

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Department of Commerce
(Agency or Board)

Regulation No. COMC 101 thru 119 (new)

Subject: Rules of Contested Case Procedures

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

NOV 20 1974 3:55 pm

BY Edla Staudenmaier CJ
AUTH. SIGNATURE

Stamped and filed with the Secretary of State 11-20-74

Rev. 9-72

TRANSMITTAL - MESSAGE SLIP

TO	LOCATION
DATE	TIME
FROM	LOCATION

TRANSMITTAL ACTION	CALL OR VISIT
☐ Review and see me	NAME
☐ Review and return	
☐ Prepare reply for my sig.	FROM
☐ Reply and send me copy	
☐ For your approval	PHONE NO.
☐ For your information	
☐ For signature	☐ Called
☐ As we discussed	☐ Was here to see you
☐ As you requested	☐ Please call
☐ Take appropriate action	☐ Will call again

MESSAGE

* 103(a) ~~Appt of Hearing Officer should be mandatory where cont. case. - Model Rule 2 - outside person~~

~~[illegible]~~ ← * 109 - ~~[illegible]~~ RCP
* 110 - ~~Consol.~~ - up to Hear. Exam. no - Model Rule 9

Admin 1010(Rev. 8-71)

☐ OVER

c4 Notice ① Should be adm. notice
② On the record

e5 - B/O/P - where (correct?) Model Rule agrees

~~e Continuances~~ - n/where dep., as no provision to take

*115b - should serve dec. on parties & allow for exceptions - see M Rule 15(b)(1)

c - Decision - must conform to 15.0422

"reasons therefor"

Basis for agency disagr. w/ H/O - (Model Rule 2(c) - must use his dec.)

Also defn of initiation
Commencement differs from model rules

~~Model H/O~~ -

M. Rule 2(c) initiation by complaint - why n/in?

M Rule 4. comm. w/in 10 day.
C. rule says "reas. time"

M Rule 5. Answer - N/incl. - why?

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TO	LOCATION
DATE	TIME
FROM	LOCATION

TRANSMITTAL ACTION	CALL OR VISIT
☐ Review and see me	NAME
☐ Review and return	
☐ Prepare reply for my sig.	FROM
☐ Reply and send me copy	
☐ For your approval	PHONE NO.
☐ For your information	
☐ For signature	☐ Called
☐ As we discussed	☐ Was here to see you
☐ As you requested	☐ Please call
☐ Take appropriate action	☐ Will call again

MESSAGE

Record Com 114 d - why n/contain matters off. noticed (as per M. Rule 14 (d)(1)(c)

Rehearing - 116 B ships 16 (b)(2) (agency get reh. for other party) - why?

M. Rule 17 - agency appeal - why n/in rules

☐ OVER

Admin 1010(Rev. 8-71)

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

TELEPHONE
(612) 296-6196

October 25, 1974

Mr. Michael Miller
Special Assistant
Attorney General
208 Administration Building
St. Paul, Minnesota 55155

Dear Mike:

I am hereby transmitting to you for review the following materials in connection with adoption of proposed rules relating to Contested Case Procedures under Minnesota Statutes, Chapter 45 and Chapter 15:

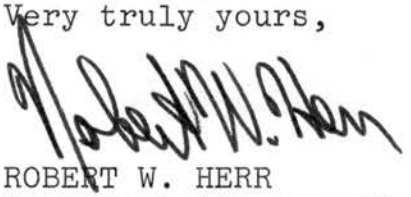
A. Five copies of the Rules as Adopted
B. Three copies of the Ruleas as Proposed
C. One transcript of the public hearing on the proposed rules
D. Three sets of the following:
   1. Order for Hearing
   2. Notice of Hearing
   3. Affidavit of Acquisition of Mailing List
   4. Secretary of State's Certificate
   5. Mailing List
   6. Affidavit of Mailing
   7. Statement of Need
   8. Findings of Fact
   9. Order Adopting Rules
   10. Statement of Compliance with the Attorney General's Rule Making Procedures

You will note that Edward J. Driscoll, Commissioner of Securities, signed the Order for Hearing as Chairman of the Commerce Commission. No authorizing resolution of the Commerce Commission is attached to the Order for Hearing.

However, it is the position of the Chairman that he is empowered to order such hearing without formal resolution of the Commerce Commission. It should be noted that the Commerce Commission formally adopted the Rules of Contested Case Procedures on October 21, 1974, and should there be any question on this point in your mind, it is submitted that the Commission by such action ratified the calling of the hearing on this matter.

If during your review you have any questions, please contact me at 296-6315.

Very truly yours,



ROBERT W. HERR
Assistant Attorney General
Securities Division
Department of Commerce
5th Floor Metro Square Building
St. Paul, Minnesota 55101

RWH:lb
Enc.

STATE OF MINNESOTA

COUNTY OF RAMSEY

DEPARTMENT OF COMMERCE
BEFORE EDWARD J. DRISCOLL,
CHAIRMAN OF COMMERCE COMMISSION

IN THE MATTER OF PROPOSED RULES)
RELATING TO CONTESTED CASE PROCE-)
DURES UNDER MINN. STAT., CHAPTER)
45 AND CHAPTER 15)

TRANSCRIPT OF PROCEEDINGS
HEARING AUGUST 12, 1974

- - - - -

Time: 9:40 a.m.
Place: Department of Commerce Hearing Room
Fifth Floor Metro Square Building
Saint Paul, Minnesota 55101

Present: Edward J. Driscoll, Commissioner of Securities and
Chairman of Commerce Commission
George A. Beck, Hearings Examiner, Department of Commerce
Clay R. Moore, Attorney
Jack Daly, Attorney
Robert Kucera, Attorney

The following proceedings were had:

- - - - -

(Commissioner Driscoll presided.)

COM'R DRISCOLL: This hearing this morning is convened to consider the adoption of rules for contested cases, pursuant to Chapter 45 and Chapter 15 of Minnesota Statutes. We are starting this morning at 9:40 a.m., and the record can show that there are three people present.

I think that the purpose of the hearing this morning and for the proposed rules under consideration is to structure hearings within the Department of Commerce, for the three constituent divisions--Securities, Banking and Insurance and the section on Consumer Protection.

Mr. Beck, will you put in the appropriate exhibits?

MR. BECK: Mr. Chairman, there are nine exhibits. Exhibit 1 is the Order for Hearing in this matter. Exhibit 2 is the Notice of Hearing. Exhibit 3 is the Secretary of State's List. Exhibit 4 is the Affidavit of the Secretary of State. Exhibit 5 is the Affidavit of Agency Delegate. Exhibit 6 is the Affidavit of Mailing. Exhibit 7 is the Statement of Need. Exhibit 8 are the

Proposed Rules under consideration this morning. And Exhibit 9 is the Agenda and Guidelines for the hearing this morning. At this time, Mr. Chairman, we would offer Exhibits 1 thru 9.

COM'R DRISCOLL: Does anyone present wish to have any of these exhibits read in full? (No response.) Hearing no request of that nature, they will be received--Exhibits 1 through 9.

The agenda indicates that there will be a Statement of Need. The Statement of Need has been marked as an exhibit and introduced. At this time, if anyone wishes to make a statement for the record, we will entertain that statement. Mr. Moore?

MR. MOORE: Yes.

COM'R DRISCOLL: If you will identify yourself for the record--

MR. MOORE: Yes. My name is Clay R. Moore, attorney at law, 1000 First National Bank Building, Minneapolis. I guess I represent all my potential clients who could possibly have business before this Agency. Will that suffice as a statement of interest?

COM'R DRISCOLL: I think it will, Mr. Moore.

MR. MOORE: I think maybe what I would like to do is present to the Commissioner what I have entitled "Proposed Changes to Proposed COMC Contested Case Rules," and I don't intend to make a long speech about all of it.

I think perhaps, in order--I have one proposal here which I would like to talk a little bit about, which is not expressly contained in what I have just given to you, but it deals with Proposed Rule 103 (a) Appointment. This kind of illustrates an underlying problem--underlying problems, some of which I don't think the Department can do anything about. It states:

> The Agency may appoint a hearing officer to hear a contested case....

Now, in those situations where the Agency is not a party to the procedure, I think that is quite appropriate. It need not appoint a hearing officer to hear the case if it chooses. But there are certain cases where the Agency, by

law, is required to make the final determination, yet it is a party to the contested case. So you have the problem of the party also being the judge. Now I propose that perhaps it ought to be mandatory in the rules that, wherever the Agency is a party and it is the one to make the final determination, it must appoint a hearing officer, to provide as much objectivity as possible.

My ultimate proposal would be that it ought to be somebody outside of the Agency--the Division involved, and I think it should be outside the Department of Commerce. I will just say that. And you all know what the problem is, and I know what it is, and perhaps that is practically impossible to contemplate, because you do not have a pool of hearing examiners outside of the Department, that I know of. If there is--it would be nice to have, but up to now we haven't progressed that way. I would think that the requirement of a hearing officer should be mandatory where the Agency is a party and where the Agency decides the issue. For instance, suppose a revocation of a real estate broker's license were involved, I think the Agency ought to have the benefit of a reasonably impartial hearing examiner to see what he says about the facts. That is something I haven't put into my proposal, but is offered as something that we should think about.

The first problem requires a hearing officer wherever the Agency is a party, to file some kind of disclosure of all contacts, including written or oral communications, that he may have had, so that that disclosure is available for all parties to look at and determine whether it is, in itself, grounds for objecting to the hearing officer or something of that type. This is, again, a desire to lay it on the table, so that we get as much objectivity as possible.

COMC 109- Intervention of Right--what I have done is, basically, adopt the State rules of civil procedure. Both Intervention of Right and Permissive Intervention, and indicated and made it clear that the intervenors have the rights of parties in all respects once they are permitted to intervene.

