

CHAPTER 8920
TRANSPORTATION REGULATION BOARD
ADMINISTRATIVE PRACTICE AND PROCEDURE

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8920.0100 DEFINITIONS.

Subpart 1. Scope. The terms used in this chapter have the meanings given them in this part.

Subp. 2. Board. "Board" means the Minnesota Transportation Regulation Board.

Subp. 3. Complainant. "Complainant" means a person who complains formally or informally of a person who violates (1) a board rule, (2) a general order of the board, or that (3) an action or failure to act by the board, whether past, present, or reasonably certain to occur as determined by the board, allegedly violates a law governing the activities of the board or under which the board has jurisdiction or allegedly violates a board rule or order.

Subp. 4. Filed. "Filed" means deposit in the mail as shown by the postmark.

Subp. 5. Intervenor. "Intervenor" means a person permitted to intervene as a party in a proceeding under this chapter.

Subp. 6. Motor carrier. "Motor carrier" has the meaning given it in Minnesota Statutes, section 221.011, and includes local cartage carriers.

Subp. 7. Participant. "Participant" means a person appearing at a proceeding under part 8920.0800 to present views without becoming a party.

Subp. 8. Party. "Party" means a person by or against whom a proceeding before the board is begun, a person permitted to intervene in a proceeding under this chapter, or a person admitted under this chapter as a protestant in a motor carrier proceeding.

Subp. 9. Person. "Person" means an individual, organization, corporation, municipal corporation, public corporation, body politic, government agency,

association, partnership, receiver, joint venture, trustee at common law, or statutory trust guardian or personal representative.

Subp. 10. **Petitioner.** "Petitioner" means a person who requests board permission, authorization, or approval or notifies the board of a proposed change in a tariff or rate proposal.

Subp. 11. **Presiding officer.** "Presiding officer" means the presiding board member, when appropriate, or the administrative law judge presiding at a hearing.

Subp. 12. **Proceeding.** "Proceeding" means an undertaking of the board, on its own motion or otherwise, formal or informal, by which it seeks to resolve a question or issue presented to it in a complaint, petition, application, or notice of a proposed change in a tariff or other rate proposal.

Subp. 13. **Proof of service.** "Proof of service" means a certificate or affidavit of service stating the facts of service, including the date and manner of service, and identifying the parties served.

Subp. 14. **Protestant.** "Protestant" means a person objecting in a proceeding involving a petition for board permission, authorization, or approval of new, additional, or modified motor carrier operating authority.

Subp. 15. **Respondent.** "Respondent" means one against whom a complaint is filed or against whom an investigation, order to show cause, or other proceeding on board motion is addressed.

Subp. 16. **Service date.** "Service date" means the same as issue date.

Subp. 17. **Staff.** "Staff" means professional or managerial persons employed by the board or assigned by the attorney general or commissioner of transportation to assist the board in a proceeding.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.0150 TIME.

Subpart 1. **Computation.** In computing a 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.

Subp. 2. **Extra time for service by mail.** When a party has the right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper on the party, or whenever service is required to be made within a prescribed period before a specified event, and the notice or paper is served by mail, three days is added to the prescribed period.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.0200 SCOPE AND CONSTRUCTION.

This chapter governs practice and procedure in matters before the board. It is to be liberally construed to secure just, economical, and expeditious determination of the issues presented. This chapter is to be construed by the board in light of its statutory responsibilities and its obligation to act in the public interest. Except as otherwise indicated, this chapter applies to persons subject to the regulatory jurisdiction of the board. A conflict between this chapter and a statute must be resolved according to the statute. After the assignment of a case to the Office of Administrative Hearings, the rules of the Office of Administrative Hearings govern the conduct of the case until the final report of the administrative law judge is issued.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

INITIATING A PROCEEDING; FORM**8920.0300 INITIATED BY COMPLAINT, PETITION, OR MOTION.**

A proceeding may be initiated by:

A. a formal or informal complaint alleging a violation of a law, or a rule or requirement made under a power granted by law;

B. a petition for the granting or modifying of a license, permit, franchise, certificate of convenience and necessity, privilege, or authority to grant or withhold that is specifically vested in the board;

C. a petition for a board order granting relief under or from a law, rule, or requirement made under a power vested by law, or order approving a proposal or other submission required or permitted by law to be made by the board; or

D. a motion of the board.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.0400 TITLE; REFERENCES TO PARTIES.

Subpart 1. Form. A person initiating a proceeding is referred to as the complainant if the proceeding is by complaint and is referred to as the petitioner in other cases. A person against whom a complaint is brought is referred to as the respondent. In other proceedings the matter is entitled "In the Matter of" followed by a brief description of the subject matter to which it relates.

