. At the discretion of the Hearing Officer, persons who are not attorneys

may be permitted to be pro se representatives for an entity as follows: a partnership may be represented by a partner, an LLC may be represented by an officer or managing member, and a cooperative or association may be represented by an officer thereof or by an employee designated in writing by an officer thereof. Upon motion, such permission shall be given in all proceedings unless, because of their factual or legal complexity or because of the number of parties, the Hearing Officer is of the opinion that there is a substantial possibility that the participation of a pro se representative will unnecessarily prolong such proceeding or will result in inadequate exposition of factual or legal matters.

- (b) Corporations must appear through an attorney except as set forth in this rule. Upon motion, the Hearing Officer may permit a corporation to appear through a non-attorney representative only if the proposed representative establishes that: (1) the organization cannot afford to hire counsel, nor can it secure counsel on a pro bono basis; (2) the proposed lay representative is authorized to represent the organization; (3) the proposed lay representative demonstrates adequate legal knowledge and skills to represent the organization without being unduly burdensome; and (4) the representative shares a common interest with the organization.
- (c) A business entity or an individual engaged in self-representation must file a written Notice of Pro Se Representative Appearance with respect to any matter in which they are appearing. This regulation shall in no respect relieve any party from the necessity of compliance with any applicable rule, law, practice, procedure, or other requirement.
- (3) Failure to File Notice of Appearance. Except as otherwise provided by law, a party, or party's pro se representative or attorney, who has failed to file a Notice of Appearance will not be entitled to notice or service of any document in connection with such matter, whether such notice or service is required to be made by the Department, by a party, or by a person seeking party status.
- (4) Service. A copy of each Notice of Appearance must, on the same day it is filed, be served by the party filing the same upon all parties on whose behalf a notice of appearance has been filed. A list of such persons and parties will be provided by the Docket Clerk upon request.
- (5) Attorneys admitted elsewhere. An attorney admitted to practice and in good standing in any other state or American or common law jurisdiction may represent a party under this rule with the written permission of the

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Hearing Officer provided that such attorney must have co-counsel of record who is admitted to practice in Vermont.

(6) Withdrawal of appearance. An attorney who has appeared on behalf of a party may withdraw only upon permission of the Hearing Officer. A person appearing as a pro se representative may withdraw without permission of the Hearing Officer, provided, that if other counsel or pro se representative has not appeared for such person within such reasonable time as allowed by the Hearing Officer, such withdrawal must be deemed to constitute withdrawal of that party and as such may result in a default judgement being entered against the party.

(H) Answer to Contested Matters.

(1) The Respondent shall must file an answer to the petition or pleading which initiated the contested case. The Department need not file an answer where a contested case is initiated by a licensee's request for a hearing as provided in Section 2(b) of this regulation. The answer shall must be filed within the time frame established by law or within thirty (30) days of the date on which the charges were served in accordance with Section 4(b) of this regulation pleading initiating the contested case was served, whichever is shorter, and shall. An answer must include the following-;

(1)-(a) A response concerning the substance of to each of the allegations allegation made in the pleading document that initiated the contested case which are disputed by the Respondent disputes. When the Respondent intends in good faith to deny only part of an allegation, he or she Respondent must specify the part of the allegation that is contested. Any allegation that is not contested may be deemed admitted.

(2)-(b) A brief statement of the legal and actual/factual basis of any defense the Respondent intends to offer at the hearing.

(3)-(c) Whether the Respondent waives an oral hearing.

(b)-(2) If a Respondent does not file an answer within the time frame allowed under this regulation, the allegations contained in the pleading which initiated the contested case will may be treated as proven and a default judgment may be entered in the case as provided in Section 12 of this regulation-1.04 (T).

(I) Defective Filings.

Substantially defective or insufficient filings may be rejected by the Department, provided, that if it will not unreasonably delay any proceeding nor unreasonably adversely affect the rights of any party, the Department should allow a reasonable

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opportunity for a party to cure any defect or insufficiency. A filing which is found to be defective or insufficient is not deemed to have been cured until the date on which the last document is filed which removes the defect or makes the filing complete. A filing is substantially insufficient if, among other things, it fails to include all material information required by statute or rule.

