

Legislative Regulation Review Committee

2009-015

Insurance Department

RULES OF PRACTICE

STATE OF CONNECTICUT
REGULATION
OF

IMPORTANT: Read instructions on bottom of Certification Page before completing this Form. Failure to comply with instructions may cause disapproval of proposed Regulations.

NAME OF AGENCY
INSURANCE DEPARTMENT
Concerning
INSURANCE DEPARTMENT RULES OF PRACTICE

SECTION 1

Section 1. Section 38a-8-33 of the Regulations of Connecticut State Agencies is repealed and the following is substituted in lieu thereof.

Sec. 38a-8-33. Appearance and representation

(a) **Taking appearances.** Parties shall enter their appearance at the beginning of the proceedings or at such time as may be designated by the Commissioner by giving their names and addresses and stating their positions or intentions in the proceedings.

(b) **Representation of parties.** (1) An individual who is a party to a proceeding may represent himself or herself. A bona fide officer designated by a partnership, corporation, association, or an employee of a governmental subdivision or agency [which] THAT is a party to a proceeding, may represent that party's interest in the proceeding.

(2) A person may be represented in any proceeding by an attorney at law admitted to practice in this state. An attorney admitted to practice in the highest court of any other state may also be allowed to represent any person in a proceeding before the Commissioner in the discretion of the Commissioner AND upon PROPER application TO THE COMMISSIONER.

(3) An attorney or other authorized representative of a party shall file a Notice of Appearance with the Commissioner in the following form, EXCEPT THAT NOTICE OF APPEARANCE SHALL NOT BE REQUIRED OF AN ATTORNEY REPRESENTING THE INSURANCE DEPARTMENT IN SUCH PROCEEDINGS:

STATE OF CONNECTICUT
INSURANCE DEPARTMENT

In the Matter of:

DOCKET NO. _____

NOTICE OF APPEARANCE

Please enter my appearance in the above-designated matter on behalf of _____ .

I am authorized to accept service on behalf of said participant in this matter.

Signature

Name (Printed)

P.O. BOX/ address

City, [state] STATE and zip code

Telephone number (including area code)

STATE OF CONNECTICUT
REGULATION
OF

NAME OF AGENCY

INSURANCE DEPARTMENT

SECTION 3

After [filing] a notice of appearance HAS BEEN FILED IN ACCORDANCE WITH THIS SECTION, copies of all pleadings, notices, rulings, or decisions shall be served on the person named in the notice of appearance.

Section 3. Section 38a-8-38 of the Regulations of Connecticut State Agencies is repealed and the following is substituted in lieu thereof.

Sec. 38a-8-38. Pre-hearing conference

(a) The Commissioner or presiding officer may, in his or her discretion, order counsel or any party to meet for a pre-hearing conference. Such conference [also] may be held with one or more persons participating by telephone or other remote means.

(b) At a pre-hearing conference, the Commissioner or presiding officer may consider and take action with respect to any or all of the following: (1) simplification and clarification of the issues; (2) exchange of witnesses and exhibit list and copies of exhibits; (3) stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents; (4) matters of which official notice may be taken; (5) the schedule for exchanging pre-hearing motions or briefs, if any; (6) the method of service and filing of papers by the parties; (7) determination of hearing dates; (8) amendments to the complaint or answers thereto; (9) such other matters as may aid in the orderly and expeditious disposition of the proceeding.

(c) With respect to Insurance Department enforcement proceedings, an initial pre-hearing conference, unless determined by the presiding officer to be unnecessary or premature, shall be held within twenty-one days after filing of an answer[, or after the expiration of the second period provided for filing an answer as set forth in section 38a-8-61(d) of the regulations of Connecticut state agencies]. When a complaint names multiple respondents, the twenty-one day period shall commence from the later of (1) the date on which the last timely answer was filed, or (2) if one or more respondents have failed to answer, from the expiration of the [second] LATEST period provided for filing an answer [in] PROVIDED BY section 38a-8-61[(d)] of the Regulations of Connecticut State Agencies.

(d) At or following the conclusion of any conference held pursuant to this section, the presiding officer or hearing officer shall enter a written ruling or order that recites any agreements reached and any procedural determinations made by the hearing officer.