Subp. 2. Effect of error. No proceeding may be dismissed, impaired, or prejudiced because it is incorrectly entitled, but opportunity must be given to correct the error; giving due consideration to a person who may have been misled by the error.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

PARTIES, INTERESTED PERSONS, JOINDER**8920.0500 PARTIES IN GENERAL.**

Parties to proceedings are referred to as petitioners, complainants, intervenors, respondents, or protestants according to the nature of the proceeding and the relationship of the parties to it. Parties to a proceeding before the board may present evidence, cross-examine witnesses, and file briefs and exceptions to a recommended decision. Parties must be notified of scheduling actions relating to the proceedings.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.0600 INTERVENORS.

Subpart 1. Party to proceeding. A person who becomes a party under this part is referred to as an intervenor.

Subp. 2. Petition and showing of interest. Before the case is assigned to an administrative law judge, other persons may become parties to the proceeding by leave of the board on petitioning to intervene under parts 8920.2300 to 8920.2500 and showing that:

A. the person is specifically deemed by statute to be interested in the particular type of matter involved or is specifically declared by statute to be an interested party to the particular type of proceeding involved; or

B. by the outcome of the proceeding the person will be bound and affected either favorably or adversely with respect to an asserted interest peculiar to the person as distinguished from an interest common to the public or other taxpayers in general.

After the assignment of a case to an administrative law judge, persons seeking to intervene must proceed pursuant to part 1400.6200.

Subp. 3. Department of Transportation. The Department of Transportation may intervene in a case and become a party to the case while retaining its investigative role.

Statutory Authority: *MS s 174 02*

History: *17 SR 95*

8920.0700 PROTESTANTS; NOTICE.

Subpart 1. Party to proceeding. A person who becomes a party to a proceeding involving a petition for board permission, authorization, or approval of new, additional, or modified motor carrier operating authority under this part is referred to as a protestant.

Subp. 2. Notice of intent to protest. A motor carrier desiring to oppose a motor carrier petition shall file with the board a written notice of intent to protest along with the docket number as published in the board calendar signed by the carrier's attorney, if any, an agent authorized to sign, or partner or officer. The notice of intent to protest must include proof of service of the notice on the petitioner or the petitioner's attorney.

Subp. 3. Failure to file timely notice. A motor carrier desiring to participate in the proceeding may be admitted as a party only when it has filed a timely notice of intent to protest as required by Minnesota Statutes, section 174A.02, subdivision 4, that is, within 20 days of the notice having been fully given. This subpart does not apply to a request to participate in a proceeding that has been assigned to an administrative law judge. With respect to such a request, the rules of the Office of Administrative Hearings apply.

Subp. 4. Notice states grounds, interest. A notice of intent to protest filed under this part must set forth specifically the grounds on which the protest will be made and must contain a concise statement of the interest of the protestant in the proceeding. The notice of intent to protest must include copies of the operating authority held by the protestant.

Subp. 5. Failure to appear. If a timely notice of intent to protest is filed but the protestant, without good cause, fails to appear at the hearing, the presiding officer shall disregard the notice.

Subp. 6. Petition by nonmotor carriers. A nonmotor carrier desiring to participate as a party in a motor carrier hearing shall file a formal petition for leave to intervene under parts 8920.2300 to 8920.2500 including proof of service of the petition on the petitioner or the petitioner's attorney.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.0800 PARTICIPANTS.

In proceedings before the board, it may hear the views or evidence of a person concerning the subject matter, but no person may become or may be considered to have become a party to the proceeding by reason of that participation in the hearing.

A person may enter an appearance in a proceeding before the board, but no person may become or may be considered to have become a party to the proceeding by reason of having entered an appearance.

Statutory Authority: *MS s 174 02*

History: *17 SR 95*

8920.0900 JOINDER OF SEVERAL PERSONS IN ONE PLEADING.

Two or more persons may join in one pleading when they desire to make sub-

stantially the same allegation, subject to the power of the board to order separate hearings on its own motion or on the motion of a party to the proceeding.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

PLEADINGS

8920.1000 TYPES OF PLEADINGS.

The pleadings before the board are informal complaint, formal complaint, answer, reply, petition, notice of intent to protest, petition to intervene and answer to petition to intervene, exceptions and replies to exceptions, and requests for oral argument, as appropriate, including amendments or supplements to them.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.1100 FORM OF INFORMAL COMPLAINT.