(J) Computation of Time.

The provisions of the Vermont Rules of Civil Procedure, Rule 6 (a) and 6 (b) (Time – Computing Time and Extending Time) apply.

(K) Remote Hearings.

At the Hearing Officer’s discretion, a hearing may be held in whole or in part by telephone conference, video conference, or other electronic means. In deciding whether a hearing should be held remotely, factors for consideration include safety, timeliness, cost-effectiveness, efficiency, facility accommodations, witness availability, public interest, the parties’ preferences, and the proceeding’s complexity.

(L) Postponement or Continuance of Hearing.

A hearing may be postponed or continued for good cause by the Hearing Officer either *sua sponte* or upon motion of a party. Notice of any postponement or continuance must be given in writing to all parties to the hearing within a reasonable time. All parties involved in a hearing must attempt to avoid undue delay caused by repetitive postponements or continuances.

(M) Motions.

Motions made during a hearing may be required to be in writing and supported by a brief within such period as the Hearing Officer may direct. Motions not made during the hearing must be in writing and, if they raise a substantial issue of law, must be accompanied by a brief. The Hearing Officer may decline to consider a motion not made within a reasonable time after the issue first arises with respect to the moving party.

(N) Briefs.

Briefs shall address each issue of law which a party desires the Hearing Officer to consider. Whenever a brief addresses more than one issue, it shall be suitably divided into sections which separately address each issue. Such a brief shall contain, immediately following the cover page, a detailed table of contents.

(O) Ex Parte Orders.

(1) Where the Commissioner is authorized by law to issue a cease-and-desist or other injunctive order, including an order suspending a license, he or she may do so without written or oral notice to the Respondent. A request for such an *ex parte* order shall be in the form of a written pleading. Unless a different standard is provided by law, the Commissioner may only issue an *ex parte* order effecting the revocation, suspension, annulment, or withdrawal of a license if the Commissioner finds that the public health, safety, or welfare imperatively requires emergency action before a hearing can be held upon proper notice.

(2) Where a cease-and-desist or other injunctive order is issued without notice, the Respondent shall be notified of the Respondent's right to a hearing at the time such cease-and-desist or other injunctive order is issued. The notice shall specify the deadline to request a hearing. Such hearing shall generally be held within thirty days of receipt by the Commissioner of the Respondent's request for hearing and a decision shall be rendered within sixty days after the conclusion of the hearing. The Commissioner may enlarge the time to hold the hearing or render a decision upon a showing of good cause.

Section 6. INTERVENTION

~~—— (a) A petition for leave to intervene as a party shall be made by motion in accordance with Section 9 of this regulation. The motion must set forth the grounds of the proposed intervention, the position and interest of the Petitioner affected in the proceeding, and whether the Petitioner's position is in support of or opposition to the order or relief sought.~~

~~—— (b) The motion shall be filed and service made on all other parties in accordance with the requirements of~~

(P) Harmless Error.

The provisions of the Vermont Rules of Civil Procedure, Rule 61 (Harmless Error) apply.

(Q) Relief from Order.

The provisions of the Vermont Rules of Civil Procedure, Rule 60 (Relief from Judgment or Order) apply.

(R) Sanctions.

(1) *Proposed findings and briefs.* An attorney or pro se representative who fails to submit proposed findings or briefs, after having been directed to do so, or who fails to conform to the requirements respecting proposed

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findings or briefs in Sections 1.04 (N) and (X), may be suspended from further participation in the proceeding or for such period of time as the Hearing Officer finds to be just. In addition, with respect to any issue of law as to which a party has failed to conform to the requirements of Section 1.04 (N), such party may be deemed to have waived any claims of law with respect to such issue, and the claims of the opposing party with respect thereto may be deemed to be the law of the case.

(2) Contemptuous or disruptive behavior. An attorney, party, pro se representative, or witness who engages in contemptuous or disruptive behavior before the Hearing Officer during a hearing shall first be warned once off the record in a bench conference with the parties. Thereafter, if such person persists in such behavior, the individual shall be warned once on the record by the Hearing Officer. Thereafter, if such person continues to persist in such behavior, such person may be suspended from further participation in the proceeding or for such period of time as the Hearing Officer finds to be just.

