

1 Office of Administrative Hearings

2

3 Adopted Permanent Rules Relating to Rulemaking, Contested Case,  
4 and Revenue Recapture Act Hearings

5

6 Rules as Adopted

7 1400.0250 FILING OF MATERIALS.

8 Subpart 1. **Size.** All materials submitted to the  
9 administrative law judge or chief administrative law judge in a  
10 rulemaking proceeding, except the draft of the proposed or  
11 adopted rules prepared by the revisor of statutes, handwritten  
12 comments from members of the public and exhibits, must be on  
13 standard size 8-1/2-inch by 11-inch paper.

14 Subp. 2. **Facsimile transmission.** Any paper relating to  
15 hearings conducted by an administrative law judge under  
16 Minnesota Statutes, chapter 14, may be filed with or served on  
17 the office by facsimile transmission. The person filing the  
18 document must forward the original signed document within five  
19 days. Filings or service shall be effective at the time that  
20 the facsimile transmission is received by the office. A  
21 transmission which is commenced prior to 4:30 p.m. shall be  
22 deemed to have been timely filed. The filing or service of a  
23 facsimile shall have the same force and effect as the filing or  
24 service of the original document.

25 1400.0300 INITIATION OF HEARING.

26 [For text of subpart 1, see M.R.]

27 Subp. 1a. **Filing documents.** Prior to giving notice of the  
28 hearing, the agency shall file with the chief administrative law  
29 judge, or the administrative law judge who will preside over the  
30 proceeding, the following documents:

31 [For text of items A and B, see M.R.]

32 C. The notice of hearing proposed to be issued that  
33 shall contain the following:

34 [For text of subitems (1) to (5), see M.R.]

35 (6) A statement advising interested persons that

1 lobbyists must register with the state Ethical Practices Board,  
2 that questions should be directed to the board, and the board's  
3 current address and telephone number.

4                   (7) A statement that written material may be  
5 submitted and recorded in the hearing record for five working  
6 days after the public hearing ends, a statement that the comment  
7 period may be extended for a longer period not to exceed 20  
8 calendar days if ordered by the administrative law judge at the  
9 hearing, a statement that the comments received during the  
10 comment period shall be available for review at the office of  
11 administrative hearings, and a statement that the agency and  
12 interested persons may respond in writing within three business  
13 days after the submission period ends to any new information  
14 submitted, and a statement that any written material or  
15 responses submitted must be received at the office no later than  
16 4:30 p.m. on the final day. No additional evidence may be  
17 submitted during the three-day period.

18                   [For text of subitems (8) to (14), see M.R.]

19                   [For text of items D to F, see M.R.]

20                   G. If required by Minnesota Statutes, section  
21 16A.128, subdivision 2a, a statement that the agency submitted a  
22 copy of the notice and the proposed rules to the chairs of the  
23 house appropriations committee and senate finance committee  
24 prior to publishing the notice of intent to adopt rules in the  
25 State Register.

26                   [For text of subp 2, see M.R.]

27 1400.0500 STATEMENT OF NEED AND REASONABLENESS.

28                   Subpart 1. **Contents.** Each agency desiring to adopt rules  
29 shall prepare a statement of need and reasonableness which shall  
30 be prefiled pursuant to part 1400.0300, subpart 1a. The  
31 statement of need and reasonableness must contain a summary of  
32 all of the evidence and argument which is anticipated to be  
33 presented by the agency at the hearing justifying both the need  
34 for and the reasonableness of the proposed rules, including  
35 citations to any statutes or case law anticipated to be relied

1 upon, citations to any economic, scientific, or other manuals or  
2 treatises anticipated to be utilized at the hearing or included  
3 in the record, and a list of any witnesses to be called by the  
4 agency to testify on its behalf, together with a summary of the  
5 testimony to be elicited from witnesses solicited to testify on  
6 behalf of the agency. The statement need not contain evidence  
7 and argument in rebuttal of evidence and argument presented by  
8 the public.