Subpart 1. Making informal complaint. An informal complaint may be made by letter or other writing. In an emergency, a board member or the board staff shall accept an informal complaint by telephone and prepare and file a memorandum concerning the call.

Subp. 2. Information required. No form of informal complaint is prescribed, but in substance the informal complaint must:

- A. contain the name and address of the complainant and the name of each carrier or other person against whom the complaint is made;
- B. state that a Minnesota statute or board rule has been violated by the carrier or other person;
- C. state when, where, and how the violation occurred; and
- D. request affirmative relief.

Subp. 3. Copies, informing respondents. Informal complaints must be accompanied by enough copies to enable the board to send one copy to each carrier and other persons named. Informal complaints may be accompanied by supporting affidavits and papers.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.1200 RESPONSE TO INFORMAL COMPLAINT.

Responses to informal complaints may be submitted to the board by the named respondents within 20 days of board notification without proof of service on the complainant and without verifications unless the complaint is verified. The board shall ensure that the complainant is notified of the substance of the response.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.1300 FILING INFORMAL COMPLAINT.

Informal complaints are assigned numbers on the informal docket in the order of their receipt. Copies of the informal complaint and writings relating to it are filed under the name of the respondent. Matters thus presented, if their nature warrants it, are taken up by correspondence with the persons affected, to try to resolve the complaint without formal hearing.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.1400 FORM OF FORMAL COMPLAINT.

A formal complaint must state the names and addresses of the complainants and respondents without abbreviation, and the names and addresses of complainants' attorneys, if any. Formal complaints are filed as received and assigned numbers on the formal docket. Formal complaints must be served on respondents with proof of service filed with the board.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.1500 FORMAL COMPLAINT ALLEGATIONS; JOINDER OF CAUSES.

A formal complaint must be drawn to advise fully and completely the respondents and the board of Minnesota statutes or board rules that authorize the complaint and that allegedly have been or are being violated. The complaint must set forth briefly and in plain language the facts claimed to constitute the violation and the relief sought. Two or more grounds of complaint involving the same principle, subject, or statement of facts may be included in one complaint, but must be stated separately and the paragraphs numbered. If violations of two or more sections of Minnesota Statutes are alleged, the facts claimed to constitute violations of one section must be stated separately from those facts relating to any other section. To avoid repetition, facts in one allegation may be incorporated by reference in another allegation.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.1550 INVESTIGATIVE DATA.

If the commissioner of transportation provides investigative data to the board under Minnesota Statutes, section 221.0315, the commissioner must notify the petitioner or carrier.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.1600 TARIFF REFERENCE.

Complaints or objections regarding rates, fares, charges, classifications, rules, regulations, or practices must be specific with reference to the approved tariff on file.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.1700 PREFERENCE OR PREJUDICE ALLEGED.

If a complainant alleges undue or unreasonable preference or advantage or undue or unreasonable prejudice, disadvantage, or discrimination, in violation of Minnesota statutes, then the formal complaint must name the particular person, company, firm, or corporation affected, describe the locality or traffic affected, and specify the statute prohibiting the preference, advantage, prejudice, disadvantage, or discrimination relied on as constituting the violation.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.1800 SIGNATURE AND VERIFICATION.

A formal complaint must be personally signed by the complainant or by a person authorized to appear for the complainant under part 8920.3100. In addition, the facts alleged must be verified under oath by a complainant or by a partner, officer, agent, or attorney of the complainant. However, if the verification

is made by an agent or attorney, the reason it is not made by a complainant, partner, or officer must be stated.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.1900 SUPPLEMENTAL COMPLAINT.

Supplemental complaints setting forth causes of action alleged to have accrued in favor of the complainants and against the respondents since the filing of the original formal complaint may be served by the complainants on the respondents at any time before the date set for hearing on the original complaint and, upon leave granted, may be filed as provided for original complaints. Supplemental complaints must be disposed of in the same proceeding, if practicable. This part applies only to cases before assignment to an administrative law judge or to original proceedings before the board.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.2000 ANSWER TO FORMAL COMPLAINT.