(S) Ex Parte Communication.

(1) Unless required for the disposition of ex parte matters authorized by law, members or employees of the Department 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, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or the representative of any party, except upon notice and opportunity for all parties to participate. The Department member or employee member:

(a) may communicate with other members or employees of the Department; and

(b) may have the aid and advice of one or more personal assistants.

(T) Waiver of Rules.

Except where precluded by statute, the Commissioner may waive these rules when the interest of justice requires.

(U) Informal Disposition

Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default.

(V) Default Judgment.

If a Respondent, against whom a pleading initiating a contested case has been properly filed and served, fails to answer within the time period specified in

Section 1.04 (H)(1), fails to request a hearing, fails to appear at a scheduled hearing, withdraws from a hearing, or otherwise fails to defend the charge, the Petitioner may move for a decision by default. The Commissioner may render a decision by default at any time after the passage of ten days from the filing and service of the motion for default, whereupon the Commissioner may issue an order based on the record.

(W) Official Notice.

Official notice may be taken of all facts of which judicial notice may be taken and of other facts, of a technical nature, within the specialized knowledge and experience of the Department.

(X) Public Hearings.

(1) In matters in which the Commissioner must hold a public hearing, other than rulemaking and evidentiary hearings, any person may submit written statements up until the close of business on the day of the public hearing or offer oral comments relevant to the subject matter of the hearing. The Commissioner may place reasonable time limitations on oral comments as necessary for the orderly conduct of the hearing.

(2) All public hearings must be recorded, and the recording retained at the Department. A public hearing, or any part thereof, shall be transcribed at the request of a party and upon payment by the requesting party of the reasonable costs thereof.

(Y) Proposed Findings of Fact and Conclusions of Law.

The Hearing Officer may require each party to submit proposed findings of fact and conclusions of law. Each proposed finding shall deal concisely with a single fact or with a group of facts so interrelated that they cannot reasonably be treated separately. Proposed findings shall be consecutively numbered and shall be in logical sequence. Where the party claims to have established more than one ultimate fact, proposed findings shall be arranged into separate groups, appropriately identified as to subject matter. Each proposed finding shall contain a citation or citations to the specific part or parts of the record containing the evidence upon which the proposed finding is based.

(Z) Commissioner's Order.

(1) The Commissioner will review the proposed findings of fact and conclusions of law, if any, and timely issue an Order as required by applicable law or, if no law dictates the time, within a reasonable time.

(2) The Order shall be in writing and shall include findings of fact and conclusions of law separately stated. Findings of fact shall be based exclusively on the evidence presented at the hearing or known to all

parties, including matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a statement of the underlying supporting facts. If a party submits proposed findings of fact, the Order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by authority or reasoned opinion. An Order shall not be made except upon consideration of the record as a whole or such portion thereof as may be supported by competent material and substantial evidence.

- (3) The Order will become effective immediately, or as otherwise specified by either the Order or applicable law.
- (4) Parties must be promptly notified of the Order, either personally or by mail, postage prepaid, certified or registered, addressed to the last known address of the person involved, or by electronic means if all parties have agreed to employ such means. A copy of the Order must be delivered or mailed to each party or to the attorney of each party or pro se representative of record. In addition, when practicable, Orders may be sent via electronic mail to all parties to a proceeding.

1.05 EVIDENTIARY HEARINGS

(A) Authority of a Hearing Officer.

When the Commissioner designates a Hearing Officer to preside at a hearing, the Hearing Officer has the authority to conduct the hearing(s), take all necessary action to avoid delay, maintain order, and ensure the development of a clear and complete record. The Hearing Officer shall have all powers necessary to conduct a hearing including the power to:

- (1) administer oaths and affirmations;
- (2) regulate the course of hearings, set the time and place for continued hearings, set deadlines for filing of documents, provide for the taking of testimony by deposition if necessary, and generally conduct the proceeding according to administrative law and this regulation;
- (3) examine witnesses and direct witnesses to testify, limit the number of times any witness may testify, limit repetitious or cumulative testimony, and set reasonable limits on the amount of time each witness may testify;
- (4) rule upon offers of proof and receive relevant evidence;
- (5) sign and issue subpoenas that require attendance, giving testimony, and the production of books, papers, electronically stored information, and other documentary evidence;