9 The statement of need and reasonableness must also contain  
10 the following:

11 A. If applicable, a statement complying with:

12 (1) Minnesota Statutes, section 14.115;

13 (2) Minnesota Statutes, sections 14.11,  
14 subdivision 2, and 17.80 to 17.84;

15 (3) Minnesota Statutes, sections 115.43,  
16 subdivision 1, and 116.07, subdivision 6;

17 (4) Minnesota Statutes, section 144A.29,  
18 subdivision 4;

19 B. if required by Minnesota Statutes, section  
20 16A.128, subdivisions 1 and 2a, the approval of the commissioner  
21 of finance and notice to the chairs of the house appropriations  
22 committee and the senate finance committee if the proposed rules  
23 establish or modify a fee charged; and

24 C. a statement complying with the requirements of any  
25 other law or rule prescribing in any manner the matters to be  
26 included in the statement of need and reasonableness or which  
27 the agency is required by law or rule to consider in the  
28 adoption of a rule.

29 To the extent that an agency is proposing amendments to  
30 existing rules, the agency need not demonstrate the need for and  
31 reasonableness of the existing rules not affected by the  
32 proposed amendments.

33 [For text of subp 2, see M.R.]

34 Subp. 3. **Verbatim agency presentation.** If the agency  
35 desires, the statement of need and reasonableness may contain  
36 the verbatim affirmative presentation by the agency, provided

1 that copies are available for review at the hearing, and it may  
2 be introduced as an exhibit into the record as though read. In  
3 such instance, agency personnel or other persons thoroughly  
4 familiar with the proposed rules and the agency's statement  
5 shall be available at the hearing for questioning by the  
6 administrative law judge and other interested persons or to  
7 briefly summarize all or a portion of the statement of need and  
8 reasonableness if requested by the administrative law judge.

9 1400.0800 CONDUCT OF HEARINGS.

10 [For text of subps 1 to 6, see M.R.]

11 Subp. 7. **Exhibits.** The agency shall introduce as exhibits  
12 the documents required to be filed with the administrative law  
13 judge or the chief administrative law judge pursuant to parts  
14 1400.0300, subpart 1a, items A, B, and E; and 1400.0600.

15 [For text of subps 8 to 13, see M.R.]

16 1400.0850 RECEIPT OF WRITTEN MATERIALS.

17 The administrative law judge shall allow written materials  
18 to be submitted and recorded in the hearing record for a period  
19 of five working days after the public hearing ends, or for a  
20 longer period not to exceed 20 calendar days if he or she so  
21 orders. The written materials must be received at the Office of  
22 Administrative Hearings no later than 4:30 p.m. on the last day  
23 for submission of written materials. The agency and all  
24 interested persons must be allowed to review the comments  
25 received during the comment period and must be allowed three  
26 business days after the submission period ends to respond in  
27 writing to any new information submitted. The responses must be  
28 received at the office no later than 4:30 p.m. on the third  
29 business day. During this three-day period, the agency may also  
30 indicate in writing whether there are amendments suggested by  
31 other persons which the agency is willing to adopt. Additional  
32 evidence may not be submitted during the three-day period. The  
33 written responses must be included in the rulemaking record.

34 1400.0900 RULEMAKING RECORD.

1 The hearing record shall be closed upon the last date for  
2 receipt of written responses filed pursuant to Minnesota  
3 Statutes, section 14.15, subdivision 1.

4 The rulemaking record shall include:

5 A. all documents enumerated in parts 1400.0300,  
6 subpart 1a, and 1400.0600;

7 [For text of items B to J, see M.R.]

8 1400.5100 DEFINITIONS.

9 [For text of subps 1 to 3, see M.R.]

10 Subp. 4. [See Repealer.]

11 Subp. 5. [See Repealer.]

12 [For text of subps 6 to 8, see M.R.]

13 Subp. 9. **Service; serve.** "Service" or "serve" means  
14 personal service or, unless otherwise provided by law, service  
15 by first class United States mail or a licensed overnight  
16 express mail service, postage prepaid and addressed to the party  
17 at his or her last known address. An affidavit of service shall  
18 be made by the person making the service. Service by mail or  
19 licensed overnight express mail service is complete upon placing  
20 the item to be served in the mail or delivering it to the  
21 authorized agent of the express mail service. Personal service  
22 may be accomplished by either delivering a document to the  
23 person or by leaving a document at the person's home or place of  
24 business with someone of suitable age and discretion who resides  
25 in the same house or who is located at the same business address  
26 of the person to be served.

