


# Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

SEA

# RULE REVIEW CHECKLIST

File No. 1988
DATE RECEIVED 12-31-92
REVIEW DATE 1-11-93
DUE DATE 1-14-93
(DIS)APPROVED 1-11-93
WITHDRAWN _____

Docket No. 05 0009 0050
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 12-31-92
REVISOR (DIS)APPROVED _____
FILED W/SEC. OF STATE 1-11-93
RETURNED TO AGENCY 1-11-93

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✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
1-28-91/8-31-92 Date published in State Register
_____ Comments

N/A Petition for Adoption of a Rule

N/A Board's Authorizing Resolution
_____ Date adopted

✓ Proposed Rule
Yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
14.06; 1992 Minn Laws ch 494 § 9 Statutory Authority
yes Small Business Statement
yes Expenditure of public money statement
yes Signature

✓ Statement of Need and Reasonableness (if applicable)
yes Small Business Statement
yes Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
10/22/92 Dated 30/25 days before adoption
Notice attached — indicates it is attached
Copy of rule or summary attached

✓ Publication in State Register
10/19/92 Date 30/25 days before adoption

N/A ✓ 180-day deadline from:
N/A Effective date of law requiring rule (14.12) (both rules) amendments don't apply
11/21/92 end of comment period (§ 14.26) (rules without hearing)
N/A effective date of statutory authority (§ 14.29) (emergency rules)

N/A Resolution Adopting (Board)
_____ Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
12/30/92 Date

30 recd 7 withdrawn Written Requests, Submissions or Comments

✓ Declaration of Attorney
Marty Cassedy Name of SAAG representing agency

N/A Notice of Submission to Attorney General (if applicable)

N/A Affidavit of Mailing Notice to Attorney General (if applicable)

✓ CRAR - notice - sonar Revisor

STATE OF MINNESOTA

# Office of the Attorney General

TO : PATRICIA NOLTE
Attorney General's Office
Public Finance Division

DATE : January 11, 1993

FROM : JACQELYN E. ALBRIGHT
Special Assistant
Attorney General

PHONE : 297-5932

SUBJECT : In the Matter of the Adopted Rule Relating to Rule Review

The above-referenced rule has been approved as to its legality by the Attorney General on January 11, 1993.

Enclosed is your copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

Enclosures
cc: Martha J. Casserly
William Brown, Chief Judge
MaryAnn Hruby

JEA:jj.rules.bf9

Attorney General

Adopted Permanent Rules Relating to Rule Review

Rules as Adopted

2010.0300 DOCUMENTS NECESSARY FOR REVIEW OF A RULE ADOPTED WITHOUT A PUBLIC HEARING.

To submit a rule adopted without a public hearing to the attorney general for review and approval pursuant to Minnesota Statutes, section 14.26, the agency must submit to the attorney general the following documents:

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

E. The statement of need and reasonableness complying with part 2010.0700 in support of the proposed rule. The statement of need and reasonableness must be prepared before the date that the notice of intent to adopt a rule without a public hearing is published in the State Register and mailed.

F. Evidence that the agency sent a copy of the statement of need and reasonableness to the legislative commission to review administrative rules when it became available to the public as required by Minnesota Statutes, section 14.23. The evidence must be in the form of a copy of the dated correspondence to the legislative commission to review administrative rules or an affidavit of the mailing. For the recommended format of the affidavit, see part 2010.9913.

G. The notice of intent to adopt a rule without a public hearing as mailed. The notice must be mailed at least 33 days before the end of the comment period and must contain the following:

(1) A statement that the agency intends to adopt a rule without a public hearing and is following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28.

(2) A citation to the specific statutory



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authority for the proposed rule.

(3) A statement that the public has 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the proposed rule and that comment is encouraged. The statement must specify the calendar date of the last day of the comment period. In calculating the comment period, the date of publication in the State Register or the date of mailing, whichever is later, is not included. Saturdays, Sundays, and legal holidays are included in the calculation. The last day of the period so calculated is included unless it is a Saturday, Sunday, or legal holiday, in which event, the period runs until the ~~end of the~~ next day which is not a Saturday, Sunday, or legal holiday. The State Register is published on Mondays except when the Monday is a legal holiday in which case it is published on a Tuesday.

(4) A statement that each comment should identify the portion of the proposed rule addressed, the reason for the comment and any change proposed.

(5) A statement that if 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing.

(6) A statement of the manner in which persons may submit comments or requests for a public hearing.

(7) A statement that any person requesting a public hearing must include his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

(8) A statement that if a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

(9) A statement that the proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

(10) A statement that if no hearing is required,



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upon adoption of the rule, the rule and the required supporting documents will be submitted to the attorney general for review as to legality and form to the extent form relates to legality; a statement that any person may request notification of the date of submission to the attorney general and a copy of the attorney general decision; and a statement of the manner in which the request must be made.

(11) If an entire rule is proposed to be repealed, a statement stating that fact and citing the rule to be repealed.

(12) A statement that the proposed rule is attached to the notice; or if the proposed rule is not attached to the notice sent to persons on the agency rulemaking mailing list, a statement describing the nature and effect of the proposed rule and the manner in which a free copy may be requested.

(13) A statement that the statement of need and reasonableness is available to the public and the manner in which that document may be requested.

(14) If required by Minnesota Statutes, section 14.11, subdivision 1, a statement relating to the expenditure of public money by local public bodies.

(15) If the agency elects to comply with Minnesota Statutes, section 14.115, subdivision 4, by following paragraph (a) of the statute, a statement that the proposed rule will have an impact on small businesses and a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons as provided by Minnesota Statutes, section 14.115, subdivision 4, paragraph (a).

(16) Any other notices required by law or rule to be included in the notice of intent to adopt a rule without a public hearing.

(17) The signature of the person authorized to adopt the rule or authorized to sign and give notice of the intent to adopt the rule without a public hearing.



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For the recommended format of the notice, see part 2010.9916.

H. If the proposed rule establishes or adjusts fees, evidence that the agency sent a copy of the notice of intent and the proposed rule to the ~~chairs of the house appropriations committee and senate finance committee~~ appropriate legislative committees before the agency submitted the notice of intent to the State Register as required by Minnesota Statutes, section 16A.128, subdivision 2a. Evidence shall be in the form of the dated correspondence to the chairs or an affidavit of mailing. For the recommended format of the affidavit, see part 2010.9913.

I. If the agency did not publish an appropriate notice of intent to adopt the rule within 180 days after the effective date of the law requiring the rule to be adopted, a copy of the correspondence to the legislative commission to review administrative rules, other appropriate committees of the legislature, and the governor as required by Minnesota Statutes, section 14.12.

J. The affidavit of mailing the notice of intent to adopt a rule without a public hearing. The notice must be mailed at least 33 days before the end of the comment period. The affidavit or affidavits must state that:

(1) the mailing list maintained by the agency pursuant to Minnesota Statutes, sections 14.22 and 14.14, subdivision 1a, is accurate, complete, and current; and

(2) the notice of intent to adopt the rule without a public hearing was mailed to all persons and groups whose names appear on the list.

For the recommended format of the affidavit, see part 2010.9920.

K. A copy or photocopy of the notice of intent to adopt the rule without a public hearing as published in the State Register. The publication date must be at least 30 days before the end of the comment period. The notice as published must contain the statements required by item G.

L. Three copies of the rule as adopted. Any



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modification made to the proposed rule must be reflected on the rule as adopted and be approved as to form by the revisor of statutes.

M. If the agency is a multimember agency as provided in Minnesota Statutes, section 15.0597, subdivision 1a, the certificate of the multimember agency's resolution adopting the rule. The resolution must be adopted at a meeting duly called and attended by a quorum.

The resolution must approve and adopt the rule and authorize a named individual to sign the findings of fact, conclusions, and order adopting the rule and perform the necessary acts to provide that the rule has the force and effect of law. If the multimember agency is so empowered, the resolution may also authorize the named person to modify the rule under stated circumstances or as necessary to obtain the approval of the rule by the attorney general. For the recommended format of the resolution, see part 2010.9925.

N. The findings of fact, conclusions, and order adopting the rule which must contain the following:

(1) a statement that proper notice of intent to adopt a rule without a public hearing was given;

(2) a statement that the statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public;

(3) a statement that all ~~other~~ notice and procedural requirements have been complied with;

(4) a statement that all persons were given the opportunity to submit comment on the proposed rule for 30 days after the notice of intent to adopt a rule without a public hearing was given;

(5) a statement of ~~the number of written letters with comments received,~~ the number of persons that requested a public hearing, the number of persons that requested a public hearing and withdrew their request, and the number of requests



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for notice of submission to the attorney general and whether any written comments on the rule were received;

(6) if any changes were made between the rule as proposed and the rule as adopted, findings of fact and conclusions supporting the reasons for the changes and explaining why the changes do not constitute substantial changes as provided in the attorney general rules, part 2010.1000, item D;

(7) a statement that the rule as adopted is needed and reasonable and that the rule is hereby ordered to be adopted; and

(8) the signature of the person authorized to adopt the rule or authorized to sign the findings of fact, conclusions, and order adopting the rule and the date on which the order is signed.

For the recommended format of the findings of fact, conclusions, and order, see part 2010.9930.

O. All written requests, withdrawals of requests for a hearing, submissions, or comments on the rule received by the agency except requests solely for copies of the rule or of the statement of need and reasonableness.

P. The declaration of the attorney in the attorney general's office who represents the agency. The declaration must state:

(1) that the attorney has examined the rule and the rulemaking record;

(2) that the Administrative Procedure Act and this chapter have been followed with a listing of any exceptions; and

(3) for attorney general billing purposes, the four-digit docket client code is ____. For the recommended format, see part 2010.9935.

Q. If any persons requested to be informed that the rule has been submitted to the attorney general, the notice of submission that was sent to those persons as required by Minnesota Statutes, section 14.26. The notice must be ~~given~~



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mailed on the same day the rule is submitted to the attorney general. The notice must contain the following:

(1) the date of submission of the rule to the attorney general;

(2) if the proposed rule has been modified, the notice must state that fact and must state that a free copy of the rule as modified is available upon request from the agency or that a copy of the rule as modified is enclosed with this notice;

(3) the attorney general rule review time period of 14 calendar days;

(4) a statement that comments may be submitted to the attorney general and that any comments submitted must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule and make a reference to the attorney general standards of review as set forth in part 2010.1000;

(5) the length of the period for submitting comments to the attorney general and the calendar date of the last day of the eight calendar day comment period. In calculating the comment period, the date the documents were submitted to the attorney general is not included. Saturdays, Sundays, and legal holidays are included. The last day of the period so calculated is included unless it is a Saturday, Sunday, or legal holiday, in which event, the period runs until the next day which is not a Saturday, Sunday, or legal holiday;

(6) a statement that upon written request to the attorney general a copy of the attorney general decision will be provided;

(7) the address of the attorney general division where comments and requests must be submitted; and

(8) a statement that any written comments to the attorney general must also be submitted simultaneously to a named person for the agency and the address of that person.

For the recommended format of the statement, see part 2010.9940.



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R. If the agency sent out the notice of submission of the rule to the attorney general as required by Minnesota Statutes, section 14.26, the affidavit of mailing notice of submission of the rule to the attorney general. The affidavit must state that a copy of the notice of submission of the rule to the attorney general was mailed to all persons and associations who requested the notification. For the recommended format of the affidavit, see part 2010.9945.

2010.0400 DOCUMENTS NECESSARY FOR REVIEW OF EMERGENCY RULE.

To submit an emergency rule to the attorney general for review and approval pursuant to Minnesota Statutes, section 14.32, the agency must submit to the attorney general the following documents:

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

E. The notice of intent to adopt the emergency rule as mailed. The notice must be mailed at least 28 days before the end of the comment period and must contain the following:

(1) A statement that the agency intends to adopt the emergency rule following the procedures in the Administrative Procedure Act for adopting emergency rules in Minnesota Statutes, sections 14.29 to 14.36.

(2) A citation to the specific statutory authority to adopt the emergency rule.

(3) A statement that all persons have 25 days after publication, or a longer period of time as specified in the notice, to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. The statement must include the calendar date of the last day of the comment period. In calculating the comment period, the date of the publication in the State Register or the date of mailing, whichever is later, is not included. Saturdays, Sundays, and legal holidays are included in the calculation. The last day of the period so calculated is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the ~~end-of-the~~ next day which is not a Saturday, Sunday, or



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legal holiday. The State Register is published on Mondays except when Monday is a legal holiday in which case it is published on a Tuesday.

(4) A statement of the manner in which persons may submit written comments to the agency.

(5) A statement that the proposed emergency rule is attached to the notice; or, if the proposed rule is not attached to the notice sent to persons on the agency rulemaking mailing list, a statement describing the nature and effect of the proposed rule.

(6) A statement that a free copy of the proposed emergency rule is available upon request from the agency and the manner in which the request may be made.

(7) A statement that the proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed emergency rule as noticed.

(8) A statement that the emergency rule and its supporting documents will be submitted to the attorney general for review as to legality and form to the extent form relates to legality; a statement that any person may request notification of the date of submission to the attorney general; and a statement of the manner in which the request must be made.

(9) A statement of the effective period of the proposed emergency rule in accordance with Minnesota Statutes, section 14.35.

(10) If required by Minnesota Statutes, section 14.11, subdivision 1, a statement relating to the expenditure of public money by local public bodies.

(11) Any other notices required by law or rule to be included in the notice of intent to adopt an emergency rule.

(12) The signature of the person authorized to adopt the emergency rule or authorized to sign and give notice of the intent to adopt the emergency rule.

For the recommended format of the notice, see part 2010.9951.



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F. If the emergency rule establishes or adjusts fees, evidence that the agency sent a copy of the notice of intent and the proposed rule to the ~~chairs of the house appropriations committee and senate finance committee~~ appropriate legislative committees before the agency submitted the notice of intent to the State Register as required by Minnesota Statutes, section 16A.128, subdivision 2a. Evidence shall be in the form of the dated correspondence to the chairs or an affidavit of mailing. For the recommended format of the affidavit, see the second paragraph in part 2010.9913.

G. The affidavit of mailing the notice of intent to adopt the emergency rule. The notice must be mailed at least 28 days before the end of the comment period. The affidavit or affidavits must state that the mailing list maintained by the agency pursuant to Minnesota Statutes, section 14.30 is accurate, complete, and current and that the notice of intent to adopt the emergency rule was mailed to all persons and groups whose names appear on the list. If the person who mailed the notice is not the same person who can attest to the accuracy of the mailing list, separate affidavits signed by the appropriate person must be submitted. For the recommended format of the affidavit, see part 2010.9920.

H. A copy or photocopy of the notice of intent to adopt the emergency rule as published in the State Register. The publication date must be at least 25 days before the end of the comment period. The notice as published must contain the statements required by item E.

I. Three copies of the emergency rule as adopted. Any modifications made to the proposed rule must be reflected on the rule as adopted and be approved as to form by the revisor of statutes.

J. If the agency is a multimember agency as provided in Minnesota Statutes, section 15.0597, subdivision 1a, the certificate of the multimember agency's resolution adopting the emergency rule. The resolution must be adopted at a meeting duly called and attended by a quorum.



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The resolution must approve and adopt the rule and authorize a named individual to sign the findings of fact, conclusions, and order adopting the rule and perform the necessary acts to provide that the emergency rule has force and effect of law. If the multimember agency is so empowered, the resolution may also authorize the named person to modify the rule under stated circumstances or as necessary to obtain approval of the rule by the attorney general. For the recommended format of the resolution, see part 2010.9925.

K. The findings of fact, conclusions, and order adopting the emergency rule which must contain the following:

(1) a statement that proper notice of intent to adopt a rule was given;

(2) a statement that all ~~other~~ notice and procedural requirements have been complied with;

(3) a statement that all persons were given the opportunity to submit written comment for at least 25 days after publication of the notice of intent to adopt the emergency rule;

(4) a statement of ~~the number of written letters with comments received and~~ the number of requests for notice of submission of the adopted emergency rule to the attorney general and whether any written comments were received;

(5) if any changes were made between the emergency rule as proposed and the emergency rule as adopted, findings of fact and conclusions supporting the reasons for the changes and explaining why the changes do not constitute substantial changes as provided in attorney general rule part 2010.1000, item D;

(6) a statement that the authority for use of emergency rule procedures has not expired pursuant to Minnesota Statutes, section 14.29;

(7) a statement that the emergency rule is hereby ordered to be adopted; and

(8) the signature of the person authorized to adopt the emergency rule or authorized to sign the findings of fact, conclusions, and order adopting the emergency rule and the



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date on which the order is signed.

For the recommended format of the findings of fact, conclusions, and order, see part 2010.9955.

L. All written requests, submissions, and comments on the rule received by the agency except requests solely for copies of the rule.

M. The declaration of the attorney in the attorney general's office who represents the agency. The declaration must state:

(1) that the attorney has examined the rule and the rulemaking record;

(2) that the Administrative Procedure Act and chapter 2010 have been followed with a listing of any exceptions; and

(3) for attorney general billing purposes, the four-digit docket client code is ____. For the recommended format, see part 2010.9935.

N. If any persons requested to be informed that the rule has been submitted to the attorney general, the notice of submission of the emergency rule as required by Minnesota Statutes, section 14.32. The notice must be mailed on the same day the rule is submitted to the attorney general. The notice must contain the following:

(1) the date of submission of the emergency rule to the attorney general;

(2) if the proposed emergency rule has been modified, the notice must state that fact and must state that a free copy of the emergency rule as modified is available upon request from the agency or that a copy of the rule as modified is enclosed with this notice;

(3) the attorney general rule review time period of ten working days;

(4) a statement that comments may be submitted to the attorney general and that any comments submitted must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule and make a



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reference to the attorney general standards of review as set forth in part 2010.1000;

(5) the length of the period for submitting comments to the attorney general and the calendar date of the last day of the seven working day comment period. In calculating the comment period, the date the documents were submitted to the attorney general is not included. Saturdays, Sundays, and legal holidays are not included in the calculation. The last day of the comment period so calculated is included;

(6) a statement that upon written request to the attorney general a copy of the attorney general decision will be provided;

(7) the address of the attorney general division where comments and requests must be submitted; and

(8) a statement that any written comments to the attorney general must also be submitted simultaneously to a named person for the agency and the address of that person.

For the recommended format of the statement, see part 2010.9960.

O. If the agency sent out the notice of submission of the emergency rule to the attorney general as required by Minnesota Statutes, section 14.32, the affidavit of mailing the notice of submission of the emergency rule to the attorney general. The affidavit must state that a copy of the notice of submission of the rule to the attorney general was mailed to all persons and associations who requested the notification. For the recommended format of the affidavit, see part 2010.9945.

2010.0500 RULE SUBMISSION AND AGENCY FAILURE TO SUBMIT REQUIRED DOCUMENTS.

Subpart 1. **Rule submission.** A rule is considered submitted to the attorney general when the rule and the record consisting of the required documents are received at the Office of the Attorney General, Public Finance Division located at 525 Park Street, Suite 500, Saint Paul, Minnesota 55103.



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Subp. 2. **Failure to submit required documents.** Failure to submit all the required documents makes a submission incomplete. The attorney general must promptly inform the agency of the missing documents. If the missing documents include the required three copies of the rule as adopted, findings of fact, conclusions and order, declaration of the attorney in the attorney general's office who represents the agency, or the statement of need and reasonableness for a rule adopted without a public hearing, the rule review period will not be initiated. For other missing documents, if the agency submits the missing documents to the attorney general within the attorney general review period, the submission shall be deemed complete and the period of review shall continue to run. If the missing documents are not submitted within the review period, the rule must either be withdrawn from review or rejected by the attorney general.

2010.0700 STATEMENT OF NEED AND REASONABLENESS.

The statement of need and reasonableness must contain a summary of the evidence and arguments that support both the need for and reasonableness of the proposed agency action of adopting a rule without a public hearing. In justifying the need for and reasonableness of the action, the agency must explain what circumstances have created the need for the rule or its amendment which required administrative action and why the proposed rulemaking action is an appropriate solution for meeting the need. The statement must explain the evidence relied upon and how that evidence rationally relates to the choice of action taken. A general statement of statutory implementation or restating the proposed rule will not suffice. The statement of need and reasonableness must also contain the following:

A. if required by Minnesota Statutes, section 14.115, a statement documenting the agency's consideration of methods for reducing the impact of the rule on small businesses and the results pursuant to Minnesota Statutes, section 14.115,



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subdivision 2. If the small business considerations in the rulemaking section are not applicable, the basis for the agency's exemption must be stated in the statement of need and reasonableness;

B. if the agency's notice of intent to adopt the rule does not contain the statement of estimated costs to local public bodies pursuant to Minnesota Statutes, section 14.11, subdivision 1, because the reasonable estimate of the total cost to public bodies to implement the rule for the two years following the adoption of the rule is less than $100,000, a statement that Minnesota Statutes, section 14.11, is not applicable and the basis for that statement;

C. if required by Minnesota Statutes, section 16A.128, subdivision 1, the approval of the commissioner of finance if the rule sets or adjusts a fee charged;

D. the signature of the person authorized to adopt the rule pursuant to statute or ~~authorized to adopt the rule~~ pursuant to the certificate of authorizing resolution and the date the statement was signed; and

E. any information required by any other law or rule to be included in the statement of need and reasonableness.

2010.1000 STANDARDS OF REVIEW.

A rule must be disapproved by the attorney general if:

A. The rule as submitted is not a statement of general applicability and future effect adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedures.

B. The agency has failed to comply with the applicable provisions of the Administrative Procedure Act, Minnesota Statutes, chapter 14, the agency's enabling statute, the attorney general rule parts 2010.0200 to 2010.1400 or other applicable law unless the error or omission is a harmless error as defined in Minnesota Statutes, section 14.26, subdivision 3, or 14.32, subdivision 2.

C. The rule exceeds the statutory authority conferred



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on the agency~~,~~ or conflicts with the statutes or any other relevant law~~, or has no reasonable relationship to statutory purposes~~.

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

H. The rule is unreasonable ~~by failing to comport with substantive due process~~ because it is not rationally related to the objective sought to be achieved.

I. The rule is vague or ambiguous in violation of the constitutional principles of due process or equal protection.

J. The rule, by its terms, cannot have the force and effect of law.

K. The rule is unconstitutional or illegal.

2010.1100 WITHDRAWAL OF RULE FROM REVIEW BY ATTORNEY GENERAL.

The agency may withdraw a rule from review by the attorney general. To withdraw a rule after it has been submitted to the attorney general, a written order of withdrawal of the rule from review must be submitted to the attorney general. The written order must state the date of withdrawal and be signed by a person authorized to adopt the rule or sign the findings of fact, conclusions, and order adopting the rule. Upon receipt of the written order of withdrawal, the attorney general shall return the submitted documents to the agency.

2010.1200 DISAPPROVAL.

If a rule is disapproved, the attorney general must state in writing the reasons for disapproval and make recommendations to overcome the deficiencies. The statement of the reasons for disapproval must be sent to the agency, the chief administrative law judge, the legislative commission to review administrative rules, the revisor of statutes, and persons who requested to receive a copy of the decision. Upon disapproval, the review period terminates and the rule must neither be filed in the office of the secretary of state nor published unless the rule is resubmitted and approved upon resubmission. Upon disapproval, the attorney general shall return the submitted documents to the agency.



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2010.1300 RESUBMISSION.

Subpart 1. **Resubmission.** To resubmit a rule which was withdrawn or disapproved by the attorney general, the following documents must be submitted:

A. All documents that were previously submitted to the attorney general for review that were returned to the agency upon withdrawal or disapproval.

B. A supplemental findings of fact, conclusions, and order adopting the rule. The order must be signed by a person authorized to adopt the rule or authorized to sign the findings of fact, conclusion, and order adopting the rule. If any modifications were made to the rule since the rule was withdrawn or disapproved, findings of facts and conclusions must be set forth supporting the reasons for the changes and explaining why the changes do not constitute substantial changes.

C. A supplemental certificate of the multimember agency's resolution if:

(1) the agency is a multimember agency as provided in Minnesota Statutes, section 15.0597, subdivision 1a;

(2) modifications were made to the rule since the rule was withdrawn or disapproved; and

(3) the certificate of the agency's resolution submitted in accordance with part 2010.0300, item M, or 2010.0400, item J does not authorize the modification by the person who signed the supplemental findings of fact, conclusions, and order. The supplemental certificate of the agency's resolution must be in accordance with part 2010.0300, item M or 2010.0400, item J.

D. If any modifications were made to the rule as adopted since the rule was withdrawn or disapproved, three copies of the rule as adopted with the modifications reflected and approved as to form by the revisor of statutes.

E. A new notice of submission of the rule to the attorney general mailed to any persons who requested notification pursuant to Minnesota Statutes, section 14.26 or



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14.32. The notice of submission to the attorney general must comply with part 2010.0300, item Q or 2010.0400, item N.

F. The affidavit of mailing for the notice of submission of the rule to the attorney general, if applicable. The affidavit must comply with part 2010.0300, item R or 2010.0400, item O.

G. Any other documents necessary to demonstrate that the procedural or substantive deficiencies have been remedied.

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

2010.1400 APPROVAL OF RULE.

Subpart 1. **Approval.** If the rule is approved, the attorney general shall promptly file two copies of the rule with the secretary of state. The attorney general shall send a copy of the approval memo and the approved rule to the agency. The attorney general shall also send a copy of the approval memo to the chief administrative law judge, the legislative commission to review administrative rules, and persons who requested to receive a copy of the decision.

Subp. 2. **Return of record.** Upon approval of a rule, the attorney general shall return the submitted documents to the agency. The agency is required pursuant to Minnesota Statutes, section 14.365, to maintain the official rulemaking record for every rule adopted.

2010.9910 RECOMMENDED CERTIFICATE OF AUTHORIZING RESOLUTION FOR RULE WITHOUT A PUBLIC HEARING OR EMERGENCY RULE.

CERTIFICATE OF THE

_____

AUTHORIZING RESOLUTION

I, _____, do hereby certify that I am a member and the _____(office), of the _____ _____, a [board] [commission] duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the _____ duly and properly called and held on the ___ day of _____, 19___, that a



Approved by Revisor _____

quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

"RESOLVED, that _____, [the executive director] [a member] of the _____, is hereby granted the authority and directed to sign the statement of need and reasonableness and sign and ~~to~~ give the Notice of the [Board's] [Commission's] Intent to Adopt [a rule without a public hearing] [an Emergency rule] governing _____ (describe nature of the rule) to all persons who have registered their names with the [Board] [Commission] for that purpose and publish the Notice and rule in the State Register, and to perform any ~~and all~~ necessary acts ~~incidental thereto~~ to initiate the rulemaking comment period."

IN WITNESS WHEREOF, I have hereunto subscribed my name this ___ day of _____, 19___.

_____
(Officer of the Board)

_____
Attest by one other Board member

2010.9913 RECOMMENDED AFFIDAVIT OF MAILING THE STATEMENT OF NEED AND REASONABLENESS TO THE LEGISLATIVE COMMISSION TO REVIEW ADMINISTRATIVE RULES AND MAILING THE FEE NOTICE TO COMMITTEE CHAIRS.

NOTE: The following affidavit may be used when the same person mailed both the statement of need and reasonableness to the legislative commission to review administrative rules and the fee notice pursuant to Minnesota Statutes, section 16A.128, subdivision 2, paragraph (a). If different persons mailed the two notices, the two paragraphs must be split into separate affidavits signed by the appropriate persons. If the proposed rule does not establish or adjust fees, do not use the second paragraph. For emergency rules, do not use the first paragraph as it is inapplicable.

In the Matter of the Proposed Adoption of the Rule of the State_____ Governing_____

AFFIDAVIT OF MAILING THE STATEMENT OF NEED



Approved by Revisor _____

AND REASONABLENESS
TO THE LEGISLATIVE
COMMISSION TO REVIEW
ADMINISTRATIVE RULES
AND THE FEE NOTICE
TO COMMITTEE CHAIRS

STATE OF MINNESOTA )
)ss.
COUNTY OF [_____] )

_____, being sworn says:

That on the _____ day of _____, 19__, when the Statement of Need and Reasonableness became available to the public, I mailed the Statement of Need and Reasonableness to the Legislative Commission to Review Administrative Rules by depositing in the [United States mail, with postage prepaid] [State of Minnesota Interoffice Mail System], a copy thereof.

NOTE: The following paragraph is applicable only if the rule establishes or adjusts fees.

_____, being sworn says:

That on the _____ day of _____, 19__, before this agency submitted notice to the State Register of intent to adopt a rule that establishes or adjusts fees, I mailed a copy of the notice of intent and the proposed rule to the chairs of the ~~house appropriations committee and senate finance committee~~ appropriate committees by depositing in the [United States mail, with postage prepaid] [State of Minnesota Interoffice Mail System], a copy thereof.

_____
[Name]

Subscribed and sworn to before me this _____ day of _____, 19__.

