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CHAPTER 7000 MINNESOTA POLLUTION CONTROL AGENCY PROCEDURAL RULES

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GENERALLY

7000.0050 PURPOSE.

This chapter describes how the agency makes decisions and how members of the public may involve themselves in agency decision making. The procedures and standards of conduct established in this chapter are intended to ensure an orderly and fair decision-making process, to preserve the integrity and independence of agency decisions, and to promote public confidence in those decisions.

Statutory Authority: *MS s 14 06, 116 07*

History: *19 SR 1310*

7000.0100 DEFINITIONS.

[For text of subpart 1, see M R]

Subp. 1a **Administrative law judge.** "Administrative law judge" means the person assigned by the chief administrative law judge pursuant to Minnesota Statutes, section 14 50, to preside at a rulemaking hearing or contested case hearing.

Subp. 2 **Agency or agency members.** "Agency" or "agency members" means the nine persons appointed to the Minnesota Pollution Control Agency, pursuant to Minnesota Statutes, section 116 02, subdivision 1.

Subp. 2a **Commissioner.** "Commissioner" means the chief executive officer of the Minnesota Pollution Control Agency.

Subp. 2b **Contested case.** "Contested case" has the meaning given in Minnesota Statutes, section 14 02, subdivision 3.

[For text of subs 3 and 5, see M R]

Subp. 5a **Interested person.** "Interested person" means persons who have submitted their names and addresses to the agency for inclusion on an agency list of persons to receive notice concerning a specific agency matter. Persons can place their names and addresses on an agency list for a specific matter by

A. making an oral presentation on the specific agency matter at an agency meeting and registering their names and addresses with the agency at that time,

B. submitting to the commissioner a written statement in which they request to be treated as an interested person and in which they provide their names and addresses and identify the specific agency matter in which they are interested,

C. registering their names and addresses for the purpose of receiving notice of all agency rulemakings pursuant to Minnesota Statutes, section 14 14, subdivision 1a; or

D. being named as a party to a contested case hearing for a specific agency matter.

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In addition, for any matter regarding a permit, the permittee is an interested person

Subp 5b **Material issue of fact.** A “material issue of fact” means a fact question, as distinguished from a policy question, whose resolution could have direct bearing on a final agency decision

Subp 6 [Repealed, 19 SR 1310]

[For text of subps 7 to 11, see M R]

Subp 12 **Service; serve.** “Service” or “serve” means personal service, service by mail, or service by facsimile as described in items A to C

A Personal service upon the agency is made by handing an item to the commissioner or by delivering the item to the office of the commissioner and leaving it with a person assigned to that office Personal service upon an interested person or agency member is made by handing an item to that person or by delivering the item to the person’s last known home or business address and leaving it with a competent person residing or working at that address

B Service by mail is made by placing the item in first class United States mail, postage prepaid, addressed to the last known address of the person being served Service by mail is complete upon depositing the item in the mail A person may use an overnight delivery service to effect service by mail instead of using United States mail.

C Service by facsimile is made by telefaxing a document to a person known to have a facsimile machine Service by facsimile is complete upon receipt of the facsimile Service by facsimile must be followed by personal service or service by mail within one day after a facsimile service

Upon request, the commissioner will make available the names and service addresses of agency members

[For text of subps 13 and 14, see M R]

Statutory Authority: *MS s 14 06, 116 07*

History: *19 SR 1310*

7000.0200 COMPUTATION OF TIME.

In computing any period of time prescribed by this chapter, the day of the last act, event, or default from which the designated period of time begins to run is not included The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday When this chapter requires service within a certain number of days, the term “day” includes weekdays, weekend days, and holidays

Statutory Authority: *MS s 14 06, 116 07*

History: *19 SR 1310*

7000.0400 OFFICERS, COMMITTEES, AND DUTIES.

Subpart 1 **Officers.** The officers of the agency are the chair, vice–chair, and commissioner

Subp 2 **Electing and term of the chair.** Each year, at its annual meeting, the agency shall elect a chair to serve a one–year term The chair must be elected by a majority of all agency members No member elected to the office of chair may serve in that capacity more than two full terms consecutively

Subp 3. **Electing and term of the vice–chair.** Each year, at its annual meeting, the agency shall elect a vice–chair to serve a one–year term The chair must be elected by a majority of all agency members No member elected to the office of vice–chair may serve in that capacity more than two full terms consecutively

Subp 4 **Duties.** The chair shall preside at all agency meetings and shall assist the commissioner in proposing dates, times, and agendas for agency meetings and in coordinating agency actions The vice–chair shall discharge the duties of the chair during the absence or disability of the chair The commissioner shall have the duties prescribed by statute or by rule or delegation of the agency

Subp 5 **Vacancies.** If a permanent vacancy occurs in the office of chair of the agency, the vice–chair shall become the chair until such time as new officers are elected at the next annual meeting. If a permanent vacancy occurs in the office of vice–chair, the agency shall,

as soon as possible after the permanent vacancy, elect a new vice-chair to fill out the term of the vacated office of vice-chair

Subp 6 **Removal.** The chair or vice-chair may be removed from office by an affirmative vote of two-thirds of all agency members. The vote to remove a chair or vice-chair shall be made at the next regular meeting of the agency following the meeting at which the removal motion is made.