My proposal for COMC 110 (d)--let me get to it here. The proposed change in Rule 110 (d)--no, it is in addition. In a question of consolidation, the Commissioner's proposed rule would have the agency decide whether or not consolidation proceedings are necessary. I would suggest that where the agency is a party, where there is a hearing officer, that is an appropriate function for the hearing officer to decide. That is my suggestion; that he is the one to make that determination.

Rule 114 (e) (4) and (5)--(4) Notice of Facts--you say the hearing officer may take judicial notice--may take notice of judicially cognizable facts. I have no objection to that, but I would add "but shall do so on the record and with the opportunity for any party to rebut," so that we will know when we are faced with facts on which to raise a question.

114 (5)--the old rule states that the party with the burden of proof must prove the facts at issue by a preponderance of the evidence. The present proposal simply says that the party with the burden must prove the facts at issue by a preponderance of the evidence--it simply says the party with the burden, but does not indicate, and no where else in the rules is it indicated where the burden of proof will lie. I assume the burden of proof will lie wherever the substantive law indicates. Yet it is difficult to say where the burden does lie. It would be hard for me to conceive of a case where somebody initiates a case before any of your divisions, where they really would not have a burden of going forward with the issues, and I think it is necessary that we retain the old style of the rule, because then we know in advance who has to start--who does have the burden of proof. This is something much too important to have left up to ad hoc determination at the time the hearing starts.

Now on 114 (e) on Continuances--I won't comment on that. I guess I did not like the language "good cause does not include unavailability of counsel unless he is a sole practioner...." Even in a law firm with twenty or thirty lawyers, you have generally twenty or thirty practices going on, and quite often you do not have another lawyer to take over. The last sentence about "or

unavailability of a witness if his deposition could have been taken." That part with respect to the deposition probably ought to be stricken. There is no provision, so far as I know, for taking depositions before the Department. It would seem to me to be a superfluous statement. What I said is: "Due regard shall be given to the ability of the party requesting a continuance to effectively proceed without a continuance."

Let me see--I won't comment on the others. Oh, on 115 (b), the Proposal for Decision--the present proposal says nothing about the requirement that the hearing officer's report must be served on the parties, and that is a requirement of the statute, at 15.0421, and there must be some procedure created here which would allow the filing of exceptions. My proposed change sets out a pretty standard format which is used in other agencies. I think you have got to have that in there, because the statute requires that. As far as other parties involved, they would have the opportunity to answer the agency.

(c) Agency Decision--it must conform to 15.0422, which speaks for itself.

My proposed (c) (2), on Page 3, simply says a hearing officer has rendered a proposed findings of fact and he ought to know the witnesses and determined their credibility. That might be obvious anyhow, but I thought I would put it in there.

In my proposed (c) (3), this is my effort to get at the problem where the agency is a party to the case and is also in the position of judging the ultimate merits, and where a hearing officer has rendered a proposed decision. I have accepted the fact that where the statute says the Commissioner shall decide this, that you can't have a hearing officer and then have somebody else decide ultimately. He will have to decide that. At least where the hearing officer has rendered a decision, if that agency wishes to disagree with the facts, my proposal would require that the agency shall state in detail the basis on which that objection is based, so that a reviewing court at least will have

an opportunity to lay out the differences and see them, and it will force the agency to think about the matter and give a little more thought.

COM'R DRISCOLL: This comment and your comment on COMC 115 (b)--in Chapter 45.03 the statute there makes it clear that, although the Commissioner can delegate to a hearing officer the responsibility of presiding at the hearing, and the hearing officer is obligated to make proposed findings and submit them to the Commissioner, the decision itself is based solely upon the record and the exhibits. We have struggled with this problem. We do not ourselves know what the legal import of those proposed findings is. The court has had an opportunity to consider these several times and had not commented.

MR. MOORE: I think the agency, when it finally gets it, is just like the hearing examiner and is required to look at the original record and base its decision on that, and the hearing officer's report does not have the effect of limiting the scope of review. I agree with that. All I am saying is, particularly when you get into this peculiar lineup of the agency being a party and the judge, which is a dangerous lineup, and it requires that the agency be as objective as humanly possible, that perhaps there should be some obeisance to the fact that the hearing officer has observed the demeanor of the witness, which the Commission has not. At least they have to spell out the basis of their disagreement.

COM'R DRISCOLL: I am not without sympathy, and I don't think the Commission is without sympathy with the statements you are making. I realize that you are referring to an instance that would be appealable and where the Commission is a party to the proceeding.

MR. MOORE: Yes. I can't imagine a proceeding--let me ask this: The licensing procedure on banks and industrial loans is not governed by these rules, as far as I can tell--or are they?

COM'R DRISCOLL: We are not repealing the existing rules that govern those proceedings.

MR. MOORE: Are you adding to?

COM'R DRISCOLL: I think we are adding.

MR. MOORE: That would be the one instance when you have the agency sitting as a judge without a vested interest in the result. But beyond that, every other proceeding I know of, which would take place here, would be where the agency would be a party and would be initiating the proceeding. Credit insurance would be one. Revocation of securities licenses are traditionally initiated by the Securities Commissioner. We think you have to recognize that when an agency has taken a position, it is pretty difficult to sit as a judge and look objectively. We are asking that you go through a little more when that confluence of events occurs. It is just trying to illustrate the problem.

COM'R DRISCOLL: I think we are somewhat aware of the--painfully aware of it, in fact.

MR. MOORE: The burden of proof is what I am most concerned with, because the present problem leaves it up in the air here.

MR. BECK: Could I make one comment?

COM'R DRISCOLL: Please.

MR. BECK: I think the primary reason we worked up a change is that we had a problem where a private party initiated a contested case, where perhaps the burden of proof should be on the agency. Under the old rule this became sort of unworkable. I think that was the chief thing we were worried about. I am not sure how this is going to come up--perhaps in securities applications, and maybe in license cases where the licensees desire to have a contested case. They determine the facts surrounding whatever action is being considered. I see the problems with the rule as it exists, but we were trying to include that--

MR. MOORE: Are there some instances in the Securities Division where you can take action first without a hearing, but the party then can request one?

COM'R DRISCOLL: Yes.

MR. MOORE: But even then I suppose the agency has some duty to come forward to support its original action?

COM'R DRISCOLL: Yes, where a temporary cease and desist order is issued under Chapter 80A, I think the burden is upon the Securities Division to show by a preponderance of evidence.

MR. MOORE: And you might say that you initiated the whole problem by your cease and desist order?

COM'R DRISCOLL: Yes. I am trying to think of an instance of what George Beck cited. I suppose where this would arise is where someone is appealing the adoption of a rule.

MR. MOORE: That would not be a contested case. That would be rule making.

COM'R DRISCOLL: I suppose it wouldn't. In every other instance, the agency, in some fashion, would be the party instituting the proceeding.

MR. MOORE: Yes.

COM'R DRISCOLL: And even in the case of rule making, we would be proposing it.

MR. MOORE: There I think it is a wholly different matter and burden of proof really doesn't make much sense in the rule making process. But where the agency reaches out and says we are going to do this--

COM'R DRISCOLL: Let's say the Securities Division proposes a rule under Chapter 80A, under the Securities Laws, and that is appealed to the Commerce Commission, I wonder then if the Division would not have to show a need.

MR. MOORE: The rule shows a need for the rule. To that extent you have a burden of showing the need.

COM'R DRISCOLL: But you are suggesting that without the contested case procedure--

MR. MOORE: I wasn't addressing myself to rule making at all.

COM'R DRISCOLL: In every other instance then I would suggest that we are the party that has the burden.

MR. MOORE: Yes.

COM'R DRISCOLL: I was trying to think of one actual situation where--but at least initially the burden is upon the Division.

MR. MOORE: Generally speaking, I can't conceive of the agency not having the burden all the way through.

COM'R DRISCOLL: I would suggest that that type of defense would not be raised in the agency, but in order to show cause in district court seeking to enjoin us.

MR. MOORE: It could be raised that way. Suppose you initiated the investigation of a broker's license, if I were representing the broker, and it was a real question of estoppel, he would be better advised to raise it here, and get a ruling on it here, and you may wish to rule on it.

COM'R DRISCOLL: Our experience in that type of situation is that people commonly go directly to the courts and seek to enjoin us from any further action. It is less likely that they will raise that type of defense before the agency.

MR. MOORE: The reason I would do it is that the court may say that I had not exhausted my remedies. It could come up in a number of ways.

COM'R DRISCOLL: It could.

MR. MOORE: That is all.

COM'R DRISCOLL: Thank you very much, Mr. Moore.

Do any of you gentlemen have a comment that you would like to make? (No comment from others present.) I see two of our Special Assistant Attorneys General are present. Would either of you care to make a comment? (Messrs. James Perrigo and Barry Greller indicated that they had no comments.)

COM'R DRISCOLL: There being no further comments, then this hearing will stand in adjournment. In light of the lack of comments, we will provide a period of ten days in which additional written comments will be received.

(Adjourned at 10:05 a.m.)

* * * * * * *

(Exhibits 1 thru 9 and
Moore's Exhibit A accepted.)

Cyrilla Delaney, Reporter
Department of Commerce
Fifth Floor Metro Square Building
Saint Paul, Minnesota 55101.

STATE OF MINNESOTA

COUNTY OF RAMSEY

DEPARTMENT OF COMMERCE
BEFORE EDWARD J. DRISCOLL,
CHAIRMAN OF COMMERCE COMMISSION

IN THE MATTER OF PROPOSED RULES)
RELATING TO CONTESTED CASE PROCE-)
DURES UNDER MINN. STAT., CHAPTER)
45 AND CHAPTER 15.)