_____
[Title]

_____
Notary Public

2010.9916 RECOMMENDED NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING.

STATE OF MINNESOTA

DEPARTMENT OF _____

In the Matter of the Proposed Adoption of the Rule of the State _____ Governing _____

NOTICE OF INTENT
TO ADOPT A RULE
WITHOUT A
PUBLIC HEARING

The [agency name] intends to adopt a permanent rule without a public hearing following the procedures set forth in the Administrative Procedure Act, Minnesota Statutes, sections 14.22



Approved
by Revisor _____

to 14.28. You have 30 days to submit written comments on the proposed rule and may also submit a written request that a hearing be held on the rule.

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

[Name, agency, address, telephone number, and Fax number (Fax number is optional)]

**Subject of Rule and Statutory Authority.** The proposed rule is about [title or subject of rule]. The statutory authority to adopt this rule is [specific statutory citation]. A copy of the proposed rule is published in the State Register and attached to this notice as mailed. [If the proposed rule is not attached to the mailed notice, then this notice must include an informative statement describing the nature and effect of the proposed rule and include the announcement that: A free copy of the rule is available upon request from the agency contact person listed above.]

**Comments.** You have until ____ p.m., _____ [calendar date of the end of the 30-day comment period; see part 2010.0300, item G, subitem (3), for how to count the days] to submit written comment in support of or in opposition to the proposed rule and any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

**Request for a Hearing.** In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by ____ p.m. on _____. Your written request for a public hearing must include your name and address. You are encouraged to identify the portion of the proposed rule which caused your request, the reason for the request, and any changes you want made to the proposed rule. If 25 or more persons submit a written request



Approved by Revisor _____

for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If a public hearing is required, the agency will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

**Modifications.** The proposed rule may be modified as a result of public comment. The modifications must be supported by data and views submitted to the agency and may not result in a substantial change in the proposed rule as [attached and] printed in the State Register. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

**Statement of Need and Reasonableness.** A statement of need and reasonableness is now available from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule.

**Small Business Considerations.** [If applicable and selected, see Minnesota Statutes, section 14.115, subdivision 4.]

**Expenditure of Public Money by Local Public Bodies.** [If applicable, see Minnesota Statutes, section 14.11, subdivision 1.]

**Impact on Agriculture Lands.** [If applicable, see Minnesota Statutes, section 14.11, subdivision 2.]

[Other notices required by law or chosen to be inserted in this notice.]

**Adoption and Review of Rule.** If no hearing is required, after the end of the comment period the agency may adopt the rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you wish to be so notified, or wish to receive a copy of the adopted rule, submit your request to the agency contact



Approved
by Revisor _____

person listed above.

_____
[Name]

_____
[Title]

Dated:_____

2010.9920 RECOMMENDED AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING OR AN EMERGENCY RULE AND CERTIFICATE OF MAILING LIST.

NOTE: If the person who can attest to the accuracy of the mailing list is not the same person who mailed the notices of intent, then the two paragraphs in this recommended form must be separated into two affidavits signed by the appropriate persons.

In the Matter of the Proposed Adoption of the Rule of the State _____ Governing _____

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT [A RULE WITHOUT A PUBLIC HEARING] [AN EMERGENCY RULE] AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA )
)ss.
COUNTY OF [_____] )

_____, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state _____ rulemaking mailing list is accurate, complete, and current as of this ___ day of _____, 19__.

That on the _____ day of _____, 19__, at least [33 days for rules without a public hearing] [28 days for emergency rules] prior to the end of the comment period, at the City of [_____], County of [_____], State of Minnesota, I mailed the _____ (state what was mailed, for example: (1) Notice of Intent and (2) the proposed rule) by depositing in the [State of Minnesota Central Mail System for United States mailing] [United States mail], a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

_____
[Name]



Approved
by Revisor _____

Subscribed and sworn to before me this ____ day of _____, 19__.

_____
[Title]

_____
Notary Public

2010.9930 RECOMMENDED FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING THE RULE WITHOUT PUBLIC HEARING.

STATE OF MINNESOTA

DEPARTMENT OF _____

In the Matter of the Proposed Adoption of the Rule of the State _____ Governing _____

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

FINDINGS

1. Notice of the [Commissioner's] [Board's] [Commission's] intent to adopt the above-entitled rule was published in the State Register on _____, 19__ and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on _____, 19__.

2. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

3. All of the notice and procedural requirements in Minnesota Statutes, chapter 14, and other applicable law have been complied with.

4. All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. The 30-day comment period expired on _____.

5. The agency received ------~~letters of~~ [written comments] [no written comments] and submissions on the rule. The agency received _____ requests for notice of submission to the attorney general. ~~The agency received -------requests for~~ [Number] individuals requested a public hearing [, of which ____ were subsequently withdrawn]. Therefore, there are not 25 or more outstanding requests for a public hearing.

[If any changes were made between the rule as proposed and



Approved by Revisor _____

the rule as adopted, findings of fact and conclusions supporting the reasons for the changes and explaining why the changes do not constitute substantial changes as provided in the attorney general rules, part 2010.1000, item D must be set forth.]

6. The statement of need and reasonableness together with these findings, establish and justify the rational basis for the need for and reasonableness of the rule [as amended].

CONCLUSIONS

1. The _____ duly acquired and has jurisdiction over this proceeding.

2. The _____ published and served timely and adequate notice of intent to adopt the rule without a public hearing.

3. All relevant legal and procedural requirements of statute and rule have been complied with.

4. [If the proposed rule was amended] The modifications to the proposed rule are supported by the record and do not result in a substantial change.

5. The rule [as amended] is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as _____ [as modified] is adopted this ____ day of _____, 19___, pursuant to authority vested in [me] [the Board] [the Commission] by Minnesota Statutes, section _____.

[Name] _____

[Title] _____

2010.9940 RECOMMENDED NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO ATTORNEY GENERAL.

STATE OF MINNESOTA

DEPARTMENT OF _____

| | |
|---|---|
| In the Matter of the Proposed Adoption of the Rule of the State _____ Governing _____ | NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL |

Pursuant to your request and in accordance with Minnesota Statutes, section 14.26:

PLEASE TAKE NOTICE that the above-captioned rule as adopted



Approved by Revisor _____

will be submitted to the Office of the Attorney General on the date of this notice, _____, 19__, for review as to legality and form to the extent form relates to legality. The proposed rule, the rule as adopted, all the notices, the Statement of Need and Reasonableness, all written comments and requests for a hearing received, and other required documents also ~~have been~~ will be submitted to the Attorney General.

[(If the proposed rule has been modified:) The proposed rule which was published in the State Register and ~~made available~~ mailed to ~~the public~~ interested persons on _____, 19__, has been modified. A free copy of the rule as modified as well as the findings of fact, conclusions, and order explaining the amendments and adopting the rule are available upon request from _____. (or) A copy of the rule as modified and the findings of fact, conclusions, and order are enclosed with this notice.]

The rule must be approved or disapproved by the Attorney General within 14 calendar days of the date of submission to the Attorney General. You may submit written comments to the Attorney General on the legality of the rule. Any written comments must be submitted by 4:30 p.m., _____(date,) 19__, (which is eight calendar days ~~of~~ after the date of submission of the rule to the Attorney General). Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. The Attorney General standards for review are set forth in Minnesota Rules, part 2010.1000. You may receive a copy of the Attorney General decision upon written request to the Attorney General. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
Public Finance Division
525 Park Street, Suite 500
Saint Paul, Minnesota 55103
Telephone Number: (612) 297-2040
Fax Number: (612) 297-2576

Any written comments submitted to the Attorney General must be submitted simultaneously to:

[Name, address, telephone number, and
Fax number (Fax number is optional)



Approved
by Revisor _____

of appropriate person in the agency]

[Name] _____

[Title] _____

Dated: _____

2010.9945 RECOMMENDED AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING OR EMERGENCY RULE TO ATTORNEY GENERAL.

| | |
|---|---|
| In the Matter of the Proposed Adoption of the [Emergency] Rule of the State _____ Governing _____ | AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION OF [RULE ADOPTED WITHOUT PUBLIC HEARING] [EMERGENCY RULE] TO THE ATTORNEY GENERAL |

STATE OF MINNESOTA )
)ss.
COUNTY OF [_____] )

_____, being sworn says:

That on the _____ day of _____, 19__, in the City of [_____], County of [_____], State of Minnesota, I mailed the Notice of Submission to the Attorney General by depositing in the [State of Minnesota Central Mail System for United States mailing] [United States mail], a copy thereof, with postage prepaid, to all persons and associations who requested notice that the rule in the above-entitled matter has been submitted to the Attorney General.

_____
[Name]

Subscribed and sworn to before me this ___ day of _____, 19__.

_____
[Title]

_____
Notary Public

2010.9946 RECOMMENDED DUAL NOTICE.

STATE OF MINNESOTA

DEPARTMENT OF _____

In the Matter of the Proposed Adoption of the Rule of the State _____ Governing _____

DUAL NOTICE:

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING UNLESS 25 OR MORE PERSONS REQUEST A HEARING,



Approved by Revisor _____

AND

NOTICE OF HEARING IF 25 OR MORE REQUESTS FOR HEARING ARE RECEIVED

**Introduction.** The [agency name] intends to adopt a permanent rule without a public hearing following the procedures set forth in the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rule within 30 days or by [date of the end of the 30-day comment period], a public hearing will be held on [scheduled hearing date]. To find out whether the rule will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after [date 1, end of the 30-day comment period] and before [date 2, the scheduled hearing date].

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

[Name, agency, address, telephone number, and Fax number (Fax number is optional)]

**Subject of Rule and Statutory Authority.** The proposed rule is about [title or subject of rule]. The statutory authority to adopt the rule is [specific statutory citation]. A copy of the proposed rule is published in the State Register and attached to this notice as mailed. [If the proposed rule is not attached to the mailed notice, then this notice must include an informative statement describing the nature and effect of the proposed rule and issues involved and include the announcement that: A free copy of the rule is available upon request from [the agency contact person].]

**Comments.** You have until _____ p.m. on _____ to submit written comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.



Approved by Revisor _____

**Request for a Hearing.** In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by ____ p.m. on _____. Your written request for a public hearing must include your name, address, and telephone number. You are encouraged to identify the portion of the proposed rule which caused your request, the reason for the request, and any changes you want made to the proposed rule. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing.

**Modifications.** The proposed rule may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must not result in a substantial change in the proposed rule as [attached and] printed in the State Register and must be supported by data and views submitted to the agency or presented at the hearing. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

**Cancellation of Hearing.** The hearing scheduled for [date] will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rule. If you requested a public hearing, the agency will notify you before the scheduled hearing whether or not the hearing will be held. You may also call [agency contact person] at [telephone number] after [date after the end of the 30-day comment period] to find out whether the hearing will be held.

**Notice of Hearing.** If 25 or more persons submit written requests for a public hearing on the rule, a hearing will be held following the procedures in Minnesota Statutes, sections 14.14 to 14.20. The hearing will be held on [date] in the [place] beginning at [time] and will continue until all interested persons have been heard. The hearing will continue, if necessary, at additional times and places as determined during the hearing by the administrative law judge. The administrative law judge assigned to conduct the hearing is



Approved
by Revisor _____

[name]. Judge [name] can be reached at the Office of Administrative Hearings, [current address and telephone number].

**Hearing Procedure.** If a hearing is held, you and all interested or affected persons including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should relate to the proposed rule. You may also mail written material to the administrative law judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing. Comments received during this period will be available for review at the Office of Administrative Hearings. You and the agency may respond in writing within five business days after the submission period ends to any new information submitted. All written materials and responses submitted to the administrative law judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. No additional evidence may be submitted during the five-day period. This rule hearing procedure is governed by Minnesota Rules, parts 1400.0200 to 1400.1200 and Minnesota Statutes, sections 14.14 to 14.20. Questions about procedure may be directed to the administrative law judge.

**Statement of Need and Reasonableness.** A statement of need and reasonableness is now available from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule. It also includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing, if one is held. The statement may also be reviewed and copies obtained at the cost of reproduction from the Office of Administrative Hearings.

**Small Business Considerations.** [If applicable and selected, see Minnesota Statutes, section 14.115, subdivision 4.]



Approved
by Revisor _____

**Expenditure of Public Money by Local Public Bodies.** [If applicable, see Minnesota Statutes, section 14.11, subdivision 1.]

**Impact on Agriculture Lands.** [If applicable, see Minnesota Statutes, section 14.11, subdivision 2.]

[Other notices required by law or chosen to be inserted in this notice.]

**Lobbyist Registration.** Minnesota Statutes, chapter 10A requires each lobbyist to register with the Ethical Practices Board. Questions regarding this requirement may be directed to the Ethical Practices Board at [current address and telephone number of the Ethical Practices Board].

**Adoption Procedure if No Hearing.** If no hearing is required, after the end of the comment period the agency may adopt the rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you want to be so notified, or wish to receive a copy of the adopted rule, submit your request to [agency contact person] listed above.

**Adoption Procedure After the Hearing.** If a hearing is held, after the close of the hearing record, the administrative law judge will issue a report on the proposed rule. You may request to be notified of the date on which the administrative law judge's report will be available, after which date the agency may not take any final action on the rule for a period of five working days. If you want to be notified about the report, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. You may also request notification of the date on which the rule is adopted and filed with the Secretary of State. The agency's notice of adoption must be mailed on the same day that the rule is filed. If you want to be notified of the adoption, you may so indicate at the hearing



Approved
by Revisor _____

or send a request in writing to the agency contact person at any time prior to the filing of the rule with the Secretary of State.

Date:_____ _____
[Name]
_____
[Title]

2010.9951 RECOMMENDED NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE.

STATE OF MINNESOTA

DEPARTMENT OF _____

In the Matter of the Proposed Adoption of Emergency Rule of the State _____ Governing _____ NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE

The [agency name] intends to adopt an emergency rule following the procedures set forth in the Administrative Procedure Act, Minnesota Statutes, sections 14.29 to 14.36. You may submit written comments on the proposed emergency rule within 25 days.

**Agency Contact Person.** Comments or questions on the rule must be submitted to:

[Name, agency, address, telephone number, and Fax number (Fax number is optional)]

**Subject of Emergency Rule and Statutory Authority.** The proposed emergency rule is about [title or subject of rule]. The statutory authority to adopt this emergency rule is [specific statutory citation]. A copy of the proposed rule is published in the State Register and attached to this notice as mailed. [If the proposed rule is not attached to the mailed notice, then this notice must include an informative statement describing the nature and effect of the proposed rule.] A free copy of the proposed emergency rule is available upon request from the agency contact person listed above.

**Comments.** You have until ____ p.m., _____ [calendar date of the end of the 25-day comment period; see part 2010.0400, item E, subitem (3), for how to count the days] to submit written data and views on the proposed emergency rule or any part or subpart of the emergency rule. Your comment must be in writing and received by the agency contact person by the due



Approved by Revisor _____

date.

**Modifications.** The proposed emergency rule may be modified as a result of public comment. The modifications must be supported by data and views submitted to the agency and may not result in a substantial change in the proposed emergency rule as [attached and] printed in the State Register. If the proposed emergency rule affects you in any way, you are encouraged to participate in the rulemaking process.

**Expenditure of Public Money by Local Public Bodies.** [If applicable, see Minnesota Statutes, section 14.11, subdivision 1.]

**Impact on Agriculture Lands.** [If applicable, see Minnesota Statutes, section 14.11, subdivision 2.]

[Other notices required by law or chosen to be inserted in this notice.]

**Adoption and Review of Emergency Rule.** After the end of the comment period, the agency may adopt the emergency rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you wish to be so notified, or wish to receive a copy of the adopted rule, submit your request to the agency contact person listed above.

**Effective Period for Emergency Rule.** The emergency rule will take effect five working days after approval by the attorney general and be effective for ____ days. The emergency rule will be continued in effect for an additional _____ days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

_____
[Name]

_____
[Title]

Dated:_____

2010.9955 RECOMMENDED FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULE.



Approved
by Revisor _____

STATE OF MINNESOTA

DEPARTMENT OF _____

In the Matter of the Proposed Adoption of the [Emergency] Rule of the State _____ Governing _____

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULE

FINDINGS

1. Notice of the [Commissioner's] [Board's] [Commission's] intent to adopt the above-entitled emergency rule was published in the State Register on _____, 19__ and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.30 on _____, 19__.

2. All of the notice and procedural requirements in Minnesota Statutes, chapter 14, and other applicable law have been complied with.

3. All persons were given the opportunity to submit written comment on the rule for at least 25 days after notice of proposed rulemaking. The 25-day comment period expired on _____.

4. The agency received _____~~letters of~~ [written comments] [no written comments] and submissions on the rule. The agency received _____ requests for notice of submission to the attorney general.

[If any changes were made between the rule as proposed and the rule as adopted, findings of fact and conclusions supporting the reasons for the changes, and explaining why the changes do not constitute substantial changes as provided in the attorney general rules part 2010.1000, item D must be set forth.]

CONCLUSIONS

1. The _____ duly acquired and has jurisdiction over this proceeding.

2. The authority for use of emergency rule procedures has not expired pursuant to Minnesota Statutes, section 14.29.

3. The _____ published and served timely and adequate notice of intent to adopt the emergency rules.

4. All relevant legal and procedural requirements of statute and rule have been complied with.



Approved by Revisor _____

5. [If the proposed rule was amended] The modifications to the proposed rule are supported by the record and do not result in a substantial change.

NOW, THEREFORE, IT IS ORDERED that the rule identified as _____ [as modified] is adopted this _____ day of _____, 19__, pursuant to authority vested in [me] [the Board] [the Commission] by Minnesota Statutes, section _____.

[Name] _____

[Title] _____

2010.9960 RECOMMENDED NOTICE OF SUBMISSION OF THE EMERGENCY RULE TO ATTORNEY GENERAL.

STATE OF MINNESOTA

DEPARTMENT OF _____

| | |
|---|---|
| In the Matter of the Proposed Adoption of the [Emergency] Rule of the State _____ Governing _____ | NOTICE OF SUBMISSION OF EMERGENCY RULE TO THE ATTORNEY GENERAL |

Pursuant to your request and in accordance with Minnesota Statutes, section 14.32:

PLEASE TAKE NOTICE that the above-captioned emergency rule as adopted will be submitted to the Office of the Attorney General on the date of this notice, _____, 19__, for review as to legality and form to the extent form relates to legality. The proposed emergency rule, the rule as adopted, all the notices, all written comments received and other required documents also ~~have been~~ will be submitted to the Attorney General.

[(If the proposed emergency rule has been modified:) The proposed emergency rule which was published in the State Register and ~~made available~~ mailed to ~~the public~~ interested persons on _____, 19__, has been modified. A free copy of the emergency rule as modified as well as the findings of fact, conclusions, and order explaining the amendments and adopting the rule are available upon request from _____. (or) A copy of the rule as modified and the findings of fact, conclusions, and order are enclosed with this



Approved by Revisor _____

notice.]

The rule must be approved or disapproved by the Attorney General on the tenth working day following date of receipt of the rule. You may submit written comments to the Attorney General. Any written comments must be submitted by 4:30 p.m. _____, 19__, seven working days ~~of~~ after the date of this notice. Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. The Attorney General standards for review are set forth in Minnesota Rules, part 2010.1000. You may receive a copy of the Attorney General decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
Public Finance Division
525 Park Street, Suite 500
Saint Paul, Minnesota 55103
Telephone: (612) 297-2040
Fax Number: (612) 297-2576

Any written comments submitted to the Attorney General must be submitted simultaneously to:

[Name, address, telephone number,
and Fax number (Fax number is optional)
of appropriate person in the agency]

_____
[Name]

_____
[Title]

Dated:_____

REPEALER. Minnesota Rules, parts 2010.9915; and 2010.9950, are repealed.



Approved
by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

JAN 11 1993

Joan Anderson Growe
Secretary of State

1:45 PM
PB

APPROVED AS TO FORM AND LEGALITY
January 11 19 93
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY Jacquelyn E Ulrich
SPECIAL ASSISTANT ATTORNEY GENERAL

Attorney General

Proposed Permanent Rules Relating to Rule Review

Rules as Proposed

2010.0300 DOCUMENTS NECESSARY FOR REVIEW OF A RULE ADOPTED WITHOUT A PUBLIC HEARING.

To submit a rule adopted without a public hearing to the attorney general for review and approval pursuant to Minnesota Statutes, section 14.26, the agency must submit to the attorney general the following documents:

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

E. The statement of need and reasonableness complying with part 2010.0700 in support of the proposed rule. The statement of need and reasonableness must be prepared before the date that the notice of intent to adopt a rule without a public hearing is published in the State Register and mailed.

F. Evidence that the agency sent a copy of the statement of need and reasonableness to the legislative commission to review administrative rules when it became available to the public as required by Minnesota Statutes, section 14.23. The evidence must be in the form of a copy of the dated correspondence to the legislative commission to review administrative rules or an affidavit of the mailing. For recommended format of the affidavit, see part 2010.9913.

G. The notice of intent to adopt a rule without a public hearing as mailed. The notice must be ~~signed by a person authorized to adopt the rule or authorized to sign and give notice of the intent to adopt the rule without a public hearing~~ mailed at least 33 days before the end of the comment period and must contain the following:

(1) A statement that the agency intends to adopt a rule without a public hearing ~~pursuant to the authority of [citation to the specific statutory authority for the proposed rule]~~ and is following the procedures set forth in the



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Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28.

(2) A citation to the specific statutory authority for the proposed rule.

(3) A statement that the public has 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the proposed rule and that comment is encouraged. The statement must specify the calendar date of the last day of the comment period. In calculating the comment period, the date of publication in the State Register or the date of mailing, whichever is later, is not included. Saturdays, Sundays, and legal holidays are included in the calculation. The last day of the period so calculated is included unless it is a Saturday, Sunday, or legal holiday, in which event, the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. The State Register is published on Mondays except when the Monday is a legal holiday in which case it is published on a Tuesday.

~~(3)~~ (4) A statement that each comment should identify the portion of the proposed rule addressed, the reason for the comment and any change proposed.

~~(4)~~ (5) A statement that if 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing.

~~(5)~~ (6) A statement of the manner in which persons may submit comments or requests for a public hearing.

~~(6)~~ (7) A statement that any person requesting a public hearing ~~should state~~ must include his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

~~(7)~~ (8) A statement that if a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

~~(8)~~ (9) A statement that the proposed rule may be



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modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

~~(9)~~ (10) A statement that if no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the attorney general for review as to legality and form to the extent form relates to legality; a statement that any person may request notification of the date of submission to the attorney general and a copy of the attorney general decision; and a statement of the manner in which the request must be made.

~~(10)~~ (11) If an entire rule is proposed to be repealed, a statement stating that fact and citing the rule to be repealed.

~~(11)~~ (12) A statement that the proposed rule is attached to the notice; or if the proposed rule is not attached to the notice sent to persons on the agency rulemaking mailing list, a statement describing the nature and effect of the proposed rule and the manner in which a free copy may be requested.

~~(12)~~ (13) A statement that the statement of need and reasonableness is available to the public and the manner in which that document may be requested.

~~(13)~~ (14) If required by Minnesota Statutes, section 14.11, subdivision 1, a statement relating to the expenditure of public money by local public bodies.

~~(14)~~ (15) If the agency elects to comply with Minnesota Statutes, section 14.115, subdivision 4, by following paragraph (a) of the statute, a statement that the proposed rule will have an impact on small businesses and a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons as provided by Minnesota Statutes, section 14.115, subdivision 4, paragraph (a).

~~(15)~~ (16) Any other notices required by law or rule to be included in the notice of intent to adopt a rule



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without a public hearing.

(17) The signature of the person authorized to adopt the rule or authorized to sign and give notice of the intent to adopt the rule without a public hearing.

For the recommended format of the notice, see part ~~2010.9915~~ 2010.9916.

~~F.--The-statement-of-need-and-reasonableness-in support-of-the-proposed-rule-complying-with-part-2010.0700.~~

~~G.~~ H. If the proposed rule establishes or adjusts fees, evidence that the agency sent a copy of the notice of intent and the proposed rule to the chairs of the house appropriations committee and senate finance committee before the agency submitted the notice of intent to the State Register as required by Minnesota Statutes, section 16A.128, subdivision 2a. Evidence shall be in the form of the dated correspondence to the chairs or an affidavit of mailing. For the recommended format of the affidavit, see part 2010.9913.

I. If the agency did not publish an appropriate notice of intent to adopt the rule within 180 days after the effective date of the law requiring the rule to be adopted, a copy of the correspondence to the legislative commission to review administrative rules, other appropriate committees of the legislature, and the governor as required by Minnesota Statutes, section 14.12.

J. The affidavit of mailing the notice of intent to adopt a rule without a public hearing. The notice must be mailed at least 33 days before the end of the comment period. The affidavit or affidavits must state that:

(1) the mailing list maintained by the agency pursuant to Minnesota Statutes, sections 14.22 and 14.14, subdivision 1a, is accurate, complete, and current ~~and-that~~; and

(2) the notice of intent to adopt the rule without a public hearing was mailed to all persons and groups whose names appear on the list.

~~If-the-person-who-mailed-the-notice-is-not-the-same-person who-can-attest-to-the-accuracy-of-the-mailing-list,-separate~~



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~~affidavits-signed-by-the-appropriate-person-must-be-submitted.~~ For the recommended format of the affidavit, see part 2010.9920.

~~H.~~ K. A copy or photocopy of the notice of intent to adopt the rule without a public hearing as published in the State Register. The publication date must be at least 30 days before the end of the comment period. The notice as published must contain the statements required by ~~part-2010.0300,~~ item ~~E~~ G.

~~I.--Four~~ L. Three copies of the rule as adopted. Any modification made to the proposed rule must be reflected on the rule as adopted and be approved as to form by the revisor of statutes.

~~J.~~ M. If the agency is a multimember agency as provided in Minnesota Statutes, section 15.0597, subdivision 1a, the certificate of the multimember agency's resolution adopting the rule. The resolution must be adopted at a meeting duly called and attended by a quorum.

The resolution must approve and adopt the rule and authorize a named individual to sign the findings of fact, conclusions, and order adopting the rule and perform the necessary acts to provide that the rule has the force and effect of law. If the multimember agency is so empowered, the resolution may also authorize the named person to modify the rule under stated circumstances or as necessary to obtain the approval of the rule by the attorney general. For the recommended format of the resolution, see part 2010.9925.

~~K.~~ N. The findings of fact, conclusions, and order adopting the rule which must contain the following:

(1) a statement that proper notice of intent to adopt a rule without a public hearing was given;

(2) a statement that the statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public;

(3) ~~for-rules-that-establish-or-adjust-fees,-a statement-that-before-the-notice-of-intent-to-adopt-rules-was~~



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~~submitted-to-the-State-Register,-a-copy-of-the-notice-and-the proposed-rule-was-sent-to-the-chairs-of-the-house-appropriations committee-and-senate-finance-committee~~ a statement that all other notice and procedural requirements have been complied with;

(4) a statement that all persons were given the opportunity to submit comment on the proposed rule for 30 days after the notice of intent to adopt a rule without a public hearing was given;

(5) a statement of the number of written letters with comments received, the number of persons that requested a public hearing ~~and~~, the number of persons that requested a public hearing and withdrew their request, and the number of requests for notice of submission to the attorney general;

(6) if any changes were made between the rule as proposed and the rule as adopted, findings of fact and conclusions supporting the reasons for the changes and explaining why the changes do not constitute substantial changes as provided in the attorney general rules, part 2010.1000, item D;

(7) ~~if-the-agency-received-no-requests-for-a hearing,-or-received-no-submissions-or-comments-on-the-rule required-to-be-submitted-to-the-attorney-general-by-item-B,-or received-no-requests-for-notice-of-submission-of-the-adopted rule-to-the-attorney-general,-an-applicable-statement-to-that effect;-and~~

~~(8)~~ a statement that the rule as adopted is needed and reasonable and that the rule is hereby ordered to be adopted; and ~~the-date-on-which-the-order-is-signed.~~

~~The-findings-of-fact,-conclusions,-and-order-adopting-the rule-must-be-signed-by-a-person-authorized-to-adopt-the-rule-or authorized-to-sign-the-findings-of-fact,-conclusions,-and-order adopting-the-rule.~~

(8) the signature of the person authorized to adopt the rule or authorized to sign the findings of fact, conclusions, and order adopting the rule and the date on which



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the order is signed.

For the recommended format of the findings of fact, conclusions, and order, see part 2010.9930.

~~L.~~ O. All written requests, withdrawals of requests for a hearing, submissions, or comments on the rule received by the agency except requests solely for copies of the rule or of the statement of need and reasonableness.

