

1 Office of Administrative Hearings

2

3 Adopted Permanent Rules Governing Rule Adoption Proceedings

4

5 Rules as Adopted

6 1400.2000 SCOPE.

7 Parts 1400.2010 to 1400.2560 govern all proceedings by an
8 agency for adopting any rule under Minnesota Statutes, chapter
9 14.

10 1400.2010 DEFINITIONS.

11 Subpart 1. Scope. The definitions in this part apply to
12 parts 1400.2000 to 1400.2560.

13 Subp. 2. Agency. "Agency" has the meaning given in
14 Minnesota Statutes, section 14.02, subdivision 2.

15 Subp. 3. Chief administrative law judge or chief judge.
16 "Chief administrative law judge" or "chief judge" means the
17 chief administrative law judge of the Office of Administrative
18 Hearings.

19 Subp. 4. Judge. "Judge" means the administrative law
20 judge assigned by the chief administrative law judge to conduct
21 a rule hearing or review a rule.

22 Subp. 5. Legislative commission. "Legislative commission"
23 means the Legislative Commission to Review Administrative Rules.

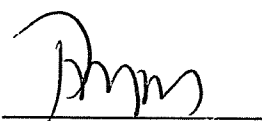
24 Subp. 6. Multimember agency. "Multimember agency" means
25 an agency described in Minnesota Statutes, section 15.0597,
26 subdivision 1, paragraph (a), clause (1), and the Capitol Area
27 Architectural and Planning Board.

28 Subp. 7. Office. "Office" means the Office of
29 Administrative Hearings.

30 Subp. 8. Revisor. "Revisor" means the Revisor of Statutes.

31 Subp. 9. Rule. "Rule" has the meaning given in Minnesota
32 Statutes, section 14.02, subdivision 4.

33 Subp. 10. Substantially different. "Substantially
34 different" has the meaning given in Minnesota Statutes, section
35 14.05, subdivision 2, paragraph (b).



1 1400.2020 ASSIGNMENT AND DISQUALIFICATION OF JUDGE.

2 Subpart 1. **Assignment.** The chief judge must promptly
3 assign a judge to a rule proceeding after the chief judge
4 receives a request to schedule a rule hearing, or a filing from
5 an agency under parts 1400.2060, 1400.2300, 1400.2400, or
6 1400.2450. A request to schedule a rule hearing must include
7 the documents listed in part 1400.2080, subpart 5.

8 Subp. 2. **Disqualification.** An assigned judge must
9 withdraw from a rule proceeding at any time the judge decides
10 that he or she is disqualified for any reason.

11 Subp. 3. **Disqualification by affidavit.** If an affected
12 person files an affidavit of prejudice against a judge assigned
13 to a rulemaking hearing, the chief judge must decide whether to
14 disqualify the judge. The affidavit must be received by the
15 chief judge at least five working days before the rulemaking
16 hearing.

17 1400.2030 COUNTING TIME AND FILING DOCUMENTS.

18 Subpart 1. **Counting time.** To count a time period, the day
19 of filing, mailing, publication, or other action is not counted
20 and the last day of the time period is counted. Saturdays,
21 Sundays, and legal holidays are included in calendar day time
22 periods and are not included in working day time periods. If a
23 calendar day time period ends on a Saturday, Sunday, or legal
24 holiday, the time period ends on the next day which is not a
25 Saturday, Sunday, or legal holiday. A time period is in
26 calendar days unless it is stated as "working days."

27 Subp. 2. **Paper size.** All documents must be submitted to
28 the office on standard size 8-1/2 inch by 11 inch paper, except:

- 29 A. the proposed or adopted rules prepared by the
30 revisor;
31 B. handwritten comments from the public; and
32 C. exhibits.

33 Subp. 3. **Facsimile transmission.** A person may file any
34 document with the office using facsimile transmission. Filing a
35 facsimile is equivalent to filing the original document, and is

1 effective when the office receives it. A transmission commenced
2 before 4:30 p.m. on the last day of filing is timely filed. The
3 person filing the document must mail or deliver the original
4 signed document to the office within five days.

5 1400.2040 PETITION FOR RULEMAKING.

6 Subpart 1. Content of petition. A petition to an agency
7 requesting rulemaking under Minnesota Statutes, section 14.09,
8 must be in the format of, and contain the information required
9 in, the form in part 1400.2500.

10 Subp. 2. Filing of petition with agency. The petition
11 must be filed with the executive director or head of the agency
12 in person or by United States mail.

13 Subp. 3. Agency response to petition. The agency must
14 reply in writing to the petition within 60 days after receiving
15 it. The reply must meet the requirements of Minnesota Statutes,
16 section 14.09, and be signed by a person authorized to adopt a
17 rule or, for multimember agencies, by a member or officer.

18 1400.2050 REQUEST FOR COMMENTS ON PLANNED RULE.

19 An agency must comply with Minnesota Statutes, section
20 14.101, before publishing a notice of intent to adopt rules or
21 notice of hearing. Part 1400.2510 is a recommended form for the
22 published request for comments.

23 1400.2060 APPROVAL OF NOTICE PLAN.

24 Subpart 1. Optional prior approval. An agency may ask the
25 office for prior approval of its plan for additional notice of
26 planned rulemaking under Minnesota Statutes, section 14.101, or
27 of its plan for additional notice of proposed rules under
28 Minnesota Statutes, section sections 14.131, 14.14, 14.22, and
29 14.23.

30 Subp. 2. Filing. An agency asking the office for prior
31 approval of a notice plan must file with the office:

32 A. For notice plans under Minnesota Statutes, section
33 14.101:

34 (1) a description of its proposed additional

1 notice plans;

2 (2) the agency's proposed request for comments on
3 planned rule; and

4 (3) an explanation of why the agency believes
5 that its notice plan complies with Minnesota Statutes, section
6 14.101.

7 B. For notice plans under Minnesota Statutes,
8 sections 14.131, 14.14, 14.22, and 14.23:

9 (1) the proposed rule;

10 (2) a draft of or a final copy of the statement
11 of need and reasonableness under part 1400.2070, containing the
12 agency's proposed notice plan;

13 (3) the agency's proposed notice of intent to
14 adopt rules, notice of hearing, or dual notice under part
15 1400.2080; and

16 (4) an explanation of why the agency believes
17 that its notice plan complies with Minnesota Statutes, section
18 14.14, subdivision 1a, or 14.22.

19 Subp. 3. Review. If a proposed notice plan is filed with
20 the office, a judge must review, and approve or disapprove it
21 within five working days after the office receives it. The
22 judge must approve the notice plan if the judge finds that the
23 notice plan meets the requirements of the applicable statute.

24 Subp. 4. Approval and or disapproval. An approved notice
25 plan is the office's final determination that the notice plan is
26 adequate. If the notice plan is disapproved, the judge must
27 explain why and tell the agency what changes are necessary for
28 approval. The agency may resubmit the notice plan for review
29 after changing it. The judge must review and approve or
30 disapprove the revised notice plan within five working days
31 after the office receives it.

32 1400.2070 STATEMENT OF NEED AND REASONABLENESS.

33 Subpart 1. General content. The statement of need and
34 reasonableness must summarize the evidence and argument that the
35 agency is relying on to justify both the need for and the

1 reasonableness of the proposed rules, and must state how the
2 evidence rationally relates to the choice of action taken. The
3 statement must explain the circumstances that created the need
4 for the rulemaking and why the proposed rulemaking is a
5 reasonable solution for meeting the need. The statement must be
6 sufficiently specific so that interested persons will be able to
7 fully prepare any testimony or evidence in favor of or in
8 opposition to the proposed rules. A general description of the
9 statute being implemented or restating the proposed rule is not
10 sufficient. The statement must include:

11 A. citations to any economic, scientific, or other
12 manuals or treatises the agency anticipates relying on;

13 B. citations to any statutes or case law the agency
14 anticipates relying on;

15 C. a list of any witnesses the agency anticipates
16 asking to testify if there is a hearing on the rule, and a
17 summary or description of their testimony; and

18 D. a citation to the agency's grant of statutory
19 authority to adopt the rule and, if the grant of authority was
20 made after January 1, 1996, the effective date of the agency's
21 statutory authority to adopt the rule.

22 The statement need not contain evidence and argument in rebuttal
23 of evidence and argument presented by the public. If an agency
24 is amending existing rules, the agency need not demonstrate the
25 need for and reasonableness of the existing rules not affected
26 by the proposed amendments.

