

CHAPTER 2610 DEPARTMENT OF COMMERCE CONTESTED CASE PROCEDURES

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2610.0100 DEFINITIONS.

Subpart 1. **Agency.** "Agency" means any division, section, or board within the Department of Commerce, or the head thereof.

Subp. 2. **Commencement.** "Commencement" means service of an order for hearing upon any party.

Subp. 3. **Contested case.** "Contested case" means a proceeding before the agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing.

Subp. 4. **Party.** "Party" means any person whose legal rights, duties, or privileges may be determined in a contested case. The term "party" shall include the agency, except when the agency participates in the contested case in a neutral or quasi-judicial capacity only.

Subp. 5. **Person.** "Person" means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision, unit, or agency, other than a court of law.

Subp. 6. **Hearing officer.** "Hearing officer" means the person or persons appointed by the agency pursuant to part 2610.0400 to hear the contested case.

Subp. 7. **Service; serve.** "Service" or "serve" means service by registered or certified United States mail, postage prepaid, and addressed to the party at his last known address, unless some other manner of service is required by law. An affidavit of mailing shall be made by the person making such service. Service by mail is complete upon the placing of the item to be served in the mail.

Statutory Authority: *MS s 45.032*

2610.0200 SCOPE AND PURPOSE.

The procedures contained in parts 2610.0100 to 2610.3800 govern all contested cases before any division, section, or board within the Department of Commerce, except for those cases governed by chapter 2650.

Statutory Authority: *MS s 45.032*

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2610.0250 EMERGENCY PROCEDURES NOT AFFECTED.

Nothing contained in these rules is intended to preempt, repeal, or be in conflict with any rule or statute that provides for acts by the agency in an emergency, or procedure for conduct by the agency in such a situation.

Statutory Authority: *MS s 45.032*

2610.0300 FUNDAMENTAL FAIRNESS.

No person before this department shall have his rights, privileges, or duties determined without regard for fundamental fairness. To that end, these rules are intended to assure that all parties to contested cases before this department are provided a speedy and just hearing. Such hearing shall include: adequate notice to all interested persons; the opportunity to consult with the department informally to attempt to resolve conflicts on issues; notice at each stage of the proceedings sufficient to provide the opportunity to prepare therefor; and an objective decision supported by substantial evidence from the record.

Statutory Authority: *MS s 45.032*

2610.0400 HEARING OFFICERS.

Subpart 1. Appointment. The agency may appoint a hearing officer to hear a contested case. The appointment, if made, shall be at the commencement of the case.

Subp. 2. Cases to which the agency is a party. In cases to which the agency is a party, the hearing officer shall not at the time of appointment be an employee of nor on retainer to the agency, but he may be employed as a hearing examiner by the Minnesota Department of Commerce. All appointments hereunder shall be consistent with the purpose of this part, which is to secure as objective and impartial a decision-maker as is legally and financially possible.

In cases to which the agency is a party, the appointment of the hearing officer shall authorize the hearing officer to hear the case and propose findings of fact and conclusions of law.

Subp. 3. Cases to which the agency is not a party. In cases to which the agency is not a party, the agency may appoint any person, including an employee of the agency or a member or members thereof, as the hearing officer.

In cases to which the agency is not a party, the appointment of the hearing officer shall grant the hearing officer such authority as the agency deems necessary and appropriate to hear the case.

Subp. 4. Function. Consistent with the law and the terms of his appointment, the hearing officer shall hear the contested case, hear and rule on preliminary motions, administer oaths and examine witnesses, issue subpoenas, make preliminary, interlocutory, or other orders as he deems appropriate, grant or deny continuances and requests for discovery, propose to the agency findings of fact upon the evidence presented and conclusions of law, and do things necessary or proper to the performance of the foregoing.

Statutory Authority: *MS s 45.032*

2610.0500 INITIATING A CONTESTED CASE.

Subpart 1. Initiation by request. Any person entitled by law to an agency hearing upon request may initiate a contested case by filing a request therefor in a timely manner as required by law. A request shall contain:

- A. the name and address of the person;
- B. a statement of the nature of the determination sought and the reasons therefor;
- C. a reference to the agency order giving rise to the request;
- D. the names and addresses of all persons known to the applicant who will be directly affected by such determination; and

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E. the signature of the applicant or his attorney.

Subp. 2. **Initiation by agency order.** Where authorized by law, the agency may order a contested case commenced to determine the rights, duties, and privileges of specific parties.