Subpart 1. **Service.** An answer to a formal complaint must be filed with the board, with proof of service on complainant, within 20 days after the day on which the complaint was served.

Subp. 2. **Form and style.** An answer to a formal complaint must be drawn to advise fully and completely the parties and the board of the nature of the defense, to state that the respondent has granted the relief demanded if that is the case, and admit or deny specifically and in detail each material allegation of the pleading answered. Denial of an alleged discrimination or that an alleged preference or prejudice is undue or unreasonable must state fully the grounds relied upon in making the denial.

Subp. 3. **Signature and verification.** An answer must be signed by the respondent or the respondent's attorney and verified.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.2100 REPLY.

If the answer to a complaint alleges the granting of the relief demanded, the complainant shall file with the board a reply admitting or denying the allegation. The reply must be filed within 20 days, with proof of service on the respondent. If the complainant fails to reply, or admits the allegation, the proceeding must be dismissed.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.2200 PETITION CONTENTS.

Except as otherwise prescribed by the board or required by statute, a petition must contain the name and address of the petitioner without abbreviation and the name and address of the petitioner's attorney, if any.

A petition must state the facts and the grounds on which relief or authority is sought, the statute or statutes under which the proceeding is brought, or that are otherwise applicable, and the relief or authority sought by the petitioner.

The petition must be signed in the same way as a formal complaint, but unless required by the board or by statute the petition need not be verified. Only the original must be filed with the board, but additional copies must be given to the board on request.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.2300 PETITION TO INTERVENE.

Subpart 1. **Filed with board.** This part applies only to an original proceeding before the board or a contested case proceeding before its assignment to the Office of Administrative Hearings. A person desiring to be made a party to a pending proceeding may petition for leave to intervene. The original petition, six copies, and the proof of service must be filed with the board before the case is assigned to the Office of Administrative Hearings. After assignment to the Office of Administrative Hearings, a petition to intervene should be filed pursuant to part 1400.6200. A petition to intervene may be filed after that time only for good cause shown.

Subp. 2. **Grounds and interest alleged.** A petition to intervene filed with the board must allege the grounds for the proposed intervention and the specific interest of the petitioner in the proceeding that qualifies the petitioner as a party under this chapter. The allegations must be reasonably pertinent to the issues involved in the principal pleadings, and must not unduly broaden the issues.

Subp. 3. **Signature.** A petition filed with the board must be signed and verified in the same way as a formal complaint.

Subp. 4. **Service.** A petition filed with the board must be served under part 8920.2700 on the parties to the proceeding.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.2400 ANSWER TO PETITION TO INTERVENE.

Parties to a proceeding before the board may file answers to petitions to intervene with the board with proof of service on the petitioner in intervention before the hearing, or parties may answer on the record at the opening of the hearing if fewer than ten days have elapsed from the date of service on them of the petition to intervene. If ten days or more have elapsed, the board shall grant or deny the petition to intervene and state the reasons. If permission is granted, the petitioner to intervene becomes an intervenor and a party to the proceedings. Answers to petitions to intervene must admit or deny the interest of the petitioner in intervention. If the intervention is objected to by a party to the proceeding, the grounds for the objection must be stated in the answer. The answers must be verified. Failure to file an answer to a petition to intervene or to make oral objection to the petition is considered to be consent to the intervention. However, on considering the files and records of the proceeding, the board may grant or deny the petition to intervene regardless of whether answers to it have been filed or oral objections made.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.2500 SCOPE OF INTERVENOR'S PARTICIPATION.

In proceedings before the board, the participation of a party granted leave to intervene is limited to those matters raised in its petition to intervene, unless for good cause shown on the record the board grants an intervenor the right to participate more fully than set forth in the petition to intervene. If there are two or more intervenors with substantially like interests and positions, the board, to expedite the hearing, may set appropriate limits on the number of attorneys permitted to cross-examine and to make and argue motions and objections on behalf of the intervenors.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.2600 AMENDMENTS.

Subpart 1. **Amendments of pleadings.** Formal complaints, answers to formal

complaints, and replies may be amended before the original time for answering or replying has expired. After a case is assigned to an administrative law judge, amendments must be filed as motions pursuant to part 1400.5600, subpart 5, or 1400.6700, as appropriate.

In proceedings before the board, amendments to petitions initiating a proceeding that do not enlarge the authority or relief sought or otherwise materially alter the petition, and amendments to notices of intent to protest and petitions to intervene, may be made without leave of the board before the day of the hearing. After the hearing begins, the petition, notices of intent to protest, or petitions to intervene may be amended only by order of the board for good cause shown upon motion.