[For text of subp 7, see MR]

Subp 8 **Execution of documents.** Contracts, stipulation agreements, and other documents approved by the agency pursuant to law shall be executed on the agency's behalf by the chair and the commissioner unless the agency authorizes some other form of signing

Statutory Authority: *MS s 14 06, 116 07*

History: *19 SR 1310*

7000.0500 AGENCY MEETINGS.

Subpart 1 **Regular and annual meetings.** Twelve regular monthly meetings of the agency shall be held each calendar year. A date for each regular meeting shall be set by the agency. The annual meeting, also conducted as a regular meeting, shall be held during the month of July of each year. The time and place of each regular meeting, including the annual meeting, shall be designated by the commissioner after consultation with the chair. The chair may direct that a regular meeting be postponed or advanced to accommodate a state holiday, weather emergency, or scheduling conflicts of agency members.

Subp 2 **Special meetings.** Upon concluding that a special meeting would assist the agency in accomplishing its work or upon receiving a request for a special meeting from three agency members, the commissioner shall call a special meeting of the agency. The time and place of the special meeting shall be designated by the commissioner after consultation with the chair. In setting the time and place of a special meeting, the commissioner shall consider the extent to which time is of the essence and whether it would be unreasonable or unfair to interested persons for the agency to postpone consideration of the agenda for the special meeting to allow as much notice as would be required for a regular meeting of the agency.

Subp 3 [Repealed, 19 SR 1310]

Subp 3a **Committee meetings.** The committee chair or the commissioner shall call a committee meeting when the commissioner concludes that a committee meeting would assist the agency in accomplishing its work or upon receiving a request for a committee meeting from a member of the agency committee. The time and place of the committee meeting shall be designated by the commissioner after consultation with the committee chair.

Subp 3b **Informational meetings.** Part 7001.0120 addresses informational meetings on permits. For all other matters, the agency or commissioner shall call a public informational meeting upon concluding that a public informational meeting would provide the agency with information that would assist it in accomplishing its work or would otherwise be in the public interest. The time and place of the informational meeting shall be designated by the commissioner after consultation with the chair.

Subp 4 [Repealed, 19 SR 1310]

Subp 5 [Repealed, 19 SR 1310]

Subp 6 [Repealed, 19 SR 1310]

Subp 7 [Repealed, 19 SR 1310]

Subp 8 **Quorum necessary for regular and special meetings.** A majority of the members of the entire agency constitutes a quorum, and a quorum must be present for the transaction of business. A committee meeting or an informational meeting may be held with less than a quorum of the agency.

Subp 9 **Presiding officer.** The chair shall preside at all regular and special meetings of the agency. The vice-chair shall preside in the chair's absence. If the chair and vice-chair are both absent, the remaining members shall designate one of the agency members present to preside over the meeting until the chair or vice-chair arrives.

Subp 10 **Adoption of and consideration of matters on agency agenda.** As the first order of business at a regular, special, or committee meeting, the agency or committee shall

review its proposed agenda, amend or modify it if appropriate, and then adopt it. Thereafter, the agency shall act on agency matters at the approximate times shown on its adopted agenda. However, by consensus of all agency members present, the agency may group noncontroversial agenda items or agenda items ministerial in nature for approval by a single agency vote.

Subp 11. [Repealed, 19 SR 1310]

Subp 12. [Repealed, 19 SR 1310]

Subp 13. **Open meetings.** Except as provided by law, all meetings of the agency must be open to the public.

Subp 14. [Repealed, 19 SR 1310]

Subp 15. [Repealed, 19 SR 1310]

Subp 16. **Record of meetings.** The agency shall keep full and accurate minutes of all meetings, including a record of all votes of individual members.

Subp 17. **Parliamentary procedure.** Except as specifically provided in this chapter, Robert's Rules of Order, as amended, shall govern any question of parliamentary procedure that may arise at any meeting of the agency.