Statutory Authority: *MS s 45.032*

2610.0600 COMMENCEMENT OF CONTESTED CASE.

Subpart 1. **Reasonable time.** Within the time provided by law or, in any event, within a reasonable time following the receipt of a request for hearing pursuant to part 2610.0400, subpart 1, the agency shall issue an order setting a hearing. An order issued pursuant to part 2610.0400, subpart 1 or 2 shall be served upon all known parties and shall contain, inter alia, the following:

- A. the time and place of the hearing;
- B. the name and address of the hearing officer;
- C. the allegations or issues to be determined, together with a citation to relevant statutes or rules;
- D. notification of the right of the parties to be represented by legal counsel;
- E. a citation to these rules;
- F. a statement announcing the right of a party to request a prehearing conference by so notifying the hearing officer; and
- G. a statement that failure to attend the hearing may result in the allegations of the order being taken as true.

Subp. 2. **Minimum notice.** The order setting a hearing shall be served not fewer than 20 days prior to the hearing unless otherwise provided by law.

Statutory Authority: *MS s 45.032*

2610.0700 RIGHT TO COUNSEL.

Any party may be represented by legal counsel throughout the proceedings in a contested case before the agency.

Statutory Authority: *MS s 45.032*

2610.0800 INFORMAL DISPOSITION.

Informal disposition may be made of any contested case or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings.

Statutory Authority: *MS s 45.032*

2610.0900 DEFAULT.

The agency may dispose of a contested case adverse to a party which defaults. Upon default the allegations of the order for hearing may be taken as true.

Statutory Authority: *MS s 45.032*

2610.1000 INTERVENTION.

Subpart 1. **Application.** Upon timely application, any person shall be permitted to intervene in a contested case upon a showing that his legal rights, duties, or privileges may be determined or affected in the contested case, unless in the discretion of the hearing officer such person's interest is adequately represented by one or more parties participating in the case.

Subp. 2. **Rights of intervenor.** Upon granting an application to intervene, the applicant shall thereafter be a party to the contested case with all of the rights of a party.

Statutory Authority: *MS s 45.032*

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2610.1100 CONSOLIDATION.

Subpart 1. **Authority.** Whenever, before hearing on any contested case, the agency, either on its own motion or upon petition by any party, determines that separate contested cases present substantially the same issues of facts or law; that a holding in one case would affect the rights of parties in another case; and that consolidation would not substantially prejudice any party, the agency may order such cases consolidated for a single hearing on the merits. Notwithstanding the requirements of this part, the parties may stipulate and agree to such consolidation.

Subp. 2. **Notice.** Following an order for consolidation the agency shall forthwith serve on all parties a notice of consolidation. Such notice shall contain: a description of the cases for consolidation; the reasons for consolidation; cancellation of any prehearing conferences for the cases consolidated; and notification of a consolidated prehearing conference if one has been requested.

Subp. 3. **Objection to consolidation.** Any party may object to consolidation by filing with the agency prior to the hearing in the case a petition for severance from consolidation, setting forth petitioner's name and address, the designation of his case prior to consolidation, and the reasons for his petition.

If the agency finds that consolidation would prejudice petitioner, it may order such severance or other relief as it deems necessary.

Subp. 4. **Agency a party.** In any contested case in which any agency is a party, all determinations and decisions regarding consolidation or severance shall be made by the hearing officer, subject to the same standards and criteria set forth in subparts 1 to 3.

Statutory Authority: *MS s 45.032*

2610.1200 DISQUALIFICATION.

A hearing officer shall withdraw from participation in a contested case at any time if he deems himself disqualified for any reason. Upon the filing in good faith by a party of an affidavit of prejudice the hearing officer shall determine the matter as a part of the record, provided the affidavit shall be filed no later than five days prior to the date set for hearing.

Statutory Authority: *MS s 45.032*

2610.1300 PREHEARING CONFERENCE.

Subpart 1. **Purpose.** The purpose of the prehearing conference is to simplify the issues to be determined, to consider amendment of the agency's order if necessary, to obtain stipulations in regard to foundation for testimony or exhibits, to consider the proposed witnesses for each party, to consider such other matters as may be necessary or advisable, and, if possible, to reach a settlement without the necessity for further hearing.

Subp. 2. **Procedure.** Upon the request of any party or upon his own motion, the hearing officer may, in his discretion, hold a prehearing conference preparatory to each contested case hearing. The prehearing conference shall be an informal proceeding conducted fairly and expeditiously by the hearing officer. Agreements on the simplification of issues shall be put in the form of stipulations and entered on the record. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

Statutory Authority: *MS s 45.032*

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2610.1400 SUBPOENAS.

Requests for subpoenas shall be made in writing to the hearing officer and shall contain a brief statement as to the relevance of the testimony or evidence sought.

A subpoena shall be served in the manner provided by the Rules of Civil Procedure for the District Courts of the state of Minnesota unless otherwise provided by law.