- ~~(6) direct parties to appear and confer for settlement or simplification of issues, and to otherwise conduct prehearing conferences;~~
- ~~(7) dispose of procedural requests or similar matters by written or oral order;~~
- ~~(8) impose sanctions pursuant to Section 41.04(R);~~
- ~~(9) enter procedural and evidentiary orders that carry out the purpose of this regulation; and~~

~~—— (c) Where a motion for intervention as a party is granted by the Commissioner, the Commissioner may limit that party's participation in the proceedings to only those issues in which the party has demonstrated a direct and substantial interest, may require such party to join with other parties with respect to appearance by counsel, presentation of evidence or other matters, or may otherwise limit such party's participation, all as the interests of justice and economy of adjudication require.~~

~~Section 7. PROCEEDINGS BEFORE HEARING OFFICER~~

~~—— (a) Where the Commissioner designates a hearing officer to preside at an oral hearing or other proceeding, the hearing officer shall be authorized to administer oaths and do all other things necessary for the proper conduct of such hearing or proceedings.~~

~~—— (b) In proceedings before a hearing officer, after the time for filing requests for findings of fact and conclusions of law provided under Section 11(g) of this regulation has expired, or the opportunity to file has been waived by all parties, the hearing officer shall serve on all parties a written proposal for decision.~~

~~—— (c) Any party adversely affected by the proposal of decision of the hearing officer shall have 10 days from the date of service to file written exceptions, legal briefs and request oral argument before the Commissioner.~~

~~—— (d) The parties, by written stipulation, may waive the opportunity to file exceptions, legal briefs or request oral argument before the Commissioner.~~

~~Section 8. PRE-HEARING CONFERENCE~~

- ~~—— (a) (10) render a Proposal for Decision, Draft Final Order, or similar document for the Commissioner's review.~~

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(B) Disqualification of Hearing Officer.

Any party may file a motion, which shall be supported by affidavit, setting forth allegations of personal bias, prejudice, or other facts that the party alleges require disqualification of the Hearing Officer. The Commissioner shall personally determine this issue as part of the record of the case. Voluntary recusal is permissible for good cause shown. When a Hearing Officer is disqualified or recused, or it becomes impractical for the Hearing Officer to continue, the Commissioner will determine how to proceed, consistent with these Rules.

(C) Prehearing Conference.

(1) The Commissioner or hearing officer Hearing Officer may direct the parties to appear before him or her for one or more for pre-hearing conferences conference(s) to consider the following matters including, but not limited to:

- (1) (a) clarification or simplification of the issues;
- (2) (b) the necessity or desirability of amendments or supplements to any filing;
- (3) (c) the possibility of obtaining stipulations of fact, documents, and/or exhibits which will avoid unnecessary proof disputes and/or motion practice;
- (4) (d) to hear any motions that should appropriately be heard and ruled upon prior to the hearing;
- (5) (e) to establish a limitation on the number of expert or cumulative other witnesses; and
- (6) (f) any other matters that may aid in the disposition of the case.

(b) The Commissioner or hearing officer (2) The Hearing Officer shall issue a written order which recites the action taken at the pre-hearing conference, including any agreements made by the parties. When entered, such order controls the subsequent course of the proceedings unless later modified in writing.

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Section 9. MOTIONS

Parties (D) Intervention.

(1) A person seeking to intervene must submit a timely motion demonstrating:

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(a) a substantial interest which may be adversely affected by the outcome of the proceeding;

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(b) that the proceeding affords the exclusive means by which the applicant can protect that interest; and

(c) that the applicant's interest is not adequately represented by existing parties.

(2) The Hearing Officer shall rule on a motion to intervene with reasonable promptness and shall issue a written pre-hearing decision on such motion.

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(3) The Hearing Officer may restrict an intervenor's participation to only those issues in which the party has demonstrated an interest, may require such party to join with other parties with respect to representation by counsel or by pro se representative, presentation of evidence or other matters, or may otherwise limit such party's participation, all as the interests of justice and economy of adjudication require.

