

1 **Office of Administrative Hearings**

2 **Adopted Permanent Rules Governing Rulemaking Procedure, Contested Case and**
3 **Revenue Recapture Act Hearings, and Awards of Expenses and Attorneys Fees to**
4 **Prevailing Parties**

5 **1400.2000 SCOPE.**

6 Parts 1400.2010 to 1400.2570 govern all proceedings by an agency for adopting any
7 rule under Minnesota Statutes, chapter 14.

8 **1400.2010 DEFINITIONS.**

9 Subpart 1. **Scope.** The definitions in this part apply to parts 1400.2000 to 1400.2570.

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

11 Subp. 5. [See repealer.]

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

13 **1400.2020 ASSIGNMENT AND DISQUALIFICATION OF JUDGE.**

14 Subpart 1. **Assignment.** The chief judge must promptly assign a judge to a rule
15 proceeding after the chief judge receives a request to schedule a rule hearing, or a filing
16 from an agency under parts 1400.2060, 1400.2300, 1400.2400, 1400.2410, or 1400.2450. A
17 request to schedule a rule hearing must include the documents listed in part 1400.2080,
18 subpart 5.

19 [For text of subps 2 and 3, see M.R.]

20 **1400.2030 COUNTING TIME AND FILING DOCUMENTS.**

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

22 Subp. 2. **Paper size.** All documents must be submitted to the office on standard size
23 8-1/2 inch by 11 inch paper, except:

24 A. handwritten comments from the public; and

25 B. exhibits.

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

2 **1400.2040 PETITION FOR RULEMAKING.**

3 Subpart 1. **Content of petition.** A petition to an agency requesting rulemaking under
4 Minnesota Statutes, section 14.09, must contain the following information:

5 A. the name and address of the ~~person petitioning the agency~~ petitioner;

6 B. ~~if applicable, the group of persons represented in the petition;~~ the specific action
7 (adoption, amendment, or repeal of an agency rule) requested by the petitioner; and

8 ~~C. the address of the petitioning person or group represented;~~

9 ~~D. whether the petitioning person or groups request an adoption, amendment, or~~
10 ~~repeal of an agency rule; and~~

11 E. C. the need for the requested action.

12 Part 1400.2500 contains a recommended format for the petition.

13 [For text of subps 2 and 3, see M.R.]

14 **1400.2050 REQUEST FOR COMMENTS ON POSSIBLE RULE.**

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

18 **1400.2060 APPROVAL OF ADDITIONAL NOTICE PLAN.**

19 Subpart 1. **Optional prior approval.** An agency may ask the office for approval of its
20 plan for giving additional notice of its request for comments on possible rulemaking
21 under Minnesota Statutes, section 14.101, or of its plan for giving additional notice of
22 proposed rules under Minnesota Statutes, sections 14.131, 14.14, 14.22, and 14.23. If the
23 agency requests approval of its additional notice plan, it must make the request and
24 receive approval of its additional notice plan before it publishes the request for
25 comments or the notice of proposed rules.

1 Subp. 2. **Filing.** An agency asking the office for approval of an additional notice plan
2 must file with the office:

3 A. For additional notice plans under Minnesota Statutes, section 14.101:

4 (1) a description of its proposed additional notice plan;

5 (2) the agency's proposed request for comments on its possible rule; and

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

8 B. For additional notice plans under Minnesota Statutes, sections 14.131, 14.14,
9 14.22, and 14.23:

10 (1) a draft of the rules or ~~certified a~~ copy of the proposed rule rules certified as
11 to form by the revisor;

12 (2) a draft or final copy of the statement of need and reasonableness under part
13 1400.2070, containing the agency's proposed notice plan;

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

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

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

22 Subp. 4. **Approval or disapproval.** An approved additional notice plan is the office's
23 final determination that the additional notice plan is adequate if the agency implements
24 the additional notice plan. If the additional notice plan is disapproved, the judge must
25 explain why and tell the agency what changes are necessary for approval. The agency

1 may resubmit the additional notice plan for review after changing it. The judge must
2 review and approve or disapprove the revised additional notice plan within five
3 working days after the office receives it.

4 **1400.2070 STATEMENT OF NEED AND REASONABLENESS.**

5 Subpart 1. **General content.** The statement of need and reasonableness must
6 summarize the evidence and argument that the agency is relying on to justify both the
7 need for and the reasonableness of the proposed rules, and must state how the evidence
8 rationally relates to the choice of action taken. The statement must explain the
9 circumstances that created the need for the rulemaking and why the proposed
10 rulemaking is a reasonable solution for meeting the need. The statement must be
11 sufficiently specific so that interested persons will be able to fully prepare any testimony
12 or evidence in favor of or in opposition to the proposed rules. A general description of
13 the statute being implemented or restating the proposed rule is not sufficient. The
14 statement must include:

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

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

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

21 E. the date the statement is made available for public review.

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

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

1 Subp. 3. **Timing.** The statement must be prepared ~~before the agency orders~~
2 ~~publication of its~~ on or before the signature date on the agency's notice of intent to
3 adopt rules, notice of hearing, or dual notice. ~~This subpart is satisfied if the statement~~
4 ~~and the notice are dated on the same day.~~ The agency must send a copy of the statement
5 to the Legislative Reference Library when ~~it becomes available for public review~~ the
6 notice is mailed.

7 **1400.2080 NOTICE OF PROPOSED RULE.**

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

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

11 [For text of items A to H, see M.R.]

12 I. the signature of the person authorized to give notice of intent to adopt rules,
13 notice of hearing, or dual notice and the date the person signed the notice.

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

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

19 B. the calendar date that the comment period ends, which must be at least 30 days
20 after the date of publication;

21 [For text of items C to F, see M.R.]

22 G. how persons must submit their comments or requests for hearing, including
23 ~~whether~~ an e-mail address if the agency will accept e-mail comments or requests for
24 hearing;

25 [For text of items H to K, see M.R.]

1 Subp. 4. **Additional contents for a notice of hearing or dual notice.** A notice of
2 hearing or dual notice must state:

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

4 F. that any person can ask to be notified of the date on which the judge's report
5 will become available and that the request can be made at the hearing or in writing to
6 the judge;

7 G. that any person can ask to be notified of the date on which the agency adopts
8 the rule and files it with the secretary of state, and that the request can be made at the
9 hearing or in writing to the agency;

10 H. that lobbyists must register with the Campaign Finance and Public Disclosure
11 Board, that questions should be referred to the board, and the board's address and
12 telephone number; and

13 I. that a hearing is ordered.

14 Subp. 5. **Scheduling of hearing, and approval of notice of hearing or dual notice.**
15 The agency must request to schedule a rule hearing and obtain the judge's approval of
16 any notice of hearing or dual notice prior to mailing it or publishing it in the State
17 Register. The judge must also advise the agency as to when, where, and how many
18 hearings should be held in order to allow for participation by all affected interests. A
19 copy of the proposed rule with a certificate of approval as to form by the revisor of
20 statutes attached, and a draft or final copy of the statement of need and reasonableness
21 must be filed with a notice submitted for approval. The judge must review the proposed
22 notice within five working days of receiving it and must either approve the notice or
23 advise the agency how the notice must be revised.

24 Subp. 6. **Timing.** A notice of hearing or notice of intent to adopt rules must be mailed
25 at least 33 days before the end of the comment period or the start of the hearing, and
26 must be published in the State Register at least 30 days before the end of the comment

1 period or the start of the hearing. A dual notice must be mailed at least 33 days before
2 the end of the comment period and must be published in the State Register at least 30
3 days before the end of the comment period. If a hearing is required after using a dual
4 notice, there must be at least ten days between the end of the comment period and the
5 start of the hearing. Depositing a mailing in the state of Minnesota's central mail system
6 for United States mail satisfies the mailing requirement of this subpart.

7 Subp. 7. **Certificates of mailing and accuracy of mailing list.** The agency must
8 prepare a certificate of mailing the notice to the rulemaking mailing list and a certificate
9 of accuracy of its rulemaking mailing list. Part 1400.2550 contains a recommended
10 format for this document.

11 **1400.2085 NOTICE OF PROPOSED EXPEDITED RULE.**

12 Subpart 1. **General content.** A notice of intent to adopt expedited rules under
13 Minnesota Statutes, section 14.389, subdivisions 1 to 4, must contain the information in
14 subpart 2. If an agency is accepting requests for a public hearing under Minnesota
15 Statutes, section 14.389, subdivision 5, the notice must also contain the information in
16 subpart 3. Part 1400.2570 contains recommended forms for these notices.

17 Subp. 2. **Contents of expedited rule notices.** All notices of intent to adopt expedited
18 rules must state:

19 A. that the agency intends to adopt, amend, or repeal rules under the expedited
20 process and identify the parts of this chapter and Minnesota Statutes, section 14.389;

21 B. a citation to the statutory authority for the rule and the statutory authority for
22 the rule to be adopted under the expedited process;

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

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

1 E. that the public has 30 days to comment in support of or in opposition to the rule
2 or any part of it, and that comment is encouraged;

3 F. how persons must submit their comments, including whether the agency will
4 accept e-mail comments;

5 G. the calendar date that the comment period ends;

6 H. that each comment should identify the part of the rule addressed, any change
7 proposed, and the reason for the suggested change;

8 I. if no hearing is held, that the agency must, after adopting the rule, submit the
9 rule to the office for review for legality;

10 J. that persons who wish to comment on the legality of the rule must do so during
11 the 30-day comment period;

12 K. that persons may request to be notified of the date that the rule is submitted to
13 the office for review and how to make that request;

14 L. that the proposed rule may be modified if the modifications do not make the
15 rule substantially different as defined under Minnesota Statutes, section 14.05,
16 subdivision 2, paragraphs (b) and (c);

17 M. that persons may request to be placed on the agency's mailing list to receive
18 notice of future rule proceedings;

19 N. any other information required by law or rule to be included in the notice; and

20 O. the signature of the person authorized to give notice of intent to adopt rules.

21 Subp. 3. **Additional notice contents when agency accepts requests for public**
22 **hearing.** If an agency publishes notice under Minnesota Statutes, section 14.389,
23 subdivision 5, the notice must also state:

24 A. that if 100 or more persons submit a written request for hearing during the
25 comment period, a public hearing must be held on the rules unless a sufficient number
26 later withdraw their requests in writing;

1 B. that any person requesting a hearing must include that person's name and
2 address, must identify the portion of the rule to which the person objects or a statement
3 that the person objects to the entire rule, and that a request that does not provide this
4 information is invalid and will not count when determining whether a public hearing
5 must be held;

6 C. that any person requesting a hearing is encouraged to propose changes to the
7 rule;

8 D. how persons must submit their request for hearing; and

9 E. that if a public hearing is held the agency must proceed under Minnesota
10 Statutes, sections 14.131 to 14.20.

11 Subp. 4. **Timing.** All notices for expedited rules must be mailed at least 33 days
12 before the end of the comment period, and must be published in the State Register at
13 least 30 days before the end of the comment period. Depositing a mailing in the state of
14 Minnesota's central mail system for United States mail satisfies the mailing requirement
15 of this subpart.