The cost of service, fees, and expenses of any witness subpoenaed shall be paid by the party at whose request the witness appears.

The person serving the subpoena shall make proof of service by filing the subpoena with the hearing officer, together with his affidavit of service.

Statutory Authority: *MS s 45.032*

HEARING

2610.2100 RIGHT TO HEARING.

All parties shall have the right to a hearing before the agency, at which hearing the parties may cross-examine witnesses, and present evidence, rebuttal testimony, and argument with respect to the issues.

Statutory Authority: *MS s 45.032*

2610.2200 WITNESSES.

Any party may be a witness or may present witnesses on his behalf at a hearing. All testimony at a hearing shall be under oath or affirmation.

Statutory Authority: *MS s 45.032*

2610.2300 RULES OF EVIDENCE.

Subpart 1. General rules. The hearing officer may admit all evidence that possesses probative value, including hearsay, if it is the type of evidence on which prudent persons are accustomed to rely in the conduct of their serious affairs. The hearing officer shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or repetitious may be excluded.

Subp. 2. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents (except tax returns and tax reports) in the possession of the agency or a true and accurate photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence (except tax returns and tax reports) shall be considered in the determination of the case.

Subp. 3. Documentary evidence. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the hearing officer or upon agreement of the parties.

Subp. 4. Administrative notice of facts. The hearing officer may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to rebut.

Subp. 5. Burden of proof. The party initiating the contested case must prove the facts at issue by a preponderance of the evidence.

Subp. 6. Examination of adverse party. A party may call an adverse party or his managing agent or employees or an officer, director, managing agent, or employee of the state or any political subdivision thereof, or of a public or private corporation, or of a partnership or association or body politic that is an adverse party, and interrogate him by leading questions and contradict and impeach him on material matters in all respects as if he had been called by the adverse party. The adverse party may be examined by his counsel upon the subject matter of his examination in chief under the rules applicable to direct

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examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by his testimony.

Statutory Authority: *MS s 45.032*

2610.2400 RECORD AND TRANSCRIPT.

Subpart 1. **Official record.** The agency shall prepare an official record in each contested case. The record in a contested case shall contain:

- A. all orders, pleadings, motions, and interlocutory rulings;
- B. evidence received or considered;
- C. offers of proof, objections, and rulings thereon;
- D. proposed findings of fact and conclusions of law; and
- E. all memoranda or data submitted to the hearing officer by any party in connection with the case.

Subp. 2. **Transcript.** A verbatim record of the hearing shall be taken by court reporter or recording equipment. A court reporter shall be used if demanded by any party. Unless the agency agrees to bear the expense of the court reporter, such expense shall be paid by the demanding party.

The verbatim record may be transcribed if requested by a party. If a transcription is requested, the agency may require the requesting party to pay the reasonable cost of preparing the transcript.

Statutory Authority: *MS s 45.032*

2610.2500 CONTINUANCES.

A request for continuance shall be made in writing to the hearing officer.

A request for continuance filed not less than three days prior to the hearing may be granted upon a showing of good cause. Due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance.

A request for a continuance filed within three days of the hearing shall be denied unless good cause exists and the reason for the request could not have been earlier ascertained.

During a hearing, if it appears in the interest of justice that further testimony should be received, the hearing officer, in his discretion, may continue the hearing to a future date and such oral notice on the record shall be sufficient.

Statutory Authority: *MS s 45.032*

2610.2600 INTERLOCUTORY MOTIONS.

When a hearing officer has been appointed, there shall be no interlocutory motions to the agency during the course of the hearing, but such motion shall be made to the hearing officer and considered by the agency in its consideration of the record as a whole.

Statutory Authority: *MS s 45.032*

2610.2700 HEARING PROCEDURE.

Subpart 1. **Hearing officer conduct.** The hearing officer shall take no part in any preliminary investigation or inquiry into the facts or issues involved in the contested case except as provided in part 2610.1300. He shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any person or party, including the agency, except upon notice and opportunity for all parties to participate.

Subp. 2. **Sequence of events.** The hearing shall be conducted in the following manner:

A. After opening the hearing, the hearing officer shall indicate the following procedural rules:

(1) all parties may present evidence and argument with respect to the issues;

(2) all witnesses shall be sworn and identify the party they represent, if any (they are subject to cross-examination by all parties); and

(3) the rules of evidence as set forth in part 2610.2300, subpart 1.

B. A representative of the agency shall introduce the following exhibits on behalf of the agency: all orders in the matter, supporting documents, if any, and affidavits of service; and any stipulations, settlement agreements, or consent orders entered into by any of the parties prior to the hearing.