Subp 18. **Continuation or recess of agency meetings.** The agency may continue or recess an agency meeting to a later time or date if necessary to allow for the drafting of findings of fact as directed by agency members or further discussion or deliberation concerning a matter on a meeting agenda. If an agency meeting is continued or recessed and the time, date, and place for reconvening is announced and recorded at the time the meeting is recessed or continued, no further notice of the reconvening is necessary. If the agency provided an opportunity for public comments on a specific matter before a meeting is recessed or continued, the chair may rule that no further comments will be heard when the meeting is reconvened. However, agency members may ask questions of agency staff and interested persons even when no further public comment is to be taken.

Statutory Authority: *MS s 14 06; 116 07*

History: *19 SR 1310*

7000.0550 AGENDA FOR AGENCY MEETINGS.

Subpart 1. **Agenda items and related written materials.** No matter may be considered at a meeting of the agency unless it is on the agenda and related written materials have been made available as provided in part 7000 0650.

Subp. 2. **Agenda preparation.** The commissioner shall prepare an agenda for each regular, special, and committee meeting of the agency. The agenda shall identify the date and place of the meeting, and the approximate times for considering each item on the agenda. Each agenda must be prepared in sufficient time to allow for notice as specified in this chapter. Each agenda must identify all matters to be considered by the agency. Agency members may place items on the regular meeting agenda by notifying the commissioner at least 14 days prior to the meeting. Agency members may place items on the agenda of a special or committee meeting by notifying the commissioner at least ten days prior to a scheduled special or committee meeting.

Subp. 3. **Agency member notice of meetings.** The commissioner shall serve on each agency member a copy of the proposed agenda for each agency meeting, together with the related written materials for the items on the agenda. However, if the related written materials are so voluminous as to make it impractical to serve them on all agency members, the commissioner may provide a notice stating that there are additional related written materials for review at the offices of the agency. Service shall be made as described in items A and B.

A. For a regular meeting of the agency, service shall be made at least ten days before the meeting.

B. For a special meeting or committee meeting of the agency, service by mail shall be made at least six days before the meeting. Personal service or service by facsimile shall be made at least three days before the meeting. However, the notice provisions of this part do not apply to emergencies which are addressed by the agency or commissioner under part 7000 5000.

Statutory Authority: *MS s 14 06, 116.07*

History: *19 SR 1310*

7000.0600 [Renumbered 7000 5000]

7000.0650 PUBLIC PARTICIPATION IN AGENCY MEETINGS.

Subpart 1 **Public inspection of agency meeting agenda and related written materials.** The agenda and related written materials for meetings of the agency shall be available for public inspection at the central office of the agency as described in items A and B

A For regularly scheduled meetings, the agenda and related written materials shall be available at least ten days prior to the regular agency meeting

B For special or committee meetings, the agenda and related written materials shall be available as soon as possible and, in any event, no later than three days prior to the special or committee meeting However, the inspection provisions of this part do not apply to emergencies which are addressed by the agency or commissioner under part 7000 5000

Subp 2 **Service on interested persons.** The commissioner shall serve on each interested person a copy of the proposed agenda for each agency meeting together with a copy of the agenda item prepared by agency staff If the related written materials for the agenda item are not voluminous, the commissioner shall serve these materials, too However, if the commissioner finds that the related written materials are so voluminous as to make it impractical for the commissioner to serve them on all interested persons, the commissioner shall serve on interested persons a notice stating that there are additional related written materials for the item in which the person is interested and that these additional related written materials can be viewed at the offices of the agency or can be requested from the agency Service shall be made as described in items A and B

A For a regular meeting of the agency, service shall be made at least ten days before the meeting

B For a special meeting or committee meeting of the agency, service by mail shall be made at least six days before the meeting Personal service or service by facsimile shall be made at least three days before the meeting However, the notice provisions of this part do not apply to emergencies which are addressed by the agency or commissioner under part 7000 5000

The agency does not intend the notice and service requirements of this chapter or any other requirements of this chapter to prevent it from seeking to recover reasonable copying and preparation costs as authorized under Minnesota Statutes, section 13 03, subdivision 3 This subpart does not limit the agency staff from presenting written materials at agency meetings as described in subpart 7

Subp. 3 **Petitions to place matters on an agency agenda.** Any person who wishes to place a matter on the agenda for an agency meeting may submit a petition identifying the matter that person would like placed on the agenda and the reasons for placing it on the agenda. The petition must be served on the commissioner by mail at least 24 days before the meeting during which a petitioner would like the matter to be considered or by personal service or facsimile at least 21 days before the meeting. The commissioner shall grant or deny the petition If the commissioner decides not to place a matter on the agenda, the commissioner shall advise the agency and the petitioner of the reasons for the denial