16 Subp. 5. **Certificates of mailing and accuracy of mailing list.** The agency must
17 prepare a certificate of mailing the notice to its rulemaking mailing list and a certificate
18 of the accuracy of its mailing list.

19 Subp. 6. **Procedure when public hearing is required.** If a public hearing is required,
20 the rule may be adopted by the agency only after complying with all of the
21 requirements for rules adopted after a public hearing, Minnesota Statutes, sections
22 14.131 to 14.20. This includes preparing a statement of need and reasonableness and
23 publishing and mailing a notice of rule hearing under Minnesota Statutes, section 14.14,
24 subdivision 1a. In addition to the notice requirements in Minnesota Statutes, section
25 14.14, subdivision 1a, the agency must also send the notice of rule hearing to those
26 persons who requested a public hearing.

1 **1400.2110 PROCEDURE TO ADOPT SUBSTANTIALLY DIFFERENT RULES.**

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

3 Subp. 2. **Notice.** The agency must mail or deliver to each person or group that made a
4 written or oral comment during the comment period or registered at the rule hearing, if
5 the person's address is known to the agency:

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

7 [For text of subps 3 to 6, see M.R.]

8 **1400.2210 CONDUCT OF HEARING.**

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

18 [For text of subps 2 to 10, see M.R.]

19 **1400.2220 AGENCY PRESENTATION AT HEARING.**

20 Subpart 1. **Rulemaking documents.** The agency must place into the hearing record
21 the following documents:

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

23 E. a copy of the transmittal letter or a certificate showing that the agency sent a
24 copy of the statement of need and reasonableness to the Legislative Reference Library;

25 F. the notice of hearing or dual notice as mailed and as published in the State
26 Register;

1400.2220

1 G. the certificate of mailing the notice of hearing and certificate of accuracy of its
2 mailing list. Part 1400.2550 is a recommended certificate form;

3 H. a certificate of additional notice if given or a copy of the transmittal letter;

4 I. any written comments on the proposed rule received by the agency during the
5 comment period;

6 J. if the chief judge has authorized the agency to omit from the notice of hearing
7 published in the State Register the text of any proposed rule, a copy of the document
8 authorizing the omission; and

9 K. any other document or evidence to show compliance with any other law or rule
10 which the agency is required to follow in adopting this rule. Examples include
11 Minnesota Statutes, section 3.9223, subdivision 4 (council of Chicano/Latino people),
12 14.111 (farming operations), or 14.116 (notice to legislators).

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

14 **1400.2230 WRITTEN COMMENTS AFTER HEARING AND CLOSE OF HEARING**
15 **RECORD.**

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

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

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

25 **1400.2240 ADMINISTRATIVE LAW JUDGE'S REPORT.**

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

2 Subp. 4. **Disapproval; review by chief judge.** If the judge disapproves the rule, the
3 judge must submit the report and the hearing record to the chief judge for review. The
4 chief judge must review the rule and the judge's report and prepare a report within ten
5 days. If the chief judge disapproves the rule, the chief judge must explain why and tell
6 the agency what changes or actions are necessary for approval. The chief judge must
7 promptly send the chief judge's report, the judge's report, and the hearing record to the
8 agency. The agency must resubmit the rule to the chief judge for review after changing
9 it. The agency may also request that the chief judge reconsider the disapproval. The
10 chief judge must review and approve or disapprove the changed rule or a request for
11 reconsideration within five working days after the office receives it.

12 [For text of subp 5, see M.R.]

13 Subp. 6. **Disapproval of need and reasonableness.** If the chief judge disapproves the
14 rule because the agency has not shown it to be needed and reasonable, and if the agency
15 chooses not to follow the chief judge's recommended corrections, the agency must
16 submit the rule to the legislative coordinating commission and the house of
17 representatives and senate policy committees with primary jurisdiction over state
18 governmental operations, for review under Minnesota Statutes, section 14.15,
19 subdivision 4.

20 [For text of subp 7, see M.R.]

21 Subp. 8. **Withdrawal of rule.** The agency may withdraw a rule by submitting a notice
22 of withdrawal to the chief judge signed by a person authorized to withdraw the rule.
23 Withdrawing a rule is appropriate unless the withdrawal of a rule or a portion of the
24 rule makes the remaining rules substantially different. The notice must explain the
25 person's authority to withdraw the rule. The office must return the agency's filing
26 promptly after receiving this notice.

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

2 Subp. 10. **Rule adoption.** Once the judge or chief judge approves the rule or the
3 review period for the legislative coordinating commission and the house of
4 representatives and senate policy committees with primary jurisdiction over state
5 governmental operations has passed, the office must file three copies of the rule with the
6 secretary of state. The agency may adopt the rule by executing an order adopting the
7 rule. ~~The agency must obtain the revisor's approval of the rule's form, file three copies~~
8 ~~of the rule with the secretary of state, and~~ After the rule is adopted, the agency may
9 publish a notice of rule adoption in the State Register.

10 **1400.2300 REVIEW OF RULES ADOPTED WITHOUT A PUBLIC HEARING.**

11 Subpart 1. **Applicability.** Parts 1400.2300 and 1400.2310 apply to review of rules
12 adopted by agencies under Minnesota Statutes, sections 14.22 to 14.28.

13 [For text of subps 2 and 3, see M.R.]

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

20 Subp. 5. **Approval.** If the rule is approved either on initial review or on resubmission,
21 the agency may publish notice of adoption of the rule in the State Register. The office
22 must file three copies of the rule with the secretary of state. The office must notify those
23 persons who requested notification that the judge's decision is available. The office must
24 also send a copy of the judge's decision to the legislative coordinating commission, the
25 revisor, and the attorney general. The office must send the agency a copy of its decision
26 and promptly return the agency's filing.

1 Subp. 6. **Disapproval.** If the rule is disapproved, the judge must state in writing the
2 reasons for the disapproval and recommend what changes or actions are necessary for
3 approval. The written reasons for disapproval must then be submitted to the chief judge
4 for review. The chief judge shall approve or disapprove the judge's determination
5 within five working days and shall state the reasons in writing and shall advise the
6 agency what changes are required for approval. The office must notify those persons
7 who requested notification that the chief judge's report is available. The office also must
8 send a copy of the chief judge's decision to the office of the governor, the legislative
9 coordinating commission, the revisor, the attorney general, and the house of
10 representatives and senate policy committees with primary jurisdiction over state
11 governmental operations. Minnesota Statutes, section 14.26, subdivision 3, governs the
12 effect of any disapproval. The chief judge shall then promptly send the rule record to
13 the agency.

14 [For text of subp 7, see M.R.]

15 Subp. 8. **Resubmission.** The agency must resubmit the rule to the chief judge for
16 review after changing it. The agency may also request that the chief judge reconsider the
17 disapproval. When the agency resubmits the rule for review, it must file with the office:

18 A. the rule as initially proposed;

19 B. the rule with the agency's proposed changes; and

20 C. the agency's amended order adopting rules. The order must include an
21 explanation of the changes, why they solve the problems identified by the chief judge,
22 and why they do not result in a substantially different rule.

23 The chief judge may request that the agency also return the hearing rule record. The
24 chief judge must review the resubmitted rule and decide whether it meets the standards
25 of part 1400.2100 within five working days of receiving it. Minnesota Statutes, section
26 14.26, subdivision 3, governs the effect of any disapproval.

1 Subp. 8a. **New modifications to rule.** If the agency wants to adopt the rule with
2 modifications other than those recommended by the judge or chief judge, the agency
3 must submit to the chief judge the filings under subpart 8.

4 The chief judge may request that the agency also return the ~~hearing~~ rule record. The
5 chief judge must review the agency's modifications to decide if they make the rule
6 substantially different than the proposed rule. The chief judge must make a written
7 decision within five working days after the office receives the rule.

8 Subp. 9. **Disapproval of need and reasonableness.** If the chief judge disapproves the
9 rule because the agency has not shown it to be needed and reasonable, and if the agency
10 chooses not to follow the chief judge's recommended corrections, the agency must
11 submit the rule to the legislative coordinating commission, and to the house of
12 representatives and senate policy committees with primary jurisdiction over state
13 governmental operations for review under Minnesota Statutes, section 14.26,
14 subdivision 3, paragraph (c).

15 **1400.2310 DOCUMENTS TO BE FILED.**

16 The agency must file the following documents with the office:

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

18 F. if the chief judge authorized the agency to omit from the notice of intent to
19 adopt rules published in the State Register the text of any proposed rule, a copy of the
20 document authorizing the omission;

21 G. the certificate of mailing the notice of intent to adopt rules and certificate of
22 accuracy of its mailing list;

23 H. a certificate of additional notice, if given, or a copy of the transmittal letter;

24 I. a copy of the transmittal letter or certificate showing that the agency sent a copy
25 of the statement of need and reasonableness to the Legislative Reference Library;

26 J. all written comments and submissions on the proposed rule received during the

1 comment period, requests for hearing, and withdrawals of requests for hearing received
2 by the agency, except those that only requested copies of documents;

3 [For text of item K, see M.R.]

4 L. a copy of the adopted rule, showing any modifications to the proposed rule and
5 the revisor's approval of them;

6 [For text of item M, see M.R.]

7 N. the order adopting the rule that complies with the requirements in part
8 1400.2090;

9 [For text of item O, see M.R.]

10 P. any other document or evidence to show compliance with any other law or rule
11 which the agency is required to follow in adopting this rule. Examples include
12 Minnesota Statutes, section 3.9223, subdivision 4 (council of Chicano/Latino people),
13 14.111 (farming operations), or 14.116 (notice to legislators).

14 Part 1400.2550 is a recommended certificate form. Part 1400.2560 is a recommended
15 order adopting rules.

16 **1400.2400 REVIEW OF EXEMPT RULES.**

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

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

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

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

21 B. ~~an~~ a proposed order adopting the rule, which must include any explanation
22 needed to support the legality of the rule, and:

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

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

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

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

5 Subp. 4. **Approval.** If the rule is approved, the agency may publish it in the State
6 Register. If the rule is approved either on initial review or on resubmission, the office
7 must file three copies of the rule with the secretary of state. The office must also send a
8 copy of the judge's decision to the legislative coordinating commission, the revisor, and
9 the attorney general. The office must send the agency a copy of the judge's decision and
10 promptly return the agency's filing.

11 Subp. 4a. **Disapproval.** If the rule is disapproved, the judge must tell the agency why
12 and what changes are necessary for approval or why the rule is not exempt from
13 rulemaking procedures. The agency must resubmit the rule to the judge for review after
14 changing it. The judge must review and approve or disapprove the rule within five
15 working days after receiving it. A rule does not take effect unless approved.