C. The party with the burden of proof may make an opening statement. All other parties may make such statements in a sequence determined by the hearing officer.

D. After any opening statements, the party with the burden of proof shall begin the presentation of evidence. He shall be followed by the other parties in a sequence determined by the hearing officer.

E. Cross-examination of witnesses shall be conducted in a sequence determined by the hearing officer.

F. When all parties and witnesses have been heard, opportunity shall be offered to present rebuttal evidence and final argument, in a sequence determined by the hearing officer. Such rebuttal and final argument may, in the discretion of the hearing officer, be in the form of written memoranda, oral argument, or both.

G. After final argument, the hearing shall be closed or continued at the discretion of the hearing officer. If continued, it shall be either continued to a certain time and day, announced at the time of the hearing and made a part of the record, or continued to a date to be determined later, which must be upon not less than five days' written notice to the parties.

Statutory Authority: *MS s 45.032*

2610.2800 DISRUPTION OF HEARING.

Subpart 1. **Cameras.** No television, newsreel, motion picture, still, or other camera, and no mechanical recording devices, other than those provided by the agency or at its direction, shall be operated in the hearing room during the course of the hearing.

Subp. 2. **Other conduct.** Pursuant to and in accordance with the provisions of Minnesota Statutes, section 624.72, no person shall interfere with the free, proper, and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt, or threaten interference with or disruption of the hearing.

Subp. 3. **Penalty.** In the event of such interference or disruption or threat thereof, the hearing officer shall read the appropriate subpart to those persons causing such interference or disruption and thereafter proceed as he deems appropriate.

Statutory Authority: *MS s 45.032*

DECISION AND REHEARINGS

2610.3100 BASIS FOR DETERMINATION.

Subpart 1. **Record.** No factual information or evidence, except tax returns and tax reports, which is not a part of the record shall be considered by the hearing officer or the agency in the determination of a contested case.

Subp. 2. **Experience, technical competence, and specialized knowledge.** The hearing officer may use his experience, technical competence, and specialized knowledge in the evaluation of the evidence presented in the case, but shall in no

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case base any proposed findings of fact or conclusions of law on any material not contained in the record.

Statutory Authority: *MS s 45.032*

2610.3200 PROPOSAL FOR DECISION.

The hearing officer shall prepare proposed findings of fact and conclusions of law and submit them to the agency. The agency, after reading the evidence and reviewing the entire record, shall then render its decision.

Statutory Authority: *MS s 45.032*

2610.3300 DECISIONS AND ORDERS.

The decision or order rendered by the agency in a contested case shall be in writing and shall be accompanied by findings of fact and conclusions of law. The decision or order shall be served on all parties and an affidavit of service shall be made.

Statutory Authority: *MS s 45.032*

2610.3400 AGENCY RIGHT TO REHEAR.

The agency may, upon request or upon its own motion, and for good cause shown, reopen, rehear, and redetermine a contested case after a final decision adverse to a party to the contested case other than the agency has been rendered. This right may be exercised until it is lost by appeal or the granting of a writ of certiorari or until a reasonable time has run, but in no event shall the time exceed the time allowed by the statute for appeal or six months, whichever is shorter.

Statutory Authority: *MS s 45.032*

2610.3500 OBTAINING A REHEARING.

Subpart 1. **Parties other than agency.** At any time prior to the agency's loss of the right to rehear a contested case, any party to that case may request a rehearing by filing a petition for rehearing. Such petition shall contain: the name and address of the petitioner; the agency designation for the case; and the reasons for the petition.

Subp. 2. **Default judgments.** A party against whom a default has been adjudged pursuant to part 2610.0900 may obtain a rehearing upon a timely showing of good cause for his failure to appear or plead.

Subp. 3. **Determination.** The agency shall grant or deny a petition for rehearing as a part of the record in the case. Such petition shall be granted if there appears on the face of the petition and record irregularities in the proceedings, errors of law occurring during the proceedings, newly discovered material evidence, a lack of substantial evidence to support the decision, or good cause for failure to appear or plead. Evidence and argument may be presented at the discretion of the agency in written or oral form, or both, by any party to the contested case with respect to the petition.

Statutory Authority: *MS s 45.032*

2610.3600 NOTICE OF REHEARING.

Notice of rehearing must be provided in the same manner prescribed for notice of hearing.

Statutory Authority: *MS s 45.032*

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2610.3700 REHEARING PROCEDURE.

A rehearing in a contested case shall be conducted in the same manner prescribed for a hearing.

Statutory Authority: *MS s 45.032*

2610.3800 DECISION AFTER REHEARING.

The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing.

Statutory Authority: *MS s 45.032*