27 **Subp. 2. Specific requirements.** The statement must also
28 contain the following:

29 A. for rules to be adopted after a public hearing,
30 the information required by Minnesota Statutes, section 14.131;

31 B. for rules to be adopted without a public hearing,
32 the information required by Minnesota Statutes, section 14.23;

33 C. an explanation of what effort the agency made to
34 obtain any information that it states could not be ascertained
35 through reasonable effort; and

36 D. information required by any other law or rule to

1 be included in the statement, or which the agency is required by
2 law or rule to consider in adopting a rule. Examples include:
3 Minnesota Statutes, section 16A.1285, subdivision 5; 115.43,
4 subdivision 1; 116.07, subdivision 6; or 144A.29, subdivision 4.

5 Subp. 3. Timing. The statement must be prepared before
6 the agency ~~publishes or mails~~ orders publication of its notice
7 of intent to adopt rules, notice of hearing, or dual notice.
8 The agency must send a copy of the statement to the legislative
9 commission when it becomes available for public review.

10 1400.2080 NOTICE OF PROPOSED RULE.

11 Subpart 1. General content. A notice of intent to adopt
12 rules under Minnesota Statutes, section 14.22, must contain the
13 information in subparts 2 and 3. A notice of hearing under
14 Minnesota Statutes, section 14.14, must contain the information
15 in subparts 2 and 4. A dual notice must contain the information
16 in subparts 2, 3, and 4. Parts 1400.2520, 1400.2530, and
17 1400.2540 contain recommended forms for these notices.

18 Subp. 2. Contents of all notices. A notice of intent to
19 adopt rules, notice of hearing, or dual notice must state:

20 A. that the agency intends to adopt a rule and
21 identify the parts of Minnesota Statutes, chapter 14, and this
22 chapter that the agency must follow;

23 B. a citation to the specific statutory authority for
24 the rule;

25 C. that the proposed rule is attached to the notice
26 or if the text of the proposed rule is not attached, a
27 description of the nature and effect of the rule and how to
28 obtain a free copy from the agency;

29 D. if applicable, that an entire rule is being
30 repealed and a citation to the rule;

31 E. that the statement of need and reasonableness is
32 available to the public, that the statement contains a summary
33 of the justification for the proposed rule, including who will
34 be affected by the proposed rule and an estimate of the probable
35 cost of the proposed rule, and how to obtain a copy from the

1 agency;

2 F. that the proposed rule can be modified if the
3 modifications are supported by the information and comments
4 submitted and do not make the rule substantially different;

5 G. that persons may ~~register-with-the-agency~~ request
6 to be placed on the agency's mailing list to receive notice of
7 future rule proceedings;

8 H. any other information required by law or rule to
9 be included in the notice; and

10 I. the signature of the person authorized to give
11 notice of intent to adopt rules, notice of hearing, or dual
12 notice.

13 Subp. 3. **Additional contents for a notice of intent to**
14 **adopt rules or dual notice.** A notice of intent to adopt rules
15 without a public hearing or dual notice must state:

16 A. that the public has 30 days to comment in support
17 of or in opposition to the rule or any part of it, and that
18 comment is encouraged;

19 B. the calendar date that the comment period ends;

20 C. that each comment should identify the part of the
21 rule addressed, any change proposed, and the reason for the
22 suggested change;

23 D. that if 25 or more persons submit a written
24 request for hearing during the comment period, a public hearing
25 must be held on the rule unless a sufficient number later
26 withdraw their requests in writing;

27 E. that any person requesting a hearing must include
28 his or her name and address, must identify the portion of the
29 rule to which the person objects or a statement that the person
30 objects to the entire rule, and that a request that does not
31 provide this information is invalid and will not count when
32 determining whether a public hearing must be held;

33 F. that any person requesting a hearing is encouraged
34 to propose changes to the rule;

35 G. how persons must submit their comments or requests
36 for hearing;

1 H. that if a public hearing is held the agency must
2 proceed under Minnesota Statutes, sections 14.131 to 14.20;

3 I. that if no hearing is required the agency must,
4 after adopting the rule, submit the rule and supporting
5 documents to the office for review for legality;

6 J. that persons ~~must-submit-comments~~ who wish to
7 comment on the legality of the rule must do so during the 30-day
8 comment period; and

9 K. that persons may request to be notified of the
10 date that the rule is submitted to the office for review and how
11 to make that request.

12 Subp. 4. Additional contents for a notice of hearing or
13 dual notice. A notice of hearing or dual notice must state:

14 A. the time, date, and place of the hearing;

15 B. that all interested persons will have an
16 opportunity to participate;

17 C. how interested persons may present their views at
18 the hearing;

19 D. the procedure in part 1400.2230 for submitting
20 written materials after the hearing;

21 E. that persons can ask the judge questions about the
22 procedure, and the name, address, and telephone number of the
23 judge;

24 F. that persons can obtain the statement of need and
25 reasonableness from the office at the cost of copying;

26 G. that any person can ask to be notified of the date
27 on which the judge's report will become available and that the
28 request can be made at the hearing or in writing to the judge;

29 H. that any person can ask to be notified of the date
30 on which the agency adopts the rule and files it with the
31 secretary of state, and that the request can be made at the
32 hearing or in writing to the agency;

33 I. that lobbyists must register with the ethical
34 practices board, that questions should be referred to the board,
35 and the board's address and telephone number; and

36 J. that a hearing is ordered.

1 Subp. 5. Scheduling of hearing, and approval of notice of
2 hearing and or dual notice. The agency must request to schedule
3 a rule hearing and obtain the judge's approval of any notice of
4 hearing or dual notice prior to mailing it or publishing it in
5 the State Register. The judge must also advise the agency as to
6 when and where the hearing should be held in order to allow for
7 participation by all affected interests. A copy of the proposed
8 rule with a certificate of approval as to form by the revisor of
9 statutes attached, and a draft of or a final copy of the
10 statement of need and reasonableness must be filed with a notice
11 submitted for approval. The judge must review the proposed
12 notice within five working days of receiving it and must either
13 approve the notice or advise the agency how the notice must be
14 revised.

15 Subp. 6. Timing. A notice of hearing~~7-dual-notice7~~ or
16 notice of intent to adopt rules must be mailed at least 33 days
17 before the end of the comment period or the start of the
18 hearing, and must be published in the State Register at least 30
19 days before the end of the comment period or the start of the
20 hearing. A dual notice must be mailed at least 33 days before
21 the end of the comment period and must be published in the State
22 Register at least 30 days before the end of the comment period.
23 If a hearing is required after using a dual notice, there must
24 be at least ten days between the end of the comment period and
25 the start of the hearing.

26 Subp. 7. Affidavit Certificate of mailing and certificate
27 of mailing list. The agency must prepare an-affidavit a
28 certificate of mailing the notice to the rulemaking mailing list
29 and a certificate of the rulemaking mailing list. Part
30 1400.2550 contains a recommended format for this document.

31 1400.2090 ORDER ADOPTING RULE

32 An agency order adopting a rule must contain the following:

33 A. if any changes were made to the proposed rule in
34 the adopted rule, a description of the changes, and an
35 explanation of the reasons for the changes and why they do not

1 make the rule substantially different, unless or, if the
2 procedures in part 1400.2110 were followed, a statement that the
3 agency followed the procedures in part 1400.2110 before adopting
4 the changes;

5 B. a statement that the agency has complied with all
6 notice and procedural requirements. For multimember agencies,
7 the order must state that proposal of the rule was authorized by
8 the agency and provide either:

9 (1) a copy of the authorization; or

10 (2) the date of the agency meeting where the
11 person was authorized to do so, and state that a quorum was
12 present and authorized proposal of the rule;

13 C. for rules adopted without a public hearing, the
14 number of persons who requested a hearing, and the number of
15 persons who withdrew their request;

16 D. the number of persons who requested notice that
17 the rule has been submitted to the office;

18 E. a statement that the rule is needed and
19 reasonable;

20 F. a statement that the rule is adopted by the
21 agency; and

22 G. the signature of the person authorized to adopt the
23 rule or sign the order and the date the person signed the
24 order. For multimember agencies, the order must state that the
25 person is authorized by the agency to sign the order and provide
26 either:

27 (1) a copy of the authorization; or

28 (2) the date of the agency meeting where the rule
29 was adopted, and state that a quorum was present and the agency
30 authorized the person to sign the order adopting the rule.