16 [For text of subp 5, see M.R.]

17 **1400.2410 REVIEW OF EXPEDITED RULES ADOPTED WITHOUT A PUBLIC**
18 **HEARING.**

19 Subpart 1. **Applicability.** This part applies to review of expedited rules adopted by
20 agencies under Minnesota Statutes, section 14.389, where no public hearing is held.

21 Subp. 2. **Filing.** The agency must file the following documents with the office:

22 A. the proposed rule, including the revisor's approval;

23 B. the notice of intent to adopt expedited rules as mailed and as published in the
24 State Register;

25 C. the certificate of mailing the notice of intent to adopt expedited rules and
26 certificate of the accuracy of its mailing list;

1 D. a certificate of additional notice, if given, or a copy of the transmittal letter;

2 E. all written comments and submissions on the proposed rule;

3 F. if required by Minnesota Statutes, section 14.25, subdivision 2, the notice of
4 withdrawal of hearing request, evidence that the notice of withdrawal was sent to all
5 persons who requested a hearing, and any responsive comments received;

6 G. one copy of the adopted rule, showing any modifications to the proposed rule
7 and the revisor's approval of them;

8 H. if the agency adopts a substantially different rule using the procedure in part
9 1400.2110, a copy of the notice that was sent to persons or groups who commented
10 during the comment period and evidence that the notice was sent to those persons or
11 groups;

12 I. the order adopting the rule that complies with the requirements in part
13 1400.2090;

14 J. the notice of submission of the rule to the office, if anyone requested this notice,
15 and a copy of the transmittal letter or certificate showing that the agency sent this
16 notice; and

17 K. any other document or evidence to show compliance with any other law or rule
18 that the agency is required to follow in adopting this rule.

19 Subp. 3. **Review.** A judge must review the agency's filing and either approve or
20 disapprove it within 14 days after the office receives it, unless it is withdrawn. In
21 reviewing the filing, the judge must decide whether the rule meets the standards of part
22 1400.2100, items A and C to H.

23 Subp. 4. **Withdrawal of rule.** The agency may withdraw an expedited rule from
24 review by submitting a notice of withdrawal signed by a person authorized to withdraw
25 the rule unless the withdrawal of the rule or a portion of the rule makes the remaining
26 rules substantially different. The notice of withdrawal must explain the person's
1400.2410

1 authority to withdraw the rule. The office must return the agency's filing promptly after
2 receiving this request.

3 Subp. 5. **Approval.** If the expedited rule is approved, either on initial review or on
4 resubmission, the agency may publish the notice of adoption in the State Register. If the
5 final expedited rule is different from the rule originally published in the State Register,
6 the agency must publish a copy of the changes in the State Register. The agency must
7 file one copy of the rule with the governor. The office must file three copies of the rule
8 with the secretary of state. A rule does not take effect unless approved.

9 Subp. 6. **Disapproval.** If the rule is disapproved, the judge must state in writing the
10 reasons for the disapproval and what changes or actions are necessary for approval. The
11 agency must resubmit the rule to the judge for review after changing it. The judge must
12 review and approve or disapprove the resubmitted rule within five working days after
13 receiving it.

14 Subp. 7. **Administrative law judge's decision.** The office must notify those persons
15 who requested notification that the judge's decision is available. The office must send a
16 copy of the judge's decision to the legislative coordinating commission, the revisor, and
17 the attorney general. The office must also send the agency a copy of the judge's decision
18 and promptly return the agency's filing.

19 Subp. 8. **Review by chief judge.** An agency may ask the chief judge to review an
20 expedited rule that has been disapproved by a judge. The agency must make this
21 request within five working days of receiving the judge's decision. The chief judge must
22 review the agency's filing and, within 14 days of receiving it, either approve or
23 disapprove it under the standards of subpart 3.

24 1400.2450 MEDIATION.

25 [For text of subps 1 to 4, see M.R.]

26 Subp. 5. **Subsequent sessions.** If additional mediation sessions are needed, the date,

1 time, and place must be determined by agreement of the participants or by the judge if
 2 the participants do not agree. The judge must give notice of future sessions orally to the
 3 participants present and by mail to any persons who have indicated a desire to
 4 participate but who are not present.

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

6 **1400.2510 RECOMMENDED REQUEST FOR COMMENTS ON POSSIBLE RULE.**

7 Minnesota Department of _____

8

9 **REQUEST FOR COMMENTS**

10

11 Possible (Amendment to) (Repeal of) Rule Governing _____, Minnesota Rules
 12 _____ (citation to rule).

13

14 **Subject of Rule.** The _____ (name of department) requests comments on its
 15 possible (amendment to) (repeal of) rule governing _____. The department is
 16 considering (a rule) (rule amendments) (repealing its rule) that _____
 17 (detailed description of subject matter of rule).

18 **Persons Affected.** The (amendment to) (repeal of) the rule would likely affect
 19 _____ (description of types of groups and individuals likely to be affected).
 20 (Optional): The department does (not) contemplate appointing an advisory committee
 21 to comment on the possible rule.

22 **Statutory Authority.** Minnesota Statutes, section _____ (section number),
 23 (authorizes) (requires) the department to adopt rules for _____ (brief
 24 description of statutory authority).

25 **Public Comment.** Interested persons or groups may submit comments or information
 26 on this possible rule in writing or orally until 4:30 p.m. on _____ (date). The

1 department (insert either: (has) (has not yet) prepared a draft of the possible rule
 2 (amendment) (repeal) **OR** does not anticipate that a draft of the rule (amendment)
 3 (repeal) will be available before the publication of the proposed rule). Written or oral
 4 comments, questions (requests to receive a draft of the rule) (when it has been
 5 prepared), and requests for more information on this possible rule should be addressed
 6 to: _____ (name, address, telephone number, and
 7 e-mail address [optional] of staff person).

8 **Comments submitted in response to this notice may not be included in the formal**
 9 **rulemaking record when a proceeding to adopt a rule is started.**

10 _____
 11 Commissioner

12 **1400.2520 RECOMMENDED NOTICE OF INTENT TO ADOPT A RULE WITHOUT**
 13 **A PUBLIC HEARING.**

14 Minnesota Department of _____

15
 16 **NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING**

17
 18 Proposed (Amendment to) (Repeal of) Rule Governing _____,
 19 Minnesota Rules _____ (citation to rule).

20
 21 **Introduction.** The (department name) intends to adopt a **permanent** rule without a
 22 public hearing following the procedures set forth in the rules of the Office of
 23 Administrative Hearings, parts 1400.2300 and 1400.2310, and the Administrative
 24 Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. You may submit written
 25 comments on the proposed rule and may also submit a written request that a hearing be
 26 held on the rule until _____ (date).

27 **Agency Contact Person.** Comments or questions on the rule and written requests for
 1400.2520

1 a public hearing on the rule must be submitted to:
2 _____ (name, agency, address, telephone number, and
3 fax number [optional]). (You may submit e-mail comments, questions, or requests for a
4 public hearing to: _____ (e-mail address)) [optional].

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

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

21 **Request for a Hearing.** In addition to submitting comments, you may also request
22 that a hearing be held on the rule. Your request for a public hearing must be in writing
23 and must be received by the agency contact person by ____ p.m. on _____, ____.
24 Your written request for a public hearing must include your name and address. You
25 must identify the portion of the proposed rule to which you object or state that you
26 oppose the entire rule. Any request that does not comply with these requirements is not
27 valid and cannot be counted by the agency for determining whether a public hearing

1 must be held. You are also encouraged to state the reason for the request and any
2 changes you want made to the proposed rule.

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

10 **Modifications.** The proposed rule may be modified as a result of public comment.
11 The modifications must be supported by comments and information submitted to the
12 agency, and the adopted rule may not be substantially different than this proposed rule
13 unless the procedure under part 1400.2110 has been followed. If the proposed rule
14 affects you in any way, you are encouraged to participate in the rulemaking process.

15 **Statement of Need and Reasonableness.** A statement of need and reasonableness is
16 now available from the agency contact person. This statement contains a summary of
17 the justification for the proposed rule, including a description of who will be affected by
18 the proposed rule and an estimate of the probable cost of the proposed rule.

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

20 **Adoption and Review of Rule.** If no hearing is required, the agency may adopt the
21 rule after the end of the comment period. The rule and supporting documents will then
22 be submitted to the Office of Administrative Hearings for review for legality. You may
23 ask to be notified of the date the rule is submitted to the office. If you want to be so
24 notified, or want to receive a copy of the adopted rule, or want to register with the
25 agency to receive notice of future rule proceedings, submit your request to the agency
26 contact person listed above.

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Dated: _____
Name _____
Title _____

1400.2530 RECOMMENDED NOTICE OF HEARING.

Minnesota Department of _____

NOTICE OF HEARING

Proposed (Amendment to) (Repeal of) Rule Governing _____, Minnesota Rules _____ (citation to rule).

Public Hearing. The (department name) intends to adopt a rule after a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, parts 1400.2200 to 1400.2240, and the Administrative Procedure Act, Minnesota Statutes, sections 14.131 to 14.20. The agency will hold a public hearing on the above-entitled rule at (place), starting at (time hearing starts) on _____, _____, and continuing until the hearing is completed. Additional days of hearing will be scheduled if necessary. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements may be submitted without appearing at the hearing.

Administrative Law Judge. The hearing will be conducted by (name, address, telephone number, and fax number of judge). The rule hearing procedure is governed by Minnesota Statutes, sections 14.131 to 14.20, and by the rules of the Office of Administrative Hearings, Minnesota Rules, parts 1400.2000 to 1400.2240. Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge.

1 **Subject of Rule, Statutory Authority, and Agency Contact Person.** The proposed
2 rule is about (subject of rule and, if applicable, that an entire rule is being repealed and a
3 citation to the rule). The proposed rules are authorized by Minnesota Statutes, section
4 (specific section number). A copy of the proposed rule is published in the State Register
5 and attached to this notice as mailed. (If the proposed rule is not attached to the mailed
6 notice, then this notice must include an ~~informative statement describing the nature and~~
7 ~~effect of the proposed rule~~ easily readable and understandable description of the rule's
8 nature and effect and include the announcement that: A free copy of the rule is available
9 upon request from the agency contact person.) The agency contact person is: (name,
10 address, telephone number, fax number [optional], and e-mail address [optional]).

11 **Statement of Need and Reasonableness.** A Statement of Need and Reasonableness is
12 now available for review at the agency offices and at the Office of Administrative
13 Hearings. This statement contains a summary of the justification for the proposed rule,
14 including a description of who will be affected by the proposed rule and an estimate of
15 the probable cost of the proposed rule. The statement may be reviewed and copies
16 obtained at the cost of reproduction from the agency.