Section 4. Section 38a-8-60 of the Regulations of Connecticut State Agencies is repealed and the following is substituted in lieu thereof.

Sec. 38a-8-60. Complaint

(a) **Complaint issuance.** All enforcement proceedings instituted by the Commissioner for the revocation or suspension of any license or imposition of a fine, or both, shall be initiated by serving on each respondent a complaint which shall specify in reasonable detail the conduct alleged to constitute a violation of any regulation or statutory provision which the commissioner has jurisdiction to enforce and contain the information required by section 38a-8-32 of the Regulations of Connecticut State Agencies and section 4-177 of the Connecticut General Statutes. IN ADDITION, THE COMPLAINT SHALL INCLUDE A NOTICE THAT THE RESPONDENT'S FAILURE TO FILE AN ANSWER IN ACCORDANCE WITH SECTION 38a-8-61 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES SHALL ALLOW THE COMMISSIONER OR THE PRESIDING OFFICER TO TREAT AS ADMITTED THE ALLEGATIONS IN THE COMPLAINT AND ISSUE A DECISION BY DEFAULT AGAINST THE RESPONDENT, PURSUANT TO SECTION 38a-8-62 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES.

STATE OF CONNECTICUT
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INSURANCE DEPARTMENT

SECTION 5

(b) **Amendments to complaint.** The Insurance Department may file and serve, NOT LATER THAN THE DAY IN WHICH A HEARING IS SCHEDULED, an amended complaint that includes new matters of fact or law once as a matter of course [at any time] before the respondent answers the complaint. [Otherwise] AFTER THE FILING OF A RESPONDENT'S ANSWER TO THE COMPLAINT, upon motion by the department, the presiding officer may permit the Insurance Department to amend the complaint to include new matters of fact or law, after considering whether the Insurance Department has shown good cause for the amendment and whether any respondent will suffer any unfair prejudice if the amendment is allowed.

Section 5. Section 38a-8-61 of the Regulations of Connecticut State Agencies is repealed and the following is substituted in lieu thereof.

Sec. 38a-8-61. Answer

(a) **Form, content, affirmative defenses.** The respondent in any enforcement proceeding shall file an answer to the complaint with the Commissioner no later than twenty (20) days after service of the complaint. An answer shall specifically admit, deny, or state that the respondent does not have and is unable to obtain sufficient information to admit or deny each allegation in the complaint. When a respondent intends to deny only part of an allegation, the respondent shall specify so much of it as is admitted and deny only the remainder. A statement of a lack of information shall be deemed a denial. Any allegation not denied in whole or in part shall be deemed admitted. Any affirmative defense shall be asserted SPECIFICALLY in the answer.

(b) **Amendments to answer.** Upon motion by a respondent, the presiding officer may, after considering good cause shown by the respondent and any unfair prejudice which may result to any other party, permit an answer to be amended UP TO THE DATE SCHEDULED FOR THE HEARING.

(c) **Extension of time to answer amended complaint.** If a complaint is amended pursuant to section 38a-8-60(b) of the Regulations of Connecticut State Agencies, the time for filing an answer or amended answer shall be the greater of the original time period within which the respondent is required to respond, or fourteen days after service of the amended complaint. If any respondent has already filed an answer, such respondent shall have fourteen days after service of the amended complaint TO FILE AN AMENDED ANSWER, unless otherwise ordered by the presiding officer[, within which to file an amended answer].

(d) **Failure to answer, default.** [If a respondent does not] A RESPONDENT'S FAILURE TO file an answer WITH THE INSURANCE DEPARTMENT within the time required BY SECTION 38a-8-61 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES[, the Insurance Department shall send a second notice to the respondent requiring an answer within fourteen days after service of the second notice. The second notice shall state that failure of the respondent to reply within the period specified] shall allow THE COMMISSIONER OR the presiding officer, in the exercise of his or her discretion, pursuant to section 38a-8-62 of the Regulations of Connecticut State Agencies to: (1) treat as admitted by the respondent the allegations in the complaint; and (2) issue a default decision against the respondent AS PROVIDED BY SECTION 38a-8-62 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES. [If the respondent fails to file an answer with the insurance department within the time required, the presiding officer may issue a default decision against the respondent pursuant to section 38a-8-62 of the Regulations of Connecticut State Agencies.]