Subp 4 **Petition for informational meeting.**

A Any person may petition the agency to hold a public informational meeting described in part 7000 0500, subpart 3b The petition must identify the matter of concern and the reasons the agency should hold the informational meeting

B If the matter involves a permit for which a public notice has been issued under part 7001 0100, subpart 4, or 7007.0850, subpart 2, the petition must be submitted to the commissioner within the comment period established in the public notice and must conform to the requirements of parts 7001 0110 and 7001.0120

C If item B does not apply and the matter is not on the agenda for an agency meeting, the petition must be submitted to the commissioner The commissioner shall grant or deny the petition If the commissioner decides not to hold the meeting, the commissioner shall advise the agency and the petitioner of the reasons for the denial

D If item B does not apply and the matter is on the agenda for an agency meeting, the petition must be submitted to the agency in accordance with the time frames for submitting written materials set out in subpart 6 The agency shall grant or deny the petition.

Subp 5 Oral presentations at agency meetings. Consistent with the provisions of part 7000 0500, subpart 18, the agency shall afford interested persons a reasonable opportunity to make oral statements concerning matters on an agency meeting agenda. To ensure an opportunity for full and fair consideration of all views, the chair may limit the time and scope of each speaker's presentation and may require speakers with similar views to select a spokesperson. Oral statements must be relevant to the matter before the agency. Oral presentations following a rulemaking or contested case hearing must be limited to the record for the matter.

Subp 6 Written materials. The agency shall consider timely, relevant written materials that interested persons submit concerning a matter on an agenda for an agency meeting. Recessing or continuing a meeting as provided under part 7000 0500, subpart 18, does not create a new opportunity to submit written comments, unless the chair states otherwise and establishes a schedule for submittal of additional written materials. Written statements will be considered timely and relevant only if they meet the following conditions:

A for matters for which a contested case hearing has been held, written comments must conform to the requirements and time limits of part 7000 2000,

B for matters for which a rulemaking hearing has been held, written comments must be limited to the record of the rulemaking hearing and must be served on the agency at least five days before the agency meeting during which the agency is scheduled to act on the proposed rules,

C for matters for which a contested case hearing has not been held but a permit comment period has been established under chapter 7001 or 7007, any additional written permit comments must be served on the agency at least five days before the agency meeting,

D for all matters except those under items A to C, the chair or commissioner may establish a reasonable schedule for submitting written comments. If a schedule is established under this item and the commissioner serves notice of the schedule on interested persons, service is timely if made within the established deadlines, and

E for all matters except those under items A to D, service is timely as follows:

(1) for regular meetings of the agency and special meetings noticed ten or more days before the meeting, service is timely if all agency members and the commissioner are served at least five days before the meeting, and

(2) for special meetings of the agency noticed less than ten days before the meeting, service is timely if all agency members and the commissioner are served personally or by facsimile before the agenda item is scheduled to be heard.

Subp 7 Written presentations at agency meetings. Notwithstanding the restrictions of subparts 2 and 6, the agency shall consider relevant written materials presented by an interested person or by agency staff at an agency meeting if such consideration does not prejudice other interested persons and there is reasonable time for the agency to consider the materials during the course of the meeting. These materials may include, but are not limited to, materials responsive to relevant information that was not available prior to the established deadlines of subpart 6, written versions or summaries of oral presentations, letters, visual aids, and clarifications or corrections of written materials.

Statutory Authority: *MS s 14 06, 116 07*

History: *19 SR 1310*

7000.0700 [Renumbered 7000 7000]

7000.0750 AGENCY RECORDS AND FINAL DECISION MAKING.

Subpart 1 Final decisions of agency. Final decisions of the agency shall be made at agency regular and special meetings. No final decisions shall be made on any agency matter unless it is on the adopted agency agenda at a regular or special meeting.

Subp 2 Rulemaking records upon which agency makes its decision. The record upon which the agency shall make a final decision concerning the adoption, amendment, or repeal of a rule consists of the following:

A the agenda and related materials for an agency meeting during which the proposed rule was considered and the minutes, transcripts, and recordings of the meeting,

B for rules adopted without a public hearing, the documents listed in part 2010 0300 or, for emergency rules, part 2010 0400, and the attorney general's written statement of required modifications or disapproval, if any,

C for rules adopted with a public hearing, the documents listed in part 1400 0900, including the report of the administrative law judge and the report of the chief administrative law judge, if any, and

D written comments submitted to the agency as allowed by part 7000 0650, subpart 6, and recordings or transcripts of oral statements as allowed by part 7000 0650, subpart 5