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

18 **Public Comment.** You and all interested or affected persons, including
19 representatives of associations and other interested groups, will have an opportunity to
20 participate. You may present your views either orally at the hearing or in writing at any
21 time before the close of the hearing record. All evidence presented should relate to the
22 proposed rule. You may also submit written material to the Administrative Law Judge
23 to be recorded in the hearing record for five working days after the public hearing ends.
24 This five-day comment period may be extended for a longer period not to exceed 20
25 calendar days if ordered by the Administrative Law Judge at the hearing. Following the
26 comment period, there is a five-working-day ~~response~~ rebuttal period during which the
27 agency and any interested person may respond in writing to any new information

1 submitted. No additional evidence may be submitted during the five-day ~~response~~
2 rebuttal period. All comments and responses submitted to the Administrative Law
3 Judge must be received at the Office of Administrative Hearings no later than 4:30 p.m.
4 on the due date. All comments or responses received will be available for review at the
5 Office of Administrative Hearings.

6 The agency requests that any person submitting written views or data to the
7 Administrative Law Judge prior to the hearing or during the comment or rebuttal
8 period also submit a copy of the written views or data to the agency contact person at
9 the address stated above.

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

13 **Modifications.** The proposed rules may be modified as a result of the rule hearing
14 process. Modifications must be supported by data and views presented during the rule
15 hearing process, and the adopted rule may not be substantially different than this
16 proposed rule unless the procedure under part 1400.2110 has been followed. If the
17 proposed rule affects you in any way, you are encouraged to participate.

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

26 **Lobbyist Registration.** Minnesota Statutes, chapter 10A, requires each lobbyist to

1 register with the Campaign Finance and Public Disclosure Board. Questions regarding
2 this requirement may be directed to the Campaign Finance and Public Disclosure Board
3 at: (address, telephone number).

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

6
7 Dated: _____
8 _____
9 Name
10 Title

11 **1400.2540 RECOMMENDED DUAL NOTICE.**

12 Minnesota Department of _____

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

16
17 Proposed (Amendment to) (Repeal of) Rule Governing _____, Minnesota
18 Rules _____ (citation to rule).

19
20 **Introduction.** The (department name) intends to adopt a rule without a public
21 hearing following the procedures set forth in the rules of the Office of Administrative
22 Hearings, parts 1400.2300 and 1400.2310, and the Administrative Procedure Act,
23 Minnesota Statutes, sections 14.22 to 14.28. If, however, 25 or more persons submit a
24 written request for a hearing on the rule by _____, _____, a public hearing will
25 be held at (location), starting at (time) on _____, _____. (The date must be at
26 least ten days after the end of the comment period.) To find out whether the rule will be
27 adopted without a hearing or if the hearing will be held, you should contact the agency
28 contact person after (date comment period ends) and before (date of hearing).

1 **Agency Contact Person.** Comments or questions on the rule and written requests for
2 a public hearing on the rule must be submitted to: _____
3 (name, address, telephone number, and fax number [optional]). (You may submit e-mail
4 comments, questions, or requests for a public hearing to:
5 _____ (e-mail address)) [optional].

6 **Subject of Rule and Statutory Authority.** The proposed rule is about (subject of rule
7 and, if applicable, that an entire rule is being repealed and a citation to the rule). The
8 statutory authority to adopt the rule is (specific statutory citation). A copy of the
9 proposed rule is published in the State Register and attached to this notice as mailed. (If
10 the proposed rule is not attached to the mailed notice, then this notice must include an
11 ~~informative statement describing the nature and effect of the proposed rule~~ easily
12 readable and understandable description of the rule's nature and effect and include the
13 announcement that: A free copy of the rule is available upon request from the agency
14 contact person listed above.)

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

23 **Request for a Hearing.** In addition to submitting comments, you may also request
24 that a hearing be held on the rule. Your request for a public hearing must be in writing
25 and must be received by the agency contact person by ____ p.m. on _____, ____.
26 Your written request for a public hearing must include your name and address. You
27 must identify the portion of the proposed rule to which you object or state that you

1 oppose the entire rule. Any request that does not comply with these requirements is not
2 valid and cannot be counted by the agency for determining whether a public hearing
3 must be held. You are also encouraged to state the reason for the request and any
4 changes you want made to the proposed rule.

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

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

15 **Modifications.** The proposed rule may be modified, either as a result of public
16 comment or as a result of the rule hearing process. Modifications must be supported by
17 data and views submitted to the agency or presented at the hearing and the adopted
18 rule may not be substantially different than this proposed rule unless the procedure
19 under part 1400.2110 has been followed. If the proposed rule affects you in any way,
20 you are encouraged to participate in the rulemaking process.

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

1 **Notice of Hearing.** If 25 or more persons submit valid written requests for a public
2 hearing on the rule, a hearing will be held following the procedures in Minnesota
3 Statutes, sections 14.131 to 14.20. The hearing will be held on the date and at the time
4 and place listed above. The hearing will continue until all interested persons have been
5 heard. An Administrative Law Judge is assigned to conduct the hearing. The judge can
6 be reached at: (name, address, telephone number, and fax number).

7 **Hearing Procedure.** If a hearing is held, you and all interested or affected persons,
8 including representatives of associations or other interested groups, will have an
9 opportunity to participate. You may present your views either orally at the hearing or in
10 writing at any time before the close of the hearing record. All evidence presented should
11 relate to the proposed rule. You may also submit written material to the Administrative
12 Law Judge to be recorded in the hearing record for five working days after the public
13 hearing ends. This five-day comment period may be extended for a longer period not to
14 exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing.
15 Following the comment period, there is a five-working-day ~~response~~ rebuttal period
16 during which the agency and any interested person may respond in writing to any new
17 information submitted. No additional evidence may be submitted during the five-day
18 ~~response~~ rebuttal period. All comments and responses submitted to the Administrative
19 Law Judge must be received at the Office of Administrative Hearings no later than 4:30
20 p.m. on the due date. All comments or responses received will be available for review at
21 the Office of Administrative Hearings. This rule hearing procedure is governed by
22 Minnesota Rules, parts 1400.2000 to 1400.2240, and Minnesota Statutes, sections 14.131
23 to 14.20. Questions about procedure may be directed to the Administrative Law Judge.

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

1 **Statement of Need and Reasonableness.** A statement of need and reasonableness is
2 now available from the agency contact person. This statement contains a summary of
3 the justification for the proposed rule, including a description of who will be affected by
4 the proposed rule and an estimate of the probable cost of the proposed rule. The
5 statement may be reviewed and copies obtained at the cost of reproduction from the
6 agency.

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

8 **Lobbyist Registration.** Minnesota Statutes, chapter 10A, requires each lobbyist to
9 register with the Campaign Finance and Public Disclosure Board. Questions regarding
10 this requirement may be directed to the Campaign Finance and Public Disclosure Board
11 at (address and telephone number).

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

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

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

1

2 Dated: _____

3

4

Name

Title

5

1400.2550 RECOMMENDED CERTIFICATES.

6

7 NOTE: This part contains the format of a certificate and language that certifies the
8 accuracy of the rulemaking mailing list, certifies the mailing of a notice or proposed
9 rule, certifies the mailing of the statement of need and reasonableness to the Legislative
10 Reference Library, certifies the mailing of a notice of submission of a rule adopted
11 without a public hearing to the office, and certifies the mailing of the notice and the
12 statement to legislators. When making certificates using this part, use only the language
13 that applies. If two or more people performed the various actions, create a separate
14 certificate for each person that includes only the actions done by each individual.

15

16 Proposed Rule Governing _____, Minnesota Rules _____ (citation to rule).

17

18 (Certificate of accuracy of the mailing list) I certify that the list of persons and
19 associations who have requested under Minnesota Statutes, section 14.14, subdivision
20 1a, that their names be placed on the department of _____ rulemaking
21 mailing list is accurate, complete, and current as of _____, ____.

22

23 (Certificate of mailing notice to rulemaking mailing list) I certify that on
24 _____, _____, at least 33 days before the end of the comment period, at the City
25 of _____, County of _____, State of Minnesota, I mailed
26 the _____ (state what was mailed, for example: (1) Notice of Intent to Adopt
27 Rules, Dual Notice, or Notice for Hearing, and (2) the proposed rule) by depositing a

1 copy thereof in [the state of ~~Minnesota~~ Minnesota's central mail system for] United
2 States mail, with postage prepaid, to all persons and associations on the rulemaking
3 mailing list established by Minnesota Statutes, section 14.14, subdivision 1a.

4
5 (Certificate of giving additional notice) I certify that on _____, ____, the
6 following additional notice was given by the agency:

7
8 (Certificate of mailing the statement of need and reasonableness to the Legislative
9 Reference Library - change the title on the upper right of document) I certify that on
10 _____, ____, when the statement of need and reasonableness became
11 available to the public, I mailed a copy of the statement to the Legislative Reference
12 Library by depositing it in [the state of ~~Minnesota~~ Minnesota's central mail system for]
13 United States mail, with postage prepaid.

14
15 (Certificate of mailing notice of submission of rule adopted without a public hearing
16 to the Office of Administrative Hearings - change the title on the upper right document)
17 I certify that on _____, ____, when the adopted rule was submitted to the
18 Office of Administrative Hearings, I mailed the notice of submission of the rule to the
19 office by depositing it in [the state of ~~Minnesota~~ Minnesota's central mail system for]
20 United States mail, with postage prepaid, to all persons and groups who requested this
21 notice.

22
23 (Certificate of mailing the notice and the statement of need and reasonableness to
24 legislators) (An agency may submit a copy of the transmittal letter instead of this
25 certificate.) I certify that on _____, ____, when the department mailed
26 Notice of Intent to Adopt Rules under Minnesota Statutes, section 14.14 or 14.22, I

1 mailed a copy of the Notice and the Statement of Need and Reasonableness to certain
 2 legislators by depositing it in [the state of ~~Minnesota~~ Minnesota's central mail system
 3 for] United States mail, with postage prepaid. The mailing was done to comply with
 4 Minnesota Statutes, section 14.116. (List the legislators contacted, or attach copy of cover
 5 letter sent to legislators.)

6 _____
 7 Name
 8 Title

9 **1400.2570 RECOMMENDED NOTICE OF INTENT TO ADOPT EXPEDITED RULE**
 10 **WITHOUT A PUBLIC HEARING.**

11 Minnesota Department of _____

12
 13 NOTICE OF INTENT TO ADOPT EXPEDITED RULES WITHOUT A PUBLIC
 14 HEARING

15
 16 Proposed (Amendment to) (Repeal of) Rule Governing _____ (topic), Minnesota
 17 Rules _____ (citation to rules).

18
 19 **Introduction.** The _____ (agency name) intends to adopt rules under the
 20 expedited rulemaking process set forth in the rules of the Office of Administrative
 21 Hearings, part 1400.2410, and the Administrative Procedure Act, Minnesota Statutes,
 22 section 14.389. You may submit written comments on the proposed expedited rules until
 23 _____ (date).