REPORTER'S CERTIFICATE

- - - - - -

I, Cyrilla Delaney, Hearings Reporter for the Department of Commerce, State of Minnesota, do hereby certify that I was present at the hearing in the above-entitled matter on August 12, 1974, and reported the proceedings in shorthand; that Pages 1 thru 9 hereto attached contain the transcript of such proceedings, as prepared from my shorthand notes, to the best of my ability.

Dated August 16, 1974.

Cyrilla Delaney

Cyrilla Delaney, Hearings Reporter
Department of Commerce
Fifth Floor Metro Square Building
Saint Paul, Minnesota 55101.

COMC 101 - 119

RULES OF CONTESTED CASE PROCEDURES

COMC 101 Scope and Purpose.

The procedures contained herein, COMC 101 to COMC 119, govern all contested cases before any division, section or board within the Department of Commerce, except for those cases governed by Minn. Reg. COMC 1-70.

COMC 102 Introduction, Definitions.

(a) Introduction. No person before this Department shall have his rights, privileges, or duties determined without regard for fundamental fairness. To that end, these rules are intended to assure that all parties to contested cases before this Department are provided a speedy and just hearing. Such hearing shall include:

(1) Adequate notice to all interested persons;

(2) The opportunity to consult with the Department informally to attempt to resolve conflicts on issues;

(3) Notice at each stage of the proceedings sufficient to provide the opportunity to prepare therefor;

(4) An objective decision supported by substantial evidence from the record.

(b) Definitions.

(1) Agency. Agency means any division, section or board within the Department of Commerce, or the head thereof.

(2) Contested Case. Contested case means a proceeding before the Agency in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after an Agency hearing.

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

(4) Person. Person means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision, unit or agency, other than a court of law.

(5) Hearing Officer. Hearing officer means the person or persons appointed by the Agency pursuant to Minn. Reg. COMC 103 hereof, to hear the contested case.

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

(7) Commencement. Commencement means service of an order for hearing upon any party.

COMC 103 Hearing Officers.

(a) Appointment. The Agency may appoint a hearing officer to hear a contested case. The appointment, if made, shall be at the commencement of the case.

(b) Qualifications.

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

(2) Cases to Which the Agency is not a Party. In cases to which the Agency is not a party, the Agency may appoint any person, including an employee of the Agency or a member or members thereof, as the hearing officer.

(c) Authority of Hearing Officer.

(1) Cases to Which the Agency is a Party. In cases to which the Agency is a party, the appointment of the hearing officer shall authorize the hearing officer to hear the case and propose findings of fact and conclusions of law.

(2) Cases to Which the Agency is not a Party. In cases to which the Agency is not a party, the appointment of the hearing officer shall grant the hearing officer such authority as the Agency deems necessary and appropriate to hear the case.

(d) Function. Consistent with the law and the terms of his appointment, the hearing officer shall hear the contested case, hear and rule on preliminary motions, administer oaths and examine witnesses, issue subpoenas, make preliminary, interlocutory, or other orders as he

deems appropriate, grant or deny continuances and requests for discovery, propose to the Agency findings of fact upon the evidence presented and conclusions of law, and do things necessary or proper to the performance of the foregoing.

COMC 104 Initiating a Contested Case.

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

(1) The name and address of the person;

(2) A statement of the nature of the determination sought and the reasons therefor;

(3) A reference to the Agency order giving rise to the request;

(4) The names and addresses of all persons known to the applicant who will be directly affected by such determination; and

(5) The signature of the applicant or his attorney.

(b) Initiation by Agency Order. Where authorized by law, the Agency may order a contested case commenced to determine the rights, duties and privileges of specific parties.

COMC 105 Commencement of Contested Case.

(a) Within the time provided by law or, in any event, within a reasonable time following the receipt of a request for hearing pursuant to COMC 104 (a), the Agency shall issue an order setting a hearing. An order issued pursuant to COMC 104 (a) or (b) shall be served upon all known parties and shall contain, inter alia, the following:

(1) The time and place of the hearing;

(2) The name and address of the hearing officer;

(3) The allegations or issues to be determined, together with a citation to relevant statutes or regulations;

(4) Notification of the right of the parties to be represented by legal counsel;

(5) A citation to these rules;

(6) A statement announcing the right of a party to request a prehearing conference by so notifying the hearing officer.

(7) A statement that failure to attend the hearing may result in the allegations of the order being taken as true.

(b) The order setting a hearing shall be served not less than twenty days prior to the hearing unless otherwise provided by law.

COMC 106 Right to Counsel. Any party may be represented by legal counsel throughout the proceedings in a contested case before the Agency.

COMC 107 Informal Disposition. Informal disposition may be made of any contested case or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings.

COMC 108 Default. The Agency may dispose of a contested case adverse to a party which defaults. Upon default the allegations of the order for hearing may be taken as true.

COMC 109 Intervention. Upon timely application any person shall be permitted to intervene in a contested case upon a showing that his legal rights, duties or privileges may be determined or affected in the contested case, unless in the discretion of the hearing officer such person's interest is adequately represented by one or more parties participating in the case.

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

COMC 110 Consolidation.

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

(b) Notice. Following an order for consolidation the Agency shall forthwith serve on all parties a notice of consolidation. Such notice shall contain:

(1) A description of the cases for consolidation;

(2) The reasons for consolidation;

(3) Cancellation of any prehearing conferences for the cases consolidated; and

(4) Notification of a consolidated prehearing conference if one has been requested.

(c) Objection to Consolidation.

(1) Petition for Severance. Any party may object to consolidation by filing with the Agency prior to the hearing in the case a petition for severance from consolidation, setting forth petitioner's name and address, the designation of his case prior to consolidation, and the reasons for his petition.

(2) Determination. If the Agency finds that consolidation would prejudice petitioner, it may order such severance or other relief as it deems necessary.

(d) In any contested case in which any agency is a party, all determinations and decisions regarding consolidation or severance shall be made by the hearing officer, subject to the same standards and criteria set forth above.

COMC 111 Disqualification. A hearing officer shall withdraw from participation in a contested case at any time if he deems himself disqualified for any reason. Upon the filing in good faith by a party of an affidavit of prejudice the hearing officer shall determine the matter as a part of the record, provided the affidavit shall be filed no later than five days prior to the date set for hearing.

COMC 112 Prehearing Conference.

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

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

COMC 113 Subpoenas. Requests for subpoenas shall be made in writing to the hearing officer and shall contain a brief statement as to the relevance of the testimony or evidence sought.

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

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

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

COMC 114 The Hearing.

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

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

(c) Rules of Evidence.

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

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

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

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

(5) The Burden of Proof. The party initiating the contested case must prove the facts at issue by a preponderance of the evidence.

(6) Examination of Adverse Party. A party may call an adverse party or his managing agent or employees or an officer, director, managing agent or employee of the State or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate him by leading questions and contradict and impeach him on material matters in all respects as if he had been called by the adverse party. The adverse party may be examined by his counsel upon the subject matter of his examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by his testimony.

(d) The Record.

(1) Agency Prepares Record. The Agency shall prepare an official record in each contested case.

(2) What the Record Shall Contain. The record in a contested case shall contain:

(aa) All orders, pleadings, motions and interlocutory rulings;

(bb) Evidence received or considered;

(cc) Offers of proof, objections and rulings thereon;

(dd) Proposed findings of fact and conclusions of law;

(ee) All memoranda or data submitted to the hearing officer by any party in connection with the case.

(3) Transcript.

(aa) Reporter or Mechanical Device. A verbatim record of the hearing shall be taken by court reporter or recording equipment. A court reporter shall be used if demanded by any party. Unless the Agency agrees to bear the expense of the court reporter, such expense shall be paid by the demanding party.

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

(e) Continuances. A request for continuance shall be made in writing to the hearing officer.

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

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

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

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

(g) Hearing Procedure.

(1) Hearing Officer Conduct. The hearing officer shall take no part in any preliminary investigation or inquiry into the facts or issues involved in the contested case except as provided in Minn. Reg. COMC 112. He shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any person or party, including the Agency, except upon notice and opportunity for all parties to participate.

(2) Sequence of Events. The hearing shall be conducted in the following manner:

(aa) After opening the hearing, the hearing officer shall indicate the following procedural rules:

(i) All parties may present evidence and argument with respect to the issues;

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

(iii) The rules of evidence as set forth in Minn. Reg. COMC 114 (c) (1).

(bb) A representative of the Agency shall introduce the following exhibits on behalf of the Agency:

(i) All orders in the matter, supporting documents, if any, and affidavits of service;

(ii) Any stipulations, settlement agreements, or consent orders entered into by any of the parties prior to the hearing.

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

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

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

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

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

(h) Disruption of Hearing.

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

(2) Other Conduct. Pursuant to and in accordance with the provisions of Minn. Stat., Section 624.72, no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the hearing officer shall read this rule to those persons causing such interference or disruption and thereafter proceed as he deems appropriate.

COMC 115 The Agency Decision.

(a) Basis for Determination.

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

(2) Experience, Technical Competence and Specialized Knowledge. The hearing officer may use his experience, technical competence, and specialized knowledge in the evaluation of the evidence presented in the case, but shall in no case base any proposed findings of fact or conclusions of law on any material not contained in the record.

(b) Proposal for Decision. The hearing officer shall prepare proposed findings of fact and conclusions of law and submit them to the Agency. The Agency, after reading the evidence and reviewing the entire record, shall then render its decision.

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

COMC 116 Rehearing.

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

(b) Obtaining a Rehearing.