(E) Joinder.

The provisions of the Vermont Rules of Civil Procedure, Rules 19 (Joinder of Persons Needed for Just Adjudication; 20 (Permissive Joinder of Parties); and 21 (Misjoinder and Nonjoinder of Parties) apply.

(F) Consolidation of Hearings / Separate Hearings.

The provisions of the Vermont Rules of Civil Procedure, Rule 42 (Consolidation; Separate Trials) apply to the extent practicable.

(G) Discovery.

(1) The following discovery procedures may be ordered by the Hearing Officer upon the written request of any party when necessary to expedite the proceedings, to ensure a clear or concise record, to ensure a fair opportunity to prepare for the hearing, or to avoid surprise at the hearing:

(a) production of documents or things;

(b) depositions; and

(c) written interrogatories.

(2) The Hearing Officer may restrict discovery when necessary to prevent undue delay, duplication, or harassment.

(3) Discovery by the Department. The procedures enumerated in this section may be used by the Commissioner or the Commissioner's agents and employees, but the availability of such procedures shall in no way limit the authority of the Commissioner and the Commissioner's agents and

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employees, including but not limited to the authority to inquire into and examine any matter within the jurisdiction of the Commissioner, to examine books, accounts and papers of any person or entity subject to the Commissioner's jurisdiction or to enter and examine the property of any person or entity subject to the Commissioner's jurisdiction.

(H) Subpoenas.

- (1) Upon application to the Hearing Officer by any party, the Hearing Officer may issue a subpoena for attendance at a deposition or a hearing, which may include the requirement to produce books, papers, electronically stored information, documents, or tangible things designated in the subpoena and reasonably necessary to resolve the matter under consideration, subject to the limitations on discovery prescribed in Section 1.05 (G) of this regulation.
- (2) Every subpoena must state the title of the action and must require each person to whom it is directed to attend and give testimony at the time and place specified in the subpoena.
- (3) The Hearing Officer, upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance, may quash or modify the subpoena if it is unreasonable, unduly burdensome, or oppressive.

(I) Transcription.

An evidentiary hearing, or any part thereof, must be transcribed by a stenographer and the petitioner will bear the cost.

(J) Conduct of Hearing.

- (1) The typical order of an evidentiary hearing, subject to modification by the Hearing Officer, is as follows:
 - (a) presentation, argument, and disposition of motions. Unless different dates are established by the pre-hearing order, on the merits;
 - (b) presentation of opening statements;
 - (c) Petitioner's case in chief and presentation of evidence;
 - (d) Respondent's case in chief and presentation of evidence;
 - (e) Petitioner's case in rebuttal;

(f) Petitioner’s closing statement, which may include legal argument;

(g) Respondent’s closing statement, which may include legal argument; and

(h) presentation and argument of all such motions shall be filed at least 15 days prior to the hearing and any opposition to a motion must be in writing and filed no later than 10 days after the motion is served.

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Section 10. EVIDENCE

(a) ~~The Commissioner or hearing officer~~ (K) Witnesses.

(1) Before testifying, every witness must give an oath or affirmation to testify truthfully. The testimony of a witness on direct examination may be offered in the written form of prefiled testimony, either by having it read into the record or by offering it for incorporation into the record without reading, provided all parties stipulate to its admission. All cross-examination shall be by live testimony.

(2) Form of prefiled testimony. The preferred form for prefiled testimony is question/answer form. However, such testimony may be filed in narrative form provided that it is typed and double spaced and that the narrative includes headers to identify subject matter categories. The prefiled testimony of each witness must be preceded by a brief statement, set forth on a separate page, containing a summary of the testimony and exhibits referred to in such testimony. The summary must not be admitted as evidence. All prefiled testimony must include a signed statement that it is being submitted under the pains and penalties of perjury.

(L) Evidence.

(1) General Rule. Evidentiary matters are governed by 3 V.S.A. § 810.