31 Part 1400.2560 is a recommended form for an order adopting
32 rules.

33 1400.2100 STANDARDS OF REVIEW.

34 A rule must be disapproved by the judge or chief judge if
35 the rule:

1 A. was not adopted in compliance with procedural
2 requirements of this chapter, Minnesota Statutes, chapter 14, or
3 other law or rule, unless the judge decides that the error must
4 be disregarded under Minnesota Statutes, section 14.15,
5 subdivision 5, or 14.26, subdivision 3, paragraph (d);

6 B. is not rationally related to the agency's
7 objective or the record does not demonstrate the need for or
8 reasonableness of the rule;

9 C. is substantially different than the proposed rule,
10 and the agency did not follow the procedures of part ~~1400.22407~~,
11 ~~subpart-8~~ 1400.2110;

12 D. exceeds, conflicts with, does not comply with, or
13 grants the agency discretion beyond what is allowed by, its
14 enabling statute or other applicable law;

15 E. is unconstitutional or illegal;

16 F. improperly delegates the agency's powers to
17 another agency, person, or group;

18 G. is not a "rule" as defined in Minnesota Statutes,
19 section 14.02, subdivision 4, or by its own terms cannot have
20 the force and effect of law; or

21 H. is subject to Minnesota Statutes, section 14.25,
22 subdivision 2, and the notice that hearing requests have been
23 withdrawn and written responses to it show that the withdrawal
24 is not consistent with Minnesota Statutes, section 14.001,
25 clauses (2), (4), and (5).

26 1400.2110 PROCEDURE TO ADOPT SUBSTANTIALLY DIFFERENT RULES.

27 Subpart 1. Required procedure. An agency may adopt a
28 substantially different rule if it has complied with the
29 procedures in this part.

30 Subp. 2. Notice. The agency must mail or deliver to each
31 person or group that made a written or oral comment during the
32 rule proceeding or registered at the rule hearing, if the
33 person's address is known to the agency:

34 A. a copy of the substantially different rule; and

35 B. a statement that tells the recipient that the

1 chief judge found the rule to be substantially different,
2 explains the agency's reasons for modifying the rule, tells the
3 recipient that the agency must accept written comments for 15
4 days, and gives the date the comment period ends.

5 Subp. 3. Filing. After considering any comments received,
6 the agency must submit the documents listed in subpart 2 and any
7 written responses to the chief judge.

8 Subp. 4. Review. The chief judge must review the agency's
9 filing to decide whether:

10 A. the agency has met the requirements of this part;

11 B. the substantially different modifications to the
12 rule are based on comments or evidence in the record;

13 C. the substantially different rule complies with
14 part 1400.2100; and

15 D. in light of the nature of the substantially
16 different modification and the course of the rule proceeding, it
17 would not be fair to affected persons to allow the agency to
18 adopt the modification without initiating a new rule proceeding.

19 The chief judge must either approve or disapprove the
20 substantially different rule within ten days after the office
21 receives it, unless it is withdrawn by a person authorized to
22 withdraw the rule.

23 Subp. 5. Rule adoption. The agency may adopt the
24 substantially different rule five working days after it has
25 received the chief judge's written approval.

26 Subp. 6. Effect of disapproval. If the chief judge
27 decides that the substantially different modifications must be
28 disapproved under subpart 4, the agency may not adopt them
29 without initiating and completing a new rule proceeding.

30 RULEMAKING HEARINGS

31 1400.2200 APPLICABILITY

32 Parts 1400.2200 to 1400.2240 apply to rule hearings and
33 review of rules adopted by agencies under Minnesota Statutes,
34 sections 14.131 to 14.20.

35 1400.2210 CONDUCT OF HEARING

1 Subpart 1. **Registration of participants.** All persons who
2 present evidence or ask questions must register with the judge
3 before presenting evidence or asking questions at the hearing.
4 Any person may register whether or not they speak at the
5 hearing. Those who register must legibly print their names,
6 addresses, telephone numbers, and the names of any individuals
7 or associations that the persons represent at the hearing on a
8 register provided by the judge. Persons may request on the
9 register to be informed when the judge's report will be
10 available. Persons may also request on the register that the
11 agency inform them when the agency adopts the rules and files
12 them with the secretary of state.

13 Subp. 2. **Introduction by judge.** The judge must start the
14 hearing and must explain the purpose of the hearing and the
15 procedure to be followed. The judge must explain how written
16 materials can be submitted after the hearing under part
17 1400.2230. The judge must also explain the requirements for
18 registration of lobbyists under Minnesota Statutes, chapter 10A.

19 Subp. 3. **Agency presentation.** The agency representatives
20 and witnesses must identify themselves for the record. The
21 agency must then make its presentation under part 1400.2220.
22 Presentation by the agency of evidence not summarized in the
23 statement of need and reasonableness, other than bona fide
24 rebuttal, constitutes grounds for the judge, upon proper motion
25 by any interested person, to recess the hearing to allow all
26 interested persons an opportunity to prepare evidence in
27 opposition to the newly presented evidence. The hearing recess
28 must not exceed 25 days.

29 Subp. 4. **Opportunity for questions.** Interested persons
30 may ask questions of the agency representatives or witnesses and
31 other interested persons who speak. Agency representatives may
32 question interested persons who speak. The questions may relate
33 to the purpose or intended operation of the proposed rules, a
34 suggested modification, or may be conducted for other purposes
35 if material to the evaluation or formulation of the proposed
36 rules.

1 Subp. 5. Opportunity to present statements and evidence.
2 Interested persons may present oral and written statements and
3 evidence regarding the proposed rules.

4 Subp. 6. Questioning by judge. The judge may question the
5 agency representatives and witnesses and other interested
6 persons who speak.

7 Subp. 7. Further agency evidence. The agency may present
8 any further evidence that it considers appropriate in response
9 to statements made by interested persons. Interested persons
10 may respond to this evidence.

11 Subp. 8. Powers of judge. Consistent with law, the judge
12 is authorized to do all things necessary and proper to conduct
13 the hearing and to promote justice, fairness, and economy. This
14 includes but is not limited to: presiding at the hearing;
15 administering oaths or affirmations when appropriate; hearing
16 and ruling on objections and motions; questioning witnesses
17 where necessary to make a complete record; ruling on the
18 admissibility of evidence and striking from the record
19 objectionable evidence; limiting repetitive or immaterial oral
20 statements and questioning; and determining the order of making
21 statements and questions.

22 Subp. 9. Court reporters. Minnesota Statutes, section
23 14.52, governs the use of court reporters.

24 Subp. 10. Transcript. A transcript of the hearing must be
25 made if requested by the agency, the attorney general, the chief
26 judge, or any interested person. If a transcript is requested
27 by an interested person, that person must pay for the original
28 and one copy. Otherwise, the agency must pay for the original
29 and any copies it requires. Any interested person may purchase
30 a copy of a transcript once the original has been ordered by
31 another person. The cost of an original or copy of a transcript
32 must be determined by the office's contract with court
33 reporters. When a transcript has been prepared, the original
34 must be filed with the office. When a transcript has been
35 prepared after the judge's report is issued, the original must
36 be filed with the office and forwarded to the agency as soon as

1 the office has completed its recordkeeping.

2 1400.2220 AGENCY PRESENTATION AT HEARING.

3 Subpart 1. Rulemaking documents. The agency must place
4 into the hearing record the following documents:

5 A. the request for comments published in the State
6 Register;

7 B. the petition for rulemaking, if the rule was
8 proposed in response to it;

9 C. the proposed rule, including the revisor's
10 approval;

11 D. the statement of need and reasonableness;

12 E. a copy of the transmittal letter or an-affidavit a
13 certificate showing that the agency sent a copy of the statement
14 of need and reasonableness to the legislative commission;

15 F. the notice of hearing as mailed and as published
16 in the State Register;

17 G. the affidavit certificate of mailing the notice of
18 hearing and certificate of mailing list. Part 1400.2550 is a
19 recommended affidavit certificate form;

20 H. an-affidavit a certificate of additional notice if
21 given;

22 I. any written comments on the proposed rule received
23 by the agency; and

24 J. if the legislative commission has authorized the
25 agency to omit from the notice of hearing published in the State
26 Register the text of any proposed rule, a copy of the document
27 authorizing the omission; and

28 K. any other document or evidence to show compliance
29 with any other law or rule which the agency is required to
30 follow in adopting this rule.