(1) Parties other than the Agency. At any time prior to the Agency's loss of the right to rehear a contested case, any party to that case may request a rehearing by filing a petition for rehearing. Such petition shall contain:

(aa) The name and address of the petitioner;

(bb) The Agency designation for the case;

(cc) The reasons for the petition.

(2) Default Judgments. A party against whom a default has been adjudged pursuant to Minn. Reg. COMC 108 may obtain a rehearing upon a timely showing of good cause for his failure to appear or plead.

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

(c) Notice of Rehearing. Notice of rehearing must be provided in the same manner prescribed for notice of hearing.

(d) Rehearing Procedure. A rehearing in a contested case shall be conducted in the same manner prescribed for a hearing.

(e) Decision after Rehearing. The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing.

COMC 117 Emergency Procedures. Nothing contained in these rules is intended to preempt, repeal or be in conflict with any rule, regulation or statute which provides for acts by the Agency in an emergency or procedure for conduct by the Agency in such a situation.

COMC 118 Severability. If any provision of these rules is held invalid, such invalidity shall not affect any other provision of the rules which can be given effect without the invalid provision, and to this end the provisions of these rules are declared to be severable.

COMC 119 Repealer. All rules or regulations governing contested case procedures previously adopted by any division, section or board of the Department of Commerce, including Minn. Reg. Ins. 120-139 and C S 1-19, but excluding Minn. Reg. COMC 1-70, are hereby repealed.

APPROVED AS TO FORM AND LEGALITY
NOV 19 1974 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY Michael B Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

3:45 P.M.
STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 2 01974
Arlen I. Erdahl
Secretary of State

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
NOV 20 1974 3:55 pm
BY Eda Staudenmaier
AUTH. SIGNATURE EJ

Ex. 1

STATE OF MINNESOTA
COUNTY OF RAMSEY

DEPARTMENT OF COMMERCE
BEFORE EDWARD J. DRISCOLL
CHAIRMAN OF COMMERCE COMMISSION

In the Matter of the Proposed)
Adoption of Rules of the State)
Department of Commerce Govern-)
ing Contested Case Procedures,)
Chapter 45 and Chapter 15)

ORDER FOR HEARING

To effectively implement Minnesota Statutes, Chapter 45 and Chapter 15, the Chairman of the Minnesota Commerce Commission deems it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in me by Minnesota Statutes, Sections 45.032 and 15.0418.

NOW, THEREFORE, IT IS ORDERED this 28th day of June, 1974, that a public hearing on the proposed rules captioned above be held in the Hearings Room of the Department of Commerce, Fifth Floor, Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota on August 12, 1974, commencing at 9:00 a.m. and continuing until all representatives have had an opportunity to be heard.

IT IS FURTHER ORDERED that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

Edward J. Driscoll

EDWARD J. DRISCOLL
CHAIRMAN, COMMERCE COMMISSION

Ex. 2

STATE OF MINNESOTA
COUNTY OF RAMSEY

DEPARTMENT OF COMMERCE
BEFORE EDWARD J. DRISCOLL
CHAIRMAN OF COMMERCE COMMISSION

In the Matter of Proposed Rules)
Relating to Contested Case Proce-)
dures Under Minn. Stat., Chapter)
45 and Chapter 15)

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes 1973, Section 15.0412, Subd. 4, in the above-entitled matter in the Hearings Room of the Department of Commerce, Fifth Floor, Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota on Monday, August 12, 1974, commencing at 9:00 a.m. and continuing until all representatives or other interested groups of persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing.

The Chairman proposes to adopt rules relating to the following matters: hearings officers; initiating a contested case; commencement of a contested case; consolidation; prehearing conference; subpoenas; the hearing; rehearing; etc.

Copies of the proposed rules are now available and may be obtained by writing to George Beck, Hearings Examiner, Department of Commerce, Fifth Floor, Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101.

STATE OF MINNESOTA
SECURITIES DIVISION

Edward J. Driscoll

EDWARD J. DRISCOLL
CHAIRMAN, COMMERCE COMMISSION

Ex. 5

STATE OF MINNESOTA

COUNTY OF RAMSEY

DEPARTMENT OF COMMERCE

BEFORE EDWARD J. DRISCOLL,
CHAIRMAN OF COMMERCE COMMISSION

IN THE MATTER OF THE PROPOSED RULES)
RELATING TO CONTESTED CASE PROCEDURES)
UNDER MINN. STAT., CHAPTER 45 AND)
CHAPTER 15.)

AFFIDAVIT OF AGENCY DELEGATE

- - - - - -

Robert R. Raines, Jr., being duly sworn on oath, deposes and says:

1. That he is an employee of the Department of Commerce of the State of Minnesota.

2. That, on the first day of July, 1974, he went to the office of the Secretary of State for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. § 15.0412.

3. That, on the first day of July, 1974, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant saith not.

Robert R. Raines, Jr.

Subscribed and sworn to before me,
a Notary Public, this 17th day
of July, 1974.

Notary Public, Ramsey County, Minnesota
My Commission Expires Feb. 27, 1980.

Ex. 4

STATE OF MINNESOTA
COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed
Adoption of Rules of the State
Commerce Commission Governing
Contested Case Procedures

I hereby certify that the attached 365 labeled 7 sheets constitute the complete list of persons, associations, and other interested groups who as of 9:30 o'clock a.m., this 1st day of July, 1974, have requested pursuant to M.S. Section 15.0412 that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State
Arlen I Erdahl

By Gail Dorn

Commerce

SECURITIES DIVISION

Ex. 3

Abdo, Robt. P. 1020 Dain Tower, Mpls. 55402
American Central Corp. 6950 France Ave. South, Edina, Minnesota 55435
Allison-Williams Company, Attn. Willys P. Jones, NW Bk. Bldg., Mpls. 55402
Almquist & Lowe.., 6800 France AVe. S., Mpls 55435
Archerd, Wm. F.,W-1781 1st Natl. Bk. Bldg., St. Paul 55101

Bache & Co., Attn. Fred R. Gamble, Soo Line Bldg. Mpls. 55402

Beckstrom, James C., 940 Midland Bk. Bldg., Mpls. 55401

Beitz, Ms. Toni A., 2400 1st Natl. Bk. Bldg., Mpls. 55402

Berde, M., 610 Midwest Plaza Bldg., Mpls. 55402

Budd, Ronald E., 954 Midland Bk. Bldg., Mpls. 55401

Branson, Lindley, 300 Roanoke Bldg., Mpls. 55402

Burns, William M., W-1781 1st Natl. Bk. Bldg., St. Paul 55101

Caldwell Phillips, Inc., Attn. Walter R. Hansen, 1st Natl. Bk. Bldg. St.Paul 5510
Casey, Everett, Quality Inns. 10750 Columbia Pike, Silver Springs, Md. 20901
Chinnock, Dwight, 151 W. Burnsville Crosstown, Burnsville 55337

Clark, Dodge & Co., Inc., Attn. Albert H. Hedding,Jr.,1635 Cargill Bldg. Mpls. 02
Cox, David, Leonard, Street & Deinard, 800 F & M Bk Bldg.,520 Marq.,Mpls 55402
Dain, Kalman & Quail, Attn. Wayne Fadden, 100 Dain Tower,Mpls. 55402
Davidson, Robt L. 2850 Metro Dr,Suite 504, Mpls (Bloomington) 55420
Dean Witter & Co. Inc., Attn. George A. Hust, 519 Marquette Ave., Mpls. 55402
Delaney, Patrick, 4444 IDS Center, 80 South Eighth St., Minneapolis, Minn.55402
DiPasquale, Benn, Foley & Lardner, 735 N Water St, Milwaukee,Wisc.53202
Dinwiddie, Harry E., IDS Corp., IDS Tower, Mpls. 55402

Dudley, Joseph J., W-1260 1st Natl Bk. Bldg., St. Paul 55101

Eastman, Dillon et al, Attn. Harold D. Covlin, 2000 Midwest Plaza, Mpls. 55402

Eastman Dillon Union Sec. & Co., Attn. Milton Van Riper, 1 Chase Manhattan Plaza, New York 10005
Eide, David B., 1608 IDS Center, Mpls. 55402
Erlander, Rose, 2867 James Ave. S., Mpls. 55408

Feinberg-Rosenberg, Robbins, Davis & Lyons, 33 S. 5th St., Mpls. 55402

Francis I. duPont & Co., Attn. Donald R. Melyon, 100 1st Natl. Concourse Bldg., Mpls. 55402

Fairchild, Robt., 7900 Xerxes Ave. So., Suite 203, Mpls. 55431

Flaten, John, 1910 1st Natl. Bk. Bldg., Mpls. 55402
Franke, Jerome E., 211 Roseville Professional Center,2233 N Hamline.St Paul 55113
Garrity, Robert W., 715 Midland Bk. Bldg., Mpls. 55401
General Development Corp.Att. S.Raskin,Adv.Dept.,1111 S Bayshore Dr,Miami,Fla 33131
Gordon, Avron, 2200 Dain Tower, Mpls. 55402

Greensweig, Bernard, 4940 Viking Dr., Mpls. 55435

Guzy, Robt., 3700 Central Ave. NE, Mpls. 55421
Hardee's Food Systems Inc., 1233 N Church St., Rocky Mount, N.D. 27801
Harris, Upham & Co., Attn. Trading Dept., NW Bk. Bldg. Mpls. 55402

Heimerl, Richard C., Craig-Hallum, Inc., 133 S. 7th St., Mpls. 55402
Henretta, Friedell et al 4644 IDS Center, 80 S 8th St., Mpls. 55402
Hillstrom, Kircher et al, 1710 Soo Line Bldg, Marquette at 5th, Mpls. 55402
Herstein, Elliot J., 621 N Lilac Dr., Mpls. 55422
Hornblower & Weeks-Hamphill, Noyes, Attn. John E. Pedderson, 230 Roanoke Bldg., Mpls. 55402

