

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Insurance
233 Richmond Street
Providence, RI 02903

INSURANCE REGULATION 63

~~WORKERS' COMPENSATION INSURANCE RATE HEARINGS~~

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~~**Section 1 — Definitions**~~

~~Except as otherwise provided herein, the definitions contained in Section 1 of the Department of Business Regulation regulations entitled Departmental Hearings In Contested Cases are hereby adopted, except (1) the definition of "party" shall be as follows:~~

~~(e) — "Party" means the insurance company or licensed rating organization making a workers' compensation insurance rate filing ("petitioner"); the Department of Business Regulation ("Department"); the office of the Attorney General (the "Attorney General"); and the Rhode Island Consumers Council. The Department shall not be deemed a formal party to any proceedings governed by this regulation unless it chooses to present its own case at hearing;~~

~~and (2) the following definitions shall be added:~~

~~(h) — "Director" shall mean the Director of the Department of Business Regulation.~~

~~(i) "Intervenor" shall mean a person, organization or association permitted to intervene in a proceeding as provided by these rules.~~

~~(j) "Licensed rating organization" shall mean an organization referred to in R.I. Gen. Laws § 27-9-22 et seq.~~

Section 2 ~~**Scope and Purpose**~~

~~(a) These regulations shall govern all adjudicatory proceedings relating to workers' compensation rate filings before the Department under the laws of the State of Rhode Island. When the circumstances of a particular proceeding require more detailed procedures than those set forth in these regulations, additional procedures that assure expeditious review may be promulgated by the Director, by order applicable to that particular proceeding.~~

~~(b) The purposes of these Regulations are as follows:~~

~~1. To expedite the review and disposition of workers' compensation insurance rate hearings;~~

~~2. To enable all parties to discover the positions of all other parties with respect to each filing prior to the actual hearing;~~

~~3. To encourage and promote settlement of all procedural matters relating to each filing without necessity of formal adversary proceedings; and~~

~~4. To limit any final decision of the Director to evidence contained in the record, stipulations to the fact, and matters officially noticed.~~

~~5. To provide for a final decision on a filing within one hundred twenty (120) days from the filing date referred to in Section 5(b) hereof.~~

~~(c) In computing any period of time prescribed or allowed by these rules or by order of the Director, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or a holiday. Where the time period within which an action must be taken is specified by statute, the terms of the statute control and the provisions of this paragraph shall not apply.~~

~~(d) — When by these rules or by a notice or order issued by the Director, an act is required or allowed to be done at, before, or within a specified time, the Director, for cause shown, may at any time, in his or her discretion, with or without request, motion or notice, order the period enlarged before the expiration of the period originally prescribed or as extended by a previous order, provided that time limits or periods that apply to other persons affected by the resulting change or delay are also adjusted appropriately. Requests for enlargement of time that are filed after expiration of the period originally prescribed or as extended by previous order will be granted only in exceptional circumstances.~~

~~**Section 3 — Hearing Officer**~~

~~(a) — The Director, authorized by law to adjudicate insurance rate hearings, may delegate his or her authority to hear the case to a hearing officer.~~

~~(b) — If the Director intends to appoint a hearing officer, said appointment must be made and notice given to all parties within ten (10) days of a filing date.~~

~~(c) — The petitioner may in writing request appointment of an independent hearing officer. If the petitioner, in good faith, shall timely present a sufficient affidavit of personal bias, lack of independence, disqualification by law, or other reason for disqualification, the Director may then disqualify said hearing officer and designate another hearing officer to preside. Any denial of such a request must be in writing setting forth the reasons of such denial.~~

~~(d) — The parties and the Director may stipulate to the appointment of a replacement hearing officer if the hearing officer is unable to continue as hearing officer.~~

~~(e) — In the event that the Department intends to refer to or rely upon factual or opinion evidence not submitted by the petitioner, Attorney General, or intervenor, the Department shall present its own case at the hearing provided however nothing herein shall limit the hearing officer's use of actuaries or other experts to assist the hearing officer in the evaluation of record evidence. In the event, the Department shall present its own case at the hearing, the hearing officer must be completely independent of any case preparation or presentation by the Department.~~