Subp. 2. Answers. In proceedings before the board, rules on the form, content, signature, verification, and time of filing of answers to formal complaints and petitions to intervene apply to answers to amended or supplemental complaints and answers to amended petition to intervene.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.2700 SERVICE.

When filing a pleading or other document initiating or relating to a proceeding pending before the board, the rules of service in items A to D must be adhered to.

A. Service of documents must be made on other parties in proceedings before the board by deposit in the first class mail with postage prepaid or by delivery in person, unless otherwise ordered by the board or unless otherwise specifically provided by law.

B. When a party has appeared by attorney, service on the attorney constitutes service on the party.

C. The date of service is the day when the document served is deposited in the mail as evidenced by the postmark or is delivered in person, as the case may be, unless otherwise provided by the board.

D. When a document is served, the person serving the paper shall file with the board proof of service, or proof of acceptance of service by the person served or the person's attorney. Proof of service or acceptance must be annexed to the copies of the documents served.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.2800 CONTINUANCES AND EXTENSIONS OF TIME.

In proceedings before the board, for good cause shown, continuance and extensions of time may be granted or denied at the discretion of the board.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.2900 DOCKETS.

Unless otherwise specified in this chapter, an original and six copies of pleadings, briefs, written arguments, notices, written motions, and other papers relating to or affecting the power or jurisdiction of the board or intended for the information of or action by the board must first be filed with the board. The board shall keep a copy as a public record. When a matter within the board's jurisdiction is filed, the board shall enter the matter on the docket and give it a consecutive docket number.

The board shall keep the necessary dockets. The dockets must be open to public inspection, but a person desiring to inspect a record of the board shall first apply to the board.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.3000 TRADE SECRET AND PROPRIETARY INFORMATION.

This chapter does not require parties to reveal proprietary information or trade secrets or processes in a document filed with the board under this chapter. When a document is filed with proprietary information or trade secret portions omitted, the person filing the document shall bring the omissions to the attention of the board. The board may require omitted information to be submitted. If the board considers this information to be necessary to the hearing, the information must be protected by protective orders.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.3100 HEARINGS.

Subpart 1. Referral to Office of Administrative Hearings. The board shall refer a proceeding to the Office of Administrative Hearings for contested case hearing under the procedures in parts 1400.5100 to 1400.8300:

A. when an issue of fact has been joined upon formal complaint by filing proof of service of answer or by failure of respondent to answer;

B. when a hearing is required by law; or

C. in every other case determined by the board to require a contested case hearing.

Subp. 2. Board determination. Unless a hearing is required by law, the board may determine a proceeding without a contested case hearing and without referring the proceeding to the Office of Administrative Hearings:

A. when the board determines that there are no material issues of fact to be determined and the pleadings raise only issues of law or policy that can be resolved through briefs;

B. when the parties, through their authorized representatives, waive any right to a contested case hearing;

C. when the parties stipulate, either in writing or oral entry in the record, to all material facts involved in the controversy; or

D. following an uncontested or unopposed proceeding.

Subp. 3. Waiver of right to testify. When competent motor carriers object to the grant of a petition but choose not to intervene as protestants within the established time frame, this choice operates to waive the right of these motor carriers to testify at a hearing before the board on the matter.

Subp. 4. Appearances of attorneys. Parties, except individuals appearing on their own behalf, must be represented by an attorney. Participants, as defined in part 8920.0100, subpart 6, need not be represented by an attorney. Persons holding specific authority to practice before the board in their areas of expertise since the effective date of part 7830.3000, subpart 1, may continue to do so within the express limits of that authority.

Subp. 5. Presiding officers. Each formal hearing before the board must be presided over by one or more board members and, where appropriate, by one or more members of the staff, with each person presiding known as a presiding officer. The presiding officers have complete charge of the proceedings and shall rule on all matters of evidence, continuances, motions, or other matters involving the case from the time the proceedings have been assigned to the presiding officers.

Subp. 6. Discretionary hearing on informal complaint. When it appears to the board, following any investigation that the board considers appropriate, that a person filing an informal complaint is entitled to relief, it may order a hearing upon the informal complaint. It may at any time order a hearing on any matter

on the informal docket or on any other matter where a hearing is discretionary with the board.