Hoelter, Timothy, White Hirschboeck et al,2100 Marine Plaza,Milwaukee, Wis.53202
Huffman, Richard W., 1810 IDS Center, Mpls. 55402

Hutton, David, 4328 IDS Center, Mpls. 55402
Intl Multifoods, Att.G.W.Haight 1200 Multifoods B ldg,8th & Marq.,Mpls. 55402
J. Lawrence McIntyre, Doherty, Rumble & Butler, 1500 1st Natl. Bk. Bldg., St. Paul 55101

Jensen, Russell J., Atty., 305 Degree of Honor Bldg., St. Paul 55101

John G. Kinnard and Co.Inc., Attn. Gerald M. Gifford, 740 Northstar Center, Mpls. 55402

John C. DeMoss Ltd., 1701 1st Natl. Bk. Bldg., Mpls. 55402
Kauffman, Howard J., 800 Midland Bk. Bldg., Mpls. 55401
King, Thomas R., Atty., Builders Exch. Bldg., Mpls. 55402

Kidder, Peabody & Co., 1650 IDS Center, Mpls. 55402

Lamson Bros. & Co., Attn. Richard A. Larson, 210 Pioneer Bldg., St. Paul 55101

Langevin, David P., 7500 80th St S., Cottage Grove 55016
Levin, Sidney, 1050 Midland Bk. Bldg., Mpls. 55401

Lowe, James E.,
Lutheran Brotherhood, Law Dept. - Bonnie Nelson, 701 2nd Aven. S., Mpls. 55402
McIntyre, J.Lawrence, 1500 1st Natl Bk Bldg., St Paul 55101 (Atty.)
Mairs and Power, Inc., W-2062 1st Natl. Bk. Bldg., St. Paul 55101

Mastor, Mattson, Lindstrom et al, 414 Roanoke Bldg., Mpls. 55402
Marien, Ronald E., 3205 Churchill Dr, Madison, Wis. 53713
Marsh, S. J., 1115 1st Natl. Bk. Bldg., Mpls. 55402

Merrill Lynch, Pierce, Fenner & Smith, Inc., Attn. Paul Stein, 1st Natl Bk. Bldg., St. Paul 55101

Merrill Lynch, Pierce,Fenner & Smith, Inc., Attn. Robert Barry, 70 Pine St., New York 10002

Merrill Lynch, Pierce, Fenner & Smith, Inc.,Attn. Ernest Walbrecker, OTC Div. (same address)

Merrill Lynch, Pierce, Fenner & Smith, Inc., Attn. Milton S. Boyce, 210 Cargill Bldg., Mpls. 55402
Milex, Inc., One Plymouth Meeting, Plymouth Meeting, Pa. 19462
Milota, William J., 4955 Queen Ave. So., Mpls. 55410

M. H. Bishop & Co., Inc., Attn. J. T. Brouillette, 830 Midwest Plaza, Mpls. 02
Moore, Juran and Company, Inc.,IDS Center, 80 S. 8thSt,Suite 436,Mpls. 55402
Muirhead, J. A., 7390 France S., Mpls. 55435
Nerness, Elroy, Suite 674, 6800 France Ave S., Mpls. 55435
Northern States Power, H. J. Bagley, 414 Nicollet Mall, Mpls. 55401

Paine, Webber, et al, Attn. Robert D. Field, Pioneer Bldg., St. Paul 55101

Piper, Jaffray & Hopwood, Inc., Attn. Paul McGough, 115 S. 7th St., Mpls. 55402
Queen's Associates, Inc., 450 N Lexington Ave, St. Paul 55104
Reiter, Arthur E., 797 Ridge St., St. Paul 55116

Reynolds & Co., Attn. John B. Nutt, 629 2nd Ave. S., Mpls. 55402

Ross, Hardies et al, 122 So. Michigan Ave., Chicago, Ill. 60603

Rotman, Jerry F., 520 Roanoke Bldg., Mpls. 55402

Roady, J. Ray, Dept. of Commerce, Occupational Licensing, Pouch D, Juneau, Alaska 99801

Rubin, Steven M., 1220 Minn. Bldg., St. Paul 55101

St. Paul Companies, Inc.,Att.Corporate Law Dept.,385 Washington St,St Paul 55102

Sanford, Earl S., Kidder Peabody & Co., Inc., 703 1st Natl. Bk. Bldg., Mpls. 02

Sander, Robert, Juran & Moody,114 E 7th St., St Paul,55101

Security Schools Inc., 4940 Viking Dr., Rm. 316, Mpls. 55435

Sell, Neil I., 1800 Midwest Plaza Bldg., Mpls. 55402

Sharp, Renate M., St. Paul Companies, Inc., 385 Washington St., St. Paul 55102

Spencer, Archibald, 1200 1st Natl. Bk. Bldg., Mpls 55402

Shearson, Hammill & Co., Inc., Attn. Preston V. Doane, 730 Cargill Bldg., Mpls. 55402

Smith, Barney & Co., Inc., Attn. Miss J. L. Jablonski, 1345 Ave. of the Americas, N.Y. 10019

Strand, Richard E., 120 S. 6th St., Mpls. 55402

Tews, Thomas, 1430 Midwest Plaza Bldg., Mpls. 55402

Thomson & McKinnon Auchincloss Inc., Attn. James R. Bonge, 711 Alworth Bldg., Duluth 55802

Walston & Co., Inc., Attn. J. W. Nyquist, 366 Cedar St., St. Paul 55101

White, Weld & Co., Attn. Harry C. Ervin, Jr., 120 S. 6th St., Mpls. 55402

Wintringham, Hadley W., Kidder, Peabody & Co., Inc., 20 Exchange Pl., NY 10005

Loewi & Co., Attn.Merrill J. Anderson, 507 Marquette Ave. S., Mpls. 55402

Smith, Barney & Co., Inc., Attn. K. C. Joas, 2608 1st Natl. Bk. Bldg., Mpls 02

Yetzer, Vernon J., 4620 W. 77th St., Suite 161, Mpls. 55435

SECURITIES DIVISION

LAND SALES PRACTICES ACT

(C. 413 L'73)

American Central Corp., 3900 Capital City Blvd., Lansing,Mich.48906
Att M.R. Woodrow

Bergman, William A., P. O. Box 1943, Cedar Rapids, Iowa 52406

Garrett, Larry,Cooper Communities,Inc.,Dept.Land Reg.,PO Box 569,Bentonville,Ark
72712

McCulloch Development Co., Attn V.A.Pellerito,7178 E Main St,Scottsdale.Ariz.
85251

[redacted]

[redacted]

COMMERCE

BANKING

SECURITIES AND REAL ESTATE

Anderson, Chas. A., Am.Natl Ins. Co., P.O. Box 6182, Minneapolis 55424

City and County Employees Credit Union, 144 E 11th St, St.Paul MN 55101

Dorsey, Owen et al, Mr. W. F. Marquart, 2400 1st Natl Bk Bldg., Mpls. 55402

Franke, Jerome E., 211 Roseville Prof.Center, 2233 N.Hamline,St. Paul 55113

Gordon, Avron L., 304 Title Ins. Bldg., Mpls. 55401

Institutional Tax Services Corp. Attn Irwin Kiman, 236 5th Ave. N.Y. N.Y. 10001

Lerner, Alan B., 650 Madison Ave., New York 22, N. Y.

Keyes, Thomas R., Security Schools 4940 Viking Dr. Rm. 264 , Mpls 55435

McCombs & Co., Inc., Box 47, Jenkintown, Pa. 19046

McCrady, Norbert A., Suite 325, 2850 Metro Dr., Bloomington 55420

Miller, Jerrold T., 1000 Currie Ave., Minneapolis 55403

~~Minnesota Bankers Ass'n., 315 W.C.C.C. Bldg., Mpls. 2~~

Minnesota League of Credit Unions, 575 University Ave., St.Paul 55103

Robert L. Smith Co., 422 Pioneer Bldg., St. Paul 55101

Savings & Loan League of Minn. 625 2nd Ave. S., Suite 303, Mpls. 2

State Capitol Credit Union, 95 Sherburne St., St. Paul 55103

Strickland, R.M., Ford Mtr Credit Co., The American Rd., Dearborn, Mich 48121

Suburban Credit Plan Inc., 1551 W. Larpenteur Ave., St. Paul 55113

CREDIT UNIONS

IBM Rochester Employees Credit Union, 3605 Hwy. 52 N., Rochester 55901

Minnesota Association of Cooperatives, ~~2651 University Ave.~~, St. Paul ~~55114~~ 55103
95 Sherburne Ave

Anoka-Hennepin Indpt.School Dist. #11,Credit Union,Box 191, Anoka, Minn. 55303

Brainerd B. N. Credit Union, 718 Front Street, Brainerd, Minnesota

Minnesota League of Credit Unions, 575 University Ave., St. Paul 55103

Northwest Airlines Credit Union, Mpls-St. Paul Intl. Airport, St. Paul 55111

Red Owl Stores Employees Credit Union - 215 E. Excelsior Ave., Hopkins 55343

St. Mary's Parish Credit Union, 105 E. Main St., Sleepy Eye, Minnesota 56085

State Capitol Credit Union, 95 Sherburne St., St. Paul 55103

Star & Tribune Employees Credit Union, J.L.Hoff, 425 Portland Ave, Mpls 55415

INDUSTRIAL & SMALL LOAN & THRIFT

nderson, Chas. A., Am. Natl.Ins.Co., P.O.Box 6182, Minneapolis 55424

ssociated Loan Co., Samuel H. Horowitz, 30 E. Supr St., Duluth, Minn. 55802

ommunity Credit Co., 30 N. 10th St., Mpls. 901 Hennepin

Institutional Tax Services Corp., Attn Irwin Kiman, 236 5th Ave. N.Y., N.Y. 10001

innesota League of Credit Unions, 575 University Ave., St. Paul

McCrady, Norbert A., Suite 325, 2850 Metro Dr., Bloomington 55420

tate Capitol Credit Union, 95 Sherburne St., St. Paul 55103

SECURITIES DIVISION

Abdo, Robt. P. 1020 Dain Tower, Mpls. 55402
American Central Corp. 6950 France Ave. South, Edina, Minnesota 55435
Allison-Williams Company, Attn. Willys P. Jones, NW Bk. Bldg., Mpls. 55402
Almquist & Lowe, 6800 France Ave So., Mpls 55435
Archerd, Wm. F., W-1781 1st Natl. Bk. Bldg., St. Paul 55101