Subp 3 Contested case record upon which agency makes its decision. The record upon which the agency shall make a final decision after a contested case hearing consists of the record as described in part 1400 7400

Subp 4 Record upon which the agency makes other decisions. The record upon which the agency shall make a final decision in all matters other than rulemaking and contested case hearings consists of the following

A the agenda and related materials for an agency meeting during which the matter was considered and the minutes, transcripts, and recordings of the meeting,

B relevant written materials submitted to the agency within an established comment period, including requests for an informational meeting and petitions for contested case hearings,

C written materials submitted to the agency as allowed by part 7000 0650, subpart 6, and recordings or transcripts of oral statements as allowed by part 7000 0650, subpart 5,

D written documents containing relevant information, data, or materials compiled, referenced, and relied upon by the commissioner and agency staff in recommending a proposed action or decision, and

E all other relevant information or material received into the record and considered by the agency at an agency meeting

Subp 5 Decisions and voting. Except as otherwise specifically provided, a majority vote of the entire agency is necessary to make any decision. All members present shall vote or abstain on every matter presented for decision. If the final vote taken on an agenda item does not result in a decision, but half or more of the voting members vote affirmatively, the matter must be placed on the agenda of the next regular monthly meeting or considered at a special meeting, unless the agenda item concerns rescission of a decision as provided in subpart 8. No final decisions of the agency shall be made at agency committee meetings even if a quorum of the agency is present.

Subp 6 Agency deliberations. During agency deliberation and consideration of a specific agenda matter, agency members may ask questions of agency staff, counsel, or interested persons, and may discuss and amend proposed findings, conclusions, and resolutions or propose alternative findings, conclusions, or resolutions based on the record before the agency. As provided in part 7000 0500, subpart 18, the agency may decide to continue or recess a meeting with instructions to counsel, agency staff, or interested persons to draft findings consistent with the agency's directions. Upon reconvening to consider the findings, the agency need not provide an opportunity for additional oral or written comments.

Subp 7 Reconsideration of decision. Any decision of the agency may be reconsidered during the course of the same meeting at which the original decision was made if an agency member who voted on the prevailing side makes a motion for reconsideration before the agency moves on to its next agenda item or if all interested persons are present and given an opportunity to comment.

Subp 8 Rescission of decision. Upon placement on the agenda by an agency member as provided in part 7000 0550 and upon the affirmative vote of two-thirds of the entire agency, any decision of the agency or commissioner may be rescinded as permitted by applicable law.

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Subp 9 **Stay of decision.** A person may petition for a stay of an agency decision. Petitions must comply with the requirements of part 7000 2100

Statutory Authority: *MS s 14 06, 116 07*

History: *19 SR 1310*

7000.0850 DELEGATION PROCEDURE.

The agency may delegate the exercise of specified authority or duties to the commissioner as follows

A at any time, the commissioner may request in writing that the agency delegate specified authority or duties. The request must be specific as to what authority or duty the agency is to delegate and why the delegation is appropriate,

B the request must be placed on the agency meeting agenda in accordance with part 7000 0550,

C the agency may grant, deny, or modify the request for the delegation as the agency deems reasonable and appropriate and shall state the conditions under which the delegated authority may be exercised,

D the chair and the vice-chair must sign and date the delegation once it is given,

E. all approved delegations must be filed with the Secretary of State,

F the agency may review, modify, revoke, or approve a delegation at any time,

G during the October meeting, the agency must review all delegations and must renew, amend, or revoke existing delegations and consider new delegations, and

H the commissioner shall maintain records of all delegations and these records must be made available for public inspection

Statutory Authority: *MS s 14 06, 116 07*

History: *19 SR 1310*

7000.0900 INFORMAL COMPLAINTS.

Any person may file with the commissioner an informal complaint concerning a pollution source or environmental problem. The informal complaint may be either written or oral and must state the name and address of the person filing the informal complaint, the name and address of the alleged pollution source, and a description of the matter giving rise to the complaint. A person making an oral complaint may be asked to submit the complaint in writing. Upon receipt of this informal complaint, the commissioner shall make such investigation as is deemed necessary and appropriate. At an appropriate time, the commissioner shall notify the person responsible for the alleged pollution source that an informal complaint has been filed. At any time after an informal complaint is filed, the commissioner may take whatever action deemed necessary and appropriate. The person who filed the complaint shall be notified of the disposition of his or her complaint. In all actions taken pursuant to this part, the commissioner shall comply with the provisions of Minnesota Statutes, chapter 13

Statutory Authority: *MS s 14 06, 116 07*

History: *19 SR 1310*

7000.1000 [Renumbered 7000 1750]