27 If a person is confined to a federal or state institution,  
28 a copy of the document must also be served upon the chief  
29 executive officer of the institution.

30 Postage shall be prepaid. Mail to a person other than a  
31 state agency shall be addressed to the last known address of the  
32 person. Agencies of the state of Minnesota may also deposit the  
33 document with the Central Mailing Section, Publications  
34 Division, Department of Administration, addressed as above.

35 Any paper relating to hearings conducted by an

1 administrative law judge under Minnesota Statutes, chapter 14,  
2 may be filed with or served on the office by facsimile  
3 transmission. The person filing the document shall forward the  
4 original signed document within five days. Filings or service  
5 shall be effective at the time that the facsimile transmission  
6 is received by the office. A transmission which is commenced  
7 prior to 4:30 p.m. shall be deemed to have been timely filed.  
8 The filing or service of a facsimile shall have the same force  
9 and effect as the filing or service of the original document.

10 1400.5200 SCOPE; CONVERSION OF CONTESTED CASE.

11 The procedures in parts 1400.5100 to 1400.8400 shall govern  
12 all contested cases required to be conducted by the office under  
13 Minnesota Statutes, chapter 14. The procedures in parts  
14 1400.8510 to 1400.8612 shall govern all cases conducted pursuant  
15 to the Revenue Recapture Act, Minnesota Statutes, sections  
16 270A.01 to 270A.12 and shall also be utilized in those cases  
17 where the parties agree to use them.

18 1400.5600 NOTICE AND ORDER FOR HEARING.

19 [For text of subpart 1, see M.R.]

20 Subp. 2. **Contents of notice and order.** Unless otherwise  
21 provided by law, a notice of and order for hearing, which shall  
22 be a single document, shall be served upon all parties and shall  
23 contain, among other things, the following:

24 [For text of items A to C, see M.R.]

25 D. A statement of the allegations or issues to be  
26 determined together with a citation to the relevant statutes or  
27 rules allegedly violated or which control the outcome of the  
28 case;

29 [For text of items E to M, see M.R.]

30 [For text of subps 3 to 7, see M.R.]

31 1400.5700 NOTICE OF APPEARANCE.

32 Each party intending to appear at a contested case hearing  
33 shall file with the judge and serve upon all other known parties  
34 a notice of appearance which shall advise the judge of the

1 party's intent to appear and shall indicate the title of the  
2 case, the agency ordering the hearing, the party's current  
3 address and telephone number, and the name, office address, and  
4 telephone number of the party's attorney or other  
5 representative. The notice of appearance shall be filed and  
6 served within 20 days of the date of service of the notice of  
7 and order for hearing, except that, where the hearing date is  
8 less than 20 days from the commencement of the contested case,  
9 the notice of appearance shall not be necessary. The failure to  
10 file and serve a notice may, in the discretion of the judge,  
11 result in a continuance of the hearing if the party failing to  
12 file appears at the hearing. A notice of appearance form shall  
13 be included with the notice of and order for hearing for use by  
14 the party served.

15 1400.5950 MEDIATION.

16 [For text of subps 1 and 2, see M.R.]

17 Subp. 3. **Initiating mediation.** Mediation may be initiated  
18 in the following ways:

19 [For text of items A and B, see M.R.]

20 C. Upon receipt of a request for mediation, the chief  
21 judge or designee shall contact, either orally or in writing,  
22 the agency and all parties to determine whether they are willing  
23 to participate in mediation. No matter shall be ordered for  
24 mediation if the agency or any party is opposed.

25 D. If the chief judge determines that ~~at-least-two~~  
26 ~~parties,-including no party or the agency,-have-agreed is~~  
27 opposed to mediation, the chief judge shall appoint a mediator  
28 and issue an order for mediation, which shall set forth:

29 (1) the name, address, and telephone number of  
30 the mediator; and

31 (2) a date by which the mediator must initiate  
32 the mediation proceedings.