31 Subp. 2. Copies available. The agency must have copies of
32 the proposed rules and the statement of need and reasonableness
33 available at the hearing.

34 Subp. 3. Showing. The agency must make its affirmative
35 presentation of facts showing the need for and the

1 reasonableness of the proposed rules and must present any other
2 evidence necessary to fulfill all substantive and procedural
3 requirements of law or rule. The agency may choose to rely on
4 the statement of need and reasonableness as its presentation and
5 the statement may be introduced as an exhibit into the record as
6 though read.

7 Subp. 4. Agency representatives present. Agency
8 representatives or other persons thoroughly familiar with the
9 proposed rules and the statement of need and reasonableness must
10 be available at the hearing for questioning by the judge and
11 other interested persons or to briefly summarize all or a
12 portion of the statement if requested by the judge.

13 1400.2230 WRITTEN COMMENTS AFTER HEARING AND CLOSE OF HEARING
14 RECORD.

15 Subpart 1. Written comments. The judge must allow written
16 comments to be submitted into the hearing record by the agency
17 and all interested persons for five working days after the
18 hearing ends, and may extend this time to no more than 20 days
19 after the hearing ends. In its comment, the agency may state
20 whether these there are rule modifications that it intends to
21 adopt. The office must receive the written comments no later
22 than 4:30 p.m. on the last day for submission.

23 Subp. 2. Written responses. The office must allow the
24 agency and all interested persons to review the submissions
25 received under subpart 1 and must allow them five working days
26 to respond in writing to any new information submitted. The
27 office must receive the responses no later than 4:30 p.m. on the
28 last day. In its response, the agency may state whether there
29 are rule modifications that the agency intends to adopt.
30 Additional evidence may not be submitted during this response
31 period. The written responses are part of the hearing record.

32 Subp. 3. Close of hearing record. The hearing record
33 closes on the last date for receipt of written responses filed
34 under subpart 2.

35 1400.2240 ADMINISTRATIVE LAW JUDGE'S REPORT.

1 Subpart 1. Report. The judge must prepare a report on the
2 rule within 30 days after the hearing record closes, unless an
3 extension is granted by the chief judge under Minnesota
4 Statutes, section 14.15, subdivision 2.

5 Subp. 2. Standard of review. The judge or chief judge
6 must review the hearing record and must disapprove the rule if
7 the judge makes any of the findings in part 1400.2100, items A
8 to G.

9 Subp. 3. Approval. If the judge approves the rule, the
10 judge must promptly send the original report and the hearing
11 record to the agency. The agency and the office must make
12 copies of the report available to any interested person at
13 reasonable cost. The agency may not adopt the rule for at least
14 five working days after receiving the report, so that interested
15 persons may examine it.

16 Subp. 4. Review by chief judge. If the judge disapproves
17 the rule, the judge must submit the report and the hearing
18 record to the chief judge for review. The chief judge must
19 review the rule and the judge's report and prepare a report
20 within ten days. If the chief judge disapproves the rule, the
21 chief judge must explain why and tell the agency what changes
22 are necessary for approval. The chief judge must promptly send
23 the chief judge's report, the judge's report, and the hearing
24 record to the agency. The agency may resubmit the rule to the
25 chief judge for review after changing it. The agency may also
26 request that the chief judge reconsider the disapproval. The
27 chief judge must review and approve or disapprove the changed
28 rule or a request for reconsideration within five working days
29 after the office receives it.

30 Subp. 5. New changes to rule. If the agency wants to
31 adopt the rule with changes other than those recommended by the
32 judge or chief judge, the agency must submit to the chief judge:

- 33 A. the rule initially proposed;
- 34 B. the agency's proposed order adopting rules; and
- 35 C. the rule, showing the agency's changes.

36 The chief judge may request that the agency also return the

1 hearing record. The chief judge must review the agency's
2 changes to decide if they make the rule substantially different
3 than the proposed rule. The chief judge must make a written
4 decision within ten days after the office receives the rule.

5 Subp. 6. Disapproval of need and reasonableness. If the
6 chief judge disapproves the rule because the agency has not
7 shown it to be needed and reasonable, and if the agency chooses
8 not to follow the chief judge's recommended corrections, the
9 agency must submit the rule to the legislative commission for
10 review under Minnesota Statutes, section 14.15, subdivision 4.

11 Subp. 7. Disapproval based on substantial difference. If
12 the chief judge disapproves the rule because it is substantially
13 different than the proposed rule, the agency may end the rule
14 proceeding, may start a new rule proceeding to adopt the
15 substantially different rule, or may proceed under part
16 1400.2110. The agency may adopt the portions of the rules which
17 are not substantially different.

18 Subp. 8. Withdrawal of rule. The agency may withdraw a
19 rule by submitting a request signed by a person authorized to
20 withdraw the rule unless the withdrawal of a rule or a portion
21 of the rule makes the remaining rules substantially different.
22 The request must explain the person's authority to withdraw the
23 rule. The office must return the agency's filing promptly after
24 receiving this request.

25 Subp. 9. Effect of disapproval. Disapproval of a rule or
26 part of a rule is binding on the agency to the extent specified
27 in Minnesota Statutes, sections 14.15, subdivisions 3 and 4, and
28 14.16.

29 Subp. 10. Rule adoption. Once the judge or chief judge
30 approves the rule or the review period for the legislative
31 commission has passed, the agency may adopt the rule by
32 executing an order adopting the rule. The agency must obtain
33 the revisor's approval of the rule's form, file two copies of
34 the rule with the secretary of state, and publish a notice of
35 rule adoption in the State Register.

36 RULES ADOPTED WITHOUT A PUBLIC HEARING

1 1400.2300 REVIEW OF RULES ADOPTED WITHOUT A PUBLIC HEARING.

2 Subpart 1. **Applicability.** Parts 1400.2300 to 1400.2310
3 apply to review of rules adopted by agencies under Minnesota
4 Statutes, sections 14.22 to 14.28.

5 Subp. 2. **Filing.** The agency must file with the office the
6 documents listed in part 1400.2310.

7 Subp. 3. **Review.** A judge must review the agency's filing
8 and either approve or disapprove it within 14 days after the
9 office receives it, unless it is withdrawn. In reviewing the
10 filing, the judge must decide whether the rule meets the
11 standards of part 1400.2100.

12 Subp. 4. **Withdrawal of rule.** The agency may withdraw a
13 rule from review by submitting a request signed by a person
14 authorized to withdraw the rule unless the withdrawal of a rule
15 or a portion of the rule makes the remaining rules substantially
16 different. The request must explain the person's authority to
17 withdraw the rule. The office must return the agency's filing
18 promptly after receiving this request.

19 Subp. 5. **Approval.** If the rule is approved, the agency
20 may publish notice of adoption of the rule in the State
21 Register. The office must file two copies of the rule with the
22 secretary of state, and send a copy of its decision to persons
23 who requested a copy of this decision, to the legislative
24 commission, and to the attorney general. The office must send
25 the agency a copy of its decision and promptly return the
26 agency's filing.

27 Subp. 6. **Disapproval.** If the rule is disapproved, the
28 judge must state in writing the reasons for the disapproval and
29 recommend what changes are necessary for approval. The written
30 reasons for disapproval must then be submitted to the chief
31 judge for ~~approval~~ review. The chief judge shall approve or
32 disapprove the judge's determination within ten five working
33 days and shall state the reasons in writing and shall advise the
34 agency what changes are required for approval. The office must
35 send a copy of the chief judge's decision to persons who

1 requested a copy of the decision, the legislative commission,
 2 the revisor, and the attorney general. Minnesota Statutes,
 3 section 14.26, subdivision 3, governs the effect of any
 4 disapproval. The chief judge shall then promptly send the rule
 5 record to the agency.

6 Subp. 7. Disapproval based on substantial difference. If
 7 the chief judge disapproves a rule because it is substantially
 8 different than the proposed rule, the agency may end the rule
 9 proceeding, may start a new rule proceeding to adopt the
 10 substantially different rule, or may proceed under part
 11 1400.2110. The agency may adopt the portions of the rules which
 12 are not substantially different.