~~(f) — No party shall engage in direct communication with a hearing officer relating to the matters to be heard by the hearing officer without the permission or attendance of all other parties to the proceeding.~~

Section 4 — Intervenors

- (a) — ~~An application for intervenor status shall be made to the Director in writing. The application shall contain a statement explaining how the applicant is or may be, or is a member of a class which is or may be, substantially and directly, affected by the proceeding.~~
- (b) — ~~An application for intervenor status may be filed at any time after the submission of the filing but shall be filed within the time permitted for intervenor applications by an order of the Director which is publicly noticed. Any person who applies for intervenor status after the deadline set by the Director shall be permitted to intervene only upon a compelling demonstration of good cause.~~
- (c) — ~~The director or hearing officer may permit interested individuals to make comments on the record as to the matters before the Director or Hearing Officer. Such comments made by the witnesses may be subject to cross examination, and the director or hearing officer is entitled to give such public testimony the appropriate weight that he or she determines. Such determination shall be dependent upon the expertise and knowledge of the witness or hearing officer. Such written comments shall not be deemed to be evidentiary or officially noticed.~~

Section 5 — Filings, Motions and Requests

- (a) — ~~All rate filings shall be submitted to the Workers' Compensation Division of the Department in accordance with the provisions of R.I. Gen. Laws § 27-7-11 *et seq.* and 27-9-1 *et seq.* Copies of all rate filings shall be delivered to the Attorney General.~~
- (b) — ~~Upon the receipt of any filings subject to these regulations, the document and any material accompanying it will be inspected by the Department. If the document is found by the Department to be defective or insufficient, the Department shall inform the person filing it of the defect or omission within thirty (30) days of receipt of the filing, and the defective or insufficient documents will not be deemed to be filed. The defective or insufficient documents will be retained by the Department, marked to indicate that it is not deemed filed. Within thirty (30) days of submission of additional material by the filing party in response to the notice of defect, the Department shall determine whether the defect or omissions have been corrected and notify the filing party of the determination. The filing date for such a document shall be deemed to be the date on which the last document that removed any defect or made the filing complete was received by the Department.~~

- ~~(c) — Every motion or request for an order or ruling of any kind by the Director or hearing officer shall be in writing, unless made on the record during a hearing to which the request or motion is related. Every request or motion should include or be accompanied by a clear and detailed statement of the facts that support the order or other action sought. The statement supporting the request or motion should also include any arguments with respect to policy or law that have a bearing on the request. Copies of every request or motion shall be served on every party to the proceeding by the requesting or moving party.~~
- ~~(d) — Requests or motions and their supporting papers should be clearly labeled on the first page with a title that includes "motion" or "request", a short description of the action or order requested, and a caption sufficient to identify the matter to which the request or motion relates. If legal arguments are advanced, the supporting statement accompanying the motion shall include citations to all supporting authorities relied upon by the moving party.~~
- ~~(e) — Any party opposing a motion shall file a statement in opposition to the motion or request within ten (10) days after service of the motion, unless some other period is established by the Director or hearing officer.~~

Section 6 — Discovery

- ~~(a) — The Director and Department staff shall have all authority granted to them by statute to obtain information in any proceeding, and the provisions of this section shall not be construed to limit that authority in any way.~~
- ~~(b) — All parties shall have the right to serve informational requests upon any party, subject to the following terms and procedures.
 - ~~(1) — Informational requests shall be in writing, unless made on the record in a hearing, and specifically directed to a party or parties. A copy of each request shall be provided to the Director or hearing officer and all parties to the proceeding.~~
 - ~~(2) — Informational requests shall be relevant to the issues involved in the pending proceeding, and shall not be unduly burdensome or repetitious.~~
 - ~~(3) — Objections to an information request shall be filed with the Director or hearing officer no later than ten (10) days after it is received, unless some other period is prescribed by order.~~
 - ~~(4) — Each informational request shall be answered within thirty (30) days after its receipt or such other period as may be ordered by the~~~~