Bache & Co., Attn. Fred R. Gamble, Soo Line Bldg. Mpls. 55402

Beckstrom, James C., 940 Midland Bk. Bldg., Mpls. 55401

Beitz, Ms. Toni A., 2400 1st Natl. Bk. Bldg., Mpls. 55402

Berde, M., 610 Midwest Plaza Bldg., Mpls. 55402

Budd, Ronald E., 954 Midland Bk. Bldg., Mpls. 55401

Branson, Lindley, 300 Roanoke Bldg., Mpls. 55402

Burns, William M., W-1781 1st Natl. Bk. Bldg., St. Paul 55101

Caldwell Phillips, Inc., Attn. Walter R. Hansen, 1st Natl. Bk. Bldg. St.Paul 551
Casey, Everett, Quality Inns. 10750 Columbia Pike, Silver Springs, Md. 20901
Chinnock, Dwight, 151 W. Burnsville Crosstown, Burnsville 55337

Clark, Dodge & Co., Inc., Attn. Albert H. Hedding, Jr., 1635 Cargill Bldg. Mpls. 0
Cox, David, Leonard, Street & Deinard, 800 F & M Bk Bldg., 520 Marq., Mpls 55402
Dain, Kalman & Quail, Attn. Wayne Fadden, 100 Dain Tower, Mpls. 55402
Davidson, Robt L. 2850 Metro Dr, Suite 504, Mpls (Bloomington) 55420
Dean Witter & Co. Inc., Attn. George A. Hust, 519 Marquette Ave., Mpls. 55402
Delaney, Patrick, 4444 IDS Center, 80 South Eighth St., Minneapolis, Minn. 55402
DiPasquale, Benn, Foley & Lardner, 735 N Water St, Milwaukee, Wisc. 53202
Dinwiddie, Harry E., IDS Corp., IDS Tower, Mpls. 55402

Dudley, Joseph J., W-1260 1st Natl Bk. Bldg., St. Paul 55101

Eastman, Dillon et al, Attn. Harold D. Covlin, 2000 Midwest Plaza, Mpls. 55402

Eastman Dillon Union Sec. & Co., Attn. Milton Van Riper, 1 Chase Manhattan Plaza, New York 10005
Eide, David B., 1608 IDS Center, Mpls 55402
Erlander, Rose, 2867 James Ave. S., Mpls. 55408

Feinberg-Rosenberg, Robbins, Davis & Lyons, 33 S. 5th St., Mpls. 55402

Francis I. duPont & Co., Attn. Donald R. Melyon, 100 1st Natl. Concourse Bldg., Mpls. 55402

Fairchild, Robt., 7900 Xerxes Ave. So., Suite 203, Mpls. 55431

Flaten, John, 1910 1st Natl. Bk. Bldg., Mpls. 55402
Franke, Jerome E, 211 Roseville Professional Ctr, 2233 N.Hamline, St.Paul 55113
Garrity, Robert W., 715 Midland Bk. Bldg., Mpls. 55401
General Development Corp. Att. S.Raskin, Adv.Dept., 1111 S Bayshore Dr, Miami, Fla 33131
Gordon, Avron, 2200 Dain Tower, Mpls. 55402

Greensweig, Bernard, 4940 Viking Dr., Mpls. 55435

Guzy, Robt., 3700 Central Ave. NE, Mpls. 55421
Hardee's Food Systems Inc., 1233 N Church St., Rocky Mount, N.D. 27801
Harris, Upham & Co., Attn. Trading Dept., NW Bk. Bldg. Mpls. 55402

Heimerl, Richard C., Craig-Hallum, Inc., 133 S. 7th St., Mpls. 55402
Hemretta, Friedell et al 4644 IDS Center, 80 S 8th St., Mpls. 55402
Hillstrom, Kircher et al, 1710 Soo Line Bldg, Marquette at 5th, Mpls. 55402
Herstein, Elliot J., 621 N Lilac Dr., Mpls. 55422
Hornblower & Weeks-Hamphill, Noyes, Attn. John E. Pedderson, 230 Roanoke Bldg., Mpls. 55402

Hoelter, Timothy, White Hirschboeck et al,2100 Marine Plaza,Milwaukee, Wis.53202
Huffman, Richard W., 1810 IDS Center, Mpls. 55402

Hutton, David, 4328 IDS Center, Mpls. 55402
Intl Multifoods, Att.G.W.Haight 1200 Multifoods B ldg,8th & Marq.,Mpls. 55402
J. Lawrence McIntyre, Doherty, Rumble & Butler, 1500 1st Natl. Bk. Bldg., St. Paul 55101

Jensen, Russell J., Atty., 305 Degree of Honor Bldg., St. Paul 55101

John G. Kinnard and Co.Inc., Attn. Gerald M. Gifford, 740 Northstar Center, Mpls. 55402

John C. DeMoss Ltd., 1701 1st Natl. Bk. Bldg., Mpls. 55402
Kauffman, Howard J., 800 Midland Bk. Bldg., Mpls. 55401
King, Thomas R., Atty., Builders Exch. Bldg., Mpls. 55402

Kidder, Peabody & Co., 1650 IDS Center, Mpls. 55402

Lamson Bros. & Co., Attn. Richard A. Larson, 210 Pioneer Bldg., St. Paul 55101

Langevin, David P., 7500 80th St S., Cottage Grove 55016
Levin, Sidney, 1050 Midland Bk. Bldg., Mpls. 55401

Lutheran Brotherhood, Law Dept. - Bonnie Nelson, 701 2nd Aven. S., Mpls. 55402

McIntyre, J.Lawrence, 1500 1st Natl Bk Bldg., St Paul 55101
Mairs and Power, Inc., W-2062 1st Natl. Bk. Bldg., St. Paul 55101
Marien, Ronald E., 3205 Churchill Dr, Madison, Wis. 53713
Mastor, Mattson, Lindstrom et al, 414 Roanoke Bldg., Mpls. 55402

Marsh, S. J., 1115 1st Natl. Bk. Bldg., Mpls. 55402

Merrill Lynch, Pierce, Fenner & Smith, Inc., Attn. Paul Stein, 1st Natl Bk. Bldg., St. Paul 55101

Merrill Lynch, Pierce,Fenner & Smith, Inc., Attn. Robert Barry, 70 Pine St., New York 10002

Merrill Lynch, Pierce, Fenner & Smith, Inc.,Attn. Ernest Walbrecker, OTC Div. (same address)

Merrill Lynch, Pierce, Fenner & Smith, Inc., Attn. Milton S. Boyce, 210 Cargill Bldg., Mpls. 55402
Milex, Inc., One Plymouth Meeting, Plymouth Meeting, Pa. 19462
Milota, William J., 4955 Queen Ave. So., Mpls. 55410

M. H. Bishop & Co., Inc., Attn. J. T. Brouillette, 830 Midwest Plaza, Mpls. 02
Moore, Juran and Company, Inc.,IDS Center, 80 S. 8thSt,Suite 436,Mpls. 55402
Muirhead, J. A., 7390 France S., Mpls. 55435
Nerness, Elroy, Suite 674, 6800 France Ave S., Mpls. 55435
Northern States Power, H. J. Bagley, 414 Nicollet Mall, Mpls. 55401

Paine, Webber, et al, Attn. Robert D. Field, Pioneer Bldg., St. Paul 55101
Queen's Associates, Inc., 450 Lexington Ave, St. Paul
Piper, Jaffray & Hopwood, Inc., Attn. Paul McGough, 115 S. 7th St., Mpls. 55402

Reiter, Arthur E., 797 Ridge St., St. Paul 55116

Reynolds & Co., Attn. John B. Nutt, 629 2nd Ave. S., Mpls. 55402

Ross, Hardies et al, 122 So. Michigan Ave., Chicago, Ill. 60603

Rotman, Jerry F., 520 Roanoke Bldg., Mpls. 55402

Roady, J. Ray, Dept. of Commerce, Occupational Licensing, Pouch D, Juneau, Alaska 99801

Rubin, Steven M., 1220 Minn. Bldg., St. Paul 55101

St. Paul Companies, Inc.,Att.Corporate Law Dept.,385 Washington St,St Paul 55102

Sanford, Earl S., Kidder Peabody & Co., Inc., 703 1st Natl. Bk. Bldg., Mpls. 02

Sander, Robert, Juran & Moody,114 E 7th St., St Paul,55101

Security Schools Inc., 4940 Viking Dr., Rm. 316, Mpls. 55435

Sell, Neil I., 1800 Midwest Plaza Bldg, Mpls 55402

Sharp, Renate M., St. Paul Companies, Inc., 385 Washington St., St. Paul 55102

Spencer, Archibald, 1200 1st Natl. Bk. Bldg., Mpls 55402

Shearson, Hammill & Co., Inc., Attn. Preston V. Doane, 730 Cargill Bldg., Mpls. 55402