13 Subp. 7- 8. Resubmission. The agency may resubmit the
 14 rule to the chief judge for review after changing it and may
 15 request that the chief judge reconsider the disapproval. The
 16 agency must file with the office:

- 17 A. the agency's initial filing under subpart 2;
- 18 B. the rule with the agency's proposed changes; and
- 19 C. an explanation of the changes, why they solve the
 20 problems identified by the chief judge, and why they do not
 21 result in a substantially different rule.

22 The chief judge must review the resubmitted rule ~~under-subparts~~
 23 ~~37-57-and-6~~ and decide whether it meets the standards of part
 24 1400.2100 within five working days of receiving it. Minnesota
 25 Statutes, section 14.26, subdivision 3, governs the effect of
 26 any disapproval.

27 Subp. 8- 9. Disapproval of need and reasonableness. If
 28 the chief judge disapproves the rule because the agency has not
 29 shown it to be needed and reasonable, and if the agency chooses
 30 not to follow the chief judge's recommended corrections, the
 31 agency must submit the rule to the legislative commission for
 32 review under Minnesota Statutes, section ~~14-15~~ 14.26,
 33 subdivision ~~4~~ 3, paragraph (c).

34 1400.2310 DOCUMENTS TO BE FILED.

35 The agency must file the following documents with the

1 office:

2 A. the request for comments published in the State
3 Register;

4 B. the petition for rulemaking, if the rule was
5 proposed in response to it;

6 C. the proposed rule, including the revisor's
7 approval;

8 D. the statement of need and reasonableness;

9 E. the notice of intent to adopt rules as mailed and
10 as published in the State Register;

11 F. if the legislative commission authorized the
12 agency to omit from the notice of intent to adopt
13 rules published in the State Register the text of any proposed
14 rule, a copy of the document authorizing the omission;

15 G. the affidavit certificate of mailing the notice of
16 intent to adopt rules and certificate of mailing list;

17 H. ~~an-affidavit~~ a certificate of additional notice,
18 if given;

19 I. a copy of the transmittal letter or affidavit
20 certificate showing that the agency sent a copy of the statement
21 of need and reasonableness to the legislative commission;

22 J. all written comments and submissions on the
23 proposed rule, requests for hearing and withdrawals of requests
24 for hearing received by the agency, except those that only
25 requested copies of documents;

26 K. if required by Minnesota Statutes, section 14.25,
27 subdivision 2, the notice of withdrawal of hearing request,
28 evidence that the notice of withdrawal was sent to all persons
29 who requested a hearing, and any responsive comments received;

30 L. three copies of the adopted rule, showing any
31 modifications to the proposed rule and the revisor's approval of
32 them;

33 M. if the agency adopted a substantially different
34 rule using the procedure in part 1400.2110, a copy of the notice
35 that was sent to persons or groups who commented during the
36 comment period and evidence that the notice was sent to those

1 persons or groups;

2 N. the order adopting the rule; and

3 O. the notice of submission of the rule to the
4 office, if anyone requested this notice, and a copy of the
5 transmittal letter or affidavit certificate showing that the
6 agency sent out this notice; and

7 P. any other document or evidence to show compliance
8 with any other law or rule which the agency is required to
9 follow in adopting this rule.

10 Part 1400.2550 is a recommended affidavit certificate form.

11 EXEMPT RULES

12 1400.2400 REVIEW OF EXEMPT RULES.

13 Subpart 1. **Applicability.** This part applies to review of
14 rules adopted by agencies under Minnesota Statutes, sections
15 14.386 and 14.388.

16 Subp. 2. **Filing.** The agency must file with the office:

17 A. the rule, including the revisor's approval; and

18 B. an order adopting the rule, which must include any
19 explanation needed to support the legality of the rule, and:

20 (1) the citation to the rule's statutory
21 exemption from the rulemaking procedures of Minnesota Statutes,
22 chapter 14, and any argument needed to support the claim of
23 exemption; or

24 (2) an explanation of why the rule meets the
25 requirements of the good cause exemption under Minnesota
26 Statutes, section 14.388; and

27 (3) any other information required by law or rule.

28 Subp. 3. **Review.** A judge must review the agency's filing
29 and either approve or disapprove it within 14 days after the
30 office receives it. In reviewing the filing, the judge must
31 decide whether the rule meets the standards of part 1400.2100,
32 items A and D to G, and whether the agency has established its
33 exemption from rulemaking under Minnesota Statutes, section
34 14.386 or 14.388.

35 Subp. 4. **Approval and disapproval.** If the rule is

1 approved, the agency may publish it in the State Register. If
2 the rule is disapproved, the judge must tell the agency why and
3 what changes are necessary for approval or why the rule is not
4 exempt from rulemaking procedures. The agency may resubmit the
5 rule to the judge for review after changing it. The judge must
6 review and approve or disapprove the rule within five working
7 days after receiving it. A rule does not take effect unless
8 approved.

9 Subp. 5. Review by chief judge. An agency may ask the
10 chief judge to review a rule that has been disapproved by a
11 judge. The agency must make this request within five working
12 days of receiving the judge's decision. The chief judge must
13 review the agency's filing and, within 14 days of receiving it,
14 either approve or disapprove it under the standards in subpart 3.

15 MEDIATION

16 1400.2450 MEDIATION.

17 Subpart 1. Request. An agency may ask the chief judge to
18 assign a judge to be a neutral party assisting in mediating or
19 negotiating a resolution to disputes relating to proposed
20 rules. The chief judge must assign a judge and notify the
21 agency of the assignment within ten days after receiving the
22 agency's written request.

23 Subp. 2. Scheduling and notice. The assigned judge must
24 contact the agency to establish a date, time, and place for the
25 first mediation session and to assist the agency in giving
26 notice of the mediation. The agency must give notice of the
27 mediation by publishing a notice in the State Register at least
28 15 days before the session and by mailing the notice to all
29 persons registered with the agency to receive rulemaking notices.

30 Subp. 3. Conduct of judge. The judge assigned must not
31 communicate, either directly or indirectly, about any facts or
32 issues in the mediation with any person not participating in the
33 mediation unless authorized to do so by all persons involved in
34 the mediation.

35 Subp. 4. Procedures and guidelines. Procedures and

1 guidelines for the mediation sessions must be established at the
2 first session by agreement of all participants.

3 Subp. 5. Subsequent sessions. If additional mediation
4 sessions are needed, the date, time, and place must be
5 determined by agreement of the participants or by the judge if
6 the participants do not agree. Notice of future sessions must
7 be given orally to the participants present and by mail to any
8 persons who have indicated a desire to participate but who are
9 not present.

10 Subp. 6. Termination. The mediation terminates either
11 when the agency decides to terminate it or when the agency and
12 the participants sign an agreement resolving the disputed issues.

13 Subp. 7. Involvement of mediation judge in subsequent
14 proceedings. The mediation judge shall not be assigned to any
15 subsequent rule hearing or review that involves the rule that
16 was the subject of the mediation.

17 Subp. 8. Compliance with other requirements. The agency
18 must comply with all requirements of law or rule in subsequently
19 adopting a rule on which agreement was reached through mediation
20 under this part.

21 RULEMAKING FORMS

22 1400.2500 PETITION FOR RULEMAKING.

23 PETITION FOR RULEMAKING TO THE MINNESOTA DEPARTMENT OF

24 _____

25 Name: _____

26 Group Represented or Title: _____

27 Address: _____

28 _____

29 _____

30
31 I request that the agency named above (check one):

32 ___ Adopt a new rule governing _____

33 ___ Amend Minnesota Rules, part(s) _____

34 ~~___ Suspend Minnesota Rules, part(s) _____~~

35 ___ Repeal Minnesota Rules, part(s) _____

1 1. Explain the need or reason for the rulemaking you
2 request. The agency will consider your reasons in making its
3 decision, so your explanation must be detailed. You can use
4 additional pages.

5 2. For a new rule, state the proposed new language of the
6 rule. For rule amendments, repeat the text of the rule,
7 striking through deletions and underlining new language. If you
8 cannot provide new rule language, then write a detailed
9 description of the rule that you are requesting. You can use
10 additional pages.

11
12
13
14
15

16 You must file this petition with the executive director or head
17 of the agency in person or by United States mail. The agency
18 must reply in writing to your petition within 60 days after
19 receiving it.

20

21 DATE: _____

Signature of Petitioner

22
23
24

25 1400.2510 RECOMMENDED REQUEST FOR COMMENTS ON PLANNED RULE.