(2) The Hearing Officer may order any party intending to submit documentary exhibits and/or written testimony at a hearing to provide the opposing party with a copy of those document(s) and file the original(s) with the Commissioner/Docket Clerk within a specified time prior to the hearing. The Commissioner or hearing officer/Hearing Officer may also order a party to provide a summary of expected testimony prior to the hearing. The filing of documentary exhibits and/or written testimony shall not constitute admission of that evidence into the record of the contested case. The opposing part may object to the admission of the documentary exhibits and/or written testimony at the hearing. Documentary exhibits and written testimony which have not been pre-filed/prefiled as required herein shall not be admitted into evidence except upon good cause shown. Impeachment exhibits need not be pre-filed/prefiled.

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~~(b)(3) Objections to the admissibility of prefiled testimony or exhibits must be filed in writing not more than thirty days after such evidence has been prefiled or five days before the date of the hearing, whichever is earlier.~~

~~(4) Parties have the obligation to make good faith efforts among themselves to stipulate to uncontested facts, and to resolve or reduce all differences related to evidentiary and procedural matters, and to avoid the filing of unnecessary motions and other pleadings.~~

~~(e) The 5) Parties may make oral objections to evidentiary offers during the hearing.~~

~~(6) Parties may request confidential treatment of information exempted from public inspection by law.~~

~~(M) Reopening or Rehearing.~~

~~(1) Except as otherwise provided by law, if the Commissioner or hearing officer may has not issued an Order, the Commissioner may, at the discretion of the Commissioner, or upon the motion of a party, order the parties to exchange witness lists within a certain time period that a hearing be reopened if a hearing has concluded and the record evidence is found by the Commissioner to be deficient. At the discretion of the Commissioner or upon the motion of a party, a rehearing may be ordered where the Commissioner has issued an Order and the record evidence or legal analysis is subsequently found to be deficient.~~

~~(2) A party's motion for rehearing or reopening must describe in detail the basis for the motion. A motion for the reopening of a hearing must be filed within ten (10) days of the date of the conclusion of the hearing, but prior to the hearing issuance of the Commissioner's Order. A motion for rehearing must be filed within ten (10) days of the date of mailing of the Commissioner's Order. A rehearing or reopening of a hearing shall be noticed and conducted in the same manner as an original hearing. The evidence received at the rehearing or reopening of a hearing shall be included in the record for the Commissioner's consideration and for judicial review. An Order may be amended or vacated after rehearing.~~

~~(d) The admissibility of evidence in hearings conducted pursuant to this regulation shall be determined in accordance with the criteria specified in 3 V.S.A. § 810(1) (4).~~

~~Section 11. GENERAL PROCEDURES FOR HEARINGS~~

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~~(a) When required by law, an oral hearing shall be held in a contested case and the Commissioner or hearing officer shall cause a time and place to be assigned for the hearing. Written notice of the hearing shall be served on each party.~~

~~(b) A(N) Informal Disposition.~~

~~Prior to the issuance of the Order, the parties may negotiate an informal disposition outside the presence of the Hearing Officer. If the parties reach agreement on an informal disposition, the parties shall notify the Hearing Officer and also submit the agreement to the Commissioner, who may accept or reject the proposal.~~

~~(O) Waiver of Hearing.~~

~~Unless precluded by law, a hearing may be waived in the discretion of the Commissioner: (1) in a formal rule-making proceeding, if no request to be heard is made at least five days prior to the hearing date in accordance with 3 V.S.A. § 840 (a) and the Petitioner, if any, waives the hearing; and (2) in any other proceeding if all the parties, if all parties to that proceeding file written waivers of the opportunity for a hearing.~~

~~(e) Attorneys and authorized agents representing parties in a contested case shall be afforded the ability to participate fully, within the limits of their profession, in any hearing before the Commissioner. Every party shall have the right to participate fully in a hearing.~~

~~(d) A witness shall be administered an oath or affirmation before testifying. The testimony of a witness on direct examination may be offered in written form, either by having it read into the record or by offering it for incorporation in the record without reading, provided all parties stipulate to its admission.~~

~~(e) A hearing, or any part thereof, shall be transcribed at the request of a party and upon payment by the requesting party of the reasonable costs thereof.~~

~~(f) Legal briefs and requests for findings of fact and conclusions of law, if any, shall be filed within 20 days after the hearing. If a hearing has been waived in accordance with paragraph (b) of this section, legal briefs and requests for findings of fact and conclusions of law, if any, shall be filed within 20 days after the date originally set for the hearing. The parties may also waive, in writing or on the record, the opportunity file legal briefs and requests for findings of fact and conclusions of law.~~