Subp. 7. Hearing on formal complaint; other hearings. The board shall assign a time and place of hearing pursuant to part 8920.3500 (1) when issue has been joined upon formal complaint by service of answer or by failure of respondent to answer, and proof of the service or failure has been filed, (2) in every other contested case, and (3) in every case in which a hearing is required by law.

Subp. 8. Examination of witnesses, cross-examination, and rebuttal. Witnesses may be examined orally before the presiding officers or, when deemed appropriate, direct evidence may be taken by written statement prepared in advance of the hearing. In these cases, the author of the written statement will be made available for cross-examination. Every party to a contested case may cross-examine witnesses and submit rebuttal evidence.

Subp. 9. Exhibits. Unless the presiding officers direct otherwise, exhibits offered to the board at any hearing or conference in a contested case must be six in number with additional copies furnished to parties of record.

Subp. 10. Order of procedure. Unless otherwise directed, the following order of procedure applies to all hearings before the board:

A. At hearings on informal complaints, formal complaints, or petitions, the complainant or petitioner shall open the proof.

B. The presiding officers shall determine the subsequent order of procedure.

C. Intervening parties shall follow the party in whose behalf intervention is made; except that in all cases when the intervention is not in support of either original party, the presiding officers shall determine when the intervening party must be heard.

Subp. 11. Failure to appear. If a complainant or petitioner fails to appear at a hearing, the presiding officers, at their discretion, may:

A. dismiss the proceeding with or without prejudice;

B. continue the hearing; or

C. grant the relief requested on the basis of a verified complaint or petition and affidavits, if any, filed in the case, which must be considered as having been offered in evidence at the hearing by the complainant or petitioner who is absent. However, the presiding officers shall not grant the relief requested if any person appears at the hearing who qualifies as a party and objects to the relief being granted.

Subp. 12. Admission of evidence. In a contested case, the presiding officers may admit and give probative effect to evidence that possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs. They shall give effect to rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial, and repetitious evidence.

Subp. 13. Documentary evidence. In a contested case, documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

Subp. 14. Evidence must be offered. All evidence in a contested case, including records and documents in the possession of the board of which the presiding officers desire to avail themselves, must be offered and made a part of the record in the case. No other factual information or evidence may be considered in the determination of the case.

Subp. 15. Official notice. In a contested case, the presiding officers may take notice of judicially cognizable facts. They may take notice of general, technical, or scientific facts within their specialized knowledge. Parties must be notified in writing either before or during hearing, by reference in preliminary reports or otherwise, or by oral statement in the record, of the material so noticed. The parties must be afforded opportunity to contest the facts so noticed.

Subp. 16. **Record of proceeding.** A written transcript of testimony before the Office of Administrative Hearings may be required if:

A. exceptions to findings of fact in a recommended decision are taken under part 8920.3700; or

B. if a hearing is scheduled to last more than one day.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.3200 CONFERENCE RECOMMENDED BY PRESIDING OFFICER.

The presiding officers, with or without motion, may direct that a conference be held and direct the parties to the proceeding, their attorneys, and the staff of the Department of Transportation to appear to consider any or all of the matters enumerated in part 8920.3600, subpart 2. Due notice of the time and place of the conference will be given to all parties to the proceeding, their attorneys, and the staff of the Department of Transportation. All parties shall come to the conference fully prepared for a useful discussion of all problems involved in the proceeding, both procedural and substantive, and fully authorized to make commitments with respect to those problems. Preparation should include, among other things, advance study of all relevant material and advance informal communication between the parties, including requests for additional data and information, to the extent it appears feasible and desirable. Failure of a party to attend the conference, without prior notification to the presiding officer and for good cause, after being served with due notice of the time and place, constitutes a waiver of all objections to any order or ruling with respect thereto, but must not otherwise prejudice an absent party's position as to the issues in the proceeding. The presiding officers at the conference may dispose of by ruling, irrespective of the consent of the parties, any procedural matters which they are authorized to rule upon during the course of the proceeding. All rulings made at the prehearing conference are binding on all parties to the proceedings. These rulings may be subsequently modified for good cause shown.

Nothing contained in part 8920.3600 and this part may be construed as precluding any party to a proceeding from submitting at any time offers of settlement or proposals of adjustment to all parties and to the staff of the Department of Transportation, or from requesting conferences for that purpose. The presiding officers have the same powers at settlement conferences as those enumerated for prehearing conferences.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.3300 STIPULATION.