26 Minnesota Department of _____

27

28 REQUEST FOR COMMENTS

29

30 Planned (Amendment to) (Repeal of) Rule Governing _____,

31 Minnesota Rules _____

32

33 Subject of Rule. The _____ (name of department)

34 requests comments on its planned (amendment to) (repeal of) rule

35 governing _____. The department is considering (a rule)

36 (rule amendments) (repealing its rule) that _____

1 (detailed description of subject matter of rule).

2 Persons Affected. The (amendment to) (repeal of) the rule
3 would likely affect _____ (description of types of
4 groups and individuals likely to be affected). (Optional): The
5 department does (not) contemplate appointing an advisory
6 committee to comment on the planned rule. ~~(optional)~~

7 Statutory Authority. Minnesota Statutes, section _____
8 (section number), (authorizes) (requires) the department to
9 adopt rules for _____ (brief description of
10 statutory authority).

11 Public Comment. Interested persons or groups may submit
12 comments or information on this planned rule in writing or
13 orally until 4:30 p.m. on _____ (date). The department
14 (insert either: (has) (has not yet) prepared a draft of the
15 planned rule (amendment) (repeal) OR does not anticipate that a
16 draft of the rule (amendment) (repeal) will be available before
17 the publication of the proposed rule). Written or oral
18 comments, questions (requests to receive a draft of the ~~propos~~
19 rule) (when it has been prepared), and requests for more
20 information on this planned rule should be addressed to:

21 _____
22 _____ (name,
23 address, and telephone number of staff person).

24 Comments submitted in response to this notice will not be
25 included in the formal rulemaking record when a proceeding to
26 adopt a rule is started.

27 _____
28 Commissioner
29

30
31 1400.2520 RECOMMENDED NOTICE OF INTENT TO ADOPT A RULE WITHOUT A
32 PUBLIC HEARING.

33 Minnesota Department of _____

34
35 NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

36

1 Proposed (Amendment to) (Repeal of) Rule Governing
2 _____, Minnesota Rules _____

3
4 **Introduction.** The (department name) intends to adopt a
5 permanent rule without a public hearing following the procedures
6 set forth in the Administrative Procedure Act, Minnesota
7 Statutes, sections 14.22 to 14.28. You have 30 days to submit
8 written comments on the proposed rule and may also submit a
9 written request that a hearing be held on the rule.

10 **Agency Contact Person.** Comments or questions on the rule
11 and written requests for a public hearing on the rule must be
12 submitted to: _____

13 _____ (name,
14 agency, address, telephone number, and FAX number [optional])

15 **Subject of Rule and Statutory Authority.** The proposed rule
16 is about (subject of rule). The statutory authority to adopt
17 this rule is (specific statutory citation). A copy of the
18 proposed rule is published in the State Register and attached to
19 this notice as mailed. (If the proposed rule is not attached to
20 the mailed notice, then this notice must include an informative
21 statement describing the nature and effect of the proposed rule
22 and include the announcement that: A free copy of the rule is
23 available upon request from the agency contact person listed
24 above.)

25 **Comments.** You have until ____ p.m. on _____, 199_,
26 to submit written comment in support of or in opposition to the
27 proposed rule and any part or subpart of the rule. Your comment
28 must be in writing and received by the agency contact person by
29 the due date. Comment is encouraged. Your comment should
30 identify the portion of the proposed rule addressed and the
31 reason for the comment. You are encouraged to propose any
32 change desired. Any comments that you would like to make on the
33 legality of the proposed rule must also be made during this
34 comment period.

35 **Request for a Hearing.** In addition to submitting comments,
36 you may also request that a hearing be held on the rule. Your

1 request for a public hearing must be in writing and must be
2 received by the agency contact person by ____ p.m. on _____,
3 199_. Your written request for a public hearing must include
4 your name and address. You must identify the portion of the
5 proposed rule to which you object or state that you oppose the
6 entire rule. Any request that does not comply with these
7 requirements is not valid and cannot be counted by the agency
8 for determining whether a public hearing must be held. You are
9 also encouraged to state the reason for the request and any
10 changes you want made to the proposed rule.

11 **Withdrawal of Requests.** If 25 or more persons submit a
12 written request for a hearing, a public hearing will be held
13 unless a sufficient number withdraw their requests in writing.
14 If enough requests for hearing are withdrawn to reduce the
15 number below 25, the agency must give written notice of this to
16 all persons who requested a hearing, explain the actions the
17 agency took to effect the withdrawal, and ask for written
18 comments on this action. If a public hearing is required, the
19 agency will follow the procedures in Minnesota Statutes,
20 sections 14.131 to 14.20.

21 **Modifications.** The proposed rule may be modified as a
22 result of public comment. The modifications must be supported
23 by comments and information submitted to the agency, and the
24 adopted rule may not be substantially different than this
25 proposed rule. If the proposed rule affects you in any way, you
26 are encouraged to participate in the rulemaking process.

27 **Statement of Need and Reasonableness.** A statement of need
28 and reasonableness is now available from the agency contact
29 person. This statement contains a summary of the justification
30 for the proposed rule, including a description of who will be
31 affected by the proposed rule and an estimate of the probable
32 cost of the proposed rule.

33 **Other notices required by law or chosen to be inserted in**
34 **this notice.**

35 **Adoption and Review of Rule.** If no hearing is required,
36 the agency may adopt the rule after the end of the comment

1 period. The rule and supporting documents will then be
 2 submitted to the Office of Administrative Hearings for review
 3 for legality. You may ask to be notified of the date the rule
 4 is submitted to the office. If you want to be so notified, or
 5 want to receive a copy of the adopted rule, or want to register
 6 with the agency to receive notice of future rule proceedings,
 7 submit your request to the agency contact person listed above.

8
9

10 Dated: _____

 Name
 Title

11
12
13
14

15 1400.2530 RECOMMENDED NOTICE OF HEARING.

16

17 Minnesota Department of _____

18

19 NOTICE OF HEARING

20

21 Proposed (Amendment to) (Repeal of) Rule Governing
 22 _____, Minnesota Rules _____

23

24 Public Hearing. The (department name) intends to adopt a
 25 rule after a public hearing following the procedures set forth
 26 in the Administrative Procedure Act, Minnesota Statutes,
 27 sections 14.131 to 14.20. The agency will hold a public hearing
 28 on the above-entitled rule at (place), starting at (time hearing
 29 starts) on _____, 199_, and continuing until the hearing
 30 is completed. Additional days of hearing will be scheduled if
 31 necessary. All interested or affected persons will have an
 32 opportunity to participate by submitting either oral or written
 33 data, statements, or arguments. Statements may be submitted
 34 without appearing at the hearing.

35 Administrative Law Judge. The hearing will be conducted by
 36 (name, address, telephone number, and FAX number of judge). The
 37 rule hearing procedure is governed by Minnesota Statutes,

1 sections 14.131 to 14.20, and by the rules of the Office of
2 Administrative Hearings, Minnesota Rules, parts 1400.2000 to
3 1400.2240. Questions concerning the rule hearing procedure
4 should be directed to the Administrative Law Judge.

5 **Subject of Rule and, Statutory Authority, and Agency**

6 **Contact Person.** The subject of the hearing will be the proposed
7 rules governing _____, Minnesota Rules
8 _____. The proposed rules are authorized by Minnesota
9 Statutes, section (specific section number). A copy of the
10 proposed rule is published in the State Register and attached to
11 this notice as mailed. (If the proposed rule is not attached to
12 the mailed notice, then this notice must include an informative
13 statement describing the nature and effect of the proposed rule
14 and include the announcement that: A free copy of the rule is
15 available upon request from the agency contact person. The
16 agency contact person is: (name, address, telephone number, and
17 FAX number [optional]).

18 **Statement of Need and Reasonableness.** A Statement of Need
19 and Reasonableness is now available for review at the agency
20 offices and at the Office of Administrative Hearings. This
21 statement contains a summary of the justification for the
22 proposed rule, including a description of who will be affected
23 by the proposed rule and an estimate of the probable cost of the
24 proposed rule. The statement may be reviewed and copies
25 obtained at the cost of reproduction from either the agency or
26 the Office of Administrative Hearings.