24 **Agency Contact Person.** Comments or questions on the rule must be submitted to:
 25 _____ (name, agency, address, telephone number, and fax
 26 number [optional]). (You may submit e-mail comments, questions, or requests for a
 27 public hearing to: _____ (e-mail address)) [optional].

1 **Subject of Expedited Rule and Statutory Authority.** The proposed expedited rule is
2 about _____ (subject of rule and, if applicable, that an entire rule is being
3 repealed and a citation to the repealed rule). The statutory authority to adopt this rule is
4 (citation to specific statutory authority). The statutory authority to adopt this rule under
5 the expedited rulemaking process is _____ (citation to statutory authority to
6 adopt rules under Minnesota Statutes, section 14.389). A copy of the proposed rule is
7 published in the State Register and attached to this notice as mailed. (If the proposed
8 rule is not attached to the mailed notice, then this notice must include an ~~informative~~
9 ~~statement describing the nature and effect of the proposed expedited rule~~ easily
10 readable and understandable description of the rule's nature and effect and include the
11 announcement that a free copy of the rule is available upon request from the agency
12 contact person listed above.) The proposed expedited rule may be viewed at:
13 _____ (applicable Web site address) [optional].

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

22 (If the agency is accepting requests for a public hearing, the following paragraph
23 must be included.)

24 **Request for a Hearing.** In addition to submitting comments, you may also request
25 that a hearing be held on the rule. Your request for a public hearing must be in writing
26 and must be received by the agency contact person by _____ (time) on _____
27 (date). Your written request for a public hearing must include your name and address.

1 You must identify the portion of the proposed rule to which you object or state that you
2 oppose the entire rule. Any request that does not comply with these requirements is not
3 valid and cannot be counted by the agency for determining whether a public hearing
4 must be held. You are also encouraged to state the reason for the request and any
5 changes you want made to the proposed rule.

6 (If the agency is accepting requests for a public hearing, the following paragraph
7 must be included.)

8 **Withdrawal of Requests.** If 100 or more persons submit a valid written request for a
9 hearing, a public hearing will be held unless a sufficient number withdraw their
10 requests in writing. If enough requests for hearing are withdrawn to reduce the number
11 below 100, the agency must give written notice of this to all persons who requested a
12 hearing, explain the actions the agency took to effect the withdrawal, and ask for written
13 comments on this action. If a public hearing is required, the agency will follow the
14 procedures in Minnesota Statutes, sections 14.131 to 14.20.

15 **Modifications.** The agency may modify the proposed expedited rule if the
16 modifications do not make the rule substantially different as defined in Minnesota
17 Statutes, section 14.05, subdivision 2, paragraphs (b) and (c), unless the procedure under
18 part 1400.2110 has been followed. If the final rule is identical to the rule originally
19 published in the State Register, the agency will publish a notice of adoption in the State
20 Register. If the final rule is different from the rule originally published in the State
21 Register, the agency must publish a copy of the changes in the State Register. If the
22 proposed expedited rule affects you in any way, you are encouraged to participate in
23 the rulemaking process.

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

25 **Adoption and Review of Expedited Rule.** (If no hearing is required, the) or (The)
26 agency may adopt the rules at the end of the comment period. The rules and supporting

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

6 Dated: _____

_____ Name
 _____ Title

7
8
9 **1400.5010 SCOPE.**

10 The procedures in parts 1400.5010 to 1400.8400 govern all contested cases conducted
 11 by the office under Minnesota Statutes, chapter 14.

12 **1400.5100 DEFINITIONS.**

13 Subpart 1. **Administrative law judge or judge.** "Administrative law judge" or "judge"
 14 means the person or persons assigned by the chief administrative law judge pursuant to
 15 Minnesota Statutes, section 14.50, to hear the contested case.

16 [For text of subps 2 and 3, see M.R.]

17 Subp. 3a. **Filing.** "Filing" means transmission of a document to the Office of
 18 Administrative Hearings by mail, delivery, fax, or licensed overnight express mail
 19 service.

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

21 Subp. 8. **Person.** "Person" means any individual, business, nonprofit association or
 22 society, or governmental entity.

23 Subp. 9. **Service; serve.** "Service" or "serve" means personal service or, unless
 24 otherwise provided by law, service by first class United States mail or a licensed
 25 overnight express mail service.

26 **1400.5300 REQUEST FOR ADMINISTRATIVE LAW JUDGE.**

27 Before issuing a notice of and order for hearing, an agency must first file with the

1400.5300

1 docket coordinator a request for assignment of an administrative law judge. The request
2 must include a proposed time, date, and place for the hearing or prehearing conference.

3 In proposing a hearing location, the requesting agency must take into account the
4 location of known parties, witnesses, and other participants so as to maximize
5 convenience and minimize costs.

6 **1400.5400 ASSIGNMENT OF ADMINISTRATIVE LAW JUDGE.**

7 Within ten days of the receipt of a request pursuant to part 1400.5300, the chief judge
8 shall assign a judge to hear the case and set the time, date, and place for hearing or
9 prehearing conference, taking into account the agency's request. The agency shall issue
10 the notice of and order for hearing, unless the substantive law requires it to be issued
11 otherwise.

12 **1400.5500 DUTIES OF ADMINISTRATIVE LAW JUDGE.**

13 Consistent with law, the judge shall perform the following duties:

14 [For text of items A to G, see M.R.]

15 H. examine witnesses as necessary to make a complete record;

16 [For text of items I to L, see M.R.]

17 M. grant or deny a request to substitute initials or numbers for proper names in the
18 hearing record or in findings of fact, conclusions, and recommendations or order;

19 N. appoint an interpreter where necessary to provide a fair hearing;

20 O. set a reasonable limit on the time allowed for testimony after considering the
21 requests of the parties;

22 P. change the location of the hearing based upon the request of a party where
23 necessary to provide a fair hearing;

24 Q. do all things necessary and proper to the performance of the foregoing; and

25 R. in his or her discretion, perform such other duties as may be delegated by the
26 agency ordering the hearing.

1 **1400.5550 SERVICE AND FILING PROCEDURE.**

2 Subpart 1. **Certificate of service.** A certificate of service must be made by the person
3 making the service. A certificate of service must bear the ~~signature~~ name of the person
4 certifying that service has been made, but need not be signed or notarized.

5 Subp. 2. **Service by mail.** Service by mail or licensed overnight express mail service is
6 ~~complete~~ effective upon placing the item to be served in the mail or delivering it to the
7 authorized agent of the express mail service. Postage must be prepaid. Mail to a person
8 other than a state agency shall be addressed to the last known address of the person.
9 Agencies of the state of Minnesota may also deposit the document with the ~~Central~~
10 ~~Mailing Section, Publications Division, Department of Administration~~ state of
11 Minnesota's central mail system for United States mail.

12 Subp. 3. **Personal service.** Personal service may be accomplished by either delivering
13 the document to the person or by leaving the document at the person's home or place of
14 business with someone of suitable age and discretion who resides in the same house or
15 who is located at the same business address as the person to be served.

16 Subp. 4. **Service upon a confined person.** If a person is confined to a federal or state
17 institution, a copy of the document must also be served upon the chief executive officer
18 of the institution.

19 Subp. 5. **Filing by facsimile and other means.** Any paper relating to hearings
20 conducted by an administrative law judge under Minnesota Statutes, chapter 14, may be
21 filed with the office by fax transmission. Filings are effective on the date that the office
22 receives the fax transmission if the transmission is begun before 4:30 p.m. on that date.
23 The filing of a fax has the same force and effect as the filing of the original document.
24 Filings made by other means described in part 1400.5100, subpart 3a, are effective on the
25 date the office receives the filing.

26 **1400.5600 NOTICE AND ORDER FOR HEARING.**

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

2 Subp. 2. **Contents of notice and order.** Unless otherwise provided by law, a notice of
3 and order for hearing, which shall be a single document, shall be served upon all
4 parties, shall be filed with the office and shall contain, among other things, the
5 following:

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

7 F. A citation to parts 1400.5100 to 1400.8400, to any applicable procedural rules of
8 the agency, and to the contested case provisions of Minnesota Statutes, chapter 14, and
9 notification of how copies may be obtained in print or online;

10 [For text of items G to K, see M.R.]

11 L. A statement advising existing parties that failure to appear at a prehearing
12 conference, settlement conference, or the hearing, or failure to comply with any order of
13 the judge may result in the allegations of the notice of and order for hearing being taken
14 as true, or the issues set out being deemed proved, and a statement that explains the
15 possible results of the allegations being taken as true or the issues proved;

16 M. A statement advising the parties that state agencies are required by law to keep
17 some data not public, that parties are required to advise the judge if not public data is
18 offered into the record, and that if not public data is admitted into evidence it may
19 become public unless a party objects and asks for relief under Minnesota Statutes,
20 sections 14.60, subdivision 2;

21 N. A statement advising the parties and counsel that the office conducts contested
22 case proceedings in accordance with the Minnesota Rules of Professional Conduct and
23 the Professionalism Aspirations adopted by the Minnesota State Bar Association;

24 O. Notification that the agency will, upon request, make an accommodation so that
25 the hearing is accessible and will appoint a qualified interpreter if necessary; and

26 P. A statement advising the parties that if an interpreter is needed the judge must
27 be promptly notified.

1 Subp. 3. **Service.** Unless otherwise provided by law, the notice of and order for
2 hearing shall be served and filed not less than 30 days prior to the hearing. Provided,
3 however, that a shorter time may be allowed, where it can be shown to the chief judge
4 that a shorter time is in the public interest and that interested persons are not likely to be
5 prejudiced.

6 Subp. 4. [See repealer.]

7 Subp. 5. **Amendment.** At any time prior to the start of the evidentiary hearing, the
8 agency may file and serve an amended notice of and order for hearing, provided that,
9 should the amended notice and order raise new issues or allegations, the parties shall
10 have a reasonable time to prepare to meet the new issues or allegations if requested.
11 Amendments sought after the start of the hearing must be approved by the judge.

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

13 **1400.5700 NOTICE OF APPEARANCE.**

14 Each party intending to appear at a contested case hearing shall file with the judge
15 and serve upon all other known parties a notice of appearance which shall advise the
16 judge of the party's intent to appear and shall indicate the title of the case, the agency
17 ordering the hearing, the party's current address and telephone number, and the name,
18 office address, and telephone number of the party's attorney or other representative.
19 The notice of appearance shall be filed and served within 20 days of the date of service
20 of the notice of and order for hearing, except that, where the hearing or prehearing
21 conference date is less than 20 days from the commencement of the contested case, the
22 notice of appearance shall be filed as soon as possible. The failure to file and serve a
23 notice may, in the discretion of the judge, result in a continuance of the hearing if the
24 party failing to file appears at the hearing. A notice of appearance form shall be
25 included with the notice of and order for hearing for use by the party served. After an
26 attorney has filed a notice of appearance, withdrawal is effective only if a notice of

1 withdrawal is promptly served on all parties and filed with the judge. The notice of
2 withdrawal must include the address and telephone number of the party. Withdrawal
3 of counsel does not create any right to a continuance.