~~Director or hearing officer, except as to any part of a request to which specific and timely objection is made. In cases where timely objection has been made and the objection is subsequently overruled, the requested information shall be provided within thirty (30) days of receipt of the Director's or hearing officer's ruling on the objection or such other period as may be provided in that ruling. A copy of the responsive material shall be provided to the Director or hearing officer and to each party. Responsive material does not become part of the record of hearing unless offered and admitted.~~

Section 7 — *Pre-Filed Testimony and Exhibits*

~~The pre-filing of each party's direct case, including testimony and exhibits, shall be required in any workers' compensation rate proceeding. Pre-filing shall be subject to a schedule established by the Director or hearing officer by order issued preceding a pre-hearing conference or otherwise, and shall be subject to the following further provisions.~~

- ~~(a) — Parties to the case shall file with the Director or hearing officer, in such number of copies as the Director or hearing officer may order, all testimony and exhibits of each witness whom they propose to present in support of their direct cases. Two (2) copies of such testimony and exhibits shall be served on each party at the time that such testimony and exhibits are filed with the Director or hearing officer. If the pre-filed direct testimony described in this paragraph is filed prior to the decision by the Director or hearing officer regarding petitions to intervene, additional copies of such testimony and exhibits shall be served on each proposed intervenor within two (2) days of the date that the party filing the testimony and exhibits receives the notice of the petition to intervene.~~
- ~~(b) — Pre-filed testimony shall be in writing and shall be presented in double-spaced print or typescript in the form of questions and answers that would render similar oral testimony admissible. Pre-filed exhibits may be attached to the testimony, provided that they are referred to, identified, and introduced in the pre-filed testimony. Pre-filed written testimony shall have numbered pages and include line numbers on each page, in the left-hand margin, except as otherwise permitted by the Director or hearing officer. Each party may file with its pre-filed testimony and exhibits an opening statement, containing a narrative summary of the testimony and exhibits and the fact(s) that they are intended to establish.~~
- ~~(c) — A witness while under oath, may supplement and explain his pre-filed testimony and exhibit by filing amendments thereto in writing or by oral testimony. Such supplementation and explanation shall not substantially alter the subject matter of the testimony, except to the extent that information which was not available and which could not have been~~

~~obtained through the exercise of due diligence at the time of preparation of the testimony may affect the nature of the presentation. Pre filed testimony shall be introduced into the record by the oral testimony of the witness under oath, after which it may be offered as an exhibit, with the same effect as if the testimony had been given orally in its entirety. Each witness sponsoring pre filed direct testimony shall be subject to oral cross-examination. Re direct examination will be conducted orally and will be limited to matters raised during cross examination. Objection to pre filed testimony or exhibits may be made at the time that testimony or exhibits are offered at the oral hearing.~~

~~Section 8~~ — *Pre-Hearing Conference*

- ~~(a) — The purposes of the pre hearing conference are to provide opportunities for the consideration of facts, arguments, and other issues as well as consideration of the means by which the hearing procedure may be facilitated and the disposition of the proceedings expedited.~~
- ~~(b) — Prior to a hearing, the Department and the Attorney General shall deliver to the petitioner their written comments on the filing stating areas of disagreement, if any, their proposed alternatives, and their own recommendation as to the extent of rate level adjustment on which each would be prepared to agree.~~
- ~~(c) — Reasonable means to be considered by the parties in order to expedite the orderly conduct and disposition of the hearing include the following:
 - ~~1. — the simplification or clarification of the issues;~~
 - ~~2. — the exchange and acceptance of service of exhibits proposed to be offered in evidence;~~
 - ~~3. — the obtaining of stipulations as to undisputed facts and documents;~~
 - ~~4. — to the extent practicable, the settling of all procedural matter prior to hearing.~~~~
- ~~(d) — A final hearing shall be held within thirty (30) days of the conclusion of the pre hearing conference.~~
- ~~(e) — At the conclusion of the pre hearing conference, a pre hearing order shall be prepared to document the discussion. The pre hearing order will become part of the Department's record of the filing pursuant to the provisions of R.I. Gen. Laws § 42-35-9. Any party may request a record to be maintained of the pre hearing conference and the cost thereof shall be borne by the requesting party.~~