~~M.~~ P. The declaration of the attorney in the attorney general's office who represents the agency. The declaration must state:

(1) that the attorney has examined the rule and the rulemaking record;

(2) that the Administrative Procedure Act and this chapter ~~2010~~ have been followed with a listing of any exceptions; and

(3) for attorney general billing purposes, the four-digit docket client code is ____. For the recommended format, see part 2010.9935.

~~N.~~ Q. ~~The notice of submission of the rule to the attorney general, if applicable. If any persons requested notification of the date of submission of the rule to the attorney general,~~ If any persons requested to be informed that the rule has been submitted to the attorney general, the notice of submission that was sent to those persons as required by Minnesota Statutes, section 14.26. The notice must be given on the same day the rule is submitted to the attorney general. The notice must contain the following:

(1) the date of submission of the rule to the attorney general;

(2) if the proposed rule has been modified, the notice must state that fact and must state that a free copy of the rule as modified is available upon request from the agency or that a copy of the rule as modified is enclosed with this notice;

(3) the attorney general rule review time period of 14 calendar days;



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(4) a statement that comments may be submitted to the attorney general and that any comments submitted must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule and make a reference to the attorney general standards of review as set forth in part 2010.1000;

(5) the length of the ~~comment~~ period for submitting comments to the attorney general and the calendar date of the last day of the eight calendar day comment period. In calculating the comment period, the date the documents were submitted to the attorney general is not included. Saturdays, Sundays, and legal holidays are included. The last day of the period so calculated is included unless it is a Saturday, Sunday, or legal holiday, in which event, the period runs until the next day which is not a Saturday, Sunday, or legal holiday;

(6) a statement that upon written request to the attorney general a copy of the attorney general decision will be provided;

(7) the address of the attorney general division where comments and requests must be submitted; and

(8) a statement that any written comments to the attorney general must also be submitted simultaneously to a named person for the agency and the address of that person.

For the recommended format of the statement, see part 2010.9940.

~~G.~~ R. If the agency sent out the notice of submission of the rule to the attorney general as required by Minnesota Statutes, section 14.26, the affidavit of mailing notice of submission of the rule to the attorney general~~, if applicable~~. The affidavit must state that a copy of the notice of submission of the rule to the attorney general was mailed to all persons and associations who requested the notification. For the recommended format of the affidavit, see part 2010.9945.

2010.0400 DOCUMENTS NECESSARY FOR REVIEW OF EMERGENCY RULE.

To submit an emergency rule to the attorney general for



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review and approval pursuant to Minnesota Statutes, section 14.32, the agency must submit to the attorney general the following documents:

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

E. The notice of intent to adopt the emergency rule as mailed. The notice must be ~~signed by a person authorized to adopt the rule or authorized to sign and give notice of the intent to adopt the emergency rule~~ mailed at least 28 days before the end of the comment period and must contain the following:

(1) A statement that the agency intends to adopt the emergency rule ~~pursuant to authority of {citation to the specific statutory authority to adopt the emergency rule} and is~~ following the procedures ~~set forth~~ in the Administrative Procedure Act for adopting emergency rules in Minnesota Statutes, sections 14.29 to 14.36.

(2) A citation to the specific statutory authority to adopt the emergency rule.

(3) A statement that all persons have 25 days after publication, or a longer period of time as specified in the notice, to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. The statement must include the calendar date of the last day of the comment period. In calculating the comment period, the date of the publication in the State Register or the date of mailing, whichever is later, is not included. Saturdays, Sundays, and legal holidays are included in the calculation. The last day of the period so calculated is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. The State Register is published on Mondays except when Monday is a legal holiday in which case it is published on a Tuesday.

~~{3}~~ (4) A statement of the manner in which persons may submit written comments to the agency.

~~{4}~~ (5) A statement that the proposed emergency



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rule is attached to the notice; or, if the proposed rule is not attached to the notice sent to persons on the agency rulemaking mailing list, a statement describing the nature and effect of the proposed rule.

~~{5}~~ (6) A statement that a free copy of the proposed emergency rule is available upon request from the agency and the manner in which the request may be made.

~~{6}~~ (7) A statement that the proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed emergency rule as noticed.

~~{7}~~ (8) A statement that the emergency rule and its supporting documents will be submitted to the attorney general for review as to legality and form to the extent form relates to legality; a statement that any person may request notification of the date of submission to the attorney general; and a statement of the manner in which the request must be made.

~~{8}~~ (9) A statement of the effective period of the proposed emergency rule in accordance with Minnesota Statutes, section 14.35.

~~{9}~~ (10) If required by Minnesota Statutes, section 14.11, subdivision 1, a statement relating to the expenditure of public money by local public bodies.

~~{10}~~ (11) Any other notices required by law or rule to be included in the notice of intent to adopt an emergency rule.

(12) The signature of the person authorized to adopt the emergency rule or authorized to sign and give notice of the intent to adopt the emergency rule.

For the recommended format of the notice, see part ~~2010.9950~~ 2010.9951.

F. If the emergency rule establishes or adjusts fees, evidence that the agency sent a copy of the notice of intent and the proposed rule to the chairs of the house appropriations committee and senate finance committee before the agency submitted the notice of intent to the State Register as required



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by Minnesota Statutes, section 16A.128, subdivision 2a. Evidence shall be in the form of the dated correspondence to the chairs or an affidavit of mailing. For the recommended format of the affidavit, see the second paragraph in part 2010.9913.

G. The affidavit of mailing the notice of intent to adopt the emergency rule. The notice must be mailed at least 28 days before the end of the comment period. The affidavit or affidavits must state that the mailing list maintained by the agency pursuant to Minnesota Statutes, section 14.30 is accurate, complete, and current and that the notice of intent to adopt the emergency rule was mailed to all persons and groups whose names appear on the list. If the person who mailed the notice is not the same person who can attest to the accuracy of the mailing list, separate affidavits signed by the appropriate person must be submitted. For the recommended format of the affidavit, see part 2010.9920.

~~G.~~ H. A copy or photocopy of the notice of intent to adopt the emergency rule as published in the State Register. The publication date must be at least 25 days before the end of the comment period. The notice as published must contain the statements required by ~~part 2010.0400~~ item E.

~~H.--Four~~ I. Three copies of the emergency rule as adopted. Any modifications made to the proposed rule must be reflected on the rule as adopted and be approved as to form by the revisor of statutes.

~~I.~~ J. If the agency is a multimember agency as provided in Minnesota Statutes, section 15.0597, subdivision 1a, the certificate of the multimember agency's resolution adopting the emergency rule. The resolution must be adopted at a meeting duly called and attended by a quorum.

The resolution must approve and adopt the rule and authorize a named individual to sign the findings of fact, conclusions, and order adopting the rule and perform the necessary acts to provide that the emergency rule has force and effect of law. If the multimember agency is so empowered, the resolution may also authorize the named person to modify the



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rule under stated circumstances or as necessary to obtain approval of the rule by the attorney general. For the recommended format of the resolution, see part 2010.9925.

~~J.~~ K. The findings of fact, conclusions, and order adopting the emergency rule which must contain the following:

(1) a statement that proper notice of intent to adopt a rule was given;

(2) a statement that all other notice and procedural requirements have been complied with;

(3) a statement that all persons were given the opportunity to submit written comment for at least 25 days after publication of the notice of intent to adopt the emergency rule;

(4) a statement of the number of written letters with comments received and the number of requests for notice of submission of the adopted emergency rule to the attorney general;

~~(3)~~ (5) if any changes were made between the emergency rule as proposed and the emergency rule as adopted, findings of fact and conclusions supporting the reasons for the changes and explaining why the changes do not constitute substantial changes as provided in attorney general rule part 2010.1000, item D;

~~(4) if the agency received no submissions or comments on the rule required to be submitted to the attorney general pursuant to item K, or received no requests for notice of submission of the adopted emergency rule to attorney general; an applicable statement to that effect; and~~

(6) a statement that the authority for use of emergency rule procedures has not expired pursuant to Minnesota Statutes, section 14.29;

~~(5)~~ (7) a statement that the emergency rule is hereby ordered to be adopted; and

(8) the signature of the person authorized to adopt the emergency rule or authorized to sign the findings of fact, conclusions, and order adopting the emergency rule and the date on which the order is signed.



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~~The findings of fact, conclusion, and order adopting the emergency rule must be signed by a person authorized to adopt the emergency rule or authorized to sign the findings of fact, conclusions, and order adopting the emergency rule.~~ For the recommended format of the findings of fact, conclusions, and order, see part 2010.9955.

~~K.~~ L. All written requests, submissions, and comments on the rule received by the agency except requests solely for copies of the rule.

~~L.~~ M. The declaration of the attorney in the attorney general's office who represents the agency. The declaration must state:

(1) that the attorney has examined the rule and the rulemaking record;

(2) that the Administrative Procedure Act and chapter 2010 have been followed with a listing of any exceptions; and

(3) for attorney general billing purposes, the four-digit docket client code is ____. For the recommended format, see part 2010.9935.

~~M. The notice of submission of the emergency rule to the attorney general, if applicable.~~ N. If any persons requested ~~notification of the date of submission of the emergency rule~~ to be informed that the rule has been submitted to the attorney general, the notice of submission of the emergency rule as required by Minnesota Statutes, section 14.32. The notice must be mailed on the same day the rule is submitted to the attorney general. The notice must contain the following:

(1) the date of submission of the emergency rule to the attorney general;

(2) if the proposed emergency rule has been modified, the notice must state that fact and must state that a free copy of the emergency rule as modified is available upon request from the agency or that a copy of the rule as modified is enclosed with this notice;



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(3) the attorney general rule review time period of ten working days;

(4) a statement that comments may be submitted to the attorney general and that any comments submitted must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule and make a reference to the attorney general standards of review as set forth in part 2010.1000;

(5) the length of the ~~comment~~ period for submitting comments to the attorney general and the calendar date of the last day of the seven working day comment period. In calculating the comment period, the date the documents were submitted to the attorney general is not included. Saturdays, Sundays, and legal holidays are not included in the calculation. The last day of the comment period so calculated is included;

(6) a statement that upon written request to the attorney general a copy of the attorney general decision will be provided;

(7) the address of the attorney general division where comments and requests must be submitted; and

(8) a statement that any written comments to the attorney general must also be submitted simultaneously to a named person for the agency and the address of that person.

For the recommended format of the statement, see part 2010.9960.

~~N.~~ O. If the agency sent out the notice of submission of the emergency rule to the attorney general as required by Minnesota Statutes, section 14.32, the affidavit of mailing the notice of submission of the emergency rule to the attorney general~~, if applicable~~. The affidavit must state that a copy of the notice of submission of the rule to the attorney general was mailed to all persons and associations who requested the notification. For the recommended format of the affidavit, see part 2010.9945.



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2010.0500 RULE SUBMISSION AND AGENCY FAILURE TO SUBMIT REQUIRED DOCUMENTS.

Subpart 1. **Rule submission.** A rule is considered submitted to the attorney general when the rule and the record consisting of the required documents are received at the Office of the Attorney General, Public Finance Division located at 515 ~~Transportation Building, John Ireland Boulevard~~ 525 Park Street, Suite 500, Saint Paul, Minnesota ~~55155~~ 55103.

Subp. 2. **Failure to submit required documents.** Failure to submit all the required documents makes a submission incomplete. The attorney general must promptly inform the agency of the missing documents. If the missing documents include the required ~~four~~ three copies of the rule as adopted, findings of fact, conclusions and order, declaration of the attorney in the attorney general's office who represents the agency, or the statement of need and reasonableness for a rule adopted without a public hearing, the rule review period will not be initiated. For other missing documents, if the agency submits the missing documents to the attorney general within the attorney general review period, the submission shall be deemed complete and the period of review shall continue to run. If the missing documents are not submitted within the review period, the rule must either be withdrawn from review or rejected by the attorney general.

2010.0700 STATEMENT OF NEED AND REASONABLENESS.

The statement of need and reasonableness must contain a summary of the evidence and arguments that support both the need for and reasonableness of the proposed agency action of adopting a rule without a public hearing. In justifying the need for and reasonableness of the action, the agency must explain what circumstances have created the need for the rule or its amendment which required administrative action and why the proposed rulemaking action is an appropriate solution for meeting the need. The statement must explain the evidence relied upon and how that evidence rationally relates to the



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choice of action taken. A general statement of statutory implementation or restating the proposed rule will not suffice. The statement of need and reasonableness must also contain the following:

A. if required by Minnesota Statutes, section 14.115, a statement documenting the agency's consideration of methods for reducing the impact of the rule on small businesses and the results pursuant to Minnesota Statutes, section 14.115, subdivision 2. If the small business considerations in the rulemaking section are not applicable, the basis for the agency's exemption must be stated in the statement of need and reasonableness;

B. if the agency's notice of intent to adopt the rule does not contain the statement of estimated costs to local public bodies pursuant to Minnesota Statutes, section 14.11, subdivision 1, because the reasonable estimate of the total cost to public bodies to implement the rule for the two years following the adoption of the rule is less than $100,000, a statement that Minnesota Statutes, section 14.11, is not applicable and the basis for that statement;

C. if required by Minnesota Statutes, section 16A.128, subdivision 1, the approval of the commissioner of finance if the rule sets or adjusts a fee charged; ~~and~~

D. the signature of the person authorized to adopt the rule or authorized to adopt the rule pursuant to the certificate of authorizing resolution and the date the statement was signed; and

~~C.~~ E. any information required by any other law or rule to be included in the statement of need and reasonableness.

2010.1000 STANDARDS OF REVIEW.

A rule must be disapproved by the attorney general if:

A. The rule as submitted is not a statement of general applicability and future effect adopted to implement or make specific the law enforced or administered by ~~the~~ that agency or to govern ~~the agency's~~ its organization or procedures.



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

H. The rule is unreasonable by failing to comport with substantive due process because it is not rationally related to the objective sought to be achieved.

I. The rule is vague or ambiguous in violation of the constitutional principles of due process or equal protection.

~~I.~~ J. The rule, by its terms, cannot have the force and effect of law.

~~J.~~ K. The rule is unconstitutional or~~,-in-the-case-of emergency-rules,-is-unreasonable~~ illegal.

2010.1100 WITHDRAWAL OF RULE FROM REVIEW BY ATTORNEY GENERAL.

The agency may withdraw a rule from review by the attorney general. To withdraw a rule after it has been submitted to the attorney general, a written order of withdrawal of the rule from review must be submitted to the attorney general. The written order must state the date of withdrawal and be signed by a person authorized to adopt the rule or sign the findings of fact, conclusions, and order adopting the rule. Upon receipt of the written order of withdrawal, the attorney general shall return the submitted documents to the agency.

2010.1200 DISAPPROVAL.

If a rule is disapproved, the attorney general must state in writing the reasons for disapproval and make recommendations to overcome the deficiencies. The statement of the reasons for disapproval must be sent to the agency, the chief administrative law judge, the legislative commission to review administrative rules, the revisor of statutes, and persons who requested to receive a copy of the decision. Upon disapproval, the review period terminates and the rule must neither be filed in the office of the secretary of state nor published unless the rule is resubmitted and approved upon resubmission. Upon disapproval, the attorney general shall return the submitted documents to the agency.

2010.1300 RESUBMISSION.



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Subpart 1. **Resubmission.** To resubmit a rule which was withdrawn or disapproved by the attorney general, the following documents must be submitted:

A. All documents that were previously submitted to the attorney general for review that were returned to the agency upon withdrawal or disapproval.

B. A supplemental findings of fact, conclusions, and order adopting the rule. The order must be signed by a person authorized to adopt the rule or authorized to sign the findings of fact, conclusion, and order adopting the rule. If any modifications were made to the rule since the rule was withdrawn or disapproved, findings of facts and conclusions must be set forth supporting the reasons for the changes and ~~explain~~ explaining why the changes do not constitute substantial changes.

~~B.~~ C. A supplemental certificate of the multimember agency's resolution if:

(1) the agency is a multimember agency as provided in Minnesota Statutes, section 15.0597, subdivision 1a;

(2) modifications were made to the rule since the rule was withdrawn or disapproved; and

(3) the certificate of the agency's resolution submitted in accordance with part 2010.0300, item ~~J~~ M, or 2010.0400, item ~~I~~ J does not authorize the modification by the person who signed the supplemental findings of fact, conclusions, and order. The supplemental certificate of the agency's resolution must be in accordance with part 2010.0300, item ~~J~~ M or 2010.0400, item ~~I~~ J.

~~C.~~ D. If any modifications were made to the rule as adopted since the rule was withdrawn or disapproved, ~~four~~ three copies of the rule as adopted with the modifications reflected and approved as to form by the revisor of statutes.

~~D.~~ E. A new notice of submission of the rule to the attorney general mailed to any persons who requested notification pursuant to Minnesota Statutes, section 14.26 or 14.32. The notice of submission to the attorney general must comply with part 2010.0300, item ~~N~~ Q or 2010.0400, item ~~M~~ N.



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~~E.~~ F. The affidavit of mailing for the notice of submission of the rule to the attorney general, if applicable. The affidavit must comply with part 2010.0300, item ~~G~~ R or 2010.0400, item ~~N~~ O.

~~F.~~ G. Any other documents necessary to demonstrate that the procedural or substantive deficiencies have been remedied.

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

2010.1400 APPROVAL OF RULE.

Subpart 1. **Approval.** If the rule is approved, the attorney general shall promptly file two copies of the rule with the secretary of state. The attorney general shall send a copy of the approval memo ~~must be sent~~ and the approved rule to the agency~~.~~. The attorney general shall also send a copy of the approval memo to the chief administrative law judge, the legislative commission to review administrative rules, and persons who requested to receive a copy of the decision.

Subp. 2. **Return of record.** Upon approval of a rule, the attorney general shall return ~~to the agency one approved copy of the rule, any extra copies of documents and any petitions, requests, submissions, or comments directed~~ the submitted documents to the agency. The agency is required pursuant to Minnesota Statutes, section 14.365, to maintain the official rulemaking record for every rule adopted.

2010.9913 RECOMMENDED AFFIDAVIT OF MAILING THE STATEMENT OF NEED AND REASONABLENESS TO THE LEGISLATIVE COMMISSION TO REVIEW ADMINISTRATIVE RULES AND MAILING THE FEE NOTICE TO COMMITTEE CHAIRS.

NOTE: The following affidavit may be used when the same person mailed both the statement of need and reasonableness to the legislative commission to review administrative rules and the fee notice pursuant to Minnesota Statutes, section 16A.128, subdivision 2, paragraph (a). If different persons mailed the two notices, the two paragraphs must be split into separate affidavits signed by the appropriate persons. If the proposed



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rule does not establish or adjust fees, do not use the second paragraph. For emergency rules, do not use the first paragraph as it is inapplicable.

| | |
|---|---|
| In the Matter of the Proposed Adoption of the Rule of the State Governing | AFFIDAVIT OF MAILING THE STATEMENT OF NEED AND REASONABLENESS TO THE LEGISLATIVE COMMISSION TO REVIEW ADMINISTRATIVE RULES AND THE FEE NOTICE TO COMMITTEE CHAIRS |

STATE OF MINNESOTA )
)ss.
COUNTY OF [ ] )

_____, being sworn says:

That on the day of , 19 , when the Statement of Need and Reasonableness became available to the public, I mailed the Statement of Need and Reasonableness to the Legislative Commission to Review Administrative Rules by depositing in the [United States mail, with postage prepaid] [State of Minnesota Interoffice Mail System], a copy thereof.

NOTE: The following paragraph is applicable only if the rule establishes or adjusts fees.

_____, being sworn says:

That on the day of , 19 , before this agency submitted notice to the State Register of intent to adopt a rule that establishes or adjusts fees, I mailed a copy of the notice of intent and the proposed rule to the chairs of the house appropriations committee and senate finance committee by depositing in the [United States mail, with postage prepaid] [State of Minnesota Interoffice Mail System], a copy thereof.

_____
[Name]

Subscribed and sworn to before me this day of , 19 .

_____
[Title]

_____

2010.9916 RECOMMENDED NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING.

STATE OF MINNESOTA

DEPARTMENT OF _____

| | |
|---|---|
| In the Matter of the Proposed Adoption of the Rule of the State Governing | NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING |



Approved by Revisor _____

The [agency name] intends to adopt a permanent rule without a public hearing following the procedures set forth in the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. You have 30 days to submit written comments on the proposed rule and may also request that a hearing be held on the rule.

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

[Name, agency, address, telephone number, and fax number]

**Subject of Rule and Statutory Authority.** The proposed rule is about [title or subject of rule]. The statutory authority to adopt this rule is [specific statutory citation]. A copy of the proposed rule is published in the State Register and attached to this notice as mailed. [If the proposed rule is not attached to the mailed notice, then this notice must include an informative statement describing the nature and effect of the proposed rule and include the announcement that: A free copy of the rule is available upon request from the agency contact person listed above.]

**Comments.** You have until p.m., [calendar date of the end of the 30-day comment period; see part 2010.0300, item G, subitem (3), for how to count the days] to submit written comment in support of or in opposition to the proposed rule and any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

**Request for a Hearing.** In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by p.m. on . Your written request for a public hearing must include your name and address. You are encouraged to identify



Approved by Revisor _____

the portion of the proposed rule which caused your request, the reason for the request, and any changes you want made to the proposed rule. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If a public hearing is required, the agency will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

**Modifications.** The proposed rule may be modified as a result of public comment. The modifications must be supported by data and views submitted to the agency and may not result in a substantial change in the proposed rule as [attached and] printed in the State Register. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

**Statement of Need and Reasonableness.** A statement of need and reasonableness is now available from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule.

**Small Business Considerations.** [If applicable and selected, see Minnesota Statutes, section 14.115, subdivision 4.]

**Expenditure of Public Money by Local Public Bodies.** [If applicable, see Minnesota Statutes, section 14.11, subdivision 1.]

**Impact on Agriculture Lands.** [If applicable, see Minnesota Statutes, section 14.11, subdivision 2.]

[Other notices required by law or chosen to be inserted in this notice.]

**Adoption and Review of Rule.** If no hearing is required, after the end of the comment period the agency may adopt the rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney



Approved
by Revisor _____

general or be notified of the attorney general's decision on the rule. If you wish to be so notified, or wish to receive a copy of the adopted rule, submit your request to the agency contact person listed above.

_____
[Name]

_____
[Title]

Dated: _____

2010.9920 RECOMMENDED AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING OR AN EMERGENCY RULE AND CERTIFICATE OF MAILING LIST.

NOTE: If the person who can attest to the accuracy of the mailing list is not the same person who mailed the notices of intent, then the two paragraphs in this recommended form must be separated into two affidavits signed by the appropriate persons.

| | |
|---|---|
| In the Matter of the Proposed Adoption of the Rule of the State _____ Governing _____ | AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT [A RULE WITHOUT A PUBLIC HEARING] [AN EMERGENCY RULE] AND CERTIFICATE OF MAILING LIST |

STATE OF MINNESOTA )
)ss.
COUNTY OF [_____] )

_____, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state _____ rulemaking mailing list is accurate, complete, and current as of this ___ day of _____, 19__.

That on the _____ day of _____, 19__, at least [33 days for rules without a public hearing] [28 days for emergency rules] prior to the end of the comment period, at the City of [_____], County of [_____], State of Minnesota, I mailed the ~~attached Notice of Intent to Adopt [A Rule Without a Public Hearing] [an Emergency Rule]~~ _____ (state what was mailed, for example: (1) Notice of Intent and (2) the proposed rule) by depositing in the [State of Minnesota



Approved
by Revisor _____

Central Mail System for United States mailing] [United States mail], a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

_____
[Name]

Subscribed and sworn to before me this ____ day of _____, 19__. _____
[Title]

_____

2010.9930 RECOMMENDED FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING THE RULE WITHOUT PUBLIC HEARING.

STATE OF MINNESOTA

DEPARTMENT OF _____

In the Matter of the Proposed Adoption of the Rule of the State _____ Governing _____

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

FINDINGS

1. Notice of the [Commissioner's] [Board's] [Commission's] intent to adopt the above-entitled rule was published in the State Register on _____, 19__ and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on _____, 19__.

2. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public. ~~[For rules that establish or adjust fees after July 1, 1987: Before the notice was submitted to the State Register, a copy of the notice of intent to adopt rules without a public hearing and the proposed rule was sent to the chairs of the house appropriations committee and senate finance committee.]~~

3. All of the notice and procedural requirements in Minnesota Statutes, chapter 14, and other applicable law have been complied with.

4. All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. The 30-day comment period expired on _____.

5. [The agency received _____ letters of comments and



Approved by Revisor _____

submissions on the rule. The agency received requests for notice of submission to the attorney general. The agency received _____ requests for a public hearing [, of which ____ were subsequently withdrawn]. Therefore, ~~the agency did not receive request~~ there are not 25 or more outstanding requests for a public hearing ~~from 25 or more persons which were not withdrawn.] or [No requests for a public hearing on the rule were received by the agency.]~~.

~~[If applicable: No submissions or comments on the rule were received by the agency. No requests for notice of submission to the attorney general were received by the agency.]~~

~~Based on the comments and evidence in the record before the agency, I find the following:~~

[If any changes were made between the rule as proposed and the rule as adopted, findings of fact and conclusions supporting the reasons for the changes and ~~explanations~~ explaining why the changes do not constitute substantial changes as provided in the attorney general rules, part 2010.1000, item D must be set forth.]

~~The above captioned rule is needed and reasonable.~~

6. The statement of need and reasonableness together with these findings, establish and justify the rational basis for the need for and reasonableness of the rule [as amended].

CONCLUSIONS

1. The duly acquired and has jurisdiction over this proceeding.

2. The published and served timely and adequate notice of intent to adopt the rule without a public hearing.

3. All relevant legal and procedural requirements of statute and rule have been complied with.

4. [If the proposed rule was amended] The modifications to the proposed rule are supported by the record and do not result in a substantial change.

5. The rule [as amended] is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as _____ [as modified] is adopted this ____



Approved by Revisor _____

day of _____, 19___, pursuant to authority vested in [me] [the Board] [the Commission] by Minnesota Statutes, section _____.

[Name] _____

[Title] _____

2010.9940 RECOMMENDED NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO ATTORNEY GENERAL.

STATE OF MINNESOTA

DEPARTMENT OF _____

In the Matter of the Proposed Adoption of the Rule of the State _____ Governing _____

NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 14.26:

PLEASE TAKE NOTICE that the above-captioned rule as adopted ~~has been~~ will be submitted to the Office of the Attorney General on the date of this notice, _____, 19__, for review as to legality and form to the extent form relates to legality. The proposed rule, the rule as adopted, all the notices, the Statement of Need and Reasonableness, all written comments and requests for a hearing received, and other required documents also have been submitted to the Attorney General.

[(If the proposed rule has been modified:) The proposed rule which was published in the State Register and made available to the public on _____, 19__, has been modified. A free copy of the rule as modified as well as the findings of fact, conclusions, and order explaining the amendments and adopting the rule ~~is~~ are available upon request from _____. (or) A copy of the rule as modified ~~is~~ and the findings of fact, conclusions, and order are enclosed with this notice.]

The rule must be approved or disapproved by the Attorney General within 14 calendar days of the date of submission to the Attorney General. You may submit written comments to the Attorney General on the legality of the rule. Any written



Approved by Revisor _____

comments must be submitted ~~within~~ by 4:30 p.m., _____ (date,) 19 __, (which is eight calendar days of the date of submission of the rule to the Attorney General). Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. The Attorney General standards for review are set forth in Minnesota Rules, part 2010.1000. You may receive a copy of the Attorney General decision upon written request to the Attorney General. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
Public Finance Division
~~515 Transportation Building~~
~~John Ireland Boulevard~~
525 Park Street, Suite 500
Saint Paul, Minnesota ~~55155~~ 55103
Telephone Number: (612) 297-2040
Fax Number: (612) 297-2576

Any written comments submitted to the Attorney General must be submitted simultaneously to:

[Name, address, ~~and phone~~ telephone number, and Fax number (Fax number is optional) of appropriate person in the agency]

[Name] _____

[Title] _____

Dated: _____

2010.9945 RECOMMENDED AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING OR EMERGENCY RULE TO ATTORNEY GENERAL.

In the Matter of the Proposed Adoption of the Rule of the State _____ Governing _____

AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION OF [RULE ADOPTED WITHOUT PUBLIC HEARING] [EMERGENCY RULE] TO THE ATTORNEY GENERAL

STATE OF MINNESOTA )
)ss.
COUNTY OF [_____] )

_____, being sworn says:

That on the _____ day of _____, 19__, in the City of [_____], County of [_____], State of Minnesota, I mailed the ~~attached~~ Notice of Submission to the Attorney General by depositing in the [State of Minnesota Central Mail



Approved by Revisor _____

System for United States mailing] [United States mail], a copy thereof, with postage prepaid, to all persons and associations who requested notice that the rule in the above-entitled matter has been submitted to the Attorney General.