Smith, Barney & Co., Inc., Attn. Miss J. L. Jablonski, 1345 Ave. of the Americas, N.Y. 10019

Strand, Richard E., 120 S. 6th St., Mpls. 55402

Tews, Thomas, 1430 Midwest Plaza Bldg., Mpls. 55402

Thomson & McKinnon Auchincloss Inc., Attn. James R. Bonge, 711 Alworth Bldg., Duluth 55802

Walston & Co., Inc., Attn. J. W. Nyquist, 366 Cedar St., St. Paul 55101

White, Weld & Co., Attn. Harry C. Ervin, Jr., 120 S. 6th St., Mpls. 55402

Wintringham, Hadley W., Kidder, Peabody & Co., Inc., 20 Exchange Pl., NY 10005

Loewi & Co., Attn.Merrill J. Anderson, 507 Marquette Ave. S., Mpls. 55402

Smith, Barney & Co., Inc., Attn. K. C. Joas, 2608 1st Natl. Bk. Bldg., Mpls 02

Yetzer, Vernon J., 4620 W. 77th St., Suite 161, Mpls. 55435

STATE OF MINNESOTA
OFFICE of SECRETARY of STATE

9-01

NOTICE of HEARINGS MAILING LABEL SYSTEM

NAME	ADDRESS STREET	CITY	STATE	ZIP CODE
MINN ASPHALT PAVEMENT ASSN	555 WABASHA Rm 209	ST PAUL	MN	55102
LYNCH DONALD SIBLEY CO	184 E 6th St	St PAUL	MN	55102
TATE VERN 3M CO	3M CENTER 220/6W	ST PAUL	MN	55101
CLAUSEN PHILLIP	2255 PRESCILLA ST	ST PAUL	MN	55108
LANAHAN E F - SIBLEY CO	184 E 6th St	ST PAUL	MN	55101
LEAGUE WOMEN VOTERS OF MINN	555 WABASHA	ST PAUL	MN	55102
McFADDEN G H DISPATCH-PRESS	55 E 4th ST	ST PAUL	MN	55101
MAYO FOUNDATION GORNOLL	200 FIRST AVE NW	ROCHESTER	MN	55901
SANFORD SID	7000 PORTLAND AVE	RICHFIELD	MN	55423
SHARP BOB	4125 HIGHWOOD RD	ST LOUIS PK	MN	55416
VOS LEROY	2137 BURNS AVE	ST PAUL	MN	55119
FREDIN CONRAD M	811 FIRST NATL BK BLDG	DULUTH	MN	55802
HINRICHSEN PATRICK	MANKATO FREE PRESS	MANKATO	MN	56001

ANDREWS MOSBURG ET AL-NIC
MIDLAND CENTER
OKLAHOMA CITY
73102

Ex. 6

STATE OF MINNESOTA
COUNTY OF RAMSEY

DEPARTMENT OF COMMERCE

In the Matter of the Proposed)
Adoption of Rules of the State)
Commerce Commission Governing)
Contested Case Procedures)

Anna M. Clint, being first duly sworn, deposes and says:

That on the 2nd day of July, 1974, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State as well as to all persons listed on the attached sheet as presently being members of the Minnesota Legislature.

Anna M. Clint

Subscribed and sworn to before me
this 2d day of July, 1974.

Cyrilla Delaney

Cyrilla Delaney, Notary Public,
Ramsey County, Minnesota
My Commission Expires Feb. 27, 1980.

STATE OF MINNESOTA
COUNTY OF RAMSEY

DEPARTMENT OF COMMERCE
BEFORE EDWARD J. DRISCOLL
CHAIRMAN OF COMMERCE COMMISSION

In the Matter of the Proposed)
Rules Relating to Contested Case)
Procedures Under Minn. Stat.,)
Chapter 45 and Chapter 15)

STATEMENT OF NEED

The Department of Commerce, State of Minnesota, proposes to adopt rules of procedure to govern all contested cases arising in any division, section or board within the Department of Commerce. These rules will repeal Minn. Reg. Ins. 120-139 and C S 1-19, contested case procedures previously adopted by the Insurance Division and the Consumer Services Section, but the proposed rules are de novo proposals as to any other divisions, sections or boards within the Department of Commerce.

Minn. Stat. § 15.0418 requires that all parties to a contested case shall be afforded an opportunity for a hearing and further provides that each agency may adopt appropriate rules of procedure for contested case hearings. Minn. Stat. § 45.032, Subd. 1 provides that the Commerce Commission shall prescribe by rule the procedures for the conduct of all hearings.

The above captioned rules are necessary to carry out the provisions of the above-cited statutes, to maintain orderly and well defined hearings' procedures, and to effectively provide fundamental fairness and due process for parties to contested cases within the Department of Commerce.

Dated: August 12, 1974

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE



EDWARD J. DRISCOLL
CHAIRMAN, COMMERCE COMMISSION

STATE OF MINNESOTA

COUNTY OF RAMSEY

DEPARTMENT OF COMMERCE
BEFORE EDWARD J. DRISCOLL
CHAIRMAN
COMMERCE COMMISSION

In the Matter of the Proposed Adoption of Rules of the State Department of Commerce Governing Contested Case Procedures, Chapter 45 and Chapter 15.

FINDINGS OF FACT

The above-entitled matter came on for hearing before the Commerce Commission on the 12th day of August, 1974, at 9:40 A.M. at the Fifth Floor of the Metro Square Building, St. Paul, Minnesota after proper notice required by Minn. Stat. § 15.0412 (1971) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, I find the following:

Minn. Stat. § 15.0418 (1971) provides that "[i]n any contested case all parties shall be afforded an opportunity for hearing after reasonable notice" and further specifies that "[e]ach agency may adopt appropriate rules of procedure for notice and hearing in contested cases." Minn. Stat. § 45.032, subd. 1 (1971) provides that the Commerce Commission shall prescribe by rule and regulation the procedures for the conduct of all hearings. Rules have been proposed in accordance with these sections of law for the governing of contested cases before any division, section or board within the Department of Commerce, except for cases governed by Minn. Reg. COMC 1-70. Such rules are necessary to carry out the provisions of the above-cited statutes, to maintain orderly and well-defined hearing procedures and to effectively provide fundamental fairness and due process for parties to contested cases within the Department

of Commerce. No credible evidence contrary to this Finding was adduced at the hearing.

Oral testimony was received at the hearing from Clay Moore, an attorney representing potential clients who might have business before the Department. Mr. Moore also submitted written comments suggesting certain changes. Consideration to the changes suggested by Mr. Moore was given and changes were made in the proposed rules in accordance with several of his recommendations. No other written or oral evidence or statements were received at the hearing or subsequent to the hearing.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
COMMERCE COMMISSION

ROBERT A. MAMPEL
Commissioner of Banks

BERTON W. HEATON
Commissioner of Insurance

EDWARD J. DRISCOLL
Commissioner of Securities

STATE OF MINNESOTA

COUNTY OF RAMSEY

DEPARTMENT OF COMMERCE
BEFORE EDWARD J. DRISCOLL
CHAIRMAN
COMMERCE COMMISSION

In the Matter of the Proposed Adoption of Rules of the State Department of Commerce Governing Contested Case Procedures, Chapter 45 and Chapter 15.

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the Commerce Commission on the 12th day of August, 1974, at 9:40 A.M. at the Fifth Floor of the Metro Square Building, St. Paul, Minnesota after proper notice required by Minn. Stat. § 15.0412 (1971) was served upon all persons, associations, and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules of Contested Case Procedures, COMC 101-119 are adopted this 21st day of October, 1974, pursuant to authority vested in the Commerce Commission by Minn. Stat. § 45.032, subd. 1 (1971).

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
COMMERCE COMMISSION

ROBERT A. MAMPEL
Commissioner of Banks

BERTON W. HEATON
Commissioner of Insurance

EDWARD J. DRISCOLL
Commissioner of Securities

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules of the State Department of Commerce Governing Contested Case Procedures, Chapter 45 and Chapter 15.

STATEMENT OF COMPLIANCE WITH MANUAL OF RULE-MAKING PROCEDURES

I, Assistant Attorney General Robert W. Herr, do hereby declare that I have examined the proposed Rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed except as noted below:

Atty. Gen. 303(e) requires a reasonable time period, at least twenty (20) days subsequent to the hearing, for interested parties to submit briefs or other written material relative to the proposed Rules.

In the case of the Proposed Rules of Contested Case Procedures, ten (10) days was allowed for comment. It was announced at the hearing that this reduced period of time was being allowed in view of the lack of comments at the hearing. No written comments were received subsequent to the hearing during or after the ten (10) day period allowed, and, therefore, it is submitted that this deviation did not prejudice the rights of any interested parties nor affect the legality of the Rules adopted.

Dated: October 25, 1974.

ROBERT W. HERR
Assistant Attorney General

Ex. 8

COMC 101 - 119

RULES OF CONTESTED CASE PROCEDURES

COMC 101 Scope and Purpose.

The procedures contained herein, COMC 101 to COMC 119, govern all contested cases before any division, section or board within the Department of Commerce, except for those cases governed by Minn. Reg. COMC 1-70.

COMC 102 Introduction, Definitions.

(a) Introduction. No person before this Department shall have his rights, privileges, or duties determined without regard for fundamental fairness. To that end, these rules are intended to assure that all parties to contested cases before this Department are provided a speedy and just hearing. Such hearing shall include:

(1) Adequate notice to all interested persons;

(2) The opportunity to consult with the Department informally to attempt to resolve conflicts on issues;

(3) Notice at each stage of the proceedings sufficient to provide the opportunity to prepare therefor;

(4) An objective decision supported by substantial evidence from the record.