7000.1100 [Renumbered 7000 2000]

7000.1400 [Renumbered 7000 9000]

7000.1500 [Repealed, 19 SR 1310]

7000.1600 [Repealed, 19 SR 1310]

CONTESTED CASE HEARINGS

7000.1750 CONTESTED CASE HEARINGS.

Subpart 1 **Objectives.** All contested case hearings required by statute or rule and all contested case hearings ordered by the agency shall be conducted in accordance with the pro-

cedures set forth in the rules of the Office of Administrative Hearings, parts 1400 5200 to 1400 8401, and in accordance with parts 7000 1000 to 7000 1150, and in accordance with this part No person's rights, privileges, or duties may be determined without regard for fundamental fairness To that end, parts 7000 1750 to 7000 4000 are intended to assure that all parties are provided a just and speedy contested case hearing

Subp 2 [Repealed, 19 SR 1310]

Subp 3 [Repealed, 19 SR 1310]

Subp 4 **Parties.** Any person whose legal rights, duties, or privileges are to be determined in the matter for which the contested case hearing is to be held is a party When a contested case hearing is held pursuant to a petition for a hearing, the person or persons petitioning for the hearing are parties to the matter In any hearing on an application for a permit or variance, the applicant is a party The commissioner is a party in any hearing ordered by the agency Any person who has properly intervened in the contested case under part 1400 6200 is a party

Subp 5 [Repealed, 19 SR 1310]

Subp 6 [Repealed, 19 SR 1310]

Subp 7 **Consolidation.** The agency may consolidate two or more matters for which contested case hearings are scheduled and hold a joint hearing if no party objects to the consolidation

Subp 8 [Repealed, 19 SR 1310]

Subp 9 [Repealed, 19 SR 1310]

Statutory Authority: *MS s 14 06, 116 07*

History: *19 SR 1310*

7000.1800 PETITION FOR CONTESTED CASE HEARING.

Subpart 1 **Petition for contested case hearing.** Any person may petition the agency to hold a contested case hearing To be considered by the agency, a petition must be submitted in writing, must contain the information specified in subpart 2, and must be timely Timeliness shall be determined as follows

A for permit matters, a petition for a contested case hearing must be submitted during the public comment period established under parts 7001 0100 and 7007 0850,

B for matters other than those covered by item A, the chair or the commissioner may establish deadlines for persons to petition for a contested case hearing If the chair or commissioner establishes deadlines to petition for a contested case hearing, petitions for a contested case hearing will be considered timely if they are served on all agency members and the commissioner within the established deadlines, and

C if item A does not apply and no deadlines are established as provided in item B, a petition for a contested case shall be considered timely as follows

(1) for regular meetings of the agency and special meetings noticed ten or more days before the meeting, service is timely if all agency members and the commissioner are served five days before the meeting, and

(2) for special meetings of the agency noticed less than ten days before the meeting, service is timely if all agency members and the commissioner are served personally or by facsimile before the agenda item is scheduled to be heard.

Subp 2 Contested case petition contents.

A A petition for a contested case hearing shall include the following information

(1) a statement of reasons or proposed findings supporting an agency decision to hold a contested case hearing pursuant to the criteria in part 7000 1900, subpart 1, and

(2) a statement of the issues proposed to be addressed by a contested case hearing and the specific relief requested or resolution of the matter.

B To the extent known by the petitioner, a petition for a contested case hearing may also include the following information

(1) a proposed list of prospective witnesses to be called, including experts, with a brief description of proposed testimony or summary of evidence to be presented at a contested case hearing,

(2) a proposed list of publications, references, or studies to be introduced and relied upon at a contested case hearing, and

(3) an estimate of time required for petitioner to present the matter at a contested case hearing

C A petitioner is not bound or limited to the witnesses, materials, or the estimated time identified in the petition if the requested contested case is granted by the agency

Subp 3 **Written responses to petitions for contested case hearings.** Any person may serve timely responses to a petition for a contested case hearing. Timeliness shall be determined as described in items A and B

A If the chair or commissioner has established a schedule as provided in subpart 1, item A or B, responses to a petition for a contested case hearing must be submitted within the deadlines established

B If no schedule has been established, responses to a petition for a contested case hearing must be personally served on or facsimiled to all agency members and the commissioner at any time prior to the time at which the matter will be considered by the agency

Subp 4 **Untimely petition for a contested case hearing.** The agency shall deny a petition for a contested case hearing if the petition is not timely served as provided in subpart 1. However, the agency may consider a petition that is not timely if the petition contains the information listed in subpart 2, and the petitioner demonstrates that the petition could not have been submitted to the agency any earlier because it relies on newly discovered material facts that could not have been discovered until after the petition period ended