33 The order shall be served upon the agency, the parties, and  
34 the judge assigned to the contested case, if any.

35 E. The mediator must initiate the mediation

1 proceedings by contacting the agency and each party no later  
2 than the date set forth in the order for mediation.

3 [For text of subp 4, see M.R.]

4 Subp. 5. **Termination.** The mediation process shall  
5 terminate when all parties are, or the agency is, unwilling to  
6 continue mediation; or a settlement agreement is signed setting  
7 forth the resolution of the disputed issues.

8 Upon termination, the mediator shall either forward the  
9 signed settlement agreement to the agency or the judge, if  
10 applicable, for appropriate action; or inform the agency or the  
11 judge, if applicable, that the mediation has been terminated  
12 without agreement.

13 [For text of subps 6 and 7, see M.R.]

14 1400.6000 **DEFAULT.**

15 The agency or the judge, where authorized, may dispose of a  
16 contested case adverse to a party which defaults. Upon default,  
17 the allegations of or the issues set out in the notice of and  
18 order for hearing or other pleading may be taken as true or  
19 deemed proved without further evidence. A default occurs when a  
20 party fails to appear without the prior consent of the judge at  
21 a prehearing conference, settlement conference, or a hearing or  
22 fails to comply with any interlocutory orders of the judge.

23 1400.6700 **DISCOVERY.**

24 Subpart 1. **Witnesses; statement by parties or witnesses.**  
25 Each party shall, within ten days of a demand by another party,  
26 disclose the following:

27 A. The names and addresses of all witnesses that a  
28 party intends to call at the hearing, along with a brief summary  
29 of each witness' testimony. All witnesses unknown at the time  
30 of said disclosure shall be disclosed as soon as they become  
31 known.

32 [For text of item B, see M.R.]

33 [For text of subps 2 to 5, see M.R.]

34



## 1 1400.7100 RIGHTS AND RESPONSIBILITIES OF PARTIES.

2 [For text of subpart 1, see M.R.]

3 Subp. 2. **Necessary preparation.** A party shall have all  
4 evidence to be presented, both oral and written, available on  
5 the date for hearing. Requests for subpoenas, depositions, or  
6 continuances shall be made within a reasonable time after their  
7 need becomes evident to the requesting party. In cases where  
8 the hearing time is expected to exceed one day, the parties  
9 shall be prepared to present their evidence at the date and time  
10 ordered by the judge or as agreed upon at a prehearing  
11 conference. Parties shall have enough copies of exhibits so  
12 that they can provide a copy to each other party at the time the  
13 exhibit is introduced, unless that other party has already  
14 obtained a copy through discovery.

15 [For text of subps 3 to 5, see M.R.]

## 16 1400.7400 HEARING RECORD.

17 Subpart 1. **Content.** The judge shall maintain the official  
18 record in each contested case until the issuance of the judge's  
19 final report, at which time the record, except for the  
20 audiomagnetic recordings of the hearing, shall be sent to the  
21 agency. The audiomagnetic recordings shall be retained by the  
22 office for five years from the date that the record is returned  
23 to the agency. Unless an agency requests a longer retention  
24 period for a specific case, the recordings may be erased or  
25 otherwise destroyed at the end of the five-year period.

26 The record in a contested case shall contain all pleadings,  
27 motions, and orders; evidence offered or considered; offers of  
28 proof, objections, and rulings thereon; the judge's findings of  
29 fact, conclusions, and recommendations; all memoranda or data  
30 submitted by any party in connection with the case; and the  
31 transcript of the hearing, if one was prepared.

32 [For text of subp 2, see M.R.]

## 33 1400.7500 CONTINUANCES.

34 Requests for a continuance of a hearing shall be granted  
35 upon a showing of good cause. Unless time does not permit, a

1 request for continuance of the hearing shall be made in writing  
2 to the judge and shall be served upon all parties of record and  
3 the agency if it is not a party. In determining whether good  
4 cause exists, due regard shall be given to the ability of the  
5 party requesting a continuance to effectively proceed without a  
6 continuance. A request for a continuance filed within five  
7 business days of the hearing shall be denied unless the reason  
8 for the request could not have been earlier ascertained.