(b) Definitions.

(1) Agency. Agency means any division, section or board within the Department of Commerce, or the head thereof.

(2) Contested Case. Contested case means a proceeding before the Agency in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after an Agency hearing.

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

(4) Person. Person means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision, unit or agency, other than a court of law.

(5) Hearing Officer. Hearing officer means the person or persons appointed by the Agency pursuant to Minn. Reg. COMC 103 hereof, to hear the contested case.

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

(7) Commencement. Commencement means service of an order for hearing upon any party.

COMC 103 Hearing Officers.

(a) Appointment. The Agency may appoint a hearing officer to hear a contested case. The appointment, if made, shall be at the commencement of the case.

(b) Qualifications.

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

(2) Cases to Which the Agency is not a Party. In cases to which the Agency is not a party, the Agency may appoint any person, including an employee of the Agency or a member or members thereof, as the hearing officer.

(c) Authority of Hearing Officer.

(1) Cases to Which the Agency is a Party. In cases to which the Agency is a party, the appointment of the hearing officer shall authorize the hearing officer to hear the case and propose findings of fact and conclusions of law.

(2) Cases to Which the Agency is not a Party. In cases to which the Agency is not a party, the appointment of the hearing officer shall grant the hearing officer such authority as the Agency deems necessary and appropriate to hear the case.

(d) Function. Consistent with the law and the terms of his appointment, the hearing officer shall hear the contested case, hear and rule on preliminary motions, administer oaths and examine witnesses, issue subpoenas, make preliminary, interlocutory, or other orders as he

deems appropriate, grant or deny continuances and requests for discovery, propose to the Agency findings of fact upon the evidence presented and conclusions of law, and do things necessary or proper to the performance of the foregoing.

COMC 104 Initiating a Contested Case.

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

(1) The name and address of the person;

(2) A statement of the nature of the determination sought and the reasons therefor;

(3) A reference to the Agency order giving rise to the request;

(4) The names and addresses of all persons known to the applicant who will be directly affected by such determination; and

(5) The signature of the applicant or his attorney.

(b) Initiation by Agency Order. Where authorized by law, the Agency may order a contested case commenced to determine the rights, duties and privileges of specific parties.

COMC 105 Commencement of Contested Case.

(a) With the time provided by law or, in any event, within a reasonable time following the receipt of a request for hearing pursuant to COMC 104 (a), the Agency shall issue an order setting a hearing. An order issued pursuant to COMC 104 (a) or (b) shall be served upon all known parties and shall contain, inter alia, the following:

(1) The time and place of the hearing;

(2) The name and address of the hearing officer;

(3) The allegations or issues to be determined, together with a citation to relevant statutes or regulations;

(4) Notification of the right of the parties to be represented by legal counsel;

(5) A citation to these rules;

(6) A statement announcing the right of a party to request a prehearing conference by so notifying the hearing officer.

(7) A statement that failure to attend the hearing may result in the allegations of the order being taken as true.

(b) The order setting a hearing shall be served not less than twenty days prior to the hearing unless otherwise provided by law.

COMC 106 Right to Counsel. Any party may be represented by legal counsel throughout the proceedings in a contested case before the Agency.

COMC 107 Informal Disposition. Informal disposition may be made of any contested case or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings.

COMC 108 Default. The Agency may dispose of a contested case adverse to a party which defaults. Upon default the allegations of the order for hearing may be taken as true.

COMC 109 Intervention. Upon timely application any person shall be permitted to intervene in a contested case upon a showing that his legal rights, duties or privileges may be determined or affected in the contested case, unless in the discretion of the hearing officer such person's interest is adequately represented by one or more parties participating in the case.

COMC 110 Consolidation.

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

(b) Notice. Following an order for consolidation the Agency shall forthwith serve on all parties a notice of consolidation. Such notice shall contain:

(1) A description of the cases for consolidation;

(2) The reasons for consolidation;

(3) Cancellation of any prehearing conferences for the cases consolidated; and

(4) Notification of a consolidated prehearing conference if one has been requested.

(c) Objection to Consolidation.

(1) Petition for Severance. Any party may object to consolidation by filing with the Agency prior to the hearing in the case a petition for severance from consolidation, setting forth petitioner's name and address, the designation of his case prior to consolidation, and the reasons for his petition.

(2) Determination. If the Agency finds that consolidation would prejudice petitioner, it may order such severance or other relief as it deems necessary.

COMC 111 Disqualification. A hearing officer shall withdraw from participation in a contested case at any time if he deems himself disqualified for any reason. Upon the filing in good faith by a party of an affidavit of prejudice the hearing officer shall determine the matter as a part of the record, provided the affidavit shall be filed no later than five days prior to the date set for hearing.

COMC 112 Prehearing Conference.

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

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

COMC 113 Subpoenas. Requests for subpoenas shall be made in writing to the hearing officer and shall contain a brief statement as to the relevance of the testimony or evidence sought.

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

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

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

COMC 114 The Hearing.

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

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

(c) Rules of Evidence.

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

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

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

(4) Notice of Facts. The hearing officer may take notice of judicially cognizable facts.

(5) The Burden of Proof. The party with the burden of proof must prove the facts at issue by a preponderance of the evidence.

(6) Examination of Adverse Party. A party may call an adverse party or his managing agent or employees or an officer, director, managing agent or employee of the State or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate him by leading questions and contradict and impeach him on material matters in all respects as if he had been called by the adverse party. The adverse party may be examined by his counsel upon the subject matter of his examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by his testimony.

(d) The Record.

(1) Agency Prepares Record. The Agency shall prepare an official record in each contested case.

(2) What the Record Shall Contain. The record in a contested case shall contain:

(aa) All orders, pleadings, motions and interlocutory rulings;

(bb) Evidence received or considered;

(cc) Offers of proof, objections and rulings thereon;

(dd) Proposed findings of fact and conclusions of law;

(ee) All memoranda or data submitted to the hearing officer by any party in connection with the case.

(3) Transcript.

(aa) Reporter or Mechanical Device. A verbatim record of the hearing shall be taken by court reporter or recording equipment. A court reporter shall be used if demanded by any party. Unless the Agency agrees to bear the expense of the court reporter, such expense shall be paid by the demanding party.

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

(e) Continuances. A request for continuance shall be made in writing to the hearing officer.

(1) A request for continuance filed not less than three days prior to the hearing date may be granted upon a showing of good cause. Good cause does not include unavailability of counsel unless he is a sole practitioner or unavailability of a witness if his deposition could have been taken.

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

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

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

(g) Hearing Procedure.

(1) Hearing Officer Conduct. The hearing officer shall take no part in any preliminary investigation or inquiry into the facts or issues involved in the contested case except as provided in Minn. Reg. COMC 112. He shall not communicate, directly or indirectly, in connection with any issue of fact or law, with any person or party, including the Agency, except upon notice and opportunity for all parties to participate.

(2) Sequence of Events. The hearing shall be conducted in the following manner:

(aa) After opening the hearing, the hearing officer shall indicate the following procedural rules:

(i) All parties may present evidence and argument with respect to the issues;

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

(iii) The rules of evidence as set forth in Minn. Reg. COMC 114 (c) (1).

(bb) A representative of the Agency shall introduce the following exhibits on behalf of the Agency:

(i) All orders in the matter, supporting documents, if any, and affidavits of service;

(ii) Any stipulations, settlement agreements, or consent orders entered into by any of the parties prior to the hearing.

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

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

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

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

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

(h) Disruption of Hearing.

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

(2) Other Conduct. Pursuant to and in accordance with the provisions of Minn. Stat., Section 624.72, no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the hearing officer shall read this rule to those persons causing such interference or disruption and thereafter proceed as he deems appropriate.

COMC 115 The Agency Decision.

(a) Basis for Determination.

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

(2) Experience, Technical Competence and Specialized Knowledge. The hearing officer may use his experience, technical competence, and specialized knowledge in the evaluation of the evidence presented in the case.

(b) Proposal for Decision. The hearing officer shall prepare proposed findings of fact and conclusions of law and submit them to the Agency. The Agency, after reading the evidence and reviewing the entire record, shall then render its decision.

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

COMC 116 Rehearing.

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

(b) Obtaining a Rehearing.

(1) Parties other than the Agency. At any time prior to the Agency's loss of the right to rehear a contested case, any party to that case may request a rehearing by filing a petition for rehearing. Such petition shall contain:

(aa) The name and address of the petitioner;

(bb) The Agency designation for the case;

(cc) The reasons for the petition.

(2) Default Judgments. A party against whom a default has been adjudged pursuant to Minn. Reg. COMC 108 may obtain a rehearing upon a timely showing of good cause for his failure to appear or plead.

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

(c) Notice of Rehearing. Notice of rehearing must be provided in the same manner prescribed for notice of hearing.

(d) Rehearing Procedure. A rehearing in a contested case shall be conducted in the same manner prescribed for a hearing.

(e) Decision after Rehearing. The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing.

COMC 117 Emergency Procedures. Nothing contained in these rules is intended to preempt, repeal or be in conflict with any rule, regulation or statute which provides for acts by the Agency in an emergency or procedure for conduct by the Agency in such a situation.

COMC 118 Severability. If any provision of these rules is held invalid, such invalidity shall not affect any other provision of the rules which can be given effect without the invalid provision, and to this end the provisions of these rules are declared to be severable.

COMC 119 Repealer. All rules or regulations governing contested case procedures previously adopted by any division, section or board of the Department of Commerce, including Minn. Reg. Ins. 120-139 and C S 1-19, but excluding Minn. Reg. COMC 1-70, are hereby repealed.