27 **Other notices required by law or chosen to be inserted in**
28 **this notice.**

29 **Public Comment.** You and all interested or affected
30 persons, including representatives of associations and other
31 interested groups, will have an opportunity to participate. You
32 may present your views either orally at the hearing or in
33 writing at any time before the close of the hearing record. All
34 evidence presented should relate to the proposed rule. You may
35 also submit written material to the Administrative Law Judge to
36 be recorded in the hearing record for five working days after

1 the public hearing ends. This five-day comment period may be
2 extended for a longer period not to exceed 20 calendar days if
3 ordered by the Administrative Law Judge at the hearing.
4 Following the comment period, there is a five-working-day
5 response period during which the agency and any interested
6 person may respond in writing to any new information submitted.
7 No additional evidence may be submitted during the five-day
8 response period. All comments and responses submitted to the
9 Administrative Law Judge must be received at the Office of
10 Administrative Hearings no later than 4:30 p.m. on the due
11 date. All comments or responses received will be available for
12 review at the Office of Administrative Hearings.

13 The agency requests that any person submitting written
14 views or data to the Administrative Law Judge prior to the
15 hearing or during the comment period also submit a copy of the
16 written views or data to the agency contact person at the
17 address stated above.

18 **Accommodation.** If you need an accommodation to make this
19 hearing accessible, please contact the agency contact person at
20 the address or telephone number listed above.

21 **Modifications.** The proposed rules may be modified as a
22 result of the rule hearing process. Modifications must be
23 supported by data and views presented during the rule hearing
24 process, and the adopted rule may not be substantially different
25 than this proposed rule. If the proposed rule affects you in
26 any way, you are encouraged to participate.

27 **Adoption Procedure After Hearing.** After the close of the
28 hearing record, the Administrative Law Judge will issue a report
29 on the proposed rule. You may ask to be notified of the date
30 when the judge's report will become available, and can make this
31 request at the hearing or in writing to the Administrative Law
32 Judge. You may also ask to be notified of the date on which the
33 agency adopts the rule and files it with the Secretary of State,
34 and can make this request at the hearing or in writing to the
35 agency contact person stated above.

36 **Lobbyist Registration.** Minnesota Statutes, chapter 10A,

1 requires each lobbyist to register with the State Ethical
2 Practices Board. Questions regarding this requirement may be
3 directed to the Ethical Practices Board at: (address, telephone
4 number).

5 Order. I order that the rulemaking hearing be held at the
6 date, time, and location listed above.

7

8 Dated: _____

Name
Title

9

10

11

12

13 1400.2540 RECOMMENDED DUAL NOTICE.

14

15 Minnesota Department of _____

16

17 DUAL NOTICE: NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC
18 HEARING UNLESS 25 OR MORE PERSONS REQUEST A HEARING, AND NOTICE
19 OF HEARING IF 25 OR MORE REQUESTS FOR HEARING ARE RECEIVED

20

21 Proposed (Amendment to) (Repeal of) Rule Governing
22 _____, Minnesota Rules _____

23

24 Introduction. The (department name) intends to adopt a
25 rule without a public hearing following the procedures set forth
26 in the Administrative Procedure Act, Minnesota Statutes,
27 sections 14.22 to 14.28. If, however, 25 or more persons submit
28 a written request for a hearing on the rule within 30 days or by
29 _____, 199_, a public hearing will be held at
30 (location), starting at (time) on _____, 199_. (The
31 date must be at least ten days after the end of the comment
32 period.) To find out whether the rule will be adopted without a
33 hearing or if the hearing will be held, you should contact the
34 agency contact person after (date comment period ends) and
35 before (date of hearing).

36 Agency Contact Person. Comments or questions on the rule
37 and written requests for a public hearing on the rule must be

1 submitted to (name, address, telephone number, and FAX number
2 [optional]).

3 **Subject of Rule and Statutory Authority.** The proposed rule
4 is about (subject of rule). The statutory authority to adopt
5 the rule is (specific statutory citation). A copy of the
6 proposed rule is published in the State Register and attached to
7 this notice as mailed. (If the proposed rule is not attached to
8 the mailed notice, then this notice must include an informative
9 statement describing the nature and effect of the proposed rule
10 and include the announcement that: A free copy of the rule is
11 available upon request from the agency contact person listed
12 above.)

13 **Comments.** You have until _____ p.m. on _____,
14 199_, to submit written comment in support of or in opposition
15 to the proposed rule or any part or subpart of the rule. Your
16 comment must be in writing and received by the agency contact
17 person by the due date. Comment is encouraged. Your comments
18 should identify the portion of the proposed rule addressed, the
19 reason for the comment, and any change proposed. You are
20 encouraged to propose any change desired. Any comments that you
21 would like to make on the legality of the proposed rule must
22 also be made during this comment period.

23 **Request for a Hearing.** In addition to submitting comments,
24 you may also request that a hearing be held on the rule. Your
25 request for a public hearing must be in writing and must be
26 received by the agency contact person by _____ p.m. on _____,
27 199_. Your written request for a public hearing must include
28 your name and address. You must identify the portion of the
29 proposed rule to which you object or state that you oppose the
30 entire rule. Any request that does not comply with these
31 requirements is not valid and cannot be counted by the agency
32 for determining whether a public hearing must be held. You are
33 also encouraged to state the reason for the request and any
34 changes you want made to the proposed rule.

35 **Withdrawal of Requests.** If 25 or more persons submit a
36 written request for a hearing, a public hearing will be held

1 unless a sufficient number withdraw their requests in writing.
2 If enough requests for hearing are withdrawn to reduce the
3 number below 25, the agency must give written notice of this to
4 all persons who requested a hearing, explain the actions the
5 agency took to effect the withdrawal, and ask for written
6 comments on this action. If a public hearing is required, the
7 agency will follow the procedures in Minnesota Statutes,
8 sections 14.131 to 14.20.

9 **Accommodation.** If you need an accommodation to make this
10 hearing accessible, please contact the agency contact person at
11 the address or telephone number listed above.

12 **Modifications.** The proposed rule may be modified, either
13 as a result of public comment or as a result of the rule hearing
14 process. Modifications must be supported by data and views
15 submitted to the agency or presented at the hearing and the
16 adopted rule may not be substantially different than this
17 proposed rule. If the proposed rule affects you in any way, you
18 are encouraged to participate in the rulemaking process.

19 **Cancellation of Hearing.** The hearing scheduled for
20 _____, 199_, will be canceled if the agency does not
21 receive requests from 25 or more persons that a hearing be held
22 on the rule. If you requested a public hearing, the agency will
23 notify you before the scheduled hearing whether or not the
24 hearing will be held. You may also call the agency contact
25 person at (telephone number) after (date comment period ends) to
26 find out whether the hearing will be held.

27 **Notice of Hearing.** If 25 or more persons submit written
28 requests for a public hearing on the rule, a hearing will be
29 held following the procedures in Minnesota Statutes, sections
30 14.14 to 14.20. The hearing will be held on the date and at the
31 time and place listed above. The hearing will continue until
32 all interested persons have been heard. An Administrative Law
33 Judge is assigned to conduct the hearing. The judge can be
34 reached at: (name, address, telephone number, and FAX number).

35 **Hearing Procedure.** If a hearing is held, you and all
36 interested or affected persons, including representatives of

1 associations or other interested groups, will have an
2 opportunity to participate. You may present your views either
3 orally at the hearing or in writing at any time before the close
4 of the hearing record. All evidence presented should relate to
5 the proposed rule. You may also submit written material to the
6 Administrative Law Judge to be recorded in the hearing record
7 for five working days after the public hearing ends. This
8 five-day comment period may be extended for a longer period not
9 to exceed 20 calendar days if ordered by the Administrative Law
10 Judge at the hearing. Following the comment period, there is a
11 five-working-day response period during which the agency and any
12 interested person may respond in writing to any new information
13 submitted. No additional evidence may be submitted during the
14 five-day response period. All comments and responses submitted
15 to the Administrative Law Judge must be received at the Office
16 of Administrative Hearings no later than 4:30 p.m. on the due
17 date. All comments or responses received will be available for
18 review at the Office of Administrative Hearings. This rule
19 hearing procedure is governed by Minnesota Rules, parts
20 ~~1400.0200~~ 1400.2000 to ~~1400.1200~~ 1400.2240, and Minnesota
21 Statutes, sections 14.14 to 14.20. Questions about procedure
22 may be directed to the Administrative Law Judge.