Statutory Authority: *MS s 14 06, 116 07*

History: *19 SR 1310*

7000.1900 AGENCY CRITERIA TO HOLD CONTESTED CASE HEARING.

Subpart 1 **Agency decision to hold contested case hearing.** The agency must grant the petition to hold a contested case hearing or order upon its own motion that a contested case hearing be held if it finds that

A there is a material issue of fact in dispute concerning the matter pending before the agency,

B the agency has the jurisdiction to make a determination on the disputed material issue of fact, and

C there is a reasonable basis underlying the disputed material issue of fact or facts such that the holding of a contested case hearing would allow the introduction of information that would aid the agency in resolving the disputed facts in making a final decision on the matter

Subp 2 **Scope of contested case.** If the agency decides to hold a contested case hearing, the agency shall identify the issues to be resolved and limit the scope and conduct of the hearing in accordance with applicable law, due process, and fundamental fairness. Alternatively, the agency may request the administrative law judge to identify the issues and determine the appropriate scope and conduct of the hearing in accordance with applicable law, due process, and fundamental fairness

Subp 3 **Agency decision not to hold contested case hearing.** If the agency decides not to hold a contested case hearing, the agency may hold a public informational meeting as provided in part 7000 0550, subpart 4

Statutory Authority: *MS s 14 06, 116 07*

History: *19 SR 1310*

7000.2000 FINAL DECISIONS AND ORDERS IN CONTESTED CASES.

Subpart 1 **Time for filing comments and exceptions.** The agency shall take no final action with respect to a matter for which a contested case hearing has been held for at least ten days after the date of issuance of the administrative law judge's report. Any person may serve written comments on or exceptions to the findings of fact, conclusions, and recommendations of the administrative law judge at any time up to five days prior to the agency meeting at which the matter will be considered for final decision. However, these comments and exceptions must be based solely upon the record of the hearing

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Subp 2 **Service of comments and exceptions.** Any person who serves written comments on or exceptions to the administrative law judge's report shall serve these comments or exceptions upon each agency member and upon all parties

Subp 3 **Appearance at agency meeting.** Any party may appear at the agency meeting at which the matter will be considered for final decision and present oral comments and arguments, limited to evidence in the record, subject to time limitations and conditions that the chair prescribes in accordance with part 7000 0650, subpart 5

[For text of subp 4, see M R]

Subp 5 **Time.** The agency shall reach a final decision or order on the matter as expeditiously as possible after receipt of the administrative law judge's report and recommendation

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

Subp 7a **Informal disposition.** Informal disposition by stipulation, agreed settlement, or consent order may be made of any matter for which a contested case hearing is scheduled, or any contested issue, at any point in the proceeding, subject to agency approval of this informal disposition and its terms

[For text of subp 8, see M R]

Statutory Authority: *MS s 14 06, 116 07*

History: *19 SR 1310*

7000.2100 PETITION FOR STAY AND REOPENING OF AGENCY'S FINAL DECISION FOLLOWING CONTESTED CASE HEARING.

Subpart 1 **Petition for a stay and reopening.** At any time up to ten days after the agency's final decision, any party to a contested case hearing may petition in writing the agency for an order that the agency's final decision be stayed and that the matter be reopened and, if necessary, remanded to the administrative law judge The petition must be served upon all agency members and parties Any response to the petition by other parties must be served any time up to seven days after receipt of the petition on all the agency members and parties to the matter

Subp 2 **Petition contents.** The written petition shall contain the name and address of the petitioner, the agency designation for the matter, and the specific grounds as described in subpart 3 for staying and reopening the matter.

Subp 3 **Grounds for granting or denying the petition.** The petition shall be granted upon a showing that there are irregularities in the hearing, errors of law, or newly discovered material issue of fact or facts of such importance as are likely to have altered the outcome of the decision

Subp. 4. **Agency's consideration of petition.** Within 30 days of the agency's final decision, the agency must schedule a meeting to determine whether or not to deny or grant the petition submitted under subpart 1

Statutory Authority: *MS s 14 06, 116 07*

History: *19 SR 1310*

7000.2200 DECISION AFTER REOPENING AND REMAND.

The decision after reopening of the hearing and remand to the administrative law judge must be made in the same manner prescribed in part 7000 2000

Statutory Authority: *MS s 14 06, 116 07*

History: *19 SR 1310*

EMERGENCY AND VARIANCE PROCEDURES

7000.5000 DECLARATION OF EMERGENCY.

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

Subp 6 **Notice.** The notice requirements of parts 7000 0550 and 7000 0650 do not apply when the agency or the commissioner is considering the exercise of emergency powers, but the agency and the commissioner shall give such notice to the public as is possible under the circumstances