4 **1400.5800 RIGHT TO COUNSEL.**

5 Parties may be represented by an attorney throughout the proceedings in a contested
6 case, by themselves, or by a person of their choice if not otherwise prohibited as the
7 unauthorized practice of law. Persons appearing in contested case proceedings in a
8 representative capacity must conform to the standards of professional conduct required
9 of attorneys before the courts of Minnesota. If any representative fails to conform to
10 these standards, the judge may exclude the person from the proceeding.

11 **1400.5900 CONSENT ORDER, SETTLEMENT, OR STIPULATION.**

12 Informal disposition may be made of any contested case or any issue therein by
13 stipulation, agreed settlement, or consent order at any point in the proceedings. Parties
14 may enter into these agreements on their own or may utilize the mediation procedures
15 in part 1400.5950 or the settlement conference procedures in part 1400.6550. The parties
16 must promptly notify the judge in writing of a settlement so that the office file can be
17 closed.

18 **1400.6200 INTERVENTION IN PROCEEDINGS AS PARTY.**

19 [For text of subps 1 to 2a, see M.R.]

20 Subp. 3. **Order.** The judge shall allow intervention upon a proper showing pursuant
21 to subpart 1 unless the judge finds that the petitioner's interest is adequately
22 represented by one or more parties participating in the case. An order allowing
23 intervention shall specify the extent of participation permitted the petitioner and shall
24 state the judge's reasons. A petitioner may be allowed to:

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

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

1 **1400.6400 ADMINISTRATIVE LAW JUDGE DISQUALIFICATION.**

2 The judge shall withdraw from participation in a contested case at any time if he or
3 she deems himself or herself disqualified for any reason. Upon the filing in good faith
4 by a party of an affidavit of prejudice, the chief judge shall determine the matter as a
5 part of the record provided the affidavit shall be filed no later than five days prior to the
6 date set for hearing. A judge must be removed upon an affirmative showing of
7 prejudice or bias. A judge may not be removed merely because of rulings on prior cases.

8 **1400.6500 PREHEARING CONFERENCE.**

9 Subpart 1. **Purpose.** The purpose of the prehearing conference is to simplify the issues
10 to be determined, to consider amendment of the agency's order if necessary, to obtain
11 stipulations in regard to foundation for testimony or exhibits, to obtain stipulations of
12 agreement on nondisputed facts or the application of particular laws, to consider the
13 proposed witnesses for each party, to consider how the hearing will be recorded and
14 whether a transcript will be prepared, to consider whether an interpreter or other
15 accommodation is needed, to identify and exchange documentary evidence intended to
16 be introduced at the hearing, to determine deadlines for the completion of any
17 discovery, to consider a reasonable limit on the time allowed for presenting evidence, to
18 establish hearing dates and locations if not previously set, to determine whether the
19 issues in the case are susceptible to mediation, to consider such other matters that may
20 be necessary or advisable and, if possible, to reach a settlement without the necessity for
21 further hearing.

22 Subp. 2. **Procedure.** Upon the request of any party or upon his or her own motion, the
23 judge may, in his or her discretion, hold a prehearing conference prior to each contested
24 case hearing. A prehearing conference may be held by telephone. The judge may require
25 the parties to file a prehearing statement prior to the prehearing conference which shall
26 contain such items as the judge deems necessary to promote a useful prehearing
27 conference. A prehearing conference shall be an informal proceeding conducted

1400.6500

1 expeditiously by the judge. Agreements on the simplification of issues, amendments,
2 stipulations, or other matters may be entered on the record or may be made the subject
3 of an order by the judge.

4 **1400.6600 MOTIONS.**

5 Any application to the judge for an order shall be by motion which, unless made
6 during a hearing, shall be made in writing, shall state with particularity the grounds
7 therefor, and shall set forth the relief or order sought. Motions provided for in parts
8 1400.5100 to 1400.8400 shall be served on all parties, the agency, if it is not a party, and
9 the judge. The written motion shall advise other parties that should they wish to contest
10 the motion they must file a written response with the judge and serve copies on all
11 parties, within ten working days after it is received. No memorandum of law submitted
12 in connection with a motion may exceed 25 pages, except with the permission of the
13 judge. If any party desires a hearing on the motion, they shall make a request for a
14 hearing at the time of the submission of their motion or response. A response shall set
15 forth the nonmoving party's objections. A hearing on a motion will be ordered by the
16 judge only if it is determined that a hearing is necessary to the development of a full and
17 complete record on which a proper decision can be made. Motions may be heard by
18 telephone. All orders on such motions, other than those made during the course of the
19 hearing, shall be in writing and shall be served upon all parties of record and the agency
20 if it is not a party. In ruling on motions where parts 1400.5100 to 1400.8400 are silent, the
21 judge shall apply the Rules of Civil Procedure for the District Court for Minnesota to the
22 extent that it is determined appropriate in order to promote a fair and expeditious
23 proceeding.

24 **1400.6700 DISCOVERY.**

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

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

2 C. All written exhibits to be introduced at the hearing. The exhibits need not be
3 produced until one week before the hearing unless otherwise ordered.

4 D. Any party unreasonably failing upon demand to make the disclosure required
5 by this subpart may, in the discretion of the judge, be foreclosed from presenting any
6 evidence at the hearing through witnesses or exhibits not disclosed or through witnesses
7 whose statements are not disclosed.

8 [For text of subps 2 and 3, see M.R.]

9 Subp. 4. **Protective orders.** The judge may issue a protective order as justice requires
10 to protect a party or person from annoyance, embarrassment, oppression, or undue
11 burden or expense due to a discovery request. When a party is asked to reveal material
12 considered to be proprietary information or trade secrets, or not public data, that party
13 may bring the matter to the attention of the judge, who shall make such protective
14 orders as are reasonable and necessary or as otherwise provided by law.

15 [For text of subp 5, see M.R.]

16 **1400.6950 EXCHANGE OF WITNESS LISTS AND EXHIBITS.**

17 Subpart 1. **Order.** Prior to the hearing the judge may, upon a party's request or at the
18 judge's own motion, order the parties by a date certain to:

19 A. exchange a list of all witnesses to be called at the hearing. The list must include
20 the witness' occupation and address; and

21 B. exchange all written exhibits to be offered at the hearing.

22 Subp. 2. **Objection to foundation.** Any party objecting to the foundation for any
23 written exhibit received under subpart 1 must notify both the offering party and the
24 judge in writing at least two working days before the hearing or the foundation
25 objection is waived.

1 **1400.7100 RIGHTS AND RESPONSIBILITIES OF PARTIES.**

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

3 Subp. 4. **Copies.** The judge shall send copies of all orders or decisions to all parties
4 simultaneously. Any party sending a letter, exhibit, brief, memorandum, subpoena
5 request, or other document to the judge shall simultaneously send a copy to all other
6 parties.

7 [For text of subp 5, see M.R.]

8 Subp. 6. **Communication with judge.** No party or attorney may communicate with
9 the judge on the merits of the case unless all parties have the opportunity to participate.

10 **1400.7400 HEARING RECORD.**

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

12 Subp. 2. **Transcript.** The verbatim record shall be transcribed if requested by the
13 agency, a party, or in the discretion of the chief judge. The agency or party requesting a
14 transcript is responsible for the cost. The parties may agree to divide the cost. When the
15 chief administrative law judge requests a transcript the agency is responsible for the
16 cost.

17 **1400.7700 ADMINISTRATIVE LAW JUDGE'S CONDUCT.**

18 Subpart 1. **Communication with parties.** The judge shall not communicate, directly
19 or indirectly, in connection with any issue of fact or law with any person or party
20 including the agency concerning any pending case, except upon notice and opportunity
21 for all parties to participate. When these rules authorize communications contrary to
22 this part, the communications shall be limited to only those matters permitted by these
23 rules. The judge may respond to questions relating solely to procedures for the hearing
24 without violating this part.

25 Subp. 2. **Ex parte communication.** Where circumstances require, ex parte
26 communications for scheduling, administrative purposes, or emergencies that do not
27 deal with substantive matters or issues on the merits are authorized, provided;

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1 A. the judge reasonably believes that no party will gain a procedural or tactical
2 advantage as a result of the ex parte communication; and

3 B. the judge makes provisions promptly to notify all other parties of the substance
4 of the ex parte communication and allows an opportunity to respond.

5 Subp. 3. **Other communication.** The administrative law judge may:

6 A. obtain the advice of a disinterested expert on the law applicable to a proceeding
7 before the judge if the judge gives prior notice to the parties of the person to be
8 consulted and an opportunity to object. If the advice is obtained, the judge shall notify
9 the parties of the substance of the advice and afford the parties a reasonable opportunity
10 to respond;

11 B. consult with other judges and with office personnel whose function is to aid the
12 judge in carrying out the judge's adjudicative responsibilities;

13 C. if the parties consent, confer separately with the parties and/or their
14 representatives in an effort to mediate or settle matters pending before the judge, subject
15 to part 1400.5950, subpart 7; and

16 D. initiate or consider any ex parte communication when expressly authorized by
17 law to do so.

18 Subp. 4. **Code of conduct.** Administrative law judges are subject to the provisions of
19 the Code of Judicial Conduct.

20 **1400.7800 CONDUCT OF HEARING.**

21 In the absence of a specific provision mandating or permitting a closed hearing, all
22 contested case hearings are open to the public. Unless the judge determines that the
23 public interest will be equally served otherwise, the hearing shall be conducted
24 substantially in the following manner:

25 A. The judge shall open the hearing by reading the title of the case, asking the

1 parties or counsel to note their appearances, and explaining the hearing procedure to
2 unrepresented parties.

3 B. After opening the hearing, the judge shall, unless all parties are represented by
4 counsel or are otherwise familiar with the procedures, state the procedural rules for the
5 hearing including the following:

6 (1) All parties may present evidence and argument with respect to the issues
7 and cross-examine witnesses.

8 [For text of subitems (2) and (3), see M.R.]

9 [For text of items C to G, see M.R.]

10 H. When all parties and witnesses have been heard, opportunity shall be offered to
11 present oral final argument, in a sequence determined by the judge. Final argument
12 may, in the discretion of the judge, be in the form of written memoranda or oral
13 argument, or both. Final argument need not be recorded, in the discretion of the judge.
14 Written memoranda may, in the discretion of the judge, be submitted simultaneously or
15 sequentially and within time periods as the judge may prescribe. The judge may limit
16 the length of written memoranda.

17 [For text of items I and J, see M.R.]