9 "Good cause" shall include: death or incapacitating  
10 illness of a party, representative, or attorney of a party; a  
11 court order requiring a continuance; lack of proper notice of  
12 the hearing; a substitution of the representative or attorney of  
13 a party if the substitution is shown to be required; a change in  
14 the parties or pleadings requiring postponement; and agreement  
15 for a continuance by all parties provided that it is shown that  
16 more time is clearly necessary to complete authorized discovery  
17 or other mandatory preparation for the case and the parties and  
18 the judge have agreed to a new hearing date, or, the parties are  
19 engaged in serious settlement negotiations or have agreed to a  
20 settlement of the case which has been or will likely be approved  
21 by the final decision maker.

22 "Good cause" shall not include: intentional delay;  
23 unavailability of counsel or other representative due to  
24 engagement in another judicial or administrative proceeding  
25 unless all other members of the attorney's or representative's  
26 firm familiar with the case are similarly engaged, or if the  
27 notice of the other proceeding was received subsequent to the  
28 notice of the hearing for which the continuance is sought;  
29 unavailability of a witness if the witness' testimony can be  
30 taken by deposition; and failure of the attorney or  
31 representative to properly utilize the statutory notice period  
32 to prepare for the hearing.

33 During a hearing, if it appears in the interest of justice  
34 that further testimony should be received and sufficient time  
35 does not remain to conclude the testimony, the judge shall  
36 either order the additional testimony be taken by deposition or

1 continue the hearing to a future date and oral notice on the  
2 record shall be sufficient.

3 A continuance shall not be granted when to do so would  
4 prevent the case from being concluded within any statutory  
5 deadline.

6 1400.8300 RECONSIDERATION OR REHEARING.

7 Once a judge has issued a report, unless that report is  
8 binding on the agency, the judge loses jurisdiction to amend the  
9 report except for clerical or mathematical errors. Unless the  
10 report is a final order, binding on the agency, petitions for  
11 reconsideration or rehearing must be filed with the agency.

12 Where the judge's decision is binding on the agency, a  
13 petition for reconsideration or rehearing shall be filed with  
14 the judge. The petition ~~may~~ must be filed ~~at-any-time-until-the~~  
15 within a reasonable time for appeal has elapsed or until but not  
16 after an appeal is taken nor more than one year after the  
17 decision was issued. Pursuant to Minnesota Statutes, section  
18 14.64, a petition for reconsideration must be filed within ten  
19 days after the decision in order to toll the time for appeal to  
20 the court of appeals. A notice of and order for rehearing shall  
21 be served on all parties in the same manner prescribed for the  
22 notice of and order for hearing provided that the judge may  
23 permit service of the notice and order for rehearing less than  
24 30 days prior to rehearing. The rehearing shall be conducted in  
25 the same manner prescribed for a hearing.

26 In ruling on a motion for reconsideration or rehearing in  
27 cases where the judge's decision is binding on the agency, the  
28 judge shall grant reconsideration or rehearing if it appears  
29 that to deny it would be inconsistent with substantial justice  
30 and any one of the following has occurred:

31 A. irregularity in the proceedings whereby the moving  
32 party was deprived of a fair hearing;

33 B. accident or surprise that could not have been  
34 prevented by ordinary prudence;

35 C. material evidence newly discovered that with

1 reasonable diligence could not have been found and produced at  
2 hearing; or

3 D. fraud upon the hearing process.

4 ~~The rehearing shall be conducted in the same manner prescribed~~  
5 ~~for a hearing;~~

6 E. mistake, inadvertence, or excusable neglect; or

7 F. the decision is not justified by the evidence, or  
8 is contrary to law; but unless it be so expressly stated in the  
9 order granting rehearing, it shall not be presumed, on appeal,  
10 to have been made on the ground that the decision was not  
11 justified by the evidence.

12 1400.8401 EXPENSES AND ATTORNEY FEES.

13 [For text of subps 1 and 2, see M.R.]

14 Subp. 3. **Application.** A party seeking an award of  
15 expenses and attorney's fees shall submit to the judge an  
16 application that shows:

17 [For text of items A to D, see M.R.]

18 E. a proof of service showing that the state agency  
19 and all other parties have been served, either personally or by  
20 first class mail, with a copy of the application.