The parties to a proceeding before the board may agree by stipulation either in writing filed with the board or oral entry in the record upon the facts or any portion of the facts involved in the controversy. The stipulation must be regarded and used as evidence in the determination of the facts.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.3400 WITNESSES AND SUBPOENAS.

Subpoenas requiring the attendance of witnesses at any designated place of hearing within Minnesota or for the production of books, papers, or documents may be issued by the board, by any member of the board, or by a presiding officer. Upon motion made promptly and in any event at or before the time specified in the subpoena for compliance with the subpoena, the board may: quash or modify the subpoena if it is unreasonable or oppressive; or condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the books, papers, or documents.

Witnesses who are subpoenaed are entitled to the same fees as are paid for like service in the district courts of Minnesota. These fees must be paid by the party at whose instance the testimony is taken.

Service of subpoenas must be made in like manner as provided by law for the service of subpoenas in the district courts of this state.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.3500 WRITTEN NOTICE.

Except as otherwise provided by statute or this chapter, written notice of any hearing must be served at least 30 days before the date set for the hearing, upon all parties and other persons as the board directs, unless the board for good cause determines a longer or shorter period of notice. The notice must state the time, place, and nature of the hearing and include a concise statement of the matter to be considered. The board, except as otherwise provided by statute, may prescribe by order the form and extent of notice to be given. The board's notice of public hearings and decisions must be issued weekly and must be mailed to all subscribers, and to all parties and other persons deemed interested in a given proceeding by the secretary, and constitutes official notice of all formal proceedings.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.3600 PREHEARING CONFERENCES AND SETTLEMENT CONFERENCES.

Subpart 1. Conferences. In order to provide opportunity for submitting and considering facts, arguments, offers of settlement, or proposals of adjustment, for settling a proceeding or any of the issues in the proceeding, or for considering means by which the conduct of the hearing may be facilitated and the disposition of the proceeding expedited, conferences between the parties to the proceeding and staff for these purposes may be held at any time before the hearings before the presiding officers as time, the nature of the proceeding, and the public interest may permit.

Subp. 2. Issues at conferences. At a prehearing or other conference as may be held to expedite the orderly conduct and disposition of any hearing, there may be considered, in addition to any offers of settlement or proposals of adjustment, the possibility of the following:

- A. simplification of the factual and legal issues to be determined;
- B. amendment of pleadings;
- C. determination of prehearing motions;
- D. separation of issues;
- E. consolidation of presentations by parties having substantially the same interest;
- F. the names, number, and order of presentation of witnesses giving testimony;
- G. production of exhibits and consideration of their authenticity;
- H. arrangement for completion of discovery activities;
- I. submission and consideration of appropriate authorities in support of contentions made;
- J. estimation of the time required for hearing;
- K. discussion of the possibility of voluntary dismissal of the proceedings; and
- L. all other matters that may aid in the disposition of the proceedings.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.3700 EXCEPTIONS TO RECOMMENDED DECISIONS AND ORDERS.

Subpart 1. Filing exceptions. Within 20 days after the service date, which is the issue date, of a recommended decision of an administrative law judge in a contested case hearing, a party may file and serve exceptions to the decision and reasons in support of the exceptions. The filing must be mailed or delivered personally. If exceptions are mailed, three days is added to the prescribed period of 20 days in accordance with part 8920.0150. Exceptions that are not filed in a timely fashion must not be accepted or read by the board unless the party, for good cause shown, has applied to the board for an extension of time.

Subp. 2. Contents of exceptions. Exceptions to findings of fact or conclusions of law must be specific and must be stated and numbered separately. When exception is taken that a finding of fact is unsupported or contrary to substantial evidence in the record, a corrected finding must be submitted. Specific reference in the transcript supporting the correction to the finding must be submitted in support of the exception.

Subp. 3. Replies. A reply to an exception is not required, but may be filed by a party within ten days after service by mail of the exception to which the reply is made. Proof of service of the reply on the parties of record must be filed with the reply.

Subp. 4. Supporting arguments required. Exceptions and replies must contain written arguments in support of the position taken by the party filing them.

Statutory Authority: *MS s 174.02*

History: 17 SR 95

8920.3800 ORAL ARGUMENT.

If a party adversely affected by a recommended decision requests oral argument before the board when filing exceptions or replies, the board must permit it. Oral arguments are limited to a discussion of legal issues and a restatement of facts in evidence. No new evidence may be received at oral arguments.