18 **1400.8401 EXPENSES AND ATTORNEY FEES.**

19 Subpart 1. [See repealer.]

20 Subp. 2. [See repealer.]

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

23 ~~A. that the party is a prevailing party and is eligible to receive an award under this~~
24 ~~part. The applicant must show that it meets all conditions of eligibility set out in~~
25 ~~Minnesota Statutes, sections 15.471 to 15.474 and this part;~~

1 ~~(1) In determining who is an eligible party, the judge shall consider the~~
2 ~~provisions of Minnesota Statutes, section 15.471, subdivision 6, and the following:~~

3 ~~(a) The annual revenues shall mean the party's annual gross revenue.~~

4 ~~(b) The number of employees of an applicant includes all persons who~~
5 ~~regularly perform services for remuneration for the applicant under the applicant's~~
6 ~~direction and control. Part-time employees shall be included on a proportional basis.~~

7 ~~(c) An applicant who appears pro se in a proceeding is ineligible for an award~~
8 ~~of attorney fees. However, eligibility for other expenses is not affected by pro se~~
9 ~~representation.~~

10 ~~(d) An applicant who appears individually as a partner, officer, shareholder,~~
11 ~~member, or owner of an entity eligible under the provisions of Minnesota Statutes,~~
12 ~~section 3.761, subdivision 6, paragraph (a), clauses (1) and (2) may only assert a claim to~~
13 ~~the extent the entity which they own or control can assert such claim and may not assert~~
14 ~~a claim if the issues on which the applicant prevails are related primarily to personal~~
15 ~~interests rather than to business interests.~~

16 ~~(2) In determining whether an applicant is a prevailing party, the following~~
17 ~~standards shall be applied:~~

18 ~~(a) In order to be eligible for an award, the applicant need not have succeeded~~
19 ~~on every issue raised but must have at least been successful on the central issue or~~
20 ~~received substantially the relief requested.~~

21 ~~(b) No presumption arises that the agency's position was not substantially~~
22 ~~justified simply because the agency did not prevail.~~

23 ~~B. an itemization of the amount of fees and expenses sought. This shall include full~~
24 ~~documentation of fees and expenses, including an affidavit from each attorney, agent, or~~
25 ~~expert witness representing or appearing on behalf of the applicant stating the actual~~
26 ~~time expended and the rate at which fees have been computed and describing the~~
27 ~~specific services performed.~~

1 The affidavit shall itemize in detail the services performed by the date, number of
2 hours per date, and the services performed during those hours. In order to establish the
3 hourly rate, the affidavit shall state the hourly rate which is billed and paid by the
4 majority of clients for similar services during the relevant time periods;

5 The documentation shall also include a description of any expenses for which
6 reimbursement is sought and a statement of the amounts paid and payable by the
7 applicant or by any other person or entity for the services provided;

8 ~~C. B.~~ a statement that explains with specificity how or why the position of the state
9 agency was not substantially justified. ~~No presumption arises that the agency's position~~
10 ~~was not substantially justified simply because the agency did not prevail;~~

11 ~~D. C.~~ if the claim for attorney's fees exceeds \$125 per hour, a statement of facts
12 showing that the excess award qualifies under Minnesota Statutes, section 15.471,
13 subdivision 5, paragraph (c); and

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

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

19 Subp. 4. **Response or objection to application.** The state agency or any other party
20 may respond or object to all or any part of the application for expenses and fees. A
21 response or objection must be sworn to and filed with the judge within 14 days
22 following the service of the application and must show:

23 [For text of item A, see M.R.]

24 B. in detail any objections to the award requested and identify the facts relied on to
25 support the objection. If the response or objection is based on any alleged facts not
26 already reflected in the record of the proceeding, the response or objection shall include

1 either a supporting affidavit or affidavits or request for further proceedings under
2 subpart 5b; and

3 [For text of item C, see M.R.]

4 Subp. 5a. **Settlement.** A prevailing party and the agency may agree on a proposed
5 settlement of an award before final action on the application. If a settlement occurs, a
6 stipulation for settlement shall be filed with the judge together with a proposed order
7 which shall be prepared for the judge's signature. Upon receipt of a stipulation for
8 settlement and proposed order, the judge shall issue an order, serve all parties and the
9 chief administrative law judge with a copy, and send the original to the agency for
10 inclusion with the record of the contested case which gave rise to the application.

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

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

13 C. In the event that an evidentiary hearing is required or permitted by the judge,
14 the hearing and any related filings or other action required or permitted shall be
15 conducted under parts 1400.8505 to 1400.8612.

16 Subp. 6. [See repealer.]

17 Subp. 7. **Decision of the administrative law judge.** Within 30 days following the
18 close of the record in the proceeding for the award of expenses and attorney's fees, the
19 administrative law judge shall issue a written order which shall also contain findings
20 and conclusions on each of the following which are relevant to the decision:

21 A. the applicant's status as a prevailing party;

22 B. the applicant's qualification as a party under Minnesota Statutes, section 15.471,
23 subdivision 6;

24 C. whether the agency's position as a party to the proceeding was substantially
25 justified;

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

2 **1400.8505 SCOPE.**

3 Parts 1400.8505 to 1400.8612 govern hearings based on the Revenue Recapture Act,
4 Minnesota Statutes, sections 114C.23; 115.076; 116.072, subdivision 6; 144.991; and
5 270A.01 to 270A.12; and for other hearings as directed by statute. In addition, parts
6 1400.8505 to 1400.8612 may be used for any other hearings conducted by the state Office
7 of Administrative Hearings if all parties to a particular hearing and the administrative
8 law judge agree to use them.

9 **1400.8510 DEFINITIONS.**

10 Subpart 1. **Agency.** "Agency" means the public agency for whom the hearing is
11 conducted.

12 Subp. 2. [See repealer.]

13 Subp. 3. **Party.** "Party" means each person named as a party by the agency in the
14 notice of hearing or any other persons granted permission to intervene pursuant to part
15 1400.8570. "Party" includes the agency except when the agency participates in the
16 hearing in a neutral or quasi-judicial capacity only.

17 Subp. 3a. **Person.** "Person" means any individual, business, nonprofit association or
18 society, or governmental entity.

19 Subp. 4. **Service; serve.** "Service" or "serve" means personal service or, unless
20 otherwise provided by law, service by first class United States mail or a licensed express
21 mail service.

22 **1400.8530 WAIVER.**

23 Upon request of all parties, the administrative law judge shall waive or modify any of
24 the procedures in parts 1400.8505 to 1400.8612, provided that the waiver or modification
25 does not conflict with any provision of Minnesota Statutes, sections 14.48 to 14.69, or
26 statutes conferring jurisdiction on the Office of Administrative Hearings.

1 **1400.8540 ADMINISTRATIVE LAW JUDGE ASSIGNMENT.**

2 Subpart 1. **Request for assignment.** Any agency may order a Revenue Recapture Act
3 hearing by filing with the docket coordinator a request for assignment of an
4 administrative law judge. The request must include a proposed date, time, and place for
5 the hearing or prehearing conference.

6 In proposing a hearing location, the requesting agency must take into account the
7 location of known parties, witnesses, and other participants so as to maximize
8 convenience and minimize costs.

9 If requested by the chief administrative law judge or designee, the agency shall file a
10 copy of the notice of hearing proposed to be issued.

11 Subp. 2. **Assignment.** Within ten days of the receipt of a request, the chief
12 administrative law judge or designee shall assign an administrative law judge to hear
13 the case and set the time, date, and place for hearing or prehearing conference, taking
14 into account the agency's request.

15 **1400.8545 SERVICE AND FILING PROCEDURE.**

16 Subpart 1. **Certificate of service.** A certificate of service must be made by the person
17 making the service. A certificate of service must bear the name of the person certifying
18 that service has been made, but need not be signed or notarized.

19 Subp. 2. **Service by mail.** Service by mail or licensed overnight express mail service is
20 complete effective upon placing the item to be served in the mail or delivering it to the
21 authorized agent of the express mail service. Postage must be prepaid. Mail to a person
22 other than a state agency shall be addressed to the last known address of the person.
23 Agencies of the state of Minnesota may also deposit the document with the ~~Central~~
24 ~~Mailing Section, Publications Division, Department of Administration~~ state of
25 Minnesota's central mail system for United States mail.

26 Subp. 2- ~~3.~~ **Personal service.** Personal service may be accomplished by either

1 delivering the document to the person or by leaving the document at the person's home
2 or place of business with someone of suitable age and discretion who resides in the
3 same house or who is located at the same business address as the person to be served.

4 Subp. ~~3~~. **4. Service upon a confined person.** If a person is confined to a federal or
5 state institution, a copy of the document must also be served upon the chief executive
6 officer of the institution.

7 Subp. ~~4~~. **5. Filing by facsimile and other means.** Any paper relating to hearings
8 conducted by an administrative law judge under these rules may be filed with the office
9 by fax transmission. Filings are effective on the date that the office receives the fax
10 transmission if the transmission is begun before 4:30 p.m. on that date. The filing of a fax
11 has the same force and effect as the filing of the original document. Filings made by
12 other means are effective on the date the office receives the filing.

13 **1400.8550 NOTICE OF HEARING.**

14 The agency shall issue the notice of hearing. The notice of hearing shall be served at
15 least 20 days before the hearing. The notice of hearing shall be served upon all parties.
16 The notice shall be worded in clear, nontechnical language and shall contain, at a
17 minimum, the following:

18 A. the time, date, and place for the hearing or prehearing conference;

19 B. the name, address, and telephone number of the administrative law judge;

20 C. a statement of the allegations or issues to be determined at the hearing, together
21 with a citation to any relevant statutes and rules. Each alleged violation of statute or rule
22 shall be noted;

23 D. a citation to the statutory authority to hold the hearing and to take the action
24 proposed;

25 E. a citation to these rules, and notification of how copies may be obtained in print
26 or online;

1 F. a brief description of the procedure to be followed at the hearing;

2 G. the name, address, and telephone number of the agency representative to be
3 contacted to discuss informal disposition of the dispute, along with an explanation of
4 the types of informal disposition that the agency might consider;

5 [For text of item H, see M.R.]

6 I. notification that the agency will, upon request, make an accommodation so that
7 the hearing location is accessible and will appoint a qualified interpreter if necessary;

8 J. a statement advising the parties to bring to the hearing all documents, records,
9 and witnesses they need to present their position; in addition, a statement that
10 subpoenas may be available to compel the attendance of witnesses or the production of
11 documents and a reference to part 1400.8601 relating to subpoenas;

12 K. a statement advising parties that failure to appear at the hearing or prehearing
13 conference will result in the allegations of the notice being taken as true, and a statement
14 which explains the possible results if the allegations are taken as true; and

15 L. a statement advising the parties that state agencies are required by law to keep
16 some data not public, that parties are required to advise the judge if not public data is
17 offered into the record, and that if not public data is admitted into evidence it may
18 become public unless a party objects and asks for relief under Minnesota Statutes,
19 section 14.60, subdivision 2.