~~(f) — If the parties agree, no pre-hearing conference shall be held and the final hearing shall commence within ten (10) days of receipt of the reports called for in Section (b) above.~~

Section 9 — Public Hearing

~~(a) — After public notice as provided in R.I. Gen. Laws § 27-9-10, the Director or hearing officer shall hold a public hearing. All hearings will be conducted on a continuous calendar basis.~~

~~(b) — Hearings will be held before the Director or hearing officer.~~

~~(c) — The parties have the right to be represented by counsel, to be present, and to participate. The right to participate shall include the right to present evidence and argument on all relevant issues, to call and examine witnesses, to cross-examine the author of any documents prepared by or on behalf of or for the use of the Department and offered in evidence, and to cross-examine any person present and testifying. The Department staff or those individuals employed by the Director pursuant to R.I. Gen. Laws § 27-9-52 may appear at any hearing and shall have the right to participate in any proceedings on the same basis as the parties may have, subject to the aforesaid.~~

~~(d) — All witnesses shall swear that their testimony is whole and truthful or shall make a solemn affirmation to the effect in lieu thereof.~~

~~(e) — The Director or hearing officer may admit evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs, giving effect to the rules of privilege recognized by law, and excluding incompetent, immaterial, and unduly repetitious evidence. Documentary evidence may be received in the form of copies or excerpts or by incorporation by a reference. Upon request, parties shall be given an opportunity to compare the copies with the originals.~~

~~(f) — Objections to evidentiary offers may be made and shall be noted in the records.~~

~~(g) — At any stage of the hearing, the Director or hearing officer may require further evidence be submitted upon such terms or conditions as the Director or hearing officer deems proper.~~

~~(h) — When evidence to be presented consists of technical matters or figures so numerous as to make all presentation difficult to follow, it shall be presented in exhibit form, supplemented and explained by oral testimony.~~

- ~~(i) — Notice may be taken of judicially cognizable facts. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noted, including any staff memoranda or data. Parties shall be afforded an opportunity to contest the material so noted.~~
- ~~(j) — At the conclusion of the evidence, the Director or hearing officer may permit the parties to argue orally or to submit written brief within thirty (30) days of receipt of the transcript of proceedings.~~
- ~~(k) — A complete record of the proceedings shall be made and at the close of the hearing, expedited transcripts shall be ordered. Costs of the transcripts for the Department and the Attorney General shall be borne by the petitioner.~~
- ~~(l) — All hearings once commenced shall continue on successive work days until completed, unless the hearing officer rules otherwise.~~
- ~~(m) — All hearings shall be open to the public.~~
- ~~(n) — Any written evaluation of evidence produced by an actuary or other expert engaged by the Department which is available prior to the conclusion of the presentation of the evidence shall be available to the parties at or prior to the close of the hearings.~~

Section 10 — Final Decision and Order

- ~~(a) — Within thirty (30) days after receipt of the transcript of proceedings, the hearing officer or Director shall enter the final decision of the hearing officer or Director and the Director shall enter his order. The final decision and/or order shall be served upon the parties forthwith by regular mail, postage pre paid. Said order shall be effective on the twentieth (20th) day after the date of the order unless otherwise provided therein.~~
- ~~(b) — The decision and order shall contain:
 - ~~1. — an appropriate caption;~~
 - ~~2. — the appearance of the parties;~~
 - ~~3. — a short statement of the nature of the proceedings;~~
 - ~~4. — complete references to the specific statutes or regulations at issue;~~
 - ~~5. — a list of exhibits admitted in evidence which may be part of the initial decision or attached as an appendix;~~~~