Section 12. DEFAULT

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~~Where a Respondent, against whom a pleading initiating a contested case has been properly filed and served, fails to answer within the time period specified in Section 5(a), fails to appear at a scheduled hearing or otherwise fails to defend the charge, the Petitioner may move for a decision by default. The Commissioner or hearing officer may render a decision by default at any time after passage of ten days from the filing and service of the motion for default, whereupon the Commissioner may issue any applicable order.~~

~~Section 13. EX PARTE ORDERS~~

~~(a) Where the Commissioner is authorized by law to issue a cease and desist or other injunctive order, including an order suspending a license, he or she may do so without written or oral notice to the Respondent. A request for an ex parte order shall be in the form of a written pleading. Unless a different standard is provided by law, the Commissioner may only issue an ex parte order effecting the revocation, suspension, annulment, or withdrawal of a license if he or she finds that the public health, safety or welfare imperatively requires emergency action before a hearing can be held upon proper notice.~~

~~(b) Where a cease and desist or other injunctive order is issued without notice, the Respondent shall be notified of the right to a hearing at the time such cease and desist or other injunctive order is issued. Unless otherwise specified by law, such hearing shall be held within thirty days of receipt by the Department of the Respondent's request for hearing and a decision shall [be] rendered within sixty days after the conclusion of the hearing. The Commissioner may enlarge the time to hold the hearing or render a decision upon a showing of good cause.~~

~~Section 14. PETITIONS FOR RULE MAKING~~

~~(a) (P) Hearing Officer's Proposal for Decision.~~

~~(1) The Hearing Officer's proposal for decision shall be in writing and shall include findings of fact and conclusions of law, or opinions separately stated. Findings of fact shall be based exclusively on the evidence presented at the hearing or known to all parties, including matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a statement of the underlying supporting facts. If a party submits proposed findings of fact, the proposal for decision shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by authority or reasoned opinion. A proposal for decision shall not be submitted to the Commissioner except upon consideration of~~

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the record as a whole or such portion thereof as may be supported by competent material and substantial evidence.

- (2) The Hearing Officer may require any party to file proposed findings of fact in accordance with Section 1.04 (X).
- (3) The Hearing Officer shall submit the proposal for decision to the Commissioner via such means as the Commissioner shall direct.
- (4) The Hearing Officer shall serve on all parties the proposal for decision. Any party shall have ten (10) days from the date of service to file written exceptions, legal briefs, and request oral argument before the Commissioner.
- (5) The parties, by written stipulation, may waive the opportunity to file exceptions, legal briefs, or request oral argument concerning the proposal for decision before the Commissioner.

(Q) Order of the Commissioner.

- (1) The Commissioner shall review the Hearing Officer's Proposal for Decision and shall issue an Order within a reasonable time or as set forth by applicable statutes.
- (2) The Order will become effective immediately upon its execution, or as otherwise specified by either the Order or applicable statutes.
- (3) Parties shall be promptly notified of the Order, either personally or by mail, postage prepaid, certified, or registered, addressed to the last known address of the person involved, or electronically if the parties have agreed to electronic service. A copy of the Order shall be delivered or mailed to each party or to the attorney or pro se representative of record. In addition, when practicable, Orders may be sent via electronic mail to all parties to a proceeding.

(R) Commissioner as Hearing Officer: Order.

For hearings over which the Commissioner personally presides, Section 1.04(Y) applies to the Order by the Commissioner and Section 1.05(P) and (Q) apply when the Commissioner does not personally preside.

1.06 Appeals

In several instances, statutes within the Department's jurisdiction specifically address the process to appeal an Order. In those instances, the specific statute governs the appeal. Otherwise, the general appeal process is governed by this section, 8 V.S.A. § 16, and 3 V.S.A. § 815. A party contemplating an appeal must review the statutes at issue in the hearing to determine the appropriate appeal process.

In all instances, a Notice of Appeal must be filed with the Commissioner and the applicable court of jurisdiction. Upon receipt of a Notice of Appeal, the Commissioner will compile the record of the administrative process and submit the record to the court and to each party.