Statutory Authority: *MS s 174.02*

History: 17 SR 95

8920.3900 UNTIMELY SUBMISSION OF COMMENTS OR LETTERS.

The board shall not consider comments or letters filed in place of oral argument if submitted by parties or intervenors after oral arguments.

Statutory Authority: *MS s 174.02*

History: 17 SR 95

8920.4000 PETITION FOR FURTHER HEARING.

Before the board issues a final written decision or order in a proceeding, a party desiring a further hearing may file a petition for further hearing with the board. The petition must clearly set forth the grounds relied on for a further hearing. If the party proposes to produce additional testimony, the testimony must be briefly summarized. No further hearing may be granted if the evidence to be adduced appears to be merely cumulative. The petition must be served on the parties to the proceeding. An adverse party has ten days from the service date of the petition to answer. A reply to an answer is not permitted. The board may grant or deny the petition without a hearing or may set a hearing on the petition.

Statutory Authority: *MS s 174.02*

History: 17 SR 95

8920.4100 BOARD'S FINAL DECISIONS AND ORDERS.

Subpart 1. Contents. A decision or order must be in writing and set forth

findings of fact, conclusions of law, and a statement of reasons necessary to decision.

Subp. 2. **Filed and mailed.** The board shall file its decisions and orders and notify parties to the proceeding of the filing. Copies of the decision or order must be mailed to the parties by first class United States mail.

Subp. 3. **When effective.** A decision or order of the board is effective upon filing and mailing unless the board orders a different date.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.4200 PETITIONS FOR FURTHER ACTIONS.

Subpart 1. **Deadline.** Within 20 days from the service date of the board's final decision and order, a party to the proceeding may petition for a rehearing; for an amendment or vacation of the findings of fact, decision, or order; or for reconsideration or reargument.

Subp. 2. **Contents.** A petition for rehearing, vacation, reconsideration, or reargument must specifically set forth the grounds relied upon and clearly state the errors. A petition for an amendment of the findings of fact, decision, or order must contain the desired proposed amendments and must state clearly the reasons for amending.

Subp. 3. **Service.** A petition under this part must be served on the parties to the proceeding. An adverse party has ten days from the service date of the petition to answer. Replies are not permitted.

Subp. 4. **Board actions.** The board may grant or deny the petition without a hearing or in its discretion set the matter for hearing. Pending the decision of the board on the petition, the board may vacate and set aside the decision or order.

Subp. 5. **Extending time for appeal.** A petition under this part does not extend the time for appeal from a final decision or order unless it is filed within ten days after the filing and mailing of the board's decision or order under Minnesota Statutes, section 14.64.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.4300 AMENDMENT OF EFFECTIVE DATE.

Petitions to amend an order or decision that seek only a change in the date when the order or decision takes effect, or in the period or date prescribed, must be made by petition reasonably filed and served in a like manner as other petitions under this part and part 8920.4400, except that, if an unforeseen emergency satisfactorily shown by the petitioner requires relief within three days, the relief may be sought informally, by telegram or otherwise, upon notice to the parties to the proceeding.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.4400 SECOND PETITION ON SAME GROUND.

A second petition for further hearing, rehearing, amendment, or vacation of a finding of fact, decision or order, reconsideration, or reargument by the same party or parties and on the same grounds as a former petition that has been considered and denied, must not be entertained.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*

8920.4500 VARIANCE.

Subpart 1. **Conditions justifying.** Upon written application or upon its own

motion, the board shall grant a variance to this chapter when it appears to the satisfaction of the board that:

A. enforcing the rule would impose an excessive burden on the applicant or others affected by the rule;

B. granting the variance would not adversely affect the public interest; and

C. granting the variance would not conflict with standards imposed by law.

Subp. 2. Alternative practices. A variance granted under subpart 1 may be conditioned upon alternative practices proposed by the applicant or imposed by the board and adapted to the circumstances and facts justifying approval of the variance.

Subp. 3. Notice. Within 30 days after receiving an application, the board shall notify the applicant by written order that the variance is granted or denied and the reasons for that decision.

Subp. 4. Duration; revocation. A variance may be of limited duration. The board shall revoke a variance if a material change occurs in the circumstances that justified the variance under subpart 1, or if the applicant fails to comply with the specified practices.

Statutory Authority: *MS s 174.02*

History: *17 SR 95*