_____
[Name]

Subscribed and sworn to before me this ___ day of _____, 19__. _____
[Title]

_____

2010.9946 RECOMMENDED DUAL NOTICE.

STATE OF MINNESOTA

DEPARTMENT OF _____

In the Matter of the Proposed Adoption of the Rule of the State _____ Governing _____

DUAL NOTICE:

Notice of Intent to Adopt a Rule Without a Public Hearing Unless 25 or More Persons Request a Hearing, and

Notice of Hearing if 25 or More Requests for Hearing are Received

**Introduction.** The [agency name] intends to adopt a permanent rule without a public hearing following the procedures set forth in the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rule by [date of the end of the 30-day comment period], a public hearing will be held on [scheduled hearing date]. To find out whether the rule will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after [date 1, end of the 30-day comment period] and before [date 2, the scheduled hearing date].

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

[Name, agency, address, telephone number, and fax number]

**Subject of Rule and Statutory Authority.** The proposed rule



Approved by Revisor _____

is about [title or subject of rule]. The statutory authority to adopt the rule is [specific statutory citation]. A copy of the proposed rule is published in the State Register and attached to this notice as mailed. [If the proposed rule is not attached to the mailed notice, then this notice must include an informative statement describing the nature and effect of the proposed rule and issues involved and include the announcement that: A free copy of the rule is available upon request from [the agency contact person].]

**Comments.** You have until p.m. on to submit written comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

**Request for a Hearing.** In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by p.m. on . Your written request for a public hearing must include your name, address, and telephone number. You are encouraged to identify the portion of the proposed rule which caused your request, the reason for the request, and any changes you want made to the proposed rule. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing.

**Modifications.** The proposed rule may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must not result in a substantial change in the proposed rule as [attached and] printed in the State Register and must be supported by data and views submitted to the agency or presented at the hearing. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

**Cancellation of Hearing.** The hearing scheduled for [date]



Approved
by Revisor _____

will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rule. If you requested a public hearing, the agency will notify you before the scheduled hearing whether or not the hearing will be held. You may also call [agency contact person] at [telephone number] after [date after the end of the 30-day comment period] to find out whether the hearing will be held.

**Notice of Hearing.** If 25 or more persons submit written requests for a public hearing on the rule, a hearing will be held following the procedures in Minnesota Statutes, sections 14.14 to 14.20. The hearing will be held on [date] in the [place] beginning at [time] and will continue until all interested persons have been heard. The hearing will continue, if necessary, at additional times and places as determined during the hearing by the administrative law judge. The administrative law judge assigned to conduct the hearing is [name]. Judge [name] can be reached at the Office of Administrative Hearings, [current address and telephone number].

**Hearing Procedure.** If a hearing is held, you and all interested or affected persons including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should relate to the proposed rule. You may also mail written material to the administrative law judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing. Comments received during this period will be available for review at the Office of Administrative Hearings. You and the agency may respond in writing within five business days after the submission period ends to any new information submitted. All written materials and responses submitted to the administrative law judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on



Approved
by Revisor _____

the due date. No additional evidence may be submitted during the five-day period. This rule hearing procedure is governed by Minnesota Rules, parts 1400.0200 to 1400.1200 and Minnesota Statutes, sections 14.14 to 14.20. Questions about procedure may be directed to the administrative law judge.

**Statement of Need and Reasonableness.** A statement of need and reasonableness is now available from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule. It also includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing, if one is held. The statement may also be reviewed and copies obtained at the cost of reproduction from the Office of Administrative Hearings.

**Small Business Considerations.** [If applicable and selected, see Minnesota Statutes, section 14.115, subdivision 4.]

**Expenditure of Public Money by Local Public Bodies.** [If applicable, see Minnesota Statutes, section 14.11, subdivision 1.]

**Impact on Agriculture Lands.** [If applicable, see Minnesota Statutes, section 14.11, subdivision 2.]

[Other notices required by law or chosen to be inserted in this notice.]

**Lobbyist Registration.** Minnesota Statutes, chapter 10A requires each lobbyist to register with the Ethical Practices Board. Questions regarding this requirement may be directed to the Ethical Practices Board at [current address and telephone number of the Ethical Practices Board].

**Adoption Procedure if No Hearing.** If no hearing is required, after the end of the comment period the agency may adopt the rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you want to be so notified, or wish to receive a copy



Approved
by Revisor _____

of the adopted rule, submit your request to [agency contact person] listed above.

**Adoption Procedure After the Hearing.** If a hearing is held, after the close of the hearing record, the administrative law judge will issue a report on the proposed rule. You may request to be notified of the date on which the administrative law judge's report will be available, after which date the agency may not take any final action on the rule for a period of five working days. If you want to be notified about the report, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. You may also request notification of the date on which the rule is adopted and filed with the Secretary of State. The agency's notice of adoption must be mailed on the same day that the rule is filed. If you want to be notified of the adoption, you may so indicate at the hearing or send a request in writing to the agency contact person at any time prior to the filing of the rule with the Secretary of State.

Date: _____

_____
[Name]

_____
[Title]

2010.9951 RECOMMENDED NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE.

STATE OF MINNESOTA

DEPARTMENT OF _____

| | |
|---|---|
| In the Matter of the Proposed Adoption of Emergency Rule of the State Governing _____ | NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE |

The [agency name] intends to adopt an emergency rule following the procedures set forth in the Administrative Procedure Act, Minnesota Statutes, sections 14.29 to 14.36. You may submit written comments on the proposed emergency rule within 25 days.

**Agency Contact Person.** Comments or questions on rule must be submitted to:

[Name, agency, address, telephone number, and fax number]

**Subject of Emergency Rule and Statutory Authority.** The



Approved by Revisor _____

proposed emergency rule is about [title or subject of rule]. The statutory authority to adopt this emergency rule is [specific statutory citation]. A copy of the proposed rule is published in the State Register and attached to this notice as mailed. [If the proposed rule is not attached to the mailed notice, then this notice must include an informative statement describing the nature and effect of the proposed rule.] A free copy of the proposed emergency rule is available upon request from the agency contact person listed above.

**Comments.** You have until p.m., [calendar date of the end of the 25-day comment period; see part 2010.0400, item E, subitem (3), for how to count the days] to submit written data and views on the proposed emergency rule or any part or subpart of the emergency rule. Your comment must be in writing and received by the agency contact person by the due date.

**Modifications.** The proposed emergency rule may be modified as a result of public comment. The modifications must be supported by data and views submitted to the agency and may not result in a substantial change in the proposed emergency rule as [attached and] printed in the State Register. If the proposed emergency rule affects you in any way, you are encouraged to participate in the rulemaking process.

**Expenditure of Public Money by Local Public Bodies.** [If applicable, see Minnesota Statutes, section 14.11, subdivision 1.]

**Impact on Agriculture Lands.** [If applicable, see Minnesota Statutes, section 14.11, subdivision 2.]

[Other notices required by law or chosen to be inserted in this notice.]

**Adoption and Review of Emergency Rule.** After the end of the comment period, the agency may adopt the emergency rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be



Approved
by Revisor _____

notified of the attorney general's decision on the rule. If you wish to be so notified, or wish to receive a copy of the adopted rule, submit your request to the agency contact person listed above.

**Effective Period for Emergency Rule.** The emergency rule will take effect five working days after approval by the attorney general and be effective for _____ days. The emergency rule will be continued in effect for an additional _____ days if the agency gives notice of continuation in accordance with Minnesota Statutes, section 14.35.

_____
[Name]

_____
[Title]

Dated: _____

2010.9955 RECOMMENDED FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULE.

STATE OF MINNESOTA

DEPARTMENT OF _____

In the Matter of the Proposed Adoption of the Rule of the State _____ Governing _____

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULE

FINDINGS

1. Notice of the [Commissioner's] [Board's] [Commission's] intent to adopt the above-entitled emergency rule was published in the State Register on _____, 19__ and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, section 14.30 on _____, 19__.

2. All of the notice and procedural requirements in Minnesota Statutes, chapter 14, and other applicable law have been complied with.

3. All persons were given the opportunity to submit written comment on the rule for at least 25 days after notice of proposed rulemaking. The 25-day comment period expired on _____.

~~[If applicable: No~~ 4. The agency received _____ letters of comments and submissions ~~or comments~~ on the rule ~~were~~. The agency received ~~by the agency: No~~ _____ requests for notice of



Approved by Revisor _____

submission to the attorney general ~~were received by the agency~~].

[If any changes were made between the rule as proposed and the rule as adopted, findings of fact and conclusions supporting the reasons for the changes, and ~~explanations~~ explaining why the changes do not constitute substantial changes as provided in the attorney general rules part 2010.1000, item D must be set forth.]

CONCLUSIONS

1. The _____ duly acquired and has jurisdiction over this proceeding.

2. The authority for use of emergency rule procedures has not expired pursuant to Minnesota Statutes, section 14.29.

3. The _____ published and served timely and adequate notice of intent to adopt the emergency rules.

4. All relevant legal and procedural requirements of statute and rule have been complied with.

5. [If the proposed rule was amended] The modifications to the proposed rule are supported by the record and do not result in a substantial change.

NOW, THEREFORE, IT IS ORDERED that the rule identified as _____ [as modified] is adopted this _____ day of _____, 19__, pursuant to authority vested in [me] [the Board] [the Commission] by Minnesota Statutes, section _____.

[Name] _____

[Title] _____

2010.9960 RECOMMENDED NOTICE OF SUBMISSION OF THE EMERGENCY RULE TO ATTORNEY GENERAL.

STATE OF MINNESOTA

DEPARTMENT OF _____

| | |
|---|---|
| In the Matter of the Proposed Adoption of the Rule of the State _____ Governing _____ | NOTICE OF SUBMISSION OF EMERGENCY RULE TO THE ATTORNEY GENERAL |

Pursuant to your request and in accordance with Minnesota Statutes, section 14.32:

PLEASE TAKE NOTICE that the above-captioned emergency rule



Approved by Revisor _____

as adopted ~~has been~~ will be submitted to the Office of the Attorney General on the date of this notice, _____, 19__, for review as to legality and form to the extent form relates to legality. The proposed emergency rule, the rule as adopted, all the notices, all written comments received and other required documents also have been submitted to the Attorney General.

[(If the proposed emergency rule has been modified:) The proposed emergency rule which was published in the State Register and made available to the public on _____, 19__, has been modified. A free copy of the emergency rule as modified as well as the findings of fact, conclusions, and order explaining the amendments and adopting the rule ~~is~~ are available upon request from _____. (or) A copy of the rule as modified ~~is~~ and the findings of fact, conclusions, and order are enclosed with this notice.]

The rule must be approved or disapproved by the Attorney General on the tenth working day following date of receipt of the rule. You may submit written comments to the Attorney General. Any written comments must be submitted ~~within~~ by 4:30 p.m. _____, 19 __, seven working days of the date of this notice. Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. The Attorney General standards for review are set forth in Minnesota Rules, part 2010.1000. You may receive a copy of the Attorney General decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
Public Finance Division
~~515 Transportation Building~~
~~John Ireland Boulevard~~
525 Park Street, Suite 500
Saint Paul, Minnesota ~~55155~~ 55103
Telephone: (612) 297-2040
Fax Number: (612) 297-2576

Any written comments submitted to the Attorney General must be submitted simultaneously to:

[Name, address, ~~and phone~~ telephone number,
and Fax number (Fax number is optional)



Approved
by Revisor _____

of appropriate person in the agency]

_____
[Name]

_____
[Title]

Dated: _____

REPEALER. Minnesota Rules, parts 2010.9915; and 2010.9950, are repealed.



Approved
by Revisor _____

# Office of the Revisor of Statutes

## Administrative Rules

**TITLE:** Proposed Permanent Rules Relating to Rule Review

**AGENCY:** Attorney General

**MINNESOTA RULES:** Chapter 2010

The attached rules are approved for
publication in the State Register

Paul M. Marinac
Deputy Revisor

Care
Providers
Of Minnesota

February 15, 1991

Ms. Martha J. Casserly
Special Assistant Attorney General
Public Finance Divison
Office of the Attorney General
525 Park, Suite 500
St. Paul, MN 55103

Dear Ms. Casserly:

This letter provides the comments of Care Providers of Minnesota to the draft proposed revisions to the Administrative Procedures Act. Care Providers of Minnesota is a trade association representing nearly 250 nursing facilities, boarding care facilities, intermediate care facilities for the mentally retarded, and facilities serving physically and mentally disabled individuals. Our membership also offers home health, adult day care, hospice, and other alternative services for the elderly and disabled. Since our industry is highly regulated and depends on the effective and efficient workings of this Act, we are pleased to have the opportunity to provide comments on the proposed changes to the formal rulemaking process.

**General Comments:**

Care Providers of Minnesota supports proposed changes to the Administrative Procedures Act (APA) that make it more "user friendly". The proposed changes to the APA require government agencies to provide clearer notice information to the parties involved in the rulemaking, clearer comment response time limits and specific communication with other concerned parties such as certain legislative committees when changes, adjustments or the imposition of a fees are proposed.

New federal and state long term care reforms and additional government mandates impose significantly higher expectations on long term care facilities than ever before. Many without specific rules to implement requirements in a timely manner and many without any guarantee of funding to support those mandates. However, equal expectations are not placed on the government agencies who monitor compliance with the new rules. Consequently, problems such as lack of agency accountability and inconsistency in applying and enforcing rules have been experienced and documented as serious problems in Legislative Audit reports.

2850 Metro Drive, Suite 200 • Bloomington, Minnesota 55425 • (612) 854-2844 • 1-800-462-0024 (MN Toll Free)

RECEIVED
FEB 19 1991
Office of the Attorney General
Government Services Section
Capitol Office Bldg. - Suite 500
525 Park Street
St. Paul, MN 55103

The rulemaking process impacts the long term care industry in every aspect of business operations. From getting into business, to providing services to the elderly and disabled, to hiring and training of staff, to payment for services, to continued operations. The proposed APA rule revisions as outlined provide an initial step toward making the process more accessible to this industry.

Care Providers of Minnesota appreciates the opportunity to comment on these proposed revisions to the APA.

Sincerely,

Lori Wething

Lori Wething
Public Affairs Attorney

cc: Larry Juhl, Chairman of the Board
Dennis Kamstra, Chair, Public Affairs Coordinating Committee
Jayne Stecker, Chair, State Regulatory Committee
Rick Carter, President
Patti Cullen Garvey, Public Affairs Director

LW/blb
AG/Commune
2/15/91

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-3816

February 12, 1991

Ms. Martha J. Casserly
Special Assistant Attorney General
Public Finance Division
Office of the Attorney General
525 Park, Suite 500
St. Paul, MN 55103

Dear Martha:

Thank you for sending me the proposed rule amendments to the Attorney General's rule on rule review, Minnesota Rules, parts 2010.0200 to 2010.9960.

Minnesota Statutes, chapter 14 and Minnesota Rules, parts 2010.0200 to 2010.9960 establish precise administrative processes for each rule. The Department strives to follow each requirement at all times. However, we have an ongoing fear that a rule will be rejected because we failed to meet a procedural requirement.

We have a concern about adding general procedural requirements that are not central to the rulemaking process, i.e., procedures that do not help ensure public input is obtained, that public notice is given, and that legislative intent is met.

It strikes us that requiring copies of the report required under Minnesota Statutes, section 14.12 to be submitted to your office is adding a requirement that does not directly impact rule development or public input into the process.

Our concern is based on a number of factors:

1. The rule does not address the consequences of not submitting copies of this report or of not doing the report in the first place. If the report is not done are we barred from adopting the rule?

2. The report itself ''reporting failure to publish a proposed rule in the State Register within six months of the grant of rulemaking authority'' is a frustrating requirement for state agencies. To properly develop a rule with public input and rule advisory committees always takes more than six months. We consistently have to report our ''failure,''

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AN EQUAL OPPORTUNITY EMPLOYER

when the basis of the ''failure'' is that we try to get public input during rule development. We could meet the six month deadline by doing rules behind closed doors. It would feel more comfortable if 14.12 required state agencies to report their progress at the six month mark rather than their ''failure.''

3. The 14.12 report is sent to four different locations under separate heading. Do we really have to show that we sent it to all four locations? The rulemaking process is already heavily laden with paper.

4. It seems that submittal of this report should be policed by the LCRAR, not the AG, unless the intent is to bar adoption of a rule when a 14.12 report was not filed.

We have a concern in general about the consequences of certain procedural defects.

1. What would be the consequence of inadvertently forgetting to send the Statement of Need and Reasonableness to the LCRAR?

2. What would be the consequence of submitting materials required under section 16A.128 to Senate Finance and House Appropriations a day late?

Does your office presently have informal authority to overlook minor procedural defects? If not, it seems that ''hold harmless'' provisions should be developed for minor procedural defects.

Again, thank you for the opportunity for input on your rule. If you have questions please call me at 296-2794.

Sincerely,

Robert J. Hamper
Director
Rules and Bulletins Division

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FEB 19 1991
Office of the Attorney General
Government Services Section Suite 500
Capitol Office Bldg.
525 Park Street
St. Paul, MN 55103

10-26-90

Kevin Wallis

Berger Saw Mill

Reviewed the rules doesn't see anymore requirements - told him about having to sign the SONAR and date it and also put the end of the comment period in. Thought that the forms were easier to read. Going to recommend to his client not to request a hearing.

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155-3898
Telephone (612) 296-6300

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February 14, 1991

Ms. Martha J. Casserly
Special Assistant Attorney General
Government Services Section
522 Park Street
Suite 500
St. Paul, Minnesota 55103

Re: Amendments to Minn. Rules, Chapter 2010

Dear Ms. Casserly:

Several Minnesota Pollution Control Agency (Agency) staff persons have received your January 24, 1991 preliminary draft rules. We distributed the proposed revisions at our monthly rulewriters meeting and decided that we would pool our comments and send one letter.

Our comments are as follows:

Part 7010.0300 G(3) should be revised to read:

> (3) A statement that each comment ~~should~~ must identify the portion of the proposed rule addressed, the reason for the comment and any change proposed.

Part 7010.0300 G(6) should be revised to read:

> (6) A statement that any person requesting a public hearing must include his or her name and address, and is ~~encouraged~~ required to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

Part 7010.9915 RECOMMENDED NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING should be revised to read:

> Pg. 19, line 30 of preliminary draft -
> . . . the rule. Comment is encouraged. Each comment ~~should~~ must identify . . .

From: MNPCA::CAREY_P 14-FEB-1991 09:48:46.40
To: EGGLESTON
CC: CAREY_P
Subj: THIS IS A GOOD COMMENT, I THINK THEY SHOULD CLARIFY WHO DOES THIS SINCE THEY AR

From: MNPCA::MEYER "Sharon" 13-FEB-1991 16:50:21.73
To: CAREY_P
CC: MEYER
Subj: CHANGES TO AG RULE ON RULE REVIEW

The only comment I have regards page 18, lines 12-16. Is it the Agency or the AG that sends a copy of the approval memo to the chief ALJ, the LCRAR, and the public who asked??

I presume we will revise our procedures/forms to accommodate these changes when they become final? .....Thanks!

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155

# Facsimile Transmittal Sheet

To: Patty Nolte

Company or Agency: Ofc of AG

Facsimile Number: 297-2576

Subject: Rule Revisions

From: Jeanne Eggleston

Company or Agency: MPCA

Telephone Number: 643-3476

Facsimile Number: (612) 642-0465

Date: 2/15/91

Pages to Follow: 3

(Please Number ALL Pages)

If you have questions regarding this transmittal, please call: (612)

Please consider the pg 3 comments that are not included in the letter. Please call me to confirm receipt of comments.

Pg. 19, line 41 of preliminary draft -
. . . his or her name and address, and is ~~encouraged~~ required to identify . . .

The suggested revisions require the commenter to make a good faith and reasonable effort to articulate their position concerning the rulemaking at hand. It is not onerous because it requires essentially the same effort as required of the agency -- to set forth their comments and proposals with attendant reasoning in a public manner. The suggested revisions would minimize the submittal of broad and sweeping comment letters that are impossible to respond to in an effective way.

These suggestions come out of a specific recent rulemaking experience of one of our staff persons. Please contact Tom Clark at 612/643-3409 if you would like to discuss the suggested revisions.

Sincerely,

Jeanne A. Eggleston

Jeanne A. Eggleston
Rules Unit
Hazardous Waste Division

JAE:jao

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155-3898
Telephone (612) 296-6300

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February 22, 1991

Martha J. Casserly
Special Assistant Attorney General
Public Finance Division
Office of the Attorney General
525 Park, Suite 500
St. Paul, Minnesota 55103

Dear Ms. Casserly:

This letter is to reply to your proposed rule revisions governing rule review for the Attorney General's Office.

1. Part 2010.0300, subpart G, item 6, the language states: "that any person requesting a public hearing must include his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed." I feel you should delete "is encouraged to" because most comment letters the MPCA receives neglect to establish what portion of the rule they disagree with. Staff time is spent following up on these incomplete comments. In addition, when a hearing is being arranged, I find the Administrative Hearings Office and the MPCA's Attorney General's Office difficult to deal with when I'm not sure what part of the rule is being challenged. The proposed modification would then read: "that any person requesting a public hearing must include his or her name and address and identify the portion of the proposed rule addressed, the reason for the request, and any change proposed."

2. Part 2010.0400, subpart E, item 2, the language states: "In calculating the comment period, the date of the publication in the State Register is not included." I feel you should add a qualifier to that so it is clear to the reader when calculating the the comment period, they begin with the day following the publication date and include Saturdays, Sundays, and legal holidays.

Thank you for the opportunity to review and respond to these proposed rule revisions.

Sincerely,

Norma L. Florell

Norma L. Florell
Planning and Rule Coordinator
Air Quality Division

NLF:rrj

**Minnesota Pollution Control Agency**
520 Lafayette Road, Saint Paul, Minnesota 55155-3898
Telephone (612) 296-6300

Celebrate MINNESOTA 1990

February 14, 1991

Ms. Martha J. Casserly
Special Assistant Attorney General
Government Services Section
522 Park Street
Suite 500
St. Paul, Minnesota 55103

Re: Amendments to Minn. Rules, Chapter 2010

Dear Ms. Casserly:

Several Minnesota Pollution Control Agency (Agency) staff persons have received your January 24, 1991 preliminary draft rules. We distributed the proposed revisions at our monthly rulewriters meeting and decided that we would pool our comments and send one letter.

Our comments are as follows:

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> (3) A statement that each comment ~~should~~ must identify the portion of the proposed rule addressed, the reason for the comment and any change proposed.

**Part 7010.0300 G(6)** should be revised to read:

> (6) A statement that any person requesting a public hearing must include his or her name and address, and is ~~encouraged~~ required to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

**Part 7010.9915 RECOMMENDED NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING** should be revised to read:

> Pg. 19, line 30 of preliminary draft -
> . . . the rule. Comment is encouraged. Each comment ~~should~~ must identify . . .

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FEB 19 1991

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

Pg. 19, line 41 of preliminary draft -
. . . his or her name and address, and is ~~encouraged~~ required to identify . . .

The suggested revisions require the commenter to make a good faith and reasonable effort to articulate their position concerning the rulemaking at hand. It is not onerous because it requires essentially the same effort as required of the agency -- to set forth their comments and proposals with attendant reasoning in a public manner. The suggested revisions would minimize the submittal of broad and sweeping comment letters that are impossible to respond to in an effective way.

These suggestions come out of a specific recent rulemaking experience of one of our staff persons. Please contact Tom Clark at 612/643-3409 if you would like to discuss the suggested revisions.

Sincerely,

Jeanne A. Eggleston

Jeanne A. Eggleston
Rules Unit
Hazardous Waste Division

JAE:jao

Date: 23-JAN-91 10:06a
From: LAFA::ALANM
To: PARKB::MARTYC
CC: ALANM
RE: A.G. Rulemaking Rule Amendments

Marty, I wanted to pass along to you a comment about possible amendments to the Attorney General Rulemaking rules.

In Minn. Rules part 2010.0300(M), a Declaration of Counsel is required when submitting the rulemaking record to the A.G.'s Office for review. I would like to see that requirement eliminated. It seems to me that such a requirement simply sets up the possibility of having a conflict between the agency attorney and the review attorney in your Division. The agency attorney is not going to send over a set of rules that the attorney knows has not been properly adopted, so the Declaration will always be signed. If you find a problem with the rules, then all we have is a conflict between the two attorneys.

Also, with respect to the Pollution Control Agency, there are many sets of noncontroversial rules being adopted all the time. I think it would be a time saving change to not require the agency attorney to go through whatever review is necessary to sign the Declaration and then have you folks go through another review in order for you to approve the rules. It seems like a duplication of effort to me.

My own experience is that I come to rely on certain PCA staff who do a lot of rulemaking. In those cases I do not scrutinize the rulemaking record as carefully as I do with other less experienced staff.

I have just quickly jotted down these ideas for your consideration because I just finished three sets of noncontroversial rules that I sent to Patty Nolte and I have one more set to go. I will be happy to explore this suggestion further if you like.

Marty, you're right. We don't talk for a year on end and now I have sent you more mail messages in the last couple of days than I send to everybody else in a month. You're in trouble now; once you get on my mailing list there is no way to get off. Talk to you later. Al M

RECEIVED
NOV 25 1992
Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 5
525 Park Street
St. Paul, MN 5510

# STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

Administrative Procedure Act Section
Telephone Number (612) 341-7600
Fax Number (612) 349-2665

Workers' Compensation Section
Telephone Number (612) 341-7635
Fax Number (612) 349-2691

100 Washington Square
Suite 1700
Minneapolis, Minnesota 55401-2138

November 24, 1992

Martha J. Casserly
Special Assistant Attorney General
Suite 500
525 Park Street
St. Paul, Minnesota 55103-2106

Dear Ms. Casserly:

This is in response to your letter of November 23, 1992, concerning the "dual notice" rule. I have spoken with Judge Lunde on the issues raised by his review of the Department of Health's dual notice in the proposed lead abatement rules.

The words "30 calendar days" were suggested because Minn. Stat. § 14.15, subd. 1 (1), indicates that the notice shall include a statement advising the public that they have 30 days to submit comment. I concur with you that if the deadline date is specified in the notice and you take the added measure of mentioning the thirty-day comment period at the outset of the notice as well, this is sufficient.

As to where one can review and obtain the Statement of Need and Reasonableness, Judge Lunde was referring to the wording of Minn. Rule 1400.0300, subp. 4C. (9). It is my impression that the wording contained in the proposed dual notice rule is adequate to meet the substantive requirements of that rule.

If I can provide anything additional, please feel free to contact me.

Yours very truly,

Bill Brown

BILL BROWN
Chief Administrative Law Judge

Telephone: 612/341-7640

WGB:sh
cc: George Beck
Allan Klein
Jon Lunde
Mike Lewis

Minnesota
Department of Labor and Industry

443 Lafayette Road
St. Paul, Minnesota 55155
(612) 296-6107

Telecommunication Device
for the Deaf (612) 297-4198

FAX (612) 297-1329

December 18, 1992

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DEC 22 1992

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
Paul, MN

Martha Casserly
Office of the Attorney General
Public Finance Division
525 Park Street, #500
St. Paul, Minnesota, 55103

Re: Withdrawal of Requests for Hearing

Dear Ms. Casserly:

Pursuant to our telephone conversation of December 14, enclosed are signatures withdrawing the requests for hearing on the proposed attorney general rule review rules. As we have discussed, our concerns were that the proposed language inappropriately expands the attorney general scope of review to include whether the rule is unreasonable; that the "substantive due process" language is too vague; and that the proposed rule is duplicative of already existing provisions. My understanding is that you have agreed to eliminate the last clause in Part 2010.1000, C as follows:

> C. The rule exceeds the statutory authority conferred on the agency, or conflicts with the statutes or any other relevant law, ~~or has no reasonable relationship to statutory purposes.~~

Additionally, you will modify the proposed clause H as follows:

> H. The rule is unreasonable ~~by failing to comport with substantive due process~~ because it is not rationally related to the objective sought to be achieved.

I am reassured that these changes clarify the narrow scope of attorney general scope of review in this area.

Sincerely,

Gary Bastian
Deputy Commissioner/General Counsel

GB/kb

The undersigned withdraw their requests dated November 19, 1992 for a hearing on the proposed ammendments to Minn. Rules, Part 2010.1000:

1. GARY BASTIAN
2. Kathryn Berger
3. Pam Ayers
4. Mary Miller
5. Penny Johnson
6. [illegible]
7. Keith Mauer

Dated: December 18, 1992

November 19, 1992

To: Attorney General

Re: Proposed Amendments to AG Rules
Parts 2010.1000: Standard of Review

We the undersign request a formal hearing be held on the proposed rules related to the Standard of Review in Part 2010.1000:

| | Name: | Address: |
|---|---|---|
| 1. | | 16720 Norell, Marine, Mn 55047 |
| 2. | | 2700 E LK Isles, Mpls, MN 55418 |
| 3. | GARY BASTIAN | 1401 FROST AVE Maplewood 55109 |
| 4. | Kathryn Burger | 6945 Sheridan Ave So. Richfield MN 55423 |
| 5. | | 4361 ORION LN. EAGAN, MN. 55123 |
| 6. | | 2177 Carroll Ave St Paul MN 55104 |
| 7. | | 335 RAMSEY St. PAUL MN. 55102 |
| 8. | Cynthia Thompson | 1700 Four Oaks Rd Eagan 55121 |
| 9. | | 5404 Colfax Ave So Mpls MN 55419 |
| 10. | Nancy Hoglund | 3581 ON 958 #307 Shareview 55126 |
| 11. | | 4425 Arden View Ct, Arden Hills 55112 |
| 12. | Keith Mauren | 1590 S. River Blv St Paul 55116 |
| 13. | | 1806 Valley Cares St Paul MN 55118 |
| 14. | | 510 Mahtomedi Ave Mahtomedi MN 55115 |
| 15. | | 1668 Birmingham St St. Paul, Mn. 55106 |
| 16. | | 832 9, 8th Ave Shakopee 55379 |
| 17. | | 2181 Birmingham St. Paul 55109 |

rec'd 11:45 9-9-92 MJC

November 19, 1992

To: Attorney General

Re: Proposed Amendments to AG Rules
Parts 2010.1000: Standard of Review

We the undersign request a formal hearing be held on the proposed rules related to the Standard of Review in Part 2010.1000:

| | Name: | Address: |
|---|---|---|
| 1. | Dan Wolf | 14225 Davenport Ct. X Rosemount |
| 2. | [illegible] | 4960 Dona Lane, Golden Valley |
| 3. | Wayne Gotfels | 22 W. Franklin Av. Minneapolis |
| 4. | [illegible] Bartholomew | 1766 Walnut Lane Cozan |
| 5. | [illegible] Degnan | 215 Degnan Woodbury |
| 6. | Heather Maher | 1049 Goodrich #5, St. Paul |
| 7. | Teresa Lonergan | 2578 Summer Ridge, WBL |
| 8. | Patricia Rooney | 590 Holly Ave. #5 St. Paul, MN 5510. |
| 9. | Emil Carlson | 690 So. Wilder St. St Paul, Mn. 55110 |
| 10. | Joyce VanGilder | 606 E. Co. Rd B2 Little Canada 55117 |
| 11. | Kathleen Grahovac | 391 Old Highway 8, #202 New Brighton 55112 |
| 12. | Clare Dries | 1943 Morgan Ave. St. Paul MN 55116 |
| 13. | | |
| 14. | | |
| 15. | | |
| 16. | | |
| 17. | | |

| | | |
|---|---|---|
| 18. | Mary E. Miller | 6016 Birchwood Rd, Woodbury MN 55125 |
| 19. | | |
| 20. | | |
| 21. | | |
| 22. | | |
| 23. | | |
| 24. | | |
| 25. | | |
| 26. | | |
| 27. | | |
| 28. | | |
| 29. | | |
| 30. | | |

Minnesota
Department of Labor and Industry

443 Lafayette Road
St. Paul, Minnesota 55155
(612) 296-6107

Telecommunication Device
for the Deaf (612) 297-4198

FAX (612) 297-1329

November 19, 1992

Patricia Nolte
Attorney General's Office
Public Finance Division
525 Park Street, #500
St. Paul, MN. 55103

Re: Proposed Amendments to the Attorney General Rules

Dear Ms. Nolte:

I am writing in response to the proposed amendments to Chapter 2010 governing approval by the Office of the Attorney General of rules under the Administrative Procedures Act. The proposed changes raise a number of concerns relating to the following provisions:

Part 2010.0300, items N (5) and O
Part 2010.0400, items K (4) and L
Documents necessary for review of rules:

These provisions should specify that comments, requests for hearing and requests for notice of rule submission to the attorney general must be submitted to the attorney general only if they were received by the agency within the published comment period. Agencies often receive many comments after the comment period expires, and the rule should be specific about what is included in the record. These provisions should also require that requests for notice of submission to the attorney general be in writing.

Part 2010.0300, items Q and R;
Part 2010.0400, item O:
Mailing notice that the rule has been
submitted to the attorney general for review:

These provisions should be revised so that they are consistent with Part 0400, item N. The language in all provisions should specify that notice of rule submission must be mailed on the day the rule is submitted for attorney general review. The proposed language requiring the notice to be "sent" and "given" in items Q, R and O is confusing and could indicate the notice must be received, rather than mailed, on the day the rules are submitted for review.

Part 2010.0700, item D:
Statement of need and reasonableness:

This provision requires the statement of need and reasonableness to be signed and dated by the person authorized to adopt the rule. In most agencies this is the commissioner. This rule should be deleted, as it is not required by statute and adds yet another technical requirement that will increase the burden on the agency and commissioners and creates the possibility for non-relevant voiding of otherwise valid rules on a pure technicality.

The justification for the rule is that it ensures that the commissioner "acquiesces" in the statement of need. Regulating the internal communications and procedures of an agency are not an appropriate function of attorney general rules. Another cited justification is to ensure that the statement is available before the rule is published. However, the notice of intent to adopt the rule is signed by the commissioner prior to publication, and it includes a notification that the statement of need is available to the public. Accordingly, neither justification supports the additional requirement.

2010.1000
Standards of attorney general review:

I object to the amended standards of attorney general review. The rule proposes to add as an additional basis for review that "The rule is unreasonable by failing to comport with substantive due process because it is not rationally related to the objective sought to be achieved." Your statement of need indicates that this is based on the Minnesota Supreme Court's decision in Mammenga v. Dept of Human Services, 442 NW2d 786 (Minn. 1989). However, the standard articulated in Mammenga is not applicable to attorney general review of rules. That case interpreted Minn. Stat. 14.45, which sets forth the standard for review of a rule by the court of appeals in a declaratory judgment action. It also interpreted Minn. Stat. 14.69, which sets the standard for review of an agency decision by the court of appeals in a contested case action. These provisions authorize a different standard of review than Minn. Stat. 14.26 and 14.32, which govern attorney general review of rules. Significantly, the statutes interpreted by the court in Mammenga authorize review of constitutional issues raised by the rules. It is inappropriate and premature to cite that case as the standard for attorney general review, given the potentially expansive and uncertain meaning of the term "substantive due process" and the different statutory provisions analyzed by the court.

Another reason to delete the additional basis of review is that the existing rules already include several provisions which use similar language. Minn. Rule 2010.1000, items C,E,I and K require the attorney general to disapprove a rule if it: has no reasonable relationship to the statutory purpose; does not demonstrate a rational basis for the need for and reasonableness of the proposed rule; is vague or ambiguous in violation of constitutional principles of due process of equal protection; or is unconstitutional. Even

(and my belief is that they themselves represent the kind of overreaching that rulemaking discipline is intended to foreclose) if these items are consistent with statutory authority for attorney general review of rules, the proposed language appears to duplicate the existing provisions.

If the proposed rule is intended to expand the scope of review, the statement of need does not adequately address how it is different from the existing language, why the Mammenga case interpreting different statutory provisions is applicable to attorney general review, and why the expanded scope of review is needed, reasonable and consistent with statutory authority. Adding the proposed basis for review will simply cause more confusion about the nature of attorney general review and will likely increase disputes and litigation over rules. Minnesota's APA is already among the most cumbersome in the nation, even worse then the federal standard. We need not mess it up even more.

Finally, a related concern is that the amended standards of review minimize the distinction between review of emergency and permanent rules. Minn. Stat. 14.26 and 14.34 expressly limit the scope of review for emergency rules. The proposed rules should more clearly identify the distinction, and limit review of emergency rules accordingly.

The Administrative Procedures Act preserves the right of the agency to interpret and implement the law. The deference granted agencies by the courts is noted in the Mammenga case: "When the meaning of a statute is doubtful, courts should give great weight to a construction placed upon it by the Department charged with its administration." Id. at 792, citations omitted. The Minnesota Supreme Court recently reiterated that deference must be given to state agency expertise in Boedingheimer vs. Lake Country Transportation, served and filed June 5, 1992. Expanding the attorney general scope of review without clear statutory authority is contrary to the principles expressed in these cases and the Administrative Procedures Act.

Please contact me if you would like to discuss these concerns.

Yours truly,

John B. Lennes, Jr.
Commissioner

JBL/KB

*State of Minnesota*
***Department of Human Services***
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155

November 19, 1992

Ms. Patricia Nolte
Attorney General's Office
Public Finance Division
525 Park Street #500
St. Paul, MN 55103

**HAND-DELIVERED**

Dear Ms. Nolte:

On behalf of the Department's Rules and Bulletins Division, enclosed please find our comments regarding the Attorney General's Proposed Permanent Rules Relating to Rule Review.

If you have any questions, please contact me at (612) 297-4302.

Thank you.

Sincerely,

Stephanie L. Schwartz

Stephanie L. Schwartz
Rules and Bulletins Division

enc.

# STATE OF MINNESOTA
# DEPARTMENT OF HUMAN SERVICES
# RULES AND BULLETINS DIVISION

COMMENTS TO PROPOSED RULES RELATING TO RULE REVIEW
17 *State Register* 821-838

**1. Part 2010.0300, item I**

Part 2010.0300, item I will require agencies to submit to the Attorney General a copy of the correspondence to the LCRAR, other appropriate legislative committees, and the Governor if agencies did not publish an appropriate Notice of Intent to Adopt a Rule within 180 days after the effective date of the law requiring the rule to be adopted.

Page 5 of the SONAR states that it is necessary for the Attorney General to determine if the requirement of rule adoption within 180 days is met "in reviewing the legality of the rule adoption." This implies that the legality of the rule adoption would be in question if agencies fail to comply with Minnesota Statutes, §14.12. The Department has found no statutory authority imposing a clear penalty on agencies for failure to comply with Minnesota Statutes, §14.12.

Will the Attorney General permit a rule to be adopted if agencies fail to comply with Minnesota Statutes, §14.12? In the past, and for the foreseeable future, the Department will likely not be able to comply with Minnesota Statutes, §14.12 due to an ever-increasing backload of mandated rules and a reduction in rulewriting staff.

Further, how will the Attorney General apply Minnesota Statutes, §14.26 relative to the Minnesota Statutes, §14.12 report? Minnesota Statutes, §14.26 provides a "harmless error" provision permitting the Attorney General to disregard any error or defect in the proceeding due to an agency's failure to satisfy any procedural requirements imposed by law or rule if the Attorney General finds that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process. The Department's position is that an agency's failure to submit a Minnesota Statutes, §14.12 report or publish a Notice of Intent to Adopt a Rule within 180 days does not impact on the public's opportunity to participate meaningfully in the rulemaking process.

There is also the problem of going back and finding the paper trail of correspondence. Obtaining copies of correspondence to the Governor, LCRAR and legislative committees

may be impossible. To what degree should agencies devote resources to obtain copies of this information? Or would current rulemaking be grandfathered in?

The Department recommends that item I be deleted as it serves no useful purpose and imposes an unnecessary burden on state agencies.

2. **Part 2010.0300, item N, subitem (5)**

Part 2010.0300, item N, subitem (5) will require state agencies to include in their Findings of Fact, Conclusions, and Order Adopting a Rule "a statement of the number of written letters with comments received, the number of persons that requested a public hearing ~~and~~, the number of persons that requested a public hearing and withdrew their request, and the number of requests for notice of submission to the attorney general."

Page 7 of the SONAR states that "Requiring the statement [that no requests for a hearing, no comments, or no requests for notice of submission of the rule to the Attorney General] only when there were no comments or requests caused confusion." This has never caused confusion for the Department: Either 25 people request a hearing, or fewer than 25 people request a hearing. Requiring "an affirmation statement" of the number of comments received does not force an agency to be certain it is forwarding all comments as part of the record; rather, it forces an agency to count each and every request for a hearing or request for notification of submission of the rule to the Attorney General.

The Department recommends no amendments to part 2010.0300, item N, subitem (5). If it is the intent of the Attorney General to require that all comments/requests are submitted as part of the rulemaking record, this should be clearly stated in part 2010.0300. Requiring agencies to state the number of letters with comments received, the number of persons that requested a public hearing, and the number of requests for notice of submission to the Attorney General does not mean the necessary correspondence will become part of the rulemaking record.

Additionally, it is redundant to require a statement of the number of *written* letters. All letters are, by definition, written. At a minimum, the Department recommends that the word "written" not be included.

However, if the Attorney General still feels amendment is necessary, it should be sufficient for statutory purposes if agencies are required to state that 25 people requested a

hearing or that less than 25 people requested a hearing (and did not withdraw their requests).

3. **Part 2010.0040, item K, subitem (4)**

The Department's concerns are the same as in #2, above.

# OFFICE MEMORANDUM

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY

**DATE:** November 19, 1992

**TO:** Patricia Nolte
Attorney General's Office
Public Finance Division

**FROM:** Laura Nehl-Trueman, Administrative Rule Writer LNT
Dave Orren, Rules Coordinator DEO

**PHONE:** 296-2608

**SUBJECT:** Proposed Permanent Attorney General Rules Relating to Rule Review

Following is a list of comments to the Attorney General's rules pertaining to rule review.

**Part 2010.0300, item F (page 1, line 25).** Add "the" before "recommended"

**Part 2010.0300, item G, subitem 3 (page 2, lines 10-11).** Add "30-day" before "comment" and add "or the 33-day mailing period" before the comma. Delete "whichever is later" The third sentence of subitem 3 needs to be clarified. I believe these changes will make the sentence say what you intend it to say.

**Part 2010.0300, item G, subitem 11 (page 3, lines 12-14).** In subitem 11, does the phrase "entire rule" mean entire rule part or entire chapter? If it does mean rule part, do you want all repealed rule parts listed in the notice of intent to adopt? Please add a clarification on this item. Is this requirement really necessary?

**Part 2010.0300, item N, subitem 5 (page 6, lines 10-14); part 2010.0300, item O (page 7, lines 4-7); part 2010.9930, paragraph 5 (pages 24-25, lines 41-8).** Since these three rule parts all pertain to the same four items of information, they should list this information in the same order each time. All three paragraphs pertain to the following information:

1. written requests for a public hearing;
2. written withdrawals of requests for a public hearing;
3. requests for notice of submission to attorney general; and
4. written comments received.

In addition, it is not clear under the current rule, whether the written comments referred to are all those received since the publication of the Notice of Solicitation or just those received during the 30-day comment period. I assume that you do not want comments that were received during the development of a rule.

To make it clear that the same four items of information are requested in all three parts, the language should be consistent among the three rule parts. Following is suggested language:

**2010.0300, item N, subitem (5)** a statement of the number of persons who requested a public hearing, the number of persons who requested a public hearing and withdrew their request, the number of requests for notice of

submission to the attorney general, and the number of written comments received during the 30-day comment period except for requests solely for copies of the rule or of the statement of need and reasonableness.

**2010.0300, item O** All written requests for a hearing, withdrawals of requests for a hearing, requests for notice of submission to the attorney general, or comments on the rule received by the agency during the 30-day comment period except requests solely for copies of the rule or of the statement of need and reasonableness.

**Part 2010.9930, paragraph 5.** The agency received ____ requests for a public hearing[, of which ____ were subsequently withdrawn]. Therefore, there are not 25 or more outstanding requests for a public hearing. The agency received ____ requests for notice of submission to the attorney general. The agency received ____ written comments on the rule during the 30-day comment period except requests solely for copies of the rule or of the statement of need and reasonableness.

**Part 2010.0400, item E, subitem 3 (page 9, lines 24-26).** Add "25-day" before "comment" and add "or the 28-day mailing period" before the comma. Delete "whichever is later" These suggested changes and the reasons for them are similar to those for part 2010.0300, item G, subitem 3.

**Part 2010.0700, item B (page 16, lines 13-20).** Delete the portion of the paragraph that requires a basis for the statement that the total cost to public bodies to implement the rule for the two years following the adoption of the rule is less than $100,000. With no further explanation of the word "basis," this is a burdensome requirement. Unless additional guidelines are given regarding this fiscal requirement, this addition to the rules will not solve the problem in this area.

As you may recall, the Department of Employee Relation recently made a determination that the costs associated with rules relating to Labor and Local Government Pay Equity Compliance did not result in public bodies being affected by Minnesota Statutes, section 14.11. The basis for that determination was that DOER felt that the costs associated with the rules resulted from the requirements of the pay equity statute and not from the rules themselves. The administrative law judge disagreed with DOER's determination. Even if the basis for that determination would have been set forth in the SNR, it probably would not have made a difference in the judge's decision to require a fiscal note.

What needs clarification is the statute itself, section 14.11, subdivision 1. It is not clear as to how the calculation to determine whether a public body falls under section 14.11, subdivision 1, should be made. I am sure each agency has a different interpretation of section 14.11, subdivision 1. The requirement of adding an explanation as to how the determination was made does not address the problem of how to make the determination in the first place. Until the statute is corrected, the requirement of adding a basis for an agency's determination for finding that section 14.11 is not applicable is a burdensome requirement.

**Part 2010.0700, item D (page 16, line 25).** Replace "or authorized to adopt the rule" with "pursuant to statute or" This change will make the sentence read more easily.

**Part 2010.9916 (page 21, lines 5-7).** Add "submit a written" before "request"

**Part 2010.9916 (page 21, line 36).** The dual notice, on page 29, line 22 requires the persons to submit their telephone numbers along with their names and addresses when they request a hearing. Do you want the telephone number also included as part of this notice?

**Part 2010.9940 (page 26, line 27).** Replace "have been" with "will be" This change parallels the change you have already made on page 26, line 21.

**Part 2010.9940 (page 26, lines 29-30).** Delete "and made available to the public" The rule in question is sufficiently identified by its date of publication in the State Register. The words "and made available to the public" do not add anything to the clarity or readability of the sentence.

**Part 2010.9940 (page 27, line 2).** Replace "of" with "after" This change will make the sentence sound better.

**Part 2010.9945 (page 27, line 31).** Add "[Emergency]" before "Rule"

**Part 2010.9946 (page 28, lines 21-22).** Replace "Requests for Hearing are Received" with "Persons Request a Hearing" With this change, the wording of the second caption for the Dual Notice will match that of the first caption.

**Part 2010.9946 (page 28, line 37).** Delete the reference to "fax number." This reference could be misleading because people will assume they can request a hearing using a fax machine. If agencies must accept fax requests, then the AG Rules should state this, using a statement similar to OAH Rules, part 1400.0250, subpart 2. At this time, I suggest that no such statement be contained in the AG Rules, at least as far as requiring agencies to accept document filing by fax.

**Part 2010.9946 (page 29, line 7).** Delete "and issues involved" The phrase "and issues involved" is not included in the Notice of Intent to Adopt Without a Hearing. (See page 21, lines 16-21.) It should be removed from this notice.

**Part 2010.9951 (page 32, line 37).** Add "the" before "rule"

**Part 2010.9955 (page 34, line 21).** Add "Emergency" before "Rule"

**Part 2010.9960 (page 35, line 34).** Add "Emergency" before "Rule"

**Part 2010.9960 (page 36, line 6).** Replace "have been" with "will be" This change parallels the change you have already made on page 36, line 1.

**Part 2010.9960 (page 36, line 10).** Delete "and made available to the public" The reason for this suggestion is the same as for the change to part 2010.9940.

**Part 2010.9960 (page 36, line 21).** Replace the first "of" with "after" This change will make the sentence sound better.

**English Usage; RULE (singular) as opposed to RULES (plural).** "Rule" is defined in Minnesota Statutes, section 14.02, subdivision 4, as "every agency statement of general applicability and future effect . . . ." I understand why rulemaking requirements need to use the singular "rule" and I agree with this usage in parts 2010.0200 to 2010.1400.

I suggest, however, that the recommended forms contained in parts 2010.9900 to 2010.9960 use the plural "rules." The huge majority of proposed rules published in the State Register contain more than one statement of general applicability and future effect. To call a multi-page document with myriad requirements a "rule" only invites criticism about the awkward language that some refer to as legalese.

If you choose not to amend the recommended forms, I suggest that at the least you consider including an explanatory statement to the effect that the recommended forms can and should be customized to reflect the particular set of rule(s) for which they are being used.

If you have any questions regarding these comments, please let me know. Thank you.

Silver Celebration 25/20

# Minnesota Pollution Control Agency

Celebrating our 25th anniversary and the 20th anniversary of the Clean Water Act

November 19, 1992

Ms. Patricia Nolte
Attorney General's Office
Public Finance Division
525 Park Street, #500
St. Paul, Minnesota 55103

Dear Ms. Nolte:

The Rulewriting staff of the Minnesota Pollution Control Agency (MPCA) has reviewed the Proposed Amendment to the Attorney General Rule Governing Rule Review and Adoption of the Sample "Dual Notice" Form. Comments on the proposed amendments are provided below.

1. Page 2, line 30. The staff believes that the phrase "is encouraged to" must be changed to the word "must". In previous rulemakings, staff experiences showed that public requests for a hearing often did not identify the portion of the proposed rule, the reason for the request or any changes proposed. The majority of the requests simply stated that they need a hearing and did not present reasons why or whether the rules affect them. Changing the above mentioned phrase to "must" would eliminate people's frivolous requests, thus saving time and money. This is consistent with the State's goal of reducing the cost of rulemaking.

2. Page 2, line 23. Please add the word "individual" between "written" and "request". The MPCA provides every person an opportunity to be heard and therefore these individuals must participate directly in a rulemaking hearing. The staff believes that this addition is reasonable because it suggests that such individual has an objective to improve and make the rule more workable and just.

   Staff experiences also showed that after some groups have requested a hearing, nobody showed up for the actual hearing. The staff and the Administrative Law Judge were waiting for people to attend the hearing but nobody came. The staff believes this is a waste of time and money.

3. Page 20, line 38. Please add the words "Notary Public" on line 38. The staff believes this addition will be more specific about the title of who signs. This will avoid confusion.

4. Page 24, line 9. Again, please add the words "Notary Public" on line 9 for the same reasons as stated above.

5. Page 23, line 13 to 16. Please write out the two forms being addressed under this note. The staff believes that sample forms of these two affidavits mentioned in line 16 must be provided in the rules to avoid confusion.

In summary, the MPCA rulewriters believe that these comments will clarify the proposed amendments. We appreciate the opportunity to review the Attorney General's proposal.

Sincerely,

Carol Nankivel

Carol R. Nankivel, Supervisor
Rules Unit
Program Development Section
Hazardous Waste Division

CRN/jmp

STATE OF MINNESOTA

# Office of the Attorney General

TO : AMY KVALSETH
Special Assistant
Attorney General

DATE : November 18, 1992

FROM : PAUL G. ZERBY
Special Assistant
Attorney General

PHONE : 297-5931

SUBJECT : Attorney General Proposed Permanent Rules Relating to Rule Review

This is just a note to advise that Jane Nelson (627-5038), rules coordinator for the Minnesota Department of Health, Division of Environmental Health, recently sent to the Office of Administrative Hearings, for prehearing review, a dual track notice patterned on our dual notice (proposed rule 2010.9946). Upon review, Administrative Law Judge Jon Lunde requested that the changes indicated in the attached copy of the proposed notice be made. The changes do not appear to me to be of any substantial difference. However, it would seem to be a good idea if the Office of Administrative Hearings and Attorney General's Office could be in agreement on the boilerplate. If you wish to discuss this directly with Jane, please feel free to call her.

PGZ:sc

cc: Jane Nelson

Marty - There are in effect comments on our Rules. The ALJ added the underlined portions to our dual notice form.

Amy

| To Paul Terby | From Jane Nelson |
|---|---|
| Co. | Co. |
| Dept. | Phone # 627 5038 |
| Fax # 297-2576 | Fax # |

changes from PIVc version noted

NNESOTA

F HEALTH

**In the Matter of the Proposed Adoption of Permanent Rules of the Minnesota Department of Health Relating to Lead Abatement, Minnesota Rules, Chapters 4760 and 4761.**

**NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING UNLESS 25 OR MORE PERSONS REQUEST A HEARING,**
**AND**
**NOTICE OF HEARING IF 25 OR MORE REQUESTS FOR HEARING ARE RECEIVED.**

**Introduction.** The Minnesota Department of Health intends to adopt a permanent rule without a public hearing following the procedures set forth in the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rule by 4:30 p.m., January 6, 1993, a public hearing will be held on January 19, 1993. To find out whether the rule will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after January 6, 1993 and before January 19, 1993.

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

Douglas Benson, lead unit
Division of Environmental Health
Minnesota Department of Health
925 S. E. Delaware Street, P.O. Box 59040
Minneapolis, Minnesota 55459-0040
(612) 627-5017 FAX (612) 627-5479

**Subject of Rule and Statutory Authority.** The proposed rules revise existing lead abatement rules and propose new rules relating to lead abatement. The proposed rules give effect to statutes pertaining to licensure and certification of contractors and workers, training for licensure or certification, and training course approval. The rules revise the standard for lead in drinking water and establish licensure, certification and course approval fees. The proposed rules also renumber existing rules containing standards for lead in soil and priorities for abatement response that were transferred from the Minnesota Pollution Control Agency to the Minnesota Department of Health.

The statutory authority to adopt the proposed rules is contained in Minnesota Statutes, section 144.878, as amended by Laws of Minnesota 1992, chapter 513, article 5, section 7, subdivision 2; Minnesota Statutes, section 144.878, subdivision 5 as adopted in Laws of Minnesota 1992, chapter 522, section 22 and chapter 595, section 22; Laws of Minnesota 1992, chapter 522, section 47 and

chapter 595, section 28; and Minnesota Statutes, sections 144.05 and 144.12.

A copy of the proposed rule is published in the State Register and attached to this notice as mailed. A free copy of the proposed rule is available on request from Douglas Benson.

**Comments.** You have 30 calendar days, until 4:30 p.m. on January 6, 1993, to submit written comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Your comment must be in writing and received by Douglas Benson by 4:30 p.m., January 6, 1993. Comment is encouraged. Your comments should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

**Request for a Hearing.** In addition to submitting comments, you have 30 calendar days to request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by Douglas Benson by 4:30 p.m on January 6, 1993. Your written request for a public hearing must include your name, address, and telephone number. You are encouraged to identify the portion of the proposed rule which caused your request, the reason for the request, and any changes you want made to the proposed rule. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing.

**Modifications.** The proposed rule may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must not result in a substantial change in the proposed rule as attached and printed in the State Register and must be supported by data and views submitted to the agency or presented at the hearing. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

**Cancellation of Hearing.** The hearing scheduled for January 19, 1993 will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rule. If you requested a public hearing, the agency will notify you before the scheduled hearing whether or not the hearing will be held. You may also call Douglas Benson at (612) 627-5017 after January 6, 1993 to find out whether the hearing will be held.

**Notice of Hearing.** If 25 or more persons submit written requests for a public hearing on the rule, a hearing will be held following the procedures in Minnesota Statutes, sections 14.14 to 14.20. The hearing will be held on January 19, 1993 at the Sunwood Inn - Bandana Square, 1010 Bandana Boulevard West, St. Paul, Minnesota beginning at 9 a.m. and will continue until all interested persons have been heard. The hearing will continue, if necessary, at additional times and places as determined during the hearing by the administrative law judge. The administrative law judge assigned to conduct the hearing is Jon L. Lunde. Judge Lunde can be reached at the Office of Administrative Hearings, 100

chapter 595, section 28; and Minnesota Statutes, sections 144.05 and 144.12.

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Washington Square, Suite 1700, Minneapolis, Minnesota 55401-2138, telephone (612) 341-7645.

**Hearing Procedure.** If a hearing is held, you and all interested or affected persons including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should relate to the proposed rule. You may also mail written material to the administrative law judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing. Comments received during this period will be available for review at the Office of Administrative Hearings. You and the agency may respond in writing within five business days after the submission period ends to any new information submitted. All written materials and responses submitted to the administrative law judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. No additional evidence may be submitted during the five-day period. This rule hearing procedure is governed by Minnesota Rules, parts 1400.0200 to 1400.1200 and Minnesota Statutes, sections 14.14 to 14.20. Questions about procedure may be directed to the administrative law judge.

**Statement of Need and Reasonableness.** A statement of need and reasonableness is now available for review at the agency from Douglas Benson and at the Office of Administrative Hearings. This statement describes the need for and reasonableness of each provision of the proposed rule. This statement of need and reasonableness includes a summary of all the evidence and argument which the department anticipates presenting at the hearing, if one is held. Copies of the statement may also be reviewed at the agency and copies obtained at the cost of reproduction from the Office of Administrative Hearings.

**Small Business Considerations.** The department is subject to Minnesota Statutes, section 14.115 pertaining to small business considerations in rulemaking. The department's evaluation of the applicability of the methods contained in Minnesota Statutes, section 14.115, subdivision 2, for reducing the impact of the proposed rules is addressed in the statement of need and reasonableness.

**Expenditure of Public Money by Local Public Bodies.** The adoption of the proposed rules will not require the expenditure of public money by local public bodies of greater than $100,000 in the two years following promulgation. Minnesota Statutes, section 144.874, subdivision 1 as amended by Laws of Minnesota 1992, chapter 522, section 15 and chapter 595, section 15, require boards of health to conduct residence assessments as recommended by the Centers for Disease Control. The statutory change in the definition of "elevated blood lead level" will increase the number

of legislatively-mandated residence assessments. Other mandated duties are contingent on state or federal funding and would not result in a net increase in costs to board of health.

**Impact on Agriculture Lands.** The adoption of the proposed rules will not have a direct and substantial adverse impact on agricultural land, therefore no further information need be provided under Minnesota Statutes, section 14.11.

**Lobbyist Registration.** Minnesota Statutes, chapter 10A requires each lobbyist to register with the Ethical Practices Board. Questions about this requirement may be directed to the Ethical Practices Board, First Floor South, Centennial Office Building, St. Paul, Minnesota 55155, telephone: (612) 296-5148.

**Adoption Procedure if No Hearing.** If no hearing is required, after the end of the comment period the agency may adopt the rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you want to be so notified, or wish to receive a copy of the adopted rule, submit your request to Douglas Benson.

**Adoption Procedure After the Hearing.** If a hearing is held, after the close of the hearing record, the administrative law judge will issue a report on the proposed rule. You may request to be notified of the date on which the administrative law judge's report will be available, after which date the agency may not take any final action on the rule for a period of five working days. If you want to be notified about the report, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. You may also request notification of the date on which the rule is adopted and filed with the Secretary of State. The agency's notice of adoption must be mailed on the same day the rule is filed. If you want to be notified of the adoption, you may so indicate at the hearing or send a request in writing to the agency contact person any time prior to the filing of the rule with the Secretary of State.

Date: _____

_____
Marlene E. Marschall
COMMISSIONER OF HEALTH

RULE COMMENTS

Bruce Nelson 7-2313 11-17-92

Comments on Rules on Rules

p. 2 ℄ proposed rules —

see l. 9 & cf. w/ l. 15 —

no time vs. "end ℄ day"

does "end ℄ day" meaning "closing", "midnight"? Make clear re l. 9.

p. 9 l. 23 vs. l. 30 — same as above —

See example form at end ℄ rule

[does statute or rule require receipt at end ℄ comment period]

p. 8 l. 9 & 15 — need to add "end"

p. 28 — form — l. 18-22 — suggest all caps to parallel other notices

**OFFICE MEMORANDUM**

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY

RECEIVED
SEP 16 1992
Attorney General
Services Section
Office Bldg., Suite 500
525 Park Street
MN 551

**DATE:** September 15, 1992

**TO:** Patricia Nolte
Attorney General's Office
Public Finance Division

**FROM:** Laura Nehl-Trueman Laura

**PHONE:** 296-2608

**SUBJECT:** Proposed Rule Prescribing the Form and Content of the "Dual Notice."

I have reviewed the proposed form of the dual notice and just have couple of comments as follows:

1. For purposes of consistency, when the notice states that a person may request a hearing on the rules, a clarification should be made throughout the notice that the request must be a written request, as is done in the paragraph entitled "Request for a Hearing."

For example, the first "Introduction" paragraph, states, "If, however, 25 or more persons request a hearing on these rules by...." Whereas, the sentence could be amended to say, " If, however, 25 or more persons submit a written request for a hearing on these rules by...."

A similar change could be made in the paragraph "Cancellation of Hearings." In that paragraph, the sentence could be amended to read, "The hearing scheduled for [date] will be cancelled if the agency does not receive written requests from....."

This is a minor change but it would provide consistency throughout the notice for the public. It may be more important in the introductory paragraph, since that is the first paragraph a person will read.

2. The only other comment that I had was to get a clarification on the "Subject of Rule and Statutory Authority" paragraph. In the first sentence of the paragraph, does the phrase "[statement or description of the subjects and issues involved]" mean just the title of the rules, or does it imply something more like the "informative statement describing the nature and effect of the proposed rules..." as is mentioned later in the same paragraph. I assume that the first sentence is requiring the title of the rules and that if a copy of the rules is not attached to the notice, then an informational paragraph must be included in the rules. If this is not the

case, please let me know. Perhaps a clarification could be made in the rules.

Dave Orren, Rules Coordinator for Public Safety also had a couple of comments on the proposed rules as follows:

1. The paragraph "Address for Submissions" be removed from page two and reinserted after the "Introduction" paragraph and be renamed as "Agency Contact Person." The introduction address for submissions paragraph would then be amended as follows:

...To find out whether these rules will be adopted without a hearing or if the hearing will be held, you should contact *the agency* ~~at~~ ---------- between the end of the 30 day comment period and the scheduled hearing date.

**Agency Contact Person:** Comments, or written....

With the name of the contact person set forth early in the notice, a reference can always be made to person and address listed above. For example, in the last sentence of "Subject of Rule and Statutory Authority," when the person's name is listed as a contact for the free copy of the rule, the public will have already seen the address and phone number of the person above.

2. Be consistent in the use of "rule" or "rules." Dave prefers the use of the term "rules."

3. Do not use abbreviations of Minnesota Statutes, (Minn. Stat.) in the notice.

That is all the comments we have. I hope the comments are helpful. This notice will be an improvement over the existing dual notice. If you have any questions concerning our comments please let me know. Thank you.

SF-00006-05 (4.86)

DEPARTMENT : REVISOR OF STATUTES

STATE OF MINNESOTA

# Office Memorandum

DATE : September 18, 1992

TO : Patricia Nolte
Office of the Attorney General

FROM : Maryann Corbett
Language Specialist

PHONE : 297-2952

SUBJECT :

I received from Paul Marinac a copy of the proposed "dual notice" form. I have several comments about the language on the form. I am glad to see that the drafters have tried to be brief and direct, and I would like to take their efforts a few steps further.

In the heading language, can white space be added so that the two ideas are divided for easy reading? Here is what I mean:

DUAL NOTICE -

- Notice of Intent to Adopt Rules Without a Public Hearing unless 25 or More Persons Request a Hearing, and

- Notice of Hearing if 25 or More Requests for Hearing are Received.

In the introduction, the words "you are hereby notified that" are unnecessary in a form that is clearly labeled a notice.

In the last sentence of the introduction, the words "the end of the 30-day comment period" may not be clear to all readers. Nothing earlier in the paragraph refers to the comment period; instead, the ending date of the period is given. Only readers who know the APA will know what "the 30-day comment period" means. Since the ending date of the comment period and the scheduled hearing date are both known, it would be better to say "after (date 1) and before (date 2)."

In the modifications section, first sentence, line 3, the word "they" is potentially unclear. Knowledgeable readers know it means modifications, but inexperienced ones might look for the nearest plural noun and fix on "views." In the same sentence, the words "as noticed" come close to being legalese. In addition, the sentence is quite long. I realize that the drafters were following the language of Minnesota Statutes, sections 14.15 and 14.24, but I think they could be faithful to that language in two shorter sentences.

The last sentence of the "modifications" paragraph is a bit wordy, and its connection to the first part of the paragraph looks tenuous. These defects can be cured by rewriting the section this way:

The proposed rule may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must not result in a substantial change in the proposed rules as (attached) (printed in the State Register), and they must be supported by data and views submitted to the agency or presented at the hearing. If the proposed rules affect you in any way, you are encouraged to participate in the rulemaking process.

Page 2:

In the "Notice of Hearing" section, line 2: instead of "pursuant to," why not say "following the procedures in" as you did in the introduction?

In the "Statement of Need and Reasonableness" section, the first sentence needs dividing into more and shorter sentences. Here is one way that it might be done:

> A Statement of Need and Reasonableness is now available from the agency and the Office of Administrative Hearings. This statement describes the need for and reasonableness of each provision of the proposed rules. It also includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing, if one is held.

Page 3:

In the "Lobbyist Registration" section, the words that are there may not alert the right people. A person who spends a lot of time and money on rule procedures - enough to qualify as a lobbyist under Minnesota Statutes, section 10A.01, subdivision 11, clause (2) - still might not think of himself or herself as a lobbyist. That person would probably not call the Ethical Practices Board. It might be better to paraphrase that clause, so that people who spend money on rule comment processes will be aware of the need to comply. After the first sentence, add:

> You are considered a lobbyist if you spend more than a set amount each year communicating or urging others to communicate with officials to try to influence legislation or agency actions.

wpas to paraphrase law

Generally:

Consider substituting "want" for "desire," "ask" for "request" and the like. This has been done in some places and should be done consistently.

I have one last suggestion that may go beyond what you can do. I have always believed rulemaking notices are too long and hard to read because they say more than they have to. Much of the information in every notice is true of every rulemaking procedure. I would like to see that constant information presented in a box in every issue of the State Register, and only the specific information - type of procedure, names, addresses, dates, times - in each specific rulemaking notice.

Thank you for reading. I look forward to seeing a short, simple, clear dual notice form. If you would keep me informed of the status of the proposed notice, I would be grateful.

cc Paul Marinac
Maryann Hruby
Bill Brown Chief Administrative Law Judge

Administrative Procedure Act Section
Telephone Number (612) 341-7600
Fax Number (612) 349-2665

# STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

100 Washington Square
Suite 1700
Minneapolis, Minnesota 55401-2138

Workers' Compensation Section
Telephone Number (612) 341-7635
Fax Number (612) 349-2691

RECEIVED

AUG 31 1992

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street

August 28, 1992

Martha J. Casserly
Special Assistant Attorney General
525 Park Street, Suite 500
St. Paul, Minnesota 55103-2106

Dear Martha:

We have reviewed your proposed draft of the "dual notice" rule and I have indicated a few minor suggestions on the attached. If I can provide anything further, please feel free to contact me.

Very truly yours,

Bill Brown by lc

BILL BROWN
Chief Administrative Law Judge

Telephone: 612/341-7644

WGB:lc
enclosure

STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

FIFTH FLOOR, FLOUR EXCHANGE BUILDING
310 FOURTH AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55415
(612) 341-7600

April 30, 1992

Martha J. Casserly
Special Assitant Attorney General
Suite 500
525 Park Street
St. Paul, Minnesota 55103

Dear Martha:

Thank you for your letter of April 28, 1992, concerning the adoption of a "dual notice" rule. The process you set out in your letter is fine and I look forward to seeing the draft. Thanks.

Yours very truly,

Bill Brown

BILL BROWN
Chief Administrative Law Judge

Telephone: 612/341-7640

WGB:sh

RECEIVED

MAY 01 1992

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

STATE OF MINNESOTA

**DEPARTMENT OF TRANSPORTATION** **Office Memorandum**

**DATE** : February 11, 1991

**PHONE** : 6-0221

**TO** : Martha J. Casserly
Special Assistant Attorney General
Office of the Attorney General
525 Park Street

**FROM** : Kenneth H. Bjork, Manager
Administrative Procedures & Documentation
Office of Systems & Administrative Services
308 Transportation Bldg.

**SUBJECT:** Attorney General Rule, Part 2010.0300.

This memorandum is in response to your letter of January 24, 1991 concerning the rule changes the Office of the Attorney General is proposing and is neither in support or in opposition to the proposed rule changes at Part 2010.0300, paragraph G (2), but rather a suggestion for further study on the topic of closing the comment period when proposing to adopt rules without a public hearing.

While I understand the need to try and bring matters to a state whereby a certain body of information is collected and digested when proposing a rule change, but the way the proposed rule now comes across (and it's not at all different than it was before in terms of effect) is that the public is completely foreclosed from making any comment (and the agency would be prevented from considering any) if not submitted in the 30 day comment period. That just isn't the case. But we don't recognize this fact anywhere in our rules. This is quite atypical for us, since our APA is carefully crafted to protect the public from wretched bureaucrats.

There is nothing inherently special to my mind about the 30 day period except that it is a traditional court practice we have worked into our APA procedures. We could have just as well shortened, or, lengthened the comment period. The main objects, I think, of the 30 day period are to prevent "surprise," to allow for preparation of rebuttal or greater wisdom, and to give the postal system time to get the messages back and forth. It keeps things orderly, both for the agency and the public, I agree.

However, my subjective assessment of this all is that we could somehow state that comments not received within the 30 day period will be made a part of the record of the proceeding, but not necessarily incorporated into the rule unless the agency so chooses.

Things just hang there now, if you take my meaning.

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FEB 12 1991

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

SF-00006-05 (4/86)

STATE OF MINNESOTA

# Office Memorandum

DEPARTMENT : ATTORNEY GENERAL
340 Bremer Tower

DATE : February 15, 1991

TO : MARTHA J. CASSERLY
Special Assistant Attorney General
Public Finance Division, 525 Park, Suite 500

FROM : AMY KVALSETH ak
Special Assistant
Attorney General

PHONE : 296-2921

RECEIVED
FEB 19 1991
Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

SUBJECT : **Comments on the Proposed Permanent Rules Relating to Rule Review**

In response to your letter dated January 24, 1991 our office sends, on behalf of the Department of Public Service ("DPS", the "Department"), these comments on the proposed permanent rules relating to rule review. The comments are based on the proposed rules draft dated January 16, 1991 with the heading at the top [revisor] PMM/JC RD1771. Pursuant to Minn. Stat. § 14.22 (1990), these comments will identify the portions of the proposed rules addressed, will give the reason for the comments and will also provide changes proposed.

**Page 1, lines 13-14:** As that statement is written it is confusing regarding the final phrase "in compliance with part 2010.0700." It sounds on first reading that that compliance refers to the proposed rule rather than to the statement of need and reasonableness. For this reason it is suggested that the statement be changed to read:

The statement of need and reasonableness, complying with part 2010.0700, to support the proposed rule.

**Lines 18 through 29:** Upon first reading, the first sentence under subpart f is incomprehensible to someone unfamiliar with the rules. The DPS suggests that it state the following:

"f. Evidence that the agency pursuant to Minnesota Statutes section 14.23, sent to the Legislative Commission to Review Administrative Rules a copy of the statement of need and reasonableness when it became available to the public. The evidence can be in the form of a copy of the dated correspondence to the legislative commission to revise administrative rules or of an affidavit of the mailing."

**Page 1, line 30:** For clarity's sake and to be in keeping with changes made later when only the letter of the subpart is changed, it is suggested that before "G." insert the capital "E". to show that that original section "E" has now been changed to G.

**Page 2, lines 11 and 12:** It is suggested that the sentence starting on line 10 with the word "in" be changed in the following manner in order to make even clearer how you count the days for the thirty day comment period:

In calculating the comment period, the first day counted is the day following the date of publication in the State Register, which is published Mondays except when a Monday is a legal holiday, in which case it is published on Tuesday.

**Page 2, lines 12 and 13:** The DPS suggests adding a phrase to make this sentence even clearer. The modified sentence would now state:

"Saturdays, Sundays, and legal holidays falling within the thirty day period are included in the calculation."

**Page 2, lines 27 through 31:** This section (6) provides that a statement must be included in the notice to the effect that any person requesting a public hearing "is encouraged to identify" the portion of the proposed rule addressed. It seems that if a person is going to request a public hearing on the proposed rules, he/she should not just be encouraged to identify the portion of the proposed rules addressed but should be required to do so. Thus, this statement should state that the person "must" identify the portion of the proposed rule addressed. To effectuate the change, subpart (6) in its entirety would state:

> A statement that any person requesting a public hearing must include his or her name and address, and must identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

**Page 3, line 36 to page 4, line 2:** This provision is superfluous since it has already been stated under subpart G on page 1. Therefore, deletion of all of subpart (16) under G is suggested.

**Page 4, line 7:** To stay in conformity with the way subpart letter headings are changed in other places, delete the ~~G.~~ Instead, place it down at page 4, line 13, just before the letter J.

**Page 4, lines 7 through 10:** To clarify this passage, the DPS suggests that it be changed to "if the proposed rule establishes or adjusts fees, evidence that the agency sent a copy of the notice and the proposed rule to the chairs of the house appropriations and senate finance committees as required by Minn. Stat. § 16A.128, subd. 2A. Evidence may be a copy of the dated correspondence to the

chairs or an affidavit of mailing." By making this change, this subpart H is harmonized with the way subpart F of part 2010.0300 on page 1 is written.

**Page 4, line 12:** The DPS recommends inserting the word "rules" between the word "adopt" and "within". It appears to have been left out.

**Page 4, line 16:** The DPS believes it is more accurate to delete the words "pursuant to" on line 16 and replace them with the words "required by" since Minn. Stat. § 14.12 requires the agency to report to the groups mentioned its failure to publish an appropriate notice of intent to adopt rules and the reasons for that failure.

**Page 4, lines 19 to 20:** The new sentence, "The notice must be mailed at least 33 days before the end of the comment period," would fit in better under the section talking about notice which appears on page 1 under part 2010.0300, subpart G. It is suggested that this new sentence be inserted at the end of the phrase "public hearing as mailed" on line 31, page 1. Then G on page 1 would read: "The notice of intent to adopt a rule without a public hearing as mailed. The notice must be mailed at least 33 days before the end of the comment period."

**Also, on Page 4, line 18:** Before the letter "J.," in order to be in keeping with other changes in these proposed rules, insert the letter "~~G.~~" to indicate that that provision is no longer designated G, but rather is now designed J.

**Page 5, line 24:** Here reference is made to "part 2010.9925." That reference does not appear in the remainder of the draft. It should be inserted on page 21 between lines 44 and 45.

**Page 5, line 25:** The DPS suggests omitting the word "the" that comes right after "N." in order to make the entire subpart clearer; that is, that all agencies are required to make these findings of fact, conclusions and order. I talked to Marty Casserly about this rule and explained to her I thought it was unclear. With the word "the" first, it sounds like you are discussing the findings mentioned in subpart M, whereas in fact Marty said the findings of fact, conclusions and order are to be done by all agencies. My concern was that nowhere in the APA or otherwise in the rules is it clear that this document is required or why it is required. Apparently, according to Marty Casserly, this is the document that the AG's Office requires to fulfill APA's Minnesota Statute § 14.06 rule saying that each agency shall adopt rules. This document shows the adoption of those rules.

**Page 7, lines 14 to 15:** The sentence there says: "For the recommended format, see part 2010.9935." No part 2010.9935 appears in the draft. It needs to be inserted. Apparently, it belongs on page 23 between line 17 (which is the end of part 2010.9930) and line 18 (which is the beginning of part 2010.9940).

**Page 7, lines 16 to 17:** Under "Q." the first sentence says: "The notice of submission of the rule to the Attorney General, if applicable". It might be helpful to refer to some

statute or rule that tells the person reading this when it is applicable to send that notice of submission of the rule to the Attorney General.

**Page 7, lines 29 to 30:** Is the statement supposed to say simply that the Attorney General rule of review time period is fourteen calendar days, or is the statement supposed to give a particular date when the rule review process ends, or is it to say that the Attorney General has fourteen days from the date of submission to review the rule? It needs clarification.

**Page 8, lines 20 to 21:** The statement under "R." says: "The affidavit of mailing notice of submission of the rule to the Attorney General, if applicable." Again, it would be helpful if there were some reference that would help a reader know when submission of this affidavit is applicable.

**Page 8, line 25:** It refers here to "part 2010.9945," but that part does not appear in this draft. It must belong on page 24 of the draft between lines 33 and 34, which puts it between part 2010.9940 and part 2010.9950.

**Page 9, line 6:** Simply for clarity's sake, I would put a comma after the word "rules" and omit the word "in" before Minnesota.

**Page 9, lines 13 through 16:** To make this passage conform to the other corrections suggested earlier under part 2010.0300, it is suggested that the same corrections regarding calculations be

made here. See part 2010.0300, subpart G(2), page 2 lines 10 through 13.

**Page 10, line 17:** The "F." heading should be underlined as a new "F."

**Page 10, line 21** should have the "~~F.~~" placed before the "G." to show that that "F" has been changed to "G."

**Page 10, lines 17 through 20:** DPS suggests that this subpart F be changed to conform with the suggested subpart H appearing on page 4, lines 7 through 10. See that section for the suggestions previously given.

**Page 10, lines 22 to 23:** The sentence that states: "The notice must be mailed at least 28 days before the end of the comment period," would appear to fit better under section E on page 8, line 33, since it is referring to the notice itself and not to the affidavit. Thus, it should be deleted on page 10 and put in on page 8 on line 33 after the words "as mailed." Therefore, the first two sentences of subpart E on page 8, lines 32 to 33 would state: "The notice of intent to adopt the emergency rule as mailed. The notice must be mailed at least 28 days before the end of the comment period."

**Page 11, line 18:** Here reference is made to "part 2010.9925." That reference does not appear in the remainder of the draft. It should be inserted on page 21 between lines 44 and 45.

**Page 11, line 19:** DPS suggests that to be in conformity with changes made on page 5, line 25, remove the word "The" and put

the word "an" in between the words "and" and the word "order" so that this sentence would read: "Findings of fact, conclusions, and an order adopting the emergency rule which must contain the following:"

**Page 12, line 1:** There needs to be inserted the word "the" between the word "to" and the word "attorney".

**Page 12, line 29:** Under subpart N. the phrase "if applicable" again appears. As with the comments regarding page 7, line 17, some reference to another statute or rule that explains why or why not this submission is applicable would be in order.

**Page 13, lines 5 to 6:** In connection with the review time period of 10 working days, see the comments made in connection with page 7, lines 29 to 30 regarding review time period of 14 days. This sentence is similarly unclear.

**Page 13, lines 32 to 33:** Again the phrase "if applicable" appears. Please see the comments made regarding page 8, lines 20 to 21 regarding the similar phrase "if applicable".

**Page 13, line 36:** Reference to "part 2010.9945" appears, but this recommended format of the affidavit is missing. No doubt it should appear on page 24 between lines 33 and 34.

**Page 15, line 20:** In keeping with other corrections, before the letter "C." that appears there, insert a "B." to show showing that "B." has been changed to "C."

**Page 15, line 13:** The "B" there should be underlined to show its a new section "B."

**Page 16, line 1:** The "H." should be underlined to show its a new section "H."; and

**Page 16, line 4:** preceding the letter "I." should appear the capital H. to show that "H." has been changed to "I."

**Page 16, lines 1 through 3 in relation to lines 8 through 9 on the same page:** I have been unable to do the necessary legal research at this time, but "H." with the comment about the rule being "unreasonable by failing to comport with substantive due process because it is not rationally related to the objective sought to be achieved" appears at the least redundant. It is a constitutional question which already appears to be covered under "K." on lines 8 to 9.

The remainder of the draft consists of examples of forms that can be used. Insofar as the examples contain material written up in the rules that the DPS has proposed to be changed, the sample document must also be changed. For example, on page 19, line 41, since it was suggested that the phrase "is encouraged" be changed to "must", it should also be changed in this document. See previous suggestion for part 2010.0300, subpart G(6). It is assumed that the relevant changes in all forms would be made.

If you have any questions regarding the suggested changes, please contact me.

Respectfully submitted,

Amy V. Kvålseth

AMY V. KVÅLSETH
Special Assistant
Attorney General
Telephone: (612) 296-2921

.ae4

MINNESOTA
**Department of Public Service**

Energy Division
(612) 296-5120

900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Celebrate MINNESOTA 1990

February 5, 1991

Martha J. Casserly
Special Assistant Attorney General
Public Finance Division
525 Park St. #500
St. Paul, MN 55103

Regarding: Comments on the preliminary draft amendments to Minn. rules ch. 2010.

My comments pertain to reorganization for clarity, providing information for agencies and the public, and simplification of the rulemaking process. Under the topic of reorganization for clarity, I have the following two suggestions:

**Combined affidavits**

The discussion of combined affidavits should not be in part 2010.0300 items F and J(2), but rather located just prior to the listing of recommended formats. The subject of combining affidavits is, after all, a format issue, and is not relevant to the material content of the documents in part 2010.0300.

Furthermore, the concept of combining affidavits should be generalized to show that is applicable to other combinations (two or more) of affidavits. For example, we often split the affidavits of certification of mailing list and certification of mailing because the person who maintains our mailing list is not the same person who does the mailing. I would not want to see these two sentences repeated for each conceivable combined pair of affidavits, or a recommended affidavit format for every conceivable combination.

Instead of the two sentences that appear in the January 24 draft, I recommend adding a new part (or better yet, subpart as discussed below) that simply states:

> Combined affidavits:
> Two or more affidavits may be combined into one affidavit if one person executed all parts of the combined affidavit.

**Organization of Recommended Formats of Affidavits**

I get confused with this long series of separate rule parts all dealing with essentially the same subject. I find it hard to identify where this listing of formats begins and ends. I'd suggest listing all of the recommended formats as subparts (or items) of a single rule part. Combining these similar items under the umbrella of one rule part would make it a lot easier to follow.

By default, the Revisor will give you one part number per item. This appears to be what has happened with this listing of recommended formats. It does not always result in the best organization. The organization of items under part 2010.0300 illustrates the usefulness of my recommendation. If each of these items was listed with their own part number, the listing would be very confusing.

I'm sure that part of the basis for my argument is personal style preference. Look at our Thermal Insulation Standards (ch. 7640 --outline attached). We've tried to organize these rules with each rule part dealing with one topic so that the rule



COUNCIL 6 AFSCME UNION LABEL

is more user-friendly.
Therefore, I'd recommend the following reorganization into subparts (or items):

2010.9912 RECOMMENDED FORMATS OF AFFIDAVITS, NOTICES AND FINDINGS
Subp. 1. Combination of affidavits (and other issues of general nature)
Subp. 2. Mailing of Statement of Need & Reasonableness ...
Subp. 3. Notice of Intent to Adopt ...
Subp. 4. Mailing of Notice of Intent ...
Subp. 5. Findings of Fact, ...
Subp. 6. Submission of Rule ...
Subp. 7. Notice of Submission ...
Subp. 8. Notice of Intent ... Emergency Rule ...
Subp. 9. Findings of Fact ... Emergency Rule ...
Subp. 10. Notice of Submission ... Emergency Rule ...
... etc.

This reorganization is needed for clarity. It is reasonable because there is no substantive change to the rule. Unfortunately, to do this you have to repeal all of the existing rule numbers and reenter everything as if it were new material. I have done this sort of reorganization with ch. 7640, and I think it is worth it in the long run.

Under the topic of providing information for agencies and the public, I have the following three suggestions:

**State Register publication notice**

A note should be added for the benefit of agencies that the date of publication of the State Register is not always Monday. I understand that agencies have failed in their rulemaking in the past because they did not understand this.
I suggest the following sentence be added where appropriate:

Note: While the date of publication of the State Register is usually Monday, the date of publication is Tuesday if Monday is a State Holiday.

I understand there might be a reluctance to include such an advisory sentence in the rules because it is unenforceable. However, there is other language in this chapter for informational purposes only (draft rules page 4, lines 3-4) that serves as a precedent.

**Listing of contact person fax number**

I suggest that the agency's fax number (if one exists) accessible to the contact person be added to the place to submit written comments. I have listed my agency's fax number on notices, and on at lease one occasion received vital written comment (on which a nonsubstantive change was based) on the final day of the comment period.
Since there may be some ambiguity as to whether an agency's fax number is "accessible" to the contact person, this addition should be recommended but not required. I suggest adding it to the recommended formats of notice.

**Attorney general's review of notice in time for agency correction**

I think that the Attorney General's office should review published notices and then notify the agency of any problems with sufficient time for the agency to make corrections prior to expiration of comment period. It would be possible to determine the adequacy of several elements of the notice (2010.0300, Item G, subitems 1 through 12) from the State Register. If the agency were notified of

problems within a few days after publications, they would still have time to publish and mail a correction within the comment period.

I suggest the following addition:

2010.1000 STANDARDS OF REVIEW

Subp. 1. Review of Notice

Within 5 working days following publication of a Notice (to adopt rules without a public hearing, or emergency rules) in the State Register, the attorney general must:

A. review the notice and determine compliance with the requirements of 2010.0300, Item G, subitems 1 through 12;

B. notify the agency of the reason for failure to comply if the notice fails to comply with any requirement of 2010.0300, Item G, subitems 1 through 12.

Subp. 2. A rule must be disapproved ...

The attorney general has to review these items at some point; this suggestion only moves up the time table. A great savings of agency resources in publication costs, staff time, and calendar time would be saved by avoiding disapproval of rules due to errors that would be caught and corrected if this language were added.

Under the issue of simplification of rulemaking, I have the following suggestion:

**Simplification of "double listing" notice**

I realize this is probably outside the scope of the present revisions under consideration, but I'll suggest it anyway. The practice of publishing a notice to adopt rules without a public hearing, followed by another notice to adopt rules with a public hearing (to be canceled if less than 25 persons request it) is convenient, but cumbersome. One to two pages of the second notice is an exact duplicate of the first. This is not only a waste of agency money, but is probably confusing to the public. One notice should suffice, with a specific title and a paragraph explaining the procedure. The several items pertaining specifically to the public hearing could all be included in the notice under a heading to that effect.

Thanks for the opportunity to comment on this draft. I look forward to reviewing the proposed rules.

Sincerely,

Bruce D Nelson

Bruce D. Nelson
Senior Engineer
297-2313

cc: Erik Swanson

enclosure

MINNESOTA
Department of
Public Service

Energy Division
(612) 296-5120

900 American Center
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

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**MINNESOTA RULES CHAPTER 7640 -- MINNESOTA THERMAL INSULATION STANDARDS**

May, 1990 -- Outline (this outline is not part of Chapter 7640)


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**Minnesota**
**Higher Education**
**Coordinating Board**

Suite 400
Capitol Square
550 Cedar Street
Saint Paul, Minnesota 55101

612-296-3974

MEMORANDUM

TO: MARTHA CASSERLY

FROM: DAVID R. POWERS
EXECUTIVE DIRECTOR

SUBJECT: AMENDMENTS TO RULE ON RULE REVIEW

After reviewing the preliminary draft of amendments to the rule governing rule review, and consulting with staff of the Minnesota Higher Education Coordinating Board, I would like to comment on one issue regarding these amendments.

The issue pertains to required information supplied by persons requesting a public hearing on rules [i.e., 2010.0300 G.(6)].

I would like to suggest an addition to the proposed language in 2010.0300 G.(6), lines 27-31 on page 2 of the preliminary draft. This addition would require that any person requesting a public hearing provide his/her name and complete mailing address. The rule should require that this information be printed or typed.

My staff has experienced difficulty when attempting to contact such persons to provide them with additional information or to secure a withdrawal of such requests because the names and/or addresses were illegible or incomplete. Since a public hearing requires a significant financial expense for an agency, the requirement to provide all information in a legible manner does not seem to be an unreasonable requirement.

Minnesota
Department of Labor and Industry

443 Lafayette Road
St. Paul, Minnesota 55155
(612) 296-6107

Telecommunication Device
for the Deaf (612) 297-4198

FAX (612) 297-1329

February 13, 1991

Martha J. Casserly
Special Assistant Attorney General
Public Finance Division
Office of the Attorney General
525 Park, Suite 500
St. Paul, MN 55103

Dear Ms. Casserly:

Thank you for the opportunity to comment concerning your preliminary draft of amendments to the Attorney General Rule Review Rules in Minnesota Rules, part 2010. I have the following comments:

2010.0300 N (5) (page 6 of draft): It may be difficult to determine how many comments were received. My experience is that we often receive requests for hearing which give a general statement of discontent concerning the rule, but do not explain in any detail why the party objects or in what way the rule could be changed. Should such a general statement be considered a "comment"? While it is easy to quantity the number of hearing requests and the number of requests for notice of submission of the rule to your office, quantifying the number of comments is more difficult and not particularly useful.

2010.0300 Q (5) (page 8 of draft): What is "the eight calendar day comment period" referred to in this rule? I don't find a reference to an eight day period in the statute. Does this rule add another requirement not authorized by the statute?

2010.0700 D (page 15 of draft): Why is a signature of the Commissioner or other authorized person required here? It seems to me that as rulemakers, the requirements are already burdensome enough. The Commissioner signs the Notice of Intent to Adopt a Rule Without a Public Hearing or the Notice of Hearing already. If a small change is needed in the Statement of Need and Reasonableness, it ought not require a new signature by the Commissioner. This is a matter for agencies to handle internally. If an individual is taking action on behalf of the agency which is not authorized, disciplinary procedures may be appropriate. Is there a real problem which this rule is addressing? If not, I believe that it is unnecessary.

An Equal Opportunity Employer

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FEB 15 1991
Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

2010.1400, subp.2 (page 18 of draft): I support sending the rule record back to the agency. When someone has a question about the promulgation of a rule, they come to the agency first, usually. While I like this rule, I'm uncertain how long the agency would be required to keep rulemaking files. Any thoughts?

Thank you for the opportunity to review your proposal. I would appreciate receiving any future drafts and the Statement of Need and Reasonableness when it becomes available. Feel free to contact me at 297-4791 if you have any questions about my comments and questions.

Sincerely,

Penny Johnson

Penny Johnson
Assistant General Counsel

STATE OF MINNESOTA

# Office of the Attorney General

TO : JACQUELYN E. ALBRIGHT
Special Assistant
Attorney General

DATE : December 30, 1992

FROM : MARTHA J. CASSERLY mjc/cr
Special Assistant
Attorney General

PHONE : 296-6839

SUBJECT : **Attorney General Rule**

Please find enclosed the entire rulemaking record in support of the amendment to the Attorney General rule. Thank you for agreeing to review the rule.

If you have any questions or concerns, please contact me or Patty Nolte.

Enclosures
MJC:cr.cass.dp7

Rec 12-31-92

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

In the Matter of the Proposed Amendments to the Attorney General Rule and Adoption of the "Dual Notice" Sample Form.

**STATEMENT OF NEED AND REASONABLENESS**

## Introduction

The Office of the Attorney General reviews administrative rules adopted without a public hearing or adopted through the emergency rulemaking procedure for legality and form to the extent form relates to legality pursuant to the Administrative Procedure Act, Minn. Stat. ch. 14 ("APA"). Minn. Stat. §§ 14.26and 14.32 (1992). Since January 1971, the Attorney General has had rules governing this rule review ("Attorney General Rules"), now located in Minn. Rules ch. 2010 (1991). The Attorney General Rules, last amended in 1988, now require further amendment. As required by Minn. Stat. § 14.22, this Statement of Need and Reasonableness justifies the need for and reasonableness of the proposed amendments.

There are several reasons for the proposed amendments. First, there have been numerous amendments to the APA since the rules were last amended in 1988, requiring another update of the rules. Further, certain errors are repeatedly made by State agencies, requiring clarification of the rules to attempt to avoid these errors. In addition, the 1992 Minnesota Legislature ordered the Attorney General, after consultation with the Office of Administrative Hearings, to adopt rules prescribing the form and content of the dual notice authorized by Minn. Stat. § 14.22, subd. 2. 1992 Laws of Minnesota, ch. 494, sec. 9. Finally, legislation was proposed in 1992, but not passed, suggesting that the notices of intent to adopt rules be in clearer, everyday language. While the legislation did not pass, its objectives were incorporated into the sample notices of intent found in the Attorney General Rules.

## Statutory Authority

The statutory authority for the adoption of the "dual notice" is 1992 Minn. Laws, ch. 494, sec. 9. The authority to amend the existing Attorney General Rules is Minn. Stat. § 14.06. The Legislature has acknowledged that the Attorney General has rulemaking authority in Minn. Stat. §§ 14.365(8) and 1992 Minn. Laws, ch. 494, sec. 9.

## Section by Section Justification

### General

There is a need to amend the Attorney General Rule so that it corresponds with recent legislative changes to the APA, to clarify the rule to avoid repeated errors by state agencies, and to attempt to provide as complete, clear notices of rulemaking in common, layperson language to encourage participation in the administrative rulemaking process.

The amendments proposed are reasonable in attempting to achieve these objectives and to clarify the process for state agencies and the public. The proposed amendments attempt to strike a balance between requiring a complete rulemaking record and clearer notices, yet not unnecessarily increase the paperwork or burdens on State agencies working through the rulemaking process.

Scattered throughout the proposed amendments are re-numbering of rule parts and subparts, corrections to cross-references, and grammatical or syntex corrections. When certain rule parts or items have been added or reorganized in the rule, it is necessary to re-number the remaining parts and to correct the cross references so that they are correct. None of these changes, nor the grammatical corrections, have any impact on the substance nor administration of the rule on the public or agencies.

**2010.0300** Documents Necessary for Review of a Rule Adopted Without a Public Hearing.

**2010.0300 E**

Part 2010.0300 E is not actually a new rule, but rather a revised version of current part 2010.0300 F moved earlier on the chronological checklist of documents. The objective of rule 2010.0300 is to be essentially a chronological checklist of documents required to be part of the rulemaking record submitted to the Attorney General. Listing the documents in the order that they must be prepared during the agency's rulemaking proceeding greatly assists the agency in working through this complicated process. To this end, the Statement of Need and Reasonableness was moved earlier on the list. Minn. Stat. § 14.23 was amended in 1990 to now require agencies to prepare the Statement of Need and Reasonableness "before the section 14.22 notice." Therefore, there is a need to move the required Statement before the notice of intent to remind state agencies that they must prepare or begin to prepare, the statement before the notice. It is reasonable to assist the agencies as much as possible.

The Statement of Need and Reasonableness has always been required to be submitted as part of the rulemaking record; it is necessary that it be submitted to assure that one was prepared and that the Attorney General may review the justification for the proposed rule in reviewing the legality of the rule. Since the statement must be prepared by the agency, it is reasonable that it be part of the rulemaking record.

The first sentence of 2010.0300 E was rearranged to clarify the language. The final phrase "complying with part 2010.0700" now appears after "the statement of need and reasonableness" to clarify that it is the statement, not the proposed rule which must comply with part 2010.0700. The second sentence was added to remind state agencies of the statutory timeline requirement of Minn. Stat. § 14.23 that the Statement must be prepared prior to the date of the notice of proposed adoption of rules. It is necessary to add this reminder because agencies have not realized that that Statement must be prepared before the notice of intent and it is reasonable to add this timeline reminder in the listing of the required document.

**2010.0300 F**

The APA was amended in 1990 to require agencies to send a copy of their Statement of Need and Reasonableness to the Legislative Commission to Review Administrative Rules (LCRAR) when it becomes available to the public. Minn. Stat. § 14.23 (1990). Since the Attorney General must determine if the agency has complied with this procedural requirement, it is necessary that the agency submit proof of its compliance. Requiring either a copy of the dated correspondence to the LCRAR or an affidavit of mailing the Statement to the LCRAR is a reasonable solution of this need as it gives agencies a choice to prepare whatever document is most convenient for them.

**2010.0300 G**

The requirement that the Notice of Intent as mailed be signed has been deleted from this "preamble" provision and moved to subpart 17. In the past, many agencies have forgotten to have these notices signed, perhaps because the requirement is not separately itemized in this rule part. It is therefore necessary to emphasize this requirement, and separate itemization is a reasonable solution to prevent agencies from easily overlooking this requirement.

Rule part 2010.0300 G has also been amended to require that the mailed notice of intent to adopt rules be sent 33 days prior to the end of the comment period. Minnesota Statutes § 14.22 requires that persons be given 30 days to comment. If the notice is mailed the same day the notice appears in the State Register, persons receiving the mailed notice will not have a full 30 day period in which to comment due to the delay in receiving the mail. There is therefore a need to assure equal opportunity for all persons to comment on the rule.

In many statutory, legal or administrative proceedings, three days are added to the prescribed period if a notice is mailed. For example, Minnesota Rules of Civil Procedure 6.05 provides:

> Whenever a party has the right or is required to act within a prescribed period after the service of a notice or other paper upon the party, or whenever such service is required to be made a prescribed period before a specified event, and the notice or paper is served by mail, three days shall be added to the prescribed period.

This addition of three days is commonly known as the "three-day mailing rule." As it would be administratively inefficient to attempt to use actual date of receipt of the mailed notice to compute the 30 day comment period for those persons receiving mailed notice, it is reasonable to adopt the widely adopted and utilized "three-day mailing rule" and require that the mailed notice be sent at least three days before 30 day comment period begins to run, or 33 days before the end of the comment period.

**2010.0300 G(1) and (2)**

The requirement to cite the specific statutory authority to adopt the rule is proposed to be deleted from subpart (1) and moved to a separately listed item in subpart (2). As discussed in length in the justification for the sample form of the notice of intent in

proposed rule 2010.9916, the sample form has been extensively revised. Since the sample form has been extensively revised, it is necessary to assure that the substantive requirements correspond with the new proposed form. Only one change, however, is necessary. The present rule could be read to require the citation to the statutory authority and the reference to the APA in one sentence. Since the proposed sample form separates these two sentences, it is necessary revise the substantive rule and reasonable to separate the recitations into two different subparts.

**2010.0300 G(3)**

This subpart is proposed to be amended to include the new statutory requirement that the end date of the comment period must appear in the notice of intent and to include information on how to calculate the end date. The 1992 Legislature amended the APA to require all notices of intent to include the date on which the 30-day comment period ends. Minn. Stat. § 14.22, subd. 1 (1992 Minn. Laws, ch. 494, sec. 5). It is therefore necessary to include this new requirement in the listing of statements required in the content of the notice.

In addition, past experience has shown that there have been many errors in the calculation of the ending deadline of the "30 day" comment period. Far too often the agency mis-counted, resulting in many "29 day" comment periods. Therefore, there is a compelling need to clarify how one counts the days. The proposed calculation language is taken from Minn. Stat. § 645.15. It is reasonable to utilize the widely adopted method of counting the days and crucial that all agencies understand how to do so.

Further, the proposed rule advises agencies that the 30 day period begins to run after the latest notice, whether mailed or published. To count otherwise, that is, to begin the count from the earlier notice, would mean that recipients of the latter notice would not get a full 30 day comment period. Finally, numerous problems arise with Monday holidays (where the publication date is Tuesday, not Monday). The proposed amendment reminds agencies of this extension so that they remember to count from Tuesday, rather than Monday. It is reasonable to attempt to assist agencies as much as possible to avoid these repeated errors.

**2010.0300 G(7)**

Subpart G(7) has been amended to require a person requesting a hearing to provide his or her name and address. Minn. Stat. § 14.22(5) requires that the requester for a hearing shall state his or her name and address. Since the current rule is incorrect in stating that the requester "should" include the name and address, it is necessary to correct the rule. Moreover, several persons have suggested, in response to the draft of the amendments distributed in 1991, that other language also be made mandatory, for example, to require commentators to identify the portion of the rule addressed. Minn. Stat. § 14.22(2) requires, however, that the comment "should" identify the portion addressed. The Attorney General rule cannot be inconsistent with the statute.

**2010.0300 G(10)**

Subpart G(10) has been amended to require agencies to give notice that any person may request a copy of the Attorney General decision. Advising the public that they may receive a copy of the decision provides for a more complete notice and allows persons to better participate in the rulemaking process. Adding this clause in the notice will not be burdensome to the agency, therefore it is a reasonable addition to the notice. In fact, for the past seven years, the sample forms have advised persons that they may request such a copy, therefore, if agencies have been following the sample forms in the past, this is not a change.

**2010.0300 G(17)**

Subpart G(17) is not actually a new requirement, but rather is the signature requirement moved from the "preamble" part to this separately itemized listing. It is necessary to move this requirement to avoid it being consistently overlooked. It is necessary that these notices be signed to assure acquiescence of the rulemaking by the authorized person.

**2010.0300 F**

Subpart F is proposed to be deleted and moved to 2010.0300 E to be earlier in the chronological checklist so that it is prepared before the notice of intent is mailed and published.

**2010.0300 H**

Subpart H requires submission of evidence that the agency complied with Minn. Stat. § 16A.128, subd. 2(a). Minn. Stat. § 16A.128, subd. 2(a) requires an agency adopting rules that establish or adjust fees to send a copy of the Notice and the rules to the chairs of the house appropriations and senate finance committees. The Attorney General is required to determine whether an agency has met all statutory requirements in adopting its rule. Thus, there is a need to provide a means whereby the Attorney General can make such a determination with respect to section 16A.128. The proposed amendment provides a reasonable solution to this need by providing the agency with alternative methods for showing compliance, allowing the agency to select whichever method is most convenient. This subpart also cross-references a proposed sample affidavit should the agency wish to use the sample.

**2010.0300 I**

Subpart I requires an agency to provide copies of any correspondence required under Minn. Stat. § 14.12. Minn. Stat. § 14.12 requires an agency to report to the Legislative Commission to Review Administrative Rules (LCRAR), other appropriate committees of the legislature, and the governor of its failure to publish a notice 180 days after the effective date of the law requiring the rule to be promulgated. In reviewing the legality of the rule adoption, it is necessary for the Attorney General to determine if this requirement was met, should the agency miss the deadline. The easiest, most accurate, and therefore reasonable method of demonstrating compliance is submitting a copy of the sent

correspondence. Listing this procedural requirement also reminds state agencies of this statutory timeline.

**2010.0300 J**

This subpart repeats the requirement that the notice must be mailed at least 33 days before the end of the comment period. Because the three-day mailing rule is now expressly incorporated in the Attorney General Rule, it is reasonable to remind the person at the time he or she is preparing the affidavit of mailing of this requirement. As discussed in the justification for subpart G(3), it is necessary to assure that those receiving the notice by mail have 30 days to comment, and it is reasonable to adopt the widely utilized three-day mailing rule.

For ease and clarity, the requirements regarding the affidavit in this rule part were separated and individually numbered. Considering the procedural complexity of rulemaking, there is always a continuing need to clarify rules where possible in ways that assist compliance. It is reasonable to number the requirements to increase compliance with each. Finally, the reminder that separate affidavits may be necessary under certain circumstances has been deleted and moved to sample form Rule 2010.9920, where it is more relevant and topical than in this regulatory section.

**2010.0300 K**

This subpart was amended by adding the sentence that the publication date must be at least 30 days before the end of the 30 day comment period. Past experience with procedural rulemaking errors has shown the necessity of reiterating procedural requirements to assure compliance. Thus, reiteration that the 30 day comment period requires publication 30 days in advance of the deadline is reasonable as a means of reminding the agency of the statutory requirement and assuring that the agency double checks the deadline date with the publication date.

**2010.0300 L**

Subpart L is proposed to be amended to require three copies of the adopted rule rather than four. It is proposed that the Attorney General no longer retain the submitted agency rulemaking record, but rather return the entire record to the agency. There are several reasons for this change. First, Minnesota Statutes § 14.365 now requires the agency to retain the official rulemaking record. Furthermore, the Attorney General's Office has neither the space nor the funds to pay for duplicate storage of these records. It is unnecessary for the Attorney General to retain duplicate rulemaking records. It should be noted that the Office of Administrative Hearings returns the rulemaking record upon completion of its review, confirming the reasonableness of this change. Currently, the four copies of the adopted rule are distributed as follows: one is retained by the Secretary of State, one is for the Revisor of Statutes, the third is for the agency and the fourth copy is for the Attorney General. Since the Attorney General is no longer retaining the rulemaking record, there is no longer the need for the fourth copy of the adopted rule. The proposed amendment incorporates this change.

**2010.0300 N(3)**

It is proposed that the Findings of Fact no longer require a statement that a copy of the notice and the proposed rule was sent to the chairs of the house appropriations and finance committees. Actual proof of this notice is now required by part 2010.0300 H. Duplication is unnecessary. Instead, just a general statement of compliance with all notice and procedural requirements is necessary. Questions have been raised as to why certain procedural requirements are listed, but not others. Rather than listing various individual requirements, it is reasonable to require only the essential statements necessary for complete Findings and Order adopting the rule.

**2010.0300 N(5)**

This subpart is amended to require the agency to affirmatively state the number of written comments and requests for notice of submission of the rule to the attorney general that were received. Currently, only an affirmative statement that no requests for a hearing, no comments, or no requests for notice of submission of the rule to the attorney general was required. See rule 2010.0300 K(7). Requiring the statement only when there were no comments or requests caused confusion. Moreover, sometimes agencies forgot to forward comments as required. Requiring an affirmation statement of the number of comments received is reasonable, because it forces the agency to be certain it is forwarding all comments as part of the record. Requiring the agency to count the number of letters received is not burdensome for the agency and greatly eases review of the record.

**2010.0300 N(7)**

The amendments in subpart N(5) above requiring the agency to specify the number of written comment letters and the number of requests for notice of submission to the Attorney General make subpart seven's language duplicative. Since an agency is now required to indicate the number of comment letters received and the number of requests for notice of submission, it is unnecessary to indicate the reverse, that they received no such requests or comments.

**2010.0300 N(8)**

Requiring the Findings to be signed is not a new requirement, but rather is moved from a non-numbered paragraph to a separate itemized requirement to avoid being overlooked. It is crucial that the Findings be signed and dated in order to assure that person authorized to adopt the rule acquiesced in the adoption and to assure that the adoption did not occur before the end of the comment period.

**2010.0300 O**

Subpart O has been amended to require submission to the Attorney General of withdrawals of requests for a hearing. Although the current rule requires all submissions from the public to be a part of the rulemaking record, some agencies have argued that they did not need to submit written withdrawals of requests for hearing to the Attorney General. Thus, there is a need to clarify that submissions include withdrawals. The Attorney General must review the validity of the rulemaking process, including ascertaining whether there are more than 25 requests for a hearing outstanding. It is therefore necessary for the

Attorney General to review the withdrawals to ascertain and confirm the validity of the withdrawals. The agency has all the requests in its file, so there is a de minimus burden to forward them with the record.

**2010.0300 Q**

This subpart was merely re-organized. Some agencies prepared the notice of submission to the Attorney General even when no one requested such notice. Therefore, clarification was needed and it is reasonable to accomplish this by placing the condition and statute which triggers this requirement ("if any persons requested to be informed of the rule submission") first.

**2010.0300 Q(3) and (5)**

These two subparts have been amended to require the notice to include the review and comment periods timelines. Persons requesting notice of submission of the rule need to know how long the review period is and how much time they have to comment. It is reasonable to place the burden on the agency with the expertise and ready access to the statutes and rules to figure out these time periods. Further, specifying the deadlines in the notice assures that everyone is notified of the same deadline dates. Finally, because there have been so many misunderstandings as to how to calculate time period, it is again necessary to explain how to count the days. The language proposed is quoted from Minn. Stat. § 645.15, a widely used and adopted method of how to count the days of a time period.

**2010.0300 R**

This subpart is clarified to explain the circumstances when this affidavit is necessary because some agencies submit this document although no requests for submission were received. It is reasonable to express the condition which triggers this requirement at the outset of the rule part for clarification.

**2010.0400** Documents Necessary for Review of Emergency Rule

Rule Part 2010.0400 contains the list of documents necessary for review of an emergency rule. The justifications for the amendments to this rule are much the same for those in the corresponding section for the permanent rules. Therefore, while the following contains a brief justification for each change, there is a cross-reference to the more in-depth discussion of the rationale for each change in the corresponding permanent rule section.

**2010.0400 E**

The signature requirement for notices of intent for emergency rules has been deleted from this "preamble" section and moved to subpart 2010.0400 E(12) as a separately required item to avoid being continuously overlooked as discussed in the section justifying part 2010.0300 G.

The Attorney General proposes to expressly incorporate the "three day mailing rule" for mailing the notices of intent to adopt emergency rule. As discussed in the section justifying part 2010.0300 G, it is necessary to assure that those receiving the notice by mail

receive a full 25 day comment period and it is reasonable to adopt the widely and uniformly used "three day mailing rule" and add three days to the 25 day comment period for those notices sent by mail.

**2010.0400 E(1) and (2)**

The requirement that the notice of intent recite the specific statutory authority has been deleted from subitem (1) and moved to subitem (2). The proposed sample form for the notice of intent to adopt emergency rules in part 2010.9951 has been extensively revised. It is therefore necessary to assure that the substantive part of the rule corresponds with the sample notice. As discussed in the rationale for part 2010.0300 G(1) and (2), the only change necessary is to separate these two recitations into two different parts to avoid the argument that these recitations must be in the same sentence in the notice.

**2010.0400 E(3)**

Subpart (3) has been amended to include the new statutory requirement that the end date of the comment period must appear in the notice and contains an explanation of how to count the days. As discussed in the justification for part 2010.0300 G(3), it is necessary to update the rule for new statutory requirements and to explain how to count the days to avoid the repeated errors and misunderstandings.

**2010.0400 E(12)**

Subpart E(12) is not actually a new requirement, but rather is the signature requirement moved from the "preamble" part to a separately itemized listing to attempt to avoid the problem of this requirement being overlooked.

**2010.0400 F**

Subpart F requires submission of evidence that the agency complied with Minn. Stat. § 16A.128, subd. 2a, which requires agencies, if they are adopting rules that establishes or adjust fees, to send a copy of the notice to certain legislative officials. As discussed in the rationale for rule 2010.0300 H, it is necessary to assure that the agency complied with this requirement and the rule is reasonable in providing the agency alternatives for submitting documentation of compliance.

**2010.0400 G**

This subpart was amended to repeat the requirement that the notice of intent must be mailed at least 28 days before the end of the comment period. Since incorporating the three-day rule is new, it is necessary to remind the mailer to be sure to mail the notice three days before the comment period begins to run and reasonable to place this reminder with the affidavit of mailing.

**2010.0400 H**

This part was amended to include the reminder that the publication date must be at least 25 days before the end of the comment period. As discussed in the rationale for rule 2010.0300 K, to assure that those who receive the notice by publication receive a full

25 day opportunity to comment on the rule, it is necessary to remind the agency to check the deadline date with the publication date.

**2010.0400 I**

Subpart I was amended to require submission of three copies of the adopted rule rather than four. As discussed in the rationale rule 2010.0300 L, since the Attorney General will no longer retain the rulemaking record, an extra copy of the rule for the Attorney General is no longer necessary. Therefore, it is reasonable to require one less copy of the rule.

**2010.0400 K(2)**

Subpart K(2) requires the Findings of Fact to include a general statement that all other notice and procedural requirements have been complied with. In the past, questions were raised as to why the Findings recite compliance with certain procedural requirements, but not others. Rather than repeating individual requirements which are to be established in other ways, it is reasonable to simply require a general statement of compliance for the sake of brevity and ease.

**2010.0400 J(4) (old) and 2010.0400 K(4)**

Subpart K(4) requires agencies to affirmatively provide the number of comments and requests for notice of submission to the Attorney General for review. The current rule 2010.0400 J(4), which has been deleted, requires agencies to cite only whether no comments or notice of submission requests were received. As discussed in corresponding part 2010.0300 N(5), the proposed rule assures that the lack of any comments or requests in the rulemaking record results from none being received, rather than from the agency forgetting to include them in the record. Requiring the agency to count how many comments and requests were received confirms the completeness of the record.

**2010.0400 K(6)**

The amendment to subpart K(6) adds the requirement that the Findings must include a statement that the authority for the use of emergency rulemaking procedures has not expired. One of the legal issues in reviewing emergency rules is to assure that the emergency rule was adopted within the timelines of Minn. Stat. § 14.29. Thus, there was a need to assure compliance. Adding this statement to the Findings is a reasonable method of assuring that the agency is aware of this timeline, and is confirming its view in writing that it has met the statutory deadline.

**2010.0400 K(8)**

Subpart K(8) requiring the Findings to be signed is not a new requirement, but rather moves the signature to be a separately designated requirement. As discussed in detail in the corresponding part 2010.0300 N(8), because some Findings have been unsigned, it is necessary to separately designate the signature as an individual requirement to avoid it from being overlooked. It is necessary that the Findings be signed to assure acquiescence of the adoption by the person authorized to adopt the rule.

**2010.0400 N**

This subpart is simply re-organized to clarify at the outset that the Notice of Submission need be prepared only when a person requests notice of submission of the emergency rule to the Attorney General.

**2010.0400 N(3) and (5)**

These two subparts add the number of days for comment and review and explain how to calculate the length of the comment period into the Notice of Submission to the Attorney General. The notice is of little value in failing to tell recipients how much time they have to comment. Therefore, as discussed in length in the justification for part 2010.0300 Q(3), the rule proposes that the agency calculate the timelines and so place those dates of the deadlines in the notices because the agency has better resources to make this calculation than members of the public.

**2010.0400 O**

Subpart O adds the clarification that only if the agency sent out a notice under 2010.0400 N, does it need to prepare this affidavit because agencies have been preparing this affidavit even when no notice was sent.

**2010.0500, subpart 1**

Subpart 1 amends the address where to submit the rule for review. The division that reviews rules, the Public Finance Division of the Attorney General's Office, moved two years ago to the new address, and it is necessary to update the rule to the new address. Generally, it is advisable that rules do not to contain street addresses as the addresses periodically change. However, it is crucial that the right division and address be cited in the Attorney General rule to avoid disputes and misunderstanding as to when to trigger the clock for the rule review timeline. Otherwise, persons could argue that submission to another division in the Attorney General's Office, submission to the agency attorney, or receipt by main office will trigger the rule review time period.

**2010.0500, subpart 2**

This subpart was amended require three, rather than four, copies of the rule because the Attorney General will no longer retain a copy of the rulemaking record, thus an extra copy of the rule is unnecessary.

**2010.0700 A**

Rule 2010.0700 A is proposed to be amended by requiring the agency to explain why small business considerations are not applicable, should that be the case. Review of rules includes examining whether the agency must comply with the small business notice requirement of Minn. Stat. § 14.115. When the record is silent on small business considerations, it is unknown whether, in fact, the statute is inapplicable or whether the agency forgot to consider the impact. Since the agency must examine whether the small business considerations statute is applicable anyway, articulating its basis in writing is not burdensome or unreasonable.

**2010.0700 B**

Subpart B requires a statement of the basis for the nonapplicability of Minn. Stat. § 14.11 requiring an estimate of costs to local public bodies. Section 14.11 is another procedural requirement the Attorney General must assure compliance, and rather than being silent on this point, it is necessary for the agency to explain, should it be the case, how the statute is not applicable. Since the agency must make this determination anyway, it is not an unreasonable burden for the agency to explain its determination in writing.

**2010.0700 D**

Subpart D requires the Statement of Need and Reasonableness be signed by the appropriate person. All important legal and administrative documents should be signed by the appropriate person. The Statement of Need and Reasonableness is a crucial document in the rulemaking process. There should be confirmation of acquiescence by the person authorized to adopt the rule of the Statement of Need and Reasonableness. Additionally, now that the statement must be prepared before the date of the section 14.22 notice, Minn. Stat. § 14.23, the signature and date of signature in the Statement must be provided to assure and confirm compliance with this deadline. While an additional burden is placed on the agency to secure yet one more signature on another rulemaking document, acquiescence and confirmation of compliance with the deadline overrides the burden.

**2010.1000 A**

Part 2010.1000 A is a recitation of the definition of a rule from Minn. Stat. § 14.02, subd. 4. That statute was amended in 1990, and it is necessary to also amend the corresponding rule so that it reads verbatim from the statutory definition.

**2010.1000 H**

Rule 2010.1000 contains a list of the various legal issues involved in the review of rules. The purpose of the list is to advise the public and state agencies what issues are considered in the review of rules.

Whether or not a rule is "reasonable" has always been a legal issue in reviewing rules, see Juster Bros. v. Christgau, 214 Minn. 108, 118, 7 N.W.2d 501, 507 (1943), Broen Memorial Home v. Minnesota Dept. of Human Services, 364 N.W. 436, 440 (Minn. Ct. App. 1985). Thus, separately designating "reasonableness" as a standard will not add another legal issue. However, there has long been concern regarding the standard of determining the reasonableness of the rule on its face. Recently, the Minnesota Supreme Court specified the standard for review of reasonableness of rules on their face in Mammenga v. Dept. of Human Services, 442 N.W.2d 786, 789 (Minn. 1989). This proposed section simply repeats the legal standard cited in the Mammenga decision. It is reasonable to cite the legal standard to be used in considering the reasonableness of a rule on its face so that the public and state agencies know what standard applies.

**2010.1000 K**

"Unreasonableness" was deleted from this part because it is moved to part 2010.1000 H as a separately designated legal issue. Also, the current rule is misleading in only referring to emergency rules, when "reasonableness" has always been a legal issue in review of all rules. "Illegal" was added to this section as another "catch-all" term along with "constitutional issues" as reasons for rejection of the rule. The Attorney General has the authority to review rules as to their legality, and adding this term to this part merely repeats that authority.

**2010.1100, 2010.1200, 2010.1300, and 2010.1400, subp. 2**

These four rule parts were amended to provide that the Attorney General's Office will return the rulemaking record to the agency upon completion of its review, and because it will no longer retain the record, one less copy of the adopted rule is necessary. Since the agency is now required to keep the official rulemaking record, Minn. Stat. § 14.365, and since the Attorney General's Office neither has the space nor the funds to pay for storage space for agency rules, it is proposed that the Attorney General will no longer retain the rulemaking record. While there will be a loss of readily available rule records for review, the change is necessary and is reasonable, for the Office of Administrative Hearings also returns the record upon competition of its review. Finally, it is reasonable to remind state agencies of their statutory obligation to retain the official rulemaking record.

**2010.9913**

Sample forms help agencies comply with rulemaking procedural requirements. Changes in the law since these Attorney General Rules were amended require changes in the sample form to assure compliance. Minn. Stat. § 14.23 now requires state agencies to submit a copy of the Statement of Need and Reasonableness to the Legislative Commission to Review Administrative Rules (LCRAR) when it becomes available to the public. The rulemaking record must show that this procedural requirement was satisfied, and one way is by affidavit. Proposed 2010.9913 is the recommended format of such an affidavit.

If the proposed rules establish or adjust fees, the agency must send certain documents to certain legislative officials pursuant to Minn. Stat. § 16A.128, subd. 2a. Again, the rulemaking record must contain proof of this compliance, and proposed 2010.9913 contains a proposed sample affidavit the agencies may use to confirm that they complied with this statutory requirement.

In an effort to reduce paper work and documents, these two affidavits were combined into one sample form. However, to avoid confusion and misunderstanding of the appropriate use of this combined form, detailed notes and explanations on the applicability and use of this sample form were necessary. The amended introductory language is a reasonable solution to explain the use of the form.

**2010.9916**

The Sample Notice of Intent to Adopt a Rule without a Public Hearing has been totally re-written in layperson language and placed in this part. In 1992, legislation was proposed to require Notices of Intent to be "written in a clear and coherent manner using

words with common and everyday meanings and be appropriately divided and captioned by its various sections." While the legislation did not pass, the suggestions have been incorporated into the proposed recommended forms for Notices of Intent. The recommended forms are now directed to the reader, organized more coherently, and separately divided and captioned by paragraph headings. The overriding objective in the revision is to make the notice more useful and helpful to the public.

Substantively, essentially no change occurred in the notice from the current form with the exception of requiring the actual calendar date of the end of the 30 day comment period, now required by statute. Thus, if the agency uses the old (current) form with the addition of the ending date of the comment period, the agency will still be in compliance with the substantive section of the Attorney General Rule.

**2010.9920**

Part 2010.9920 contains an revised sample affidavit of mailing the notice. Sometimes there has been confusion when the person who can attest to the accuracy of the mailing list is not the same person who mailed the notices to those on the mailing list. Therefore, the note at the beginning of the recommended form explaining that under these circumstances, separate affidavits must be submitted, is a reasonable way to cure the confusion.

The three-day mailing rule has been incorporated into the substantive section of the Attorney General rule and it is necessary to remind agencies that they must take the three day mailing rule into consideration when mailing the notice.

The current affidavit form states that the notice must be "attached." Attaching the notice to the affidavit means a duplicate copy of the notice is part of the record. For administrative efficiency and conservation, this requirement has been deleted. However, it is proposed that the affiant affirmatively state what was mailed. In reviewing the Notice of Intent, the attorneys must check whether the rule was mailed, or if not, whether the Notice contains an adequate summary of the rule. Therefore, it is necessary for the affiant to affirmatively state whether or not the rule was mailed. While making such a statement, it is reasonable for an agency to state what else was mailed to the persons on the mailing list (such as the Statement of Need and Reasonableness). Stating what was mailed is not burdensome to the agency and would greatly ease the review of the record.

**2010.9930**

The recommended form for the Findings is proposed to be re-organized in a format more similar to regular administrative agency Findings with separately numbered paragraphs and with the standard conclusions appropriately summarizing the rulemaking proceeding. Further, as discussed in the substantive part of the rule, certain procedural recitations were deleted in favor of a general statement of compliance to avoid unnecessary duplication. Finally, it is necessary for the agency to affirmatively state how many comments and submissions were received to assure the correct number are in the submitted record.

**2010.9940**

Part 2010.9940 contains the revised Notice of Submission of the rulemaking record to the Attorney General. Minn. Stat. § 14.26 requires that the Notice must be given to those who requested such notice on the same day that the record is submitted. The rulemaking record cannot be submitted to the Attorney General until all procedural requirements have been met, thus technically, this notice must be given before the record can be submitted to the Attorney General. Therefore, rather than being in the past tense, the notice should state that the rule will be submitted to the Attorney General, presumably later on that same day.

The current notice provides the agency the option of either explaining where the supporting documents may be obtained or attaching the documents to the notice. Since the Findings are also available and will likely be of great interest to the recipients of this notice, the sample notice reminds the agency that it may choose to mail the Findings along with the rule.

The current sample form simply states that the public has eight calendar days to submit comments. Should someone want to comment, that person must go through the trouble of figuring out and counting the eight calendar days. Since confusion and error often arises in counting the days, it is reasonable to require the agency to compute and notice the comment deadline. While it imposes an additional burden on the agency, a more complete and undisputed timeline for the public outweighs the additional burden.

The address where to submit the comments has been changed, therefore it is necessary to revise the form to reflect the correct address. Finally, with the widespread use of fax machines, it is reasonableness to propose that agencies consider including their fax machine number on these notices.

**2010.9945**

The only amendment to this form was to delete the requirement that the Notice be "attached" to the Affidavit. Attaching the Notice to the affidavit means a duplicate copy of the Notice must be submitted in the record. In an effort to reduce paperwork, attaching an extra copy of the Notice was deleted.

**2010.9946**

1992 Minn. Laws, ch. 494, sec. 9 ordered the Attorney General, after consultation with the Office of Administrative Hearings, to adopt rules prescribing the form and content of the notice authorized by Minn. Stat. § 14.22, subd. 2. That notice is a combination of the Notice of Intent to Adopt a Rule Without a Public Hearing and a Notice of Hearing should 25 requests for a hearing be received, commonly referred to as the "Dual Notice." Part 2010.9946 contains the form and content of the "dual notice" containing all the statutory and regulatory requirements of both the Office of Administrative Hearings and the Office of the Attorney General. The Office of Administrative Hearings was consulted in the drafting of this form and their suggestions incorporated into the proposed dual notice. Attachment A. In addition, another Notice of Solicitation for comments on the draft dual notice was published in the State Register, two written comments were received, and many of the suggestions incorporated into the proposed dual notice form.

As with the revised Notices of Intent, the dual notice was written in layperson language, divided and captioned by various sections and directed to the reader as suggested by proposed legislation.

**2010.9951**

As discussed in the justification for part 2010.9916, the Notices of Intent were extensively revised in layperson language, reorganized, and captioned by paragraph headings. Generally, there are no substantive changes with the exception of adding the calendar date of the end of the comment period, which is now required by statute.

**2010.9955**

As discussed in the justification for part 2010.9930, the sample findings forms were revised to a more standard format for agency findings, certain specific recitations were deleted in favor of general statements of compliance, affirmative statements were set forth regarding the ending date of the comment period and the number of comments received to assure that the agency's calculations are consistent with the Attorney General's count.

**2010.9960**

As discussed in the justification for part 2010.9940, the tense in this notice was changed to reflect that this notice must be given before the agency can submit the rule to the Attorney General, changed to remind the agency that they may also provide a copy of the findings along with this notice, changed to place the burden on the agency to calculate the end of the eight day comment period and to so advise the public, and to provide the correct address for submission fo comments. All of these amendments are reasonable in providing a more useful and complete notice to the public.

**2010.9915 and 2010.9950**

2010.9915 and 2010.9950 are repealed because these notices have been extensively re-written in layperson language, reorganized with paragraph headings and additional information added to provide for more complete and useful notices of rulemaking to the public. The new sample forms are now contained in parts 2010.9916 and 2010.9951. It is therefore necessary to repeal the old sample forms to avoid duplication.

**Small Business Considerations**

Minnesota Statutes § 14.115 requires agencies, when proposing new rules or amending existing rules which may affect small businesses, to consider certain methods for reducing the impact of the rule and to provide certain notices to small businesses. By and large, the impact of these amendments in this rulemaking proceeding are on state agencies, not small businesses. However, small businesses which participate in the State administrative rulemaking process may be impacted by the rule amendments which make minimal procedural changes in the rulemaking process. Also, small businesses may be impacted by the significant amendments to the various notices, particularly the Notices of Intent and the Dual Notice. Although the impact of the amendment on small businesses is minimal and indirect, the Attorney General nevertheless considered all of the methods for

reducing the impact on small businesses as listed in Minn. Stat. § 14.115, subd. 2. The listed methods for reducing the impact on small businesses, however, are either not applicable to the proposed amendments or feasible. Nevertheless, the Attorney General's main objective in this rulemaking proceeding is to provide the most informative and useful notices to the public, including small businesses, in order to encourage public participation in the Administrative rulemaking process.

**Other Statutory Requirements**

Minn. Stat. § 14.11, subd. 1 is inapplicable as the proposed rule will not require expenditures of more than $100,000 by local public bodies. Minn. Stat. § 14.11, subd. 2 is inapplicable as the proposed rule will not have any impact on agriculture land. Minn. Stat. § 16A.128, subd. 1 is inapplicable because the proposed rule does not set any fee.

**Conclusion**

Based on the foregoing, the amendments to the Attorney General Rule and the proposed dual notice are needed to assist state agencies in the promulgation of their rules in compliance with the Minnesota Administrative Procedure Act, Minn. Stat. ch. 14, and are reasonable because they clarify the requirements and achieve these objectives. Furthermore, the proposed "dual notice" and extensive revisions to the notices of intent attempt to provide complete, informative and useful notices for the public to encourage participation in the State Administrative rulemaking process.

Dated: 10-13-92

HUBERT H. HUMPHREY III
Attorney General

cass.do3

Administrative Procedure Act Section
Telephone Number (612) 341-7600
Fax Number (612) 349-2665

# STATE OF MINNESOTA

OFFICE OF ADMINISTRATIVE HEARINGS

100 Washington Square
Suite 1700
Minneapolis, Minnesota 55401-2138

Workers' Compensation Section
Telephone Number (612) 341-7635
Fax Number (612) 349-2691

RECEIVED

AUG 31 1992

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street

August 28, 1992

Martha J. Casserly
Special Assistant Attorney General
525 Park Street, Suite 500
St. Paul, Minnesota 55103-2106

Dear Martha:

We have reviewed your proposed draft of the "dual notice" rule and I have indicated a few minor suggestions on the attached. If I can provide anything further, please feel free to contact me.

Very truly yours,

Bill Brown by lc

BILL BROWN
Chief Administrative Law Judge

Telephone: 612/341-7644

WGB:lc
enclosure



**Attachment A**

# Official Notices

**Pursuant to the provisions of Minnesota Statutes § 14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.**

**The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.**

## Department of Administration

### Materials Management Division

### Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing State Contracts

**NOTICE IS HEREBY GIVEN** that the State Department of Administration is seeking information or opinions from sources outside the Department in preparing to propose the amendment of the rule governing State contracts Chapter 1230. parts .0100 through .1300, and the permanent adoption of the emergency rule currently in effect governing the Small Business Procurement Program parts .1400 through .1910 the adoption of the rule is authorized by *Minnesota Statutes*, section 16B.04, which permits the Department to adopt, amend, and rescind rules relating to any purpose, responsibility, or authorization in (that) Chapter (16B), specifically, "contracts and purchases" and "special purchasing situations" such as "designation of procurements from small businesses".

The State Department of Administration requests information and opinions concerning the subject matter of the rule, Chapter 1230.0100 through .1910. Interested groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Robert J. Baldwin
Department of Administration
Materials Management Division
Administration Building, Room #112
50 Sherburne Avenue
St. Paul, Minnesota 55155

Oral statements will be received during regular business hours, 8:00 a.m. to 4:30 p.m., Monday through Friday over the telephone at (612) 296-2600 and in person at the above address.

All statements of information and opinions shall be accepted until February 15, 1991. Any written material received by the State Department of Administration, Materials Management Division shall become part of the rulemaking record to be submitted to the Attorney General or Administrative Law Judge in the event that the rule is amended and adopted.

Dated: January 18, 1991

Terry L. Bock
Acting Commissioner of Administration

## Office of Attorney General

### Public Finance Division

### Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Governing the Attorney General's Review of Rules Without a Public Hearing

**NOTICE IS HEREBY GIVEN** that the State Attorney General's Office is seeking information or opinions from sources outside the agency in preparing to propose the amendment of the rule governing the Attorney General's review of rules without a public hearing.

The adoption of the rule is authorized by *Minnesota Statutes*, section 14.06 (1990), which permits the agency to adopt rules regarding all formal or informal procedures relating to the administration of official agency duties.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

The State Attorney General's Office requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Patricia Nolte
Attorney General's Office
Public Finance Division
525 Park St., Suite 500
St. Paul, Minnesota 55103

Oral statements will be received during regular business hours over the telephone at (612) 296-9715 and in person at the above address.

A draft of the proposed changes is available by contacting Ms. Nolte at the above address or phone number. All statements of information and opinions shall be accepted until February 15, 1990. Any written material received by the State Attorney General's Office shall become part of the rulemaking record to be submitted to the Attorney General or Administrative Law Judge in the event that the rule is adopted.

Patricia Nolte
Public Finance Division

# Department of Commerce

## Bulletin of Pending Applications Under the Reciprocal Interstate Banking Act *Minnesota Statutes* § 48.98, Subdivision 2,(2)

The following listing of applications are pending with the Commissioner of Commerce subject to criteria for approval as set out in *Minnesota Statutes* § 48.93 and shall be disapproved if:

(1) The financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(2) The competence, experience, integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositers of the bank, or in the interest of the public to permit the person to control the bank;

(3) The acquisition will result in undue concentration of resources or substantial lessening of competition in this state;

(4) The application fails to adequately demonstrate that the acquisition proposal would bring net new funds into Minnesota;

(5) A subsidiary of the acquiring bank holding company has failed to meet the requirements set forth in the federal Community Reinvestment Act; or

(6) The acquisition will result in over 30 percent of Minnesota's total deposits in financial institutions as defined in section 13A.01, subdivision 2, being held by banks located in this state owned by reciprocating state bank holding companies. This limitation does not apply to consideration for approval pursuant to section 48.99, special acquisitions.

In addition, the Commissioner has determined by rule that applicants must describe its plan of compliance in providing an acceptable level of development loans or developmental investments in the community affected.

**Current List of Pending Applications:**

• **Minowa Bancshares, Inc.,** 120 West Water, Box 110, Decorah, Iowa 52101 proposes to acquire The First National Bank of Mabel, 101 East Newburg, Mabel, Minnesota 55954.

**NOTICE**

The Commissioner shall accept public comment on an application for a period of not less than 30 days from the date of the final publication in a newspaper of general circulation within the county in which the bank to be acquired or a proposed new bank is located; or 30 days after the date of the availability of the Bulletin of Pending Applications which includes the listing of the acquisition.

**Public Information**

Copies of bulletins of pending applications prepared and updated with each new application filed with the Commissioner are available without charge to any person upon request by writing to Department of Commerce, Bulletin of Pending Applications, Reciprocal Interstate Banking Act, 133 East Seventh Street, St. Paul, Minnesota 55101.
Dated: 16 January 1991

Bert J. McKasy
Commissioner of Commerce

4:00 p.m., for a retreat. The retreat will be held at Mount Olivet Retreat Center, 7984 257th Street West, Farmington, Minnesota, Conference Room—Showy Orchis. The general public may attend the meeting, but discussions and comment will be limited to Board members and staff only. If you plan on being in attendance, you must R.S.V.P. the ACRRA staff, by Thursday, September 10, 1992.

Please call the ACRRA Program, (612) 297-3490, should you require additional information.

# Board of Animal Health

## Notice of Board Meeting

A meeting of the Board of Animal Health has been scheduled for Friday, September 25, 1992 at the Victorian Inn, 1000 Hwy. 7 West, Hutchinson, MN 55350. The meeting will begin at 9:30 a.m.

Information about this meeting can be obtained by calling the Board office at 612-296-5000.

Eugene H. Kirchoff
Accounting Supervisor

# Office of Attorney General

## Public Finance Division

## Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rule Prescribing the Form and Content of the "Dual Notice."

**NOTICE IS HEREBY GIVEN** that the State Attorney General's Office is seeking information or opinions from sources outside the agency in preparing to propose the rule prescribing the form and content of the alternative "Dual Notice" form combining the "Notice of Intent to adopt rule without a public hearing' with the "Notice of Hearing to adopt rule with a hearing" as required by *1992 Minnesota Laws*, chapter 494, section 9.

The State Attorney General's Office requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Patricia Nolte
Attorney General's Office
Public Finance Division
525 Park St., Suite 500
St. Paul, Minnesota 55103
Fax No. 612-297-2576

Oral statements will be received during regular business hours over the telephone at (612) 296-9715 and in person at the above address.

A draft of the proposed changes is available by contacting Ms. Nolte at the above address or phone number. All statements of information and opinions shall be accepted until September 21, 1992. Any written material received by the State Attorney General's Office shall become part of the rulemaking record to be submitted to the Attorney General or Administrative Law Judge in the event that the rule is adopted.

Patricia Nolte
Public Finance Division

# Department of Commerce

## Notice to Solicit Outside Opinion Regarding Proposed Rules Relating to Sales of Securities

**NOTICE IS HEREBY GIVEN** that the Department of Commerce is seeking information or opinions from persons outside the Department in preparing to promulgate new rules for Sales of Securities. These rules will include but not be limited to Broker—Dealer Records, Net Capital Requirements, Investment Adviser Reporting Requirements, Senior Securities—Dividend and Interest Coverage, and Cheap Stock Escrow Requirements.

Promulgation of these rules is authorized by *Minnesota Statutes*, Sections 45.023, and 80A.25.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by *Minnesota Statutes*, § 14.115, subdivision 1.

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

In the Matter of the Proposed Amendment to the Attorney General Rule Governing Rule Review and Adoption of the Sample "Dual Notice" Form

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the Office of the Attorney General intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, section 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 14.06 and 1992 Minnesota Laws, Chapter 494, section 9.

All persons have 30 days, until 5:00 p.m., November 19, 1992, in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Patricia Nolte
Attorney General's Office
Public Finance Division
525 Park Street, #500
St. Paul, Minnesota 55103
Phone: 612-296-9715
Fax: 612-297-2576

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request by contacting Patricia Nolte at the address given above.

**Impact on small businesses.** Small businesses which participate in the State administrative rulemaking process may be impacted by these rule amendments which make minimal procedural changes in the rulemaking process and changes some of the sample notice forms widely used by state agencies. Small businesses, as all members of the public, are encouraged to participate in this rule amendment proceeding.

The adoption of this rule will neither require expenditures of public monies by local bodies nor have any impact on agriculture land, therefore, Minnesota Statutes section 14.11, subdivisions 1 and 2 are inapplicable.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to Patricia Nolte, Office of the Attorney General, Public Finance Division, at the address given above.

Date: 9-30-92

HUBERT H. HUMPHREY III
Attorney General

rules.bb3

# Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

# Attorney General

## Proposed Permanent Rules Relating to Rule Review

### Notice of Intent to Adopt a Rule Without a Public Hearing

**NOTICE IS HEREBY GIVEN** that the Office of the Attorney General intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, section 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, section 14.06 and *1992 Minnesota Laws*, Chapter 494, section 9.

All persons have 30 days, until 5:00 p.m., November 19, 1992, in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Patricia Nolte
Attorney General's Office
Public Finance Division
525 Park Street, #500
St. Paul, Minnesota 55103
Phone: 612-296-9715
Fax: 612-297-2576

The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

A copy of the proposed rule is attached to this notice.

**A STATEMENT OF NEED AND REASONABLENESS** that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request by contacting Patricia Nolte at the address given above.

**Impact on small businesses.** Small businesses which participate in the State administrative rulemaking process may be impacted by these rule amendments which make minimal procedural changes in the rulemaking process and changes some of the sample notice

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

forms widely used by state agencies. Small businesses, as all members of the public, are encouraged to participate in this rule amendment proceeding.

The adoption of this rule will neither require expenditures of public monies by local bodies nor have any impact on agriculture land, therefore, *Minnesota Statutes* section 14.11, subdivisions 1 and 2 are inapplicable.

If no hearing is required, upon adoption of the rule, the rule and required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit a written request to Patricia Nolte, Office of the Attorney General, Public Finance Division, at the address given above.

Dated: 30 September 1992

Hubert H. Humphrey III
Attorney General

## Rules as Proposed

### 2010.0300 DOCUMENTS NECESSARY FOR REVIEW OF A RULE ADOPTED WITHOUT A PUBLIC HEARING.

To submit a rule adopted without a public hearing to the attorney general for review and approval pursuant to *Minnesota Statutes*, section 14.26, the agency must submit to the attorney general the following documents:

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

E. The statement of need and reasonableness complying with part 2010.0700 in support of the proposed rule. The statement of need and reasonableness must be prepared before the date that the notice of intent to adopt a rule without a public hearing is published in the *State Register* and mailed.

F. Evidence that the agency sent a copy of the statement of need and reasonableness to the legislative commission to review administrative rules when it became available to the public as required by *Minnesota Statutes*, section 14.23. The evidence must be in the form of a copy of the dated correspondence to the legislative commission to review administrative rules or an affidavit of the mailing. For recommended format of the affidavit, see part 2010.9913.

G. The notice of intent to adopt a rule without a public hearing as mailed. The notice must be ~~signed by a person authorized to adopt the rule or authorized to sign and give notice of the intent to adopt the rule without a public hearing~~ mailed at least 33 days before the end of the comment period and must contain the following:

(1) A statement that the agency intends to adopt a rule without a public hearing ~~pursuant to the authority of [citation to the specific statutory authority for the proposed rule]~~ and is following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28.

(2) A citation to the specific statutory authority for the proposed rule.

(3) A statement that the public has 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the proposed rule and that comment is encouraged. The statement must specify the calendar date of the last day of the comment period. In calculating the comment period, the date of publication in the *State Register* or the date of mailing, whichever is later, is not included. Saturdays, Sundays, and legal holidays are included in the calculation. The last day of the period so calculated is included unless it is a Saturday, Sunday, or legal holiday, in which event, the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. The *State Register* is published on Mondays except when the Monday is a legal holiday in which case it is published on a Tuesday.

~~(3)~~ (4) A statement that each comment should identify the portion of the proposed rule addressed, the reason for the comment and any change proposed.

~~(4)~~ (5) A statement that if 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing.

~~(5)~~ (6) A statement of the manner in which persons may submit comments or requests for a public hearing.

~~(6)~~ (7) A statement that any person requesting a public hearing ~~should state~~ must include his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed.

~~(7)~~ (8) A statement that if a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

~~(8)~~ (9) A statement that the proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

~~(9)~~ (10) A statement that if no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the attorney general for review as to legality and form to the extent form relates to legality; a statement that any person may request notification of the date of submission to the attorney general and a copy of the attorney general decision; and a statement of the manner in which the request must be made.

~~(10)~~ (11) If an entire rule is proposed to be repealed, a statement stating that fact and citing the rule to be repealed.

~~(11)~~ (12) A statement that the proposed rule is attached to the notice; or if the proposed rule is not attached to the notice sent to persons on the agency rulemaking mailing list, a statement describing the nature and effect of the proposed rule and the manner in which a free copy may be requested.

~~(12)~~ (13) A statement that the statement of need and reasonableness is available to the public and the manner in which that document may be requested.

~~(13)~~ (14) If required by *Minnesota Statutes*, section 14.11, subdivision 1, a statement relating to the expenditure of public money by local public bodies.

~~(14)~~ (15) If the agency elects to comply with *Minnesota Statutes*, section 14.115, subdivision 4, by following paragraph (a) of the statute, a statement that the proposed rule will have an impact on small businesses and a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons as provided by *Minnesota Statutes*, section 14.115, subdivision 4, paragraph (a).

~~(15)~~ (16) Any other notices required by law or rule to be included in the notice of intent to adopt a rule without a public hearing.

(17) The signature of the person authorized to adopt the rule or authorized to sign and give notice of the intent to adopt the rule without a public hearing.

For the recommended format of the notice, see part ~~2010.9915~~ 2010.9916.

~~F. The statement of need and reasonableness in support of the proposed rule complying with part 2010.0700.~~

~~G.~~ H. If the proposed rule establishes or adjusts fees, evidence that the agency sent a copy of the notice of intent and the proposed rule to the chairs of the house appropriations committee and senate finance committee before the agency submitted the notice of intent to the *State Register* as required by *Minnesota Statutes*, section 16A.128, subdivision 2a. Evidence shall be in the form of the dated correspondence to the chairs or an affidavit of mailing. For the recommended format of the affidavit, see part 2010.9913.

I. If the agency did not publish an appropriate notice of intent to adopt the rule within 180 days after the effective date of the law requiring the rule to be adopted, a copy of the correspondence to the legislative commission to review administrative rules, other appropriate committees of the legislature, and the governor as required by *Minnesota Statutes*, section 14.12.

J. The affidavit of mailing the notice of intent to adopt a rule without a public hearing. The notice must be mailed at least 33 days before the end of the comment period. The affidavit or affidavits must state that:

(1) the mailing list maintained by the agency pursuant to *Minnesota Statutes*, sections 14.22 and 14.14, subdivision 1a, is accurate, complete, and current ~~and that~~; and

(2) the notice of intent to adopt the rule without a public hearing was mailed to all persons and groups whose names appear on the list.

~~If the person who mailed the notice is not the same person who can attest to the accuracy of the mailing list, separate affidavits signed by the appropriate person must be submitted.~~ For the recommended format of the affidavit, see part 2010.9920.

~~H.~~ K. A copy or photocopy of the notice of intent to adopt the rule without a public hearing as published in the *State Register*. The publication date must be at