23 The agency requests that any person submitting written
24 views or data to the Administrative Law Judge prior to the
25 hearing or during the comment or response period also submit a
26 copy of the written views or data to the agency contact person
27 at the address stated above.

28 **Statement of Need and Reasonableness.** A statement of need
29 and reasonableness is now available from the agency contact
30 person. This statement contains a summary of the justification
31 for the proposed rule, including a description of who will be
32 affected by the proposed rule and an estimate of the probable
33 cost of the proposed rule. The statement may also be reviewed
34 and copies obtained at the cost of reproduction from either the
35 agency or the Office of Administrative Hearings.

36 Other notices required by law or chosen to be inserted in

1 this notice.

2 Lobbyist Registration. Minnesota Statutes, chapter 10A,
3 requires each lobbyist to register with the Ethical Practices
4 Board. Questions regarding this requirement may be directed to
5 the Ethical Practices Board at (address and telephone number).

6 Adoption Procedure if No Hearing. If no hearing is
7 required, the agency may adopt the rule after the end of the
8 comment period. The rule and supporting documents will then be
9 submitted to the Office of Administrative Hearings for review
10 for legality. You may ask to be notified of the date the rule
11 is submitted to the office. If you want to be so notified, or
12 want to receive a copy of the adopted rule, or want to register
13 with the agency to receive notice of future rule proceedings,
14 submit your request to the agency contact person listed above.

15 Adoption Procedure After the Hearing. If a hearing is
16 held, after the close of the hearing record, the Administrative
17 Law Judge will issue a report on the proposed rule. You may ask
18 to be notified of the date when the judge's report will become
19 available, and can make this request at the hearing or in
20 writing to the Administrative Law Judge. You may also ask to be
21 notified of the date on which the agency adopts the rule and
22 files it with the Secretary of State, and can make this request
23 at the hearing or in writing to the agency contact person stated
24 above.

25 Order. I order that the rulemaking hearing be held at the
26 date, time, and location listed above.

27

28 Dated: _____

Name
Title

29
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31

32

33 1400.2550 RECOMMENDED AFFIDAVITS-AND-CERTIFICATE-OF-MAILING-LIST
34 CERTIFICATES.

35

36 NOTE: This part contains the format of an-affidavit a
37 certificate and language that: certifies the rulemaking mailing

1 list, certifies the mailing of a notice or proposed rule,
 2 certifies the mailing of the statement of need and
 3 reasonableness to the legislative commission, and certifies the
 4 mailing of a notice of submission of a rule adopted without a
 5 public hearing to the office. When making affidavits
 6 certificates using this part, use only the language that
 7 applies. If two or more people performed the various actions,
 8 create a separate affidavit certificate for each person that
 9 includes only the actions done by each individual.

10

11 AFFIDAVIT CERTIFICATE OF MAILING THE (DUAL) NOTICE (OF INTENT
 12 TO ADOPT A RULE WITHOUT A PUBLIC HEARING) (OF HEARING) AND
 13 CERTIFICATE OF MAILING LIST

14

15 Proposed Rule Governing _____, Minnesota Rules _____

16

17 ~~STATE-OF-MINNESOTA~~

18 ~~}ss-~~

19 ~~COUNTY-OF-----~~

20

21 ~~-----, being sworn says:~~

22

23 (Certificate of mailing list) I certify that the list of
 24 persons and associations who have requested under Minnesota
 25 Statutes, section 14.14, subdivision 1a, that their names be
 26 placed on the department of _____ rulemaking
 27 mailing list is accurate, complete, and current as of
 28 _____, 199_.

29

30 (Affidavit Certificate of mailing notice to rulemaking
 31 mailing list) I certify that on _____, 199_, at least 33
 32 days before the end of the comment period, at the City of
 33 _____, County of _____, State of Minnesota, I
 34 mailed the _____ (state what was mailed, for example:
 35 (1) Notice of Intent to Adopt Rules, Dual Notice, or Notice for
 36 Hearing, and (2) the proposed rule) by depositing a copy thereof

1 in United States mail, with postage prepaid, to all persons and
2 associations on the rulemaking mailing list established by
3 Minnesota Statutes, section 14.14, subdivision 1a.

4

5 (Affidavit Certificate of additional notice) I certify that
6 on _____, 199_, the following additional notice was
7 given by the agency:

8

9 (Affidavit Certificate of mailing the statement of need and
10 reasonableness to the legislative commission - change the title
11 on the upper right of document) I certify that on
12 _____, 199_, when the statement of need and
13 reasonableness became available to the public, I mailed a copy
14 of the statement to the Legislative Commission to Review
15 Administrative Rules by depositing it in United States mail,
16 with postage prepaid.

17

18 (Affidavit Certificate of mailing notice of submission of
19 rule adopted without a public hearing to the Office of
20 Administrative Hearings - change the title on the upper right
21 document) I certify that on _____, 199_, when the
22 adopted rule was submitted to the Office of Administrative
23 Hearings, I mailed the notice of submission of the rule to the
24 office by depositing it in United States mail, with postage
25 prepaid, to all persons and groups who requested this notice.

26

27

28

29

30 ~~Subscribed-and-sworn-to-before-me~~
31 ~~this-----day-of-----, 199_.~~

32

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34

35

36

Name
Title

Notary-Public

37 1400.2560 RECOMMENDED ORDER ADOPTING RULES.

38

39 Minnesota Department of _____

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ORDER ADOPTING RULE

Adoption of Rule Governing _____, Minnesota
Rules _____

WHEREAS:

1. All notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law have been complied with. (For multimember agencies, add the following: A copy of the authorization from the board to propose the rule is attached. OR Proposal of the rule was authorized by the board at its meeting on _____, 199_, and a quorum was present.) (For rules adopted without a public hearing, if all notice and procedural requirements were not complied with, state what happened, what corrective action was taken (if any), and why the office should find it to be harmless under Minnesota Statutes, section 14.26, subdivision 3, paragraph (d).)

2. (For rules adopted without a public hearing, state the following: The agency received [no] written comments and submissions on the rule. _____ persons requested a public hearing [, of which ___ were subsequently withdrawn.] Therefore, there are not 25 or more outstanding requests for a public hearing. The agency received ___ requests for notice of submission to the Office of Administrative Hearings.) OR (For rules adopted after a public hearing, state the following: The department adopts the Administrative Law Judge's Report dated _____, 199_, and incorporates the Report into this order, except as described above.)

3. If any changes were made between the proposed rule and the adopted rule, explain each change, why the change is reasonable, and why the change does not make the rule substantially different. (This requirement does not apply to rules adopted after a public hearing if the judge's report

1 approved the specific change.)

2 4. The rule is needed and reasonable.

3 5. (For multimember agencies, add the following: A copy
4 of the authorization from the board to adopt the rule is
5 attached. OR The rule was adopted by the board at its meeting
6 on _____, 199_, a quorum was present, and the
7 undersigned was authorized to sign this order.)

8

9 IT IS ORDERED that the above-captioned rule is adopted.

10

11 DATE: _____

Name
Title

12
13
14

15

16 REPEALER: Minnesota Rules, parts 1400.0200; 1400.0250;
17 1400.0300; 1400.0400; 1400.0500; 1400.0600; 1400.0700;
18 1400.0800; 1400.0850; 1400.0900; 1400.0950; 1400.1000;
19 1400.1100; 1400.1200; 1400.1500; 2010.0200; 2010.0300;
20 2010.0400; 2010.0500; 2010.0600; 2010.0700; 2010.0800;
21 2010.0900; 2010.1000; 2010.1100; 2010.1200; 2010.1300;
22 2010.1400; 2010.9900; 2010.9905; 2010.9910; 2010.9913;
23 2010.9916; 2010.9920; 2010.9925; 2010.9930; 2010.9935;
24 2010.9940; 2010.9945; 2010.9946; 2010.9951; 2010.9955; and
25 2010.9960, are repealed.

26

27 EFFECTIVE DATE OF REPEALER: The repealer of Minnesota Rules,
28 chapter 2010, is effective January 1, 1997. After the effective
29 date of Minnesota Rules, parts 1400.2000 to 1400.2560, Minnesota
30 Rules, chapter 2010, shall apply only to rule proceedings
31 submitted to the Office of the Attorney General for review under
32 the authority of Laws of Minnesota 1995, chapter 233, article 2,
33 section 55.