1.07 Petitions for Rulemaking

(A) Petitions for the adoption, amendment, or repeal of any rule or regulation will be entertained by the Commissioner in accordance with 3 V.S.A. § 806. Any such petition shall be filed with the Commissioner in accordance with the requirements of Section 2(a)1.04(E) of this regulation. The petition will be considered informally and, within thirty (30) days after the filing of the petition, the Commissioner shall either deny the petition, stating the reasons for the denial in writing, or shall initiate formal rulemaking proceedings.

(b) B) When requested by twenty-five (25) or more persons or by the legislative committee on administrative rules, the Commissioner shall initiate formal rulemaking proceedings to adopt an existing practice or procedure as a rule of, as required by 3 V.S.A. § 831(c). A request under this subsection shall be filed with the Commissioner in accordance with the requirements of Section 1.04(E) of this regulation.

Section 15. PETITIONS FOR DECLARATORY RULINGS

1.08 Rulemaking Hearing Procedures

Department rules shall be adopted by taking the steps described in 3 V.S.A. § 836. The Department is not mandated by law to hold its own hearing on a rulemaking unless a petition is filed requesting a hearing pursuant to 3 V.S.A. § 840. Such petition shall be filed in accordance Section 1.04 (E). Nonetheless, holding such hearings is the norm, as the Department should seek to maximize public participation in the rulemaking process. Department rulemaking hearings normally do not trigger the due process requirements present in an adjudicatory hearing and may be conducted on a less formal basis.

As a general rule, rulemaking hearings are held in the following manner. The Commissioner will schedule and notice a rulemaking hearing in accordance with the Secretary of State's guidelines. Department staff will preside at the rulemaking hearing. The purpose of the rulemaking hearing is to gather public comment(s) relevant to the proposed rule rather than to respond to such comment(s) or to debate the substance of the proposed rule. Department staff may place reasonable time limits on individual comments as necessary for the orderly conduct of the hearing. A rulemaking hearing will remain open for a reasonable time sufficient to hear such comments as are presented, and for a minimum of twenty (20) minutes even if no commenters are present. All hearings will be recorded. Attendees will be identified in the record whether or not the attendee provides comment. The recording as well as any written comments submitted at the hearing will be part of the rulemaking record.

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1.09 Petitions for Declaratory Rulings

Pursuant to 3 V.S.A. § 808, an interested person may petition the Commissioner for a declaratory ruling as to the applicability of any statutory provision or of any rule or order of the Commissioner. Any such petition shall be filed with the Commissioner in accordance with the requirements of Section ~~2(a)1.04(E)~~ of this regulation. The petition shall identify the statute, rule, or order involved, shall state the specific facts to which the statute, rule, or order is sought to be applied and shall be accompanied by a legal brief addressing any issue of law which the Petitioner desires the Commissioner to consider. Petitions ~~or for~~ declaratory rulings under this section will be considered informally unless good cause is shown for more formal proceedings.

Section 16. PETITION TO DESCRIBE AN EXISTING PRACTICE

1.10 Petitions to Describe an Existing Practice

Pursuant to 3 V.S.A. § 831(b), an interested person may petition the Commissioner to provide a description of an existing practice of the Department. Any such petition shall be filed with the Commissioner in accordance with the requirements of Section ~~2(a)1.04(E)~~ of this regulation. The petition shall be considered informally ~~by the Commissioner,~~ unless good cause is shown for more formal proceedings.

Section 17. ENLARGEMENT OF RULES

~~The Commissioner may take a case out of these rules when, in his or her opinion, the interest of justice requires, except where precluded by statute.~~

Section 18. CONFLICT

1.11 Conflict

In the event that this regulation or any section herein conflicts with Vermont statute, ~~the~~ Vermont statute shall govern.

Section 19. SEVERABILITY

1.12 Severability

If any provision of this regulation or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the regulation and the application of such provisions to other persons or circumstances shall not be affected thereby.

Section 20. EFFECTIVE DATE

1.13 Effective Date

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This regulation ~~shall be~~ effective ~~May~~ on January 1, 20002022.

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