21 The application must be signed and sworn to by the party  
22 and the attorney or other agent or representative submitting the  
23 application on behalf of the party, showing the addresses and  
24 phone numbers of all persons signing the application.

25 [For text of subps 4 and 5a, see M.R.]

26 Subp. 5b. **Extensions of time and further proceedings.**

27 [For text of items A and B, see M.R.]

28 C. In the event that an evidentiary hearing is  
29 required or permitted by the judge, the hearing and any related  
30 filings or other action required or permitted shall be conducted  
31 under parts 1400.8510 to 1400.8612.

32 [For text of subps 6 and 7, see M.R.]

33 1400.8510 DEFINITIONS.

34 [For text of subps 1 to 3, see M.R.]

35 Subp. 4. **Service, serve.** "Service" or "serve" may be

1 accomplished by either delivering a document to an individual in  
2 person, or by leaving a document at his/her home with some  
3 person of suitable age and discretion who resides in the same  
4 house, or by mailing the document to the person by first class  
5 United States mail.

6 If a person is confined to a federal or state institution,  
7 a copy of the document must also be served upon the chief  
8 executive officer of the institution.

9 Postage shall be prepaid. Mail to a person other than a  
10 state agency shall be addressed to the last known address of the  
11 person. Agencies of the state of Minnesota may also deposit the  
12 document with the Central Mailing Section, Publications  
13 Division, Department of Administration, addressed as above.

14 Any paper relating to hearings conducted by an  
15 administrative law judge under Minnesota Statutes, chapter 14,  
16 may be filed with or served on the office by facsimile  
17 transmission. A transmission which is commenced prior to 4:30  
18 p.m. shall be deemed to have been timely filed. The person  
19 filing the document shall forward the original signed document  
20 within five days. Filings or service shall be effective at the  
21 time that the facsimile transmission is received by the office.  
22 The filing or service of a facsimile shall have the same force  
23 and effect as the filing or service of the original document.

24 1400.8560 DEFAULT.

25 A default occurs when a party fails to appear without the  
26 prior consent of the judge at a prehearing conference,  
27 settlement conference, or a hearing. If the claimant agency  
28 appears at a hearing but the debtor does not, the allegations in  
29 the notice of hearing shall be taken as true and deemed proved  
30 without further evidence. If the debtor appears at a hearing,  
31 but the claimant agency fails to appear, the administrative law  
32 judge shall recommend that the hearing be dismissed with  
33 prejudice. If neither the claimant party nor the debtor appear  
34 at a hearing, the administrative law judge shall recommend that  
35 the case be dismissed with prejudice.

1 1400.8601 SUBPOENAS.

2 [For text of subpart 1, see M.R.]

3 Subp. 2. **Service.** Subpoenas shall be served personally in  
4 the manner provided in part 1400.8510, subpart 4, item A. They  
5 shall not be served by mail. The witness fees applicable in the  
6 district courts pursuant to Minnesota Statutes, section 357.22  
7 shall apply and shall be paid to the potential witness at the  
8 time of service.

9 [For text of subp 3, see M.R.]

10 1400.8604 RESPONSIBILITIES AND RIGHTS OF PARTIES.

11 Subpart 1. **Necessary preparation.** A party shall have all  
12 evidence to be presented, both oral and written, available on  
13 the date for hearing. Requests for subpoenas, depositions, or  
14 continuances shall be made within a reasonable time after their  
15 need becomes evident to the requesting party. Parties shall  
16 have enough copies of exhibits so that they can provide a copy  
17 to each other party at the time the exhibit is introduced,  
18 unless that other party has already obtained a copy through  
19 discovery.

20 [For text of subps 2 to 4, see M.R.]

21 1400.8609 HEARING RECORD.

22 Subpart 1. **Maintaining.** The administrative law judge  
23 shall maintain the official record in each case until the  
24 issuance of the report, at which time the record, except for the  
25 audiomagnetic recordings thereof, shall be sent to the agency.  
26 The audiomagnetic recordings shall be retained by the office for  
27 five years from the date that the record is returned to the  
28 agency. Unless an agency requests a longer retention period for  
29 a specific case, the recordings may be erased or otherwise  
30 destroyed at the end of the five-year period.