- ~~6. — an analysis of the facts produced at the hearing in relation to the applicable law and covering all issues of fact and law raised in the proceedings;~~
- ~~7. — specific findings of contested fact which shall be designated as such and which shall not be set forth in statutory or conclusionary language;~~
- ~~8. — specific conclusions of law based upon the findings of fact and applicable constitutional principals, statutes, and rules or regulations;~~
- ~~9. — an appropriate order based upon the findings and conclusions.~~

~~In the event the hearing officer or Director has relied on any written evaluation of evidence produced by an actuary or other expert engaged by the Department, a copy of said written evaluation shall be appended to the decision and/or order.~~

~~(c) — If the order of the Director shall state that the Director shall accept a modified filing in compliance with said order, the Department shall process said modified filing expeditiously and, in no event later than thirty (30) days from the date of its acceptance of said modified filing, report to the Director its conclusions as to the compliance by the petitioner of said modified filing, and upon the finding by the Director that such modified filing complies with the order of the Director, the Director shall approve said modified filing which filing shall be effective as of the date of the order.~~

~~(1) — The parties may petition for administrative review of any final decision and order or modified filing within twenty (20) days after receipt of the final decision and/or order. The administrative review pursuant to said petition will be conducted by the Director. The petition for administrative review shall specify the particular portions of the decision or order to which exception is taken, shall designate the portions of the record relied upon in support of such exceptions, and shall set out specific findings of facts and conclusions of law or dispositions proposed in lieu of those reached by the hearing officer or Director or in addition thereto.~~

~~(2) — Exceptions to the hearing officer's decision or Director's decision and/or order or other disposition shall set forth a form of order suggested in lieu thereof. Supporting reasons for exceptions shall be submitted in the same document or in an accompanying brief.~~

- ~~(3) — Within ten (10) days of receipt of exceptions, any party may file a reply with the Director serving a copy on all other parties. Such replies may include class exceptions or submissions in support of the decision.~~
- ~~(4) — Said petition for administrative review may, in the discretion of the Director, operate to stay the effective date of the decision and/or order or modified filing and when stayed, the effective date shall be established at such time a decision of the petition for administrative review is entered by the Director. If the Director does not reject or modify the decision and/or order or modified filing within twenty (20) days from the date of receipt of such petitions, the decision and/or order or modified filing shall be effective as of the date of the decision and/or order or modified filing.~~

Section 11 — Extensions of Time Limits

- ~~(a) — Upon a finding by the hearing officer that good cause exists, any of the time limits enumerated above may be individually extended or collectively extended by order entered at the pre hearing conference.~~
- ~~(b) — Requests for extension of any period must be stipulated in writing prior to the expiration of the period. Stipulations of all parties are acceptable in lieu of a written request for extension.~~
- ~~(c) — Extensions shall not be granted if inattention or procrastination caused the delay, but shall be granted if the delay is attributable to honest mistake, accident, or any cause compatible with proper diligence.~~

Section 12 — Interpretation and Construction

- ~~(a) — These regulations shall be interpreted as declaratory of the practice and procedures of the Department as it existed before their adoption except to the extent:
 - ~~(1) — they are inconsistent with such practice and procedure;~~
 - ~~(2) — express provision appears in these regulations to the contrary; or as~~
 - ~~(3) — may result from necessary implication.~~~~
- ~~(b) — It is hereby declared to be the intention of the Department to provide by these Regulations for the prompt, fair, and orderly administration and enforcement of the statutes within its jurisdictions, and these Regulations~~

~~shall be liberally construed and applied to effect this intention and the remedial purpose and policies of the agency.~~

- ~~(c) — Words in the singular number include the plural, and vice versa, except where the context otherwise requires or where a contrary result appears for necessary implication.~~
- ~~(d) — These Regulations shall apply to all complaints, investigations, and other proceedings begun after their effective date, so far as practicable, to all proceedings then pending to the extent permitted by law.~~
- ~~(e) — Any and all departmental rules affecting hearings in contested cases are hereby incorporated by reference herein.~~

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