20 **1400.8560 DEFAULT.**

21 A default occurs when a party fails to appear without the prior consent of the judge
22 at a prehearing conference, settlement conference, or a hearing. If the agency appears at
23 a hearing but the party against whom the agency intends to take action does not, the
24 allegations in the notice of hearing shall be taken as true and deemed proved without
25 further evidence. If the party against whom the agency intends to take action appears at
26 a hearing, but the agency fails to appear, the administrative law judge shall recommend

1 that the hearing be dismissed with prejudice. If neither the agency nor any other party
2 appear at a hearing, the administrative law judge shall recommend that the case be
3 dismissed with prejudice.

4 **1400.8580 PREHEARING CONFERENCE.**

5 The administrative law judge shall hold a prehearing conference prior to the hearing
6 upon request of any party or if the judge determines that a prehearing conference is
7 necessary.

8 The purpose of the prehearing conference is to simplify the issues to be determined at
9 the hearing; to consider amendment of the agency's notice if necessary; to obtain
10 agreements about uncontested facts or admissibility of testimony or exhibits; to
11 determine the identity and number of proposed witnesses for each party; to consider
12 such other matters that may be necessary or advisable; to set the time, date, and place
13 for hearing if not previously set; to identify and exchange documentary evidence; to
14 consider whether an interpreter or other accommodation is needed; and, if possible, to
15 reach a settlement without the necessity for further hearing.

16 A prehearing conference shall be an informal proceeding conducted expeditiously by
17 the administrative law judge. It may be conducted by telephone. Agreements on the
18 simplification of issues, uncontested facts, admissibility of evidence, or other matters
19 shall be either entered on the record at the hearing or included in a written order by the
20 administrative law judge.

21 **1400.8590 PREHEARING MOTIONS.**

22 A party desiring the administrative law judge to issue an order before the hearing or
23 during a continuance in the hearing (other than a request for a continuance or a
24 subpoena) shall make a request to the administrative law judge in writing. The request
25 shall state, in detail, the need for the order and what is being requested. A copy of the
26 request shall be served upon all parties. A party who opposes the granting of a motion

1 should notify the administrative law judge as soon as possible. The administrative law
2 judge shall notify all parties of the order orally or in writing.

3 **1400.8600 PREHEARING DISCOVERY.**

4 A party may demand that any other party disclose the names and addresses of all
5 witnesses that the other party intends to have testify at the hearing. The demand shall
6 be in writing and shall be directed to the party or the party's attorney. Responses to the
7 demand shall be served within ten days of receipt of the demand. Any witnesses
8 unknown at the time of the disclosure shall be disclosed as soon as they become known.
9 Any party that unreasonably fails to make a requested disclosure shall not be allowed to
10 call the witness at hearing.

11 **1400.8601 SUBPOENAS.**

12 Subpart 1. **Requests.** A party may obtain a subpoena to compel the attendance of a
13 witness or the production of documents by submitting a written request to the
14 administrative law judge. The request shall indicate the name and address of the person
15 upon whom the subpoena will be served; a brief statement of the potential relevance of
16 the testimony or documents sought; and, if the subpoena request is for the production of
17 documents, the requested documents should be identified with specificity.

18 Subp. 2. **Service.** Subpoenas shall be served personally in the manner provided in
19 part 1400.8545. They shall not be served by mail. The witness fees applicable in the
20 district courts pursuant to Minnesota Statutes, section 357.22 shall apply and shall be
21 paid to the potential witness at the time of service.

22 Subp. 3. **Objection to a subpoena.** Any person served with a subpoena may file an
23 objection to the subpoena with the administrative law judge. The objection shall be filed
24 promptly, and in any event at or before the time specified in the subpoena for
25 compliance. The administrative law judge shall cancel or modify a subpoena that is
26 unreasonable or oppressive, taking into account the issues or amounts in controversy,

1 the costs or other burdens of compliance compared to the value of the testimony or
2 evidence to a party's case, and any alternative methods of obtaining the desired
3 testimony or evidence. Modification may include requiring the party requesting the
4 subpoena to pay reasonable costs of producing documents, books, papers, or other
5 tangible things.

6 **1400.8603 CONDUCT OF HEARING.**

7 The hearing shall be conducted substantially in the following manner:

8 A. The administrative law judge shall open the hearing by reading the title of the
9 case, asking the parties or counsel to note their appearances, and explaining the hearing
10 procedure to unrepresented parties.

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

12 C. The party with the burden of proof shall begin the presentation of evidence
13 unless ordered otherwise. It shall be followed by the other parties in a sequence
14 determined by the administrative law judge.

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

16 G. A party may question an adverse party or any witness identified with an
17 adverse party by leading questions and contradict and impeach that witness on material
18 matters.

19 [For text of item H, see M.R.]

20 **1400.8604 RESPONSIBILITIES AND RIGHTS OF PARTIES.**

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

22 Subp. 3. **Copies.** The administrative law judge shall send copies of all orders or
23 decisions to all parties simultaneously. Any party sending a letter, exhibit, brief,
24 memorandum, or other document to the administrative law judge shall simultaneously
25 send a copy to all other parties, provided, however, that this requirement shall not

1 apply to requests for subpoenas, unless the subpoena requests documents or other
2 discovery.

3 Subp. 4. **Representation by counsel.** A party need not be represented by an attorney
4 but may choose to be represented by an attorney or by any other person. If a party has
5 notified other parties that he/she will be represented by an attorney, all
6 communications shall be directed to that attorney.

7 **1400.8605 RESPONSIBILITIES AND RIGHTS OF NONPARTIES.**

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

9 Subp. 2. **Questioning witnesses.** Generally, nonparties shall not be allowed to
10 question witnesses, provided, however, that the administrative law judge may allow
11 such questioning as is necessary for the development of a full and complete record.

12 **1400.8606 ADMINISTRATIVE LAW JUDGES.**

13 Subpart 1. **Impartiality.** An administrative law judge shall be impartial, objective,
14 and even-handed. If at any time the administrative law judge is unable to conduct any
15 proceeding in an impartial manner, the administrative law judge shall withdraw. Upon
16 the filing in good faith by a party of an affidavit of prejudice, the chief judge shall
17 determine the matter as a part of the record provided the affidavit shall be filed no later
18 than five days prior to the date set for hearing. A judge must be removed upon an
19 affirmative showing of prejudice or bias. A judge may not be removed merely because
20 of rulings on prior cases.

21 Subp. 2. **Communications.** The administrative law judge shall not communicate
22 directly or indirectly with any person or party concerning any issue of fact or law
23 relevant to a pending case except upon notice to all parties and opportunity for them to
24 participate, except that:

25 A. ex parte communication for scheduling, administrative purposes, or
26 emergencies that do not deal with substantive matters or issues on the merits are
27 authorized;

1 B. a judge may consult with other judges and with office personnel in carrying out
2 the judge's adjudicative responsibilities; and

3 C. communication expressly authorized by law is permitted.

4 Subp. 3. **Duties.** Consistent with law and these rules, the administrative law judge
5 shall perform the following duties:

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

7 F. examine witnesses as necessary to make a complete record;

8 G. prepare findings of fact, conclusions, and recommendations;

9 H. make preliminary, interlocutory, or other orders as necessary to assure a fair
10 hearing;

11 I. recommend a summary disposition of the case or a portion of it where there is no
12 genuine issue as to any material fact or recommend dismissal where the case or a
13 portion of it has become moot or for other reasons; and

14 J. do all things necessary and proper to the performance of the foregoing.

15 **1400.8607 RULES OF EVIDENCE.**

16 Subpart 1. **Admissibility.** The administrative law judge shall admit all evidence that
17 logically tends to prove or disprove an important fact, including hearsay, if it is the type
18 of evidence on which reasonable, prudent persons are accustomed to rely in the conduct
19 of their serious affairs. The administrative law judge shall give effect to the rules of
20 privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial, or
21 unduly repetitious shall be excluded.

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

23 **1400.8608 BURDEN OF PROOF.**

24 The party with the burden of proof shall have the burden of supporting its proposed
25 action by a preponderance of the evidence. If another party asserts any affirmative

1 defenses, that party shall have the burden of proving the defense by a preponderance of
2 the evidence.

3 **1400.8609 HEARING RECORD.**

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

5 Subp. 3. **Closing hearing record.** The hearing record of the contested case proceeding
6 shall be closed upon the completion of the testimony, or receipt of the final written
7 memorandum or transcript, if any, or late-filed exhibits which the parties and the
8 administrative law judge have agreed should be received into the record, whichever
9 occurs latest.

10 Subp. 4. **Transcript.** The audiomagnetic recording of the hearing shall be transcribed
11 if requested by a party or if ordered by the chief administrative law judge. The party
12 requesting a transcript is responsible for the cost. The parties may agree to divide the
13 cost. When the chief administrative law judge requests a transcript, the agency is
14 responsible for the cost.

15 **1400.8610 ADMINISTRATIVE LAW JUDGE'S REPORT.**

16 Following the close of the hearing record, the administrative law judge shall make a
17 report pursuant to Minnesota Statutes, section 14.50, and, upon completion, a copy of
18 the report shall be served upon all parties.

19 **1400.8611 DISRUPTION OF HEARING.**

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

21 Subp. 2. **Recordings.** The official audiomagnetic recording of the hearing shall be
22 made by the administrative law judge. Any party may also record all or part of the
23 proceedings. Nonparties may record all or part of the proceedings unless the
24 administrative law judge determines that such recording is disrupting the hearing. In
25 the event of failure of the official recording equipment, the administrative law judge
26 may direct any person or party to provide the administrative law judge with its original

1 recording or a copy of any recording of the proceeding upon payment of the cost of the
2 recording medium.

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

4 **1400.8612 REHEARING.**

5 Any agency notice of and order for rehearing shall be served on all parties in the
6 same manner prescribed for the notice of and order for hearing, provided that the
7 administrative law judge shall permit service of the notice of and order for rehearing
8 less than 20 days prior to rehearing if the parties agree to such earlier service. The
9 rehearing shall be conducted in the same manner prescribed for a hearing.

10 **REPEALER.** Minnesota Rules, parts 1400.2010, subpart 5; 1400.5200; 1400.5600, subpart
11 4; 1400.8401, subparts 1, 2, and 6; 1400.8510, subpart 2; and 1400.8520, are repealed.

12 **RENUMBERER.** The references to the contested case procedures, Minnesota Rules,
13 parts 1400.5200 to 1400.8500, shall be changed to parts 1400.5010 to 1400.8400 in the
14 following Minnesota Rules, parts: 1525.2360; 4405.0100, subpart 5; 5800.0100, subpart 3;
15 5800.0110, subpart 7; 6301.0800, subpart 3; 7000.1750, subpart 1; 7620.0320, subpart 2;
16 7851.0200, subpart 5; 8052.0400, subpart 4; 9200.5200; 9205.0540, subpart 3; and
17 9575.1150, subpart 7.