31 [For text of subps 2 to 4, see M.R.]

32 1405.0200 DEFINITIONS.

33 [For text of subps 1 to 5, see M.R.]

34 Subp. 6. **Service; serve.** Unless otherwise provided by

1 law, "service" or "serve" means service by first class United  
2 States mail, postage prepaid, and addressed to the person to be  
3 served at his last known address. An affidavit of service shall  
4 be made by the person making such service. Service by mail is  
5 complete upon the placing of the item to be served in the mail.  
6 Service may also be made personally.

7 Any paper relating to hearings conducted by an  
8 administrative law judge under Minnesota Statutes, chapter 14,  
9 may be filed with or served on the office by facsimile  
10 transmission. A transmission which is commenced by 4:30 p.m.  
11 shall be deemed to have been timely filed. The person filing  
12 the document shall forward the original signed document within  
13 five days. Filings or service shall be effective at the time  
14 that the facsimile transmission is received by the office. The  
15 filing or service of a facsimile shall have the same force and  
16 effect as the filing or service of the original document.

17 1405.0300 SCOPE AND PURPOSE.

18 The procedures contained herein shall govern the conduct of  
19 all hearings conducted for the Environmental Quality Board  
20 involving the siting of large electric power generating plants,  
21 the routing of high voltage transmission lines, and to the site  
22 and route exemption processes contained in Minnesota Statutes,  
23 section 116C.57, subdivisions 5 and 5a, provided, however, that  
24 the procedures for hearing concerning the revocation or  
25 suspension of a site certificate or construction permit shall be  
26 those contained in parts 1400.5100 to 1400.8401, as are the  
27 hearings conducted pursuant to Minnesota Statutes, section  
28 116C.57, subdivision 3, relating to the determination of  
29 emergencies. See part 1405.2700.

30 1405.1400 CONDUCT OF HEARING.

31 The proceedings shall be conducted substantially in the  
32 following manner. After opening the hearing, the administrative  
33 law judge shall indicate the procedural rules for the hearing  
34 including, but not limited to, the following:

35 A. all persons may present evidence and argument with

1 respect to the issues and cross-examine witnesses;

2 B. all persons may be represented by legal counsel,  
3 but such representation is not required; and

4 C. the rules of evidence as set forth in part  
5 1405.1700, subparts 3 to 8.

6 Cross-examination shall be conducted in a sequence  
7 determined by the administrative law judge. The record of the  
8 hearing shall be closed at a date to be set by the  
9 administrative law judge. Such date will correspond to a  
10 specific number of calendar days beyond the close of the last  
11 hearing date, computed pursuant to part 1405.0700, subpart 1.  
12 Written comment will be accepted if postmarked no later than the  
13 date set by the administrative law judge. However, the record  
14 shall remain open beyond that date for the sole purpose of  
15 receiving board responses to relevant comments received on the  
16 environmental impact assessment.

17 1405.1800 HEARING RECORD.

18 [For text of subps 1 and 2, see M.R.]

19 Subp. 3. **Recorder or reporter.** Unless the chief  
20 administrative law judge determines that the use of a court  
21 reporter is more appropriate, an audiomagnetic recording device  
22 shall be used to keep a record at any hearing which takes place  
23 under parts 1405.0200 to 1405.2800.

24 The audiomagnetic recordings shall be retained by the  
25 office for five years from the date that the record is returned  
26 to the agency. Unless an agency requests a longer retention  
27 period for a specific case, the recordings may be erased or  
28 otherwise destroyed at the end of the five-year period.

29 [For text of subp 4, see M.R.]

30 Subp. 5. **Environmental documents.** The environmental  
31 impact assessment prepared pursuant to parts 4400.1210 and  
32 4400.3210 shall be entered into the record at a point during the  
33 hearing process which will allow all persons an opportunity to  
34 review and comment on the material. In addition, all comments  
35 and responses to comments which the board desires to consider



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1 shall be entered into the record promptly after they are  
2 received.

3

4 REPEALER. Minnesota Rules, parts 1400.1300; 1400.5100,  
5 subparts 4 and 5; 1400.8402; 1400.8613; and 1405.2800 are  
6 repealed.