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SECTION 6

Section 6. Section 38a-8-65 of the Regulations of Connecticut State Agencies is repealed and the following is substituted in lieu thereof.

Sec. 38a-8-65. Jurisdictional objections

[Objections] AFTER PROCEEDINGS HAVE COMMENCED IN A CONTESTED CASE, OBJECTIONS to the jurisdiction of the Insurance Department may be made to the Commissioner at any time prior to the final decision.

Statement of purpose: To make technical and other minor changes to the Insurance Department's rules of practice.

A. The problems, issues or circumstances that the regulation proposes to address. In addition to the need to make some technical changes to clean and clarify some of the language, the Insurance Department ("Department") sought to address two issues. First, having become aware that the regulation's provision related to jurisdictional objections was being misinterpreted to apply also in situations in which a contested case had not commenced, the Department sought to clarify the issue. Second, it appears redundant to provide two notices when a respondent fails to answer a Department's complaint within the time allowed by law.

B. Summary of the main provision of the proposed amendment. The main provisions of the amendment provide (1) that an attorney representing the Department in a hearing instituted by the Department is not required to file a notice of appearance; (2) that a complaint issued by the Department in a contested case shall contain a notice of the consequences of a respondent's failure to answer; (3) limits to the time in which the Department may file an amended complaint; and (4) for the deletion of the requirement that the Department mail a second notice upon a respondent's failure to file an answer.

C. The legal effect of the proposed amendment on existing regulations or other laws. There is no impact on existing regulations or other laws.

CERTIFICATION

R-39 REV. 1/77

Be it known that the foregoing:

Page 5 of 5 pages

Regulations Emergency Regulations

Are:

Adopted Amended as hereinabove stated Repealed

By the aforesaid agency pursuant to:

Section 38a-8 of the General Statutes.

Section _____ of the General Statutes, as amended by Public Act No. _____ of the _____ Public Acts.

Public Act No. _____ of the Public Acts.

After publication in the Connecticut Law Journal on October 7 2008, of the notice of the proposal to:

Adopt Amend Repeal such regulations

(If applicable): And the holding of an advertised public hearing on _____ day of _____ 20 _____

WHEREFORE, the foregoing regulations are hereby:

Adopted Amended as hereinabove stated Repealed

Effective:

When filed with the Secretary of the State.

(OR)

The _____ day of _____ 20 _____.

In Witness Whereof:	DATE <u>12/29/08</u>	SIGNED (Head of Board, Agency or Commission) <i>[Signature]</i>	OFFICIAL TITLE, DULY AUTHORIZED INSURANCE COMMISSIONER
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Approved by the Attorney General as to legal sufficiency In accordance with Sec. 4-169, as amended, C. G. S. :	SIGNED <i>[Signature]</i>	OFFICIAL TITLE, DULY AUTHORIZED ASSOC. ATT. GENERAL
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Approved

Disapproved

Disapproved in part, (Indicate Section Numbers disapproved only)

Rejected without prejudice.

By the Legislative Regulation Review Committee in accordance With Sec. 4-170, as amended, of the General Statutes.	DATE	SIGNED (Clerk of the Legislative Regulation Review Committee)
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Two certified copies received and filed, and one such copy forwarded to the Commission on Official Legal Publications
In accordance with Section 4-172, as amended, of the General Statutes.

DATE	SIGNED (Secretary of the State.)	BY
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INSTRUCTION

1. One copy of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the Attorney General for his determination of legal sufficiency. Section 4-169 of the General Statutes.
2. Seventeen copies of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the standing Legislative Regulation Review Committee for its approval. Section 4-170 of the General Statutes.
3. Each regulation must be in the form intended for publication and must include the appropriate regulation section number and section heading. Section 4-172 of the General Statutes.
4. Indicate by "(NEW)" in heading if new regulation. Amended regulations must contain new language in capitol letters and deleted language in brackets. Section 4-170 of the General Statutes.