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[For text of subp 7, see M R]

Statutory Authority: *MS s 14 06, 116 07*

History: *19 SR 1310*

7000.7000 VARIANCES.

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

Subp 4 **Preliminary determination; preparation of public notice.** After a variance application is complete, the commissioner shall make a preliminary determination as to whether the variance should be issued or denied. The commissioner shall prepare a notice of the completed application and the preliminary determination. The notice must include a statement as to the manner in which the public may submit comments on the variance application and the manner in which a person may serve a request pursuant to part 7000 0650, subpart 4 or 7000 1800, asking that a contested case hearing or public informational meeting be held on the variance application. The notice must provide the public 30 days in which to submit these comments or requests.

[For text of subps 5 to 7, see M R]

Subp 8 **Agency decision.** The agency shall make all final decisions on variance applications. The agency shall approve or deny each application. The agency may grant a variance upon such conditions as the agency may prescribe.

If a contested case hearing has been held, the agency shall act on each variance application as expeditiously as possible after receipt of the administrative law judge's report and recommendation, or after submission of the application if no hearing is held. Any person may submit to the agency an oral or written statement or recommendation regarding a variance application in accordance with part 7007 1800.

[For text of subps 9 to 13, see M R]

Statutory Authority: *MS s 14 06, 116 07*

History: *19 SR 1310*

ETHICAL CONDUCT AND STANDARDS

7000.9000 CONFLICT OF INTEREST.

Subpart 1 **Conflict of interest.** Any member of the agency who has a direct and substantial financial or employment interest relating to any matter before the agency, which interest is reasonably likely to affect the impartiality or judgment of the agency member in the matter, shall make known this interest and shall refrain from participating in or voting upon the matter.

Subp 2 **Outside employment.** No employee or agent of the agency, including the commissioner, shall engage in any outside employment or other conduct that is likely to affect adversely the effectiveness or efficiency of any functions or duties performed for the agency.

Subp 3 **Postagency representation.** For one year after leaving the agency, an agency member must not represent an interested person or party before the agency on behalf of an interested person or party regarding a matter that previously was identified as an item on any agency meeting agenda.

Statutory Authority: *MS s 14 06, 116 07*

History: *19 SR 1310*

7000.9100 PROHIBITED EX PARTE COMMUNICATIONS.

Subpart 1 **Ex parte communication.** "Ex parte communication" means an oral or written, off-the-record communication made between an agency member and a person or party, without notice to other interested persons or parties, that is directed to the merits or outcome of a contested case proceeding or rulemaking proceeding after public hearing. This term does not include procedural, scheduling, and status inquiries or other inquiries or for information that have no bearing on the merits or outcome of the proceeding.

Subp 2 **Communication with agency members.** An oral or written ex parte communication must not be made or attempted to be made either directly or indirectly between an

agency member and a person or party concerning a material issue of fact during a pending contested case proceeding or rulemaking public hearing, from the date the agency decides to hold the contested case hearing or the date the rulemaking public hearing is ordered, until the agency issues its final order or makes a final decision

Subp 3 **Disclosure of ex parte communication.** If a person or party makes a prohibited oral ex parte communication to an agency member, the agency member must advise the person or party who makes the communication that the communication is prohibited and shall immediately terminate the communication. If a prohibited written or oral ex parte communication is received by an agency member, that agency member must promptly disclose the following information to the commissioner or agency chair prior to any decision regarding the contested case or rulemaking proceeding that is the subject of the ex parte communication.

A to the extent known, the name and address of the person making the communication and the relationship, if any, to the parties to or interested persons in the pending matter or proceeding,

B the date and time of the communication, its duration, and the means by and circumstances under which it was made,

C a copy of the written document or a written summary of the matters discussed, and

D whether the person or party making the prohibited communication persisted after being advised that the communication was prohibited

Subp 4 **Record of ex parte communication.** The commissioner must make the tape recording or meeting transcript showing disclosure of ex parte contacts and all disclosed written ex parte communications part of the record of the proceeding to which those communications relate

Subp 5 **Agency member abstention.** Any agency member not disclosing information regarding a prohibited ex parte communication may voluntarily abstain or may be required to abstain from voting on the matter that is the subject of the prohibited communication. A determination of an abstention must be made by a majority of agency members, based on a finding that a prohibited ex parte communication with an agency member occurred and was not disclosed in accordance with subpart 3

Statutory Authority: *MS s 14 06; 116.07*

History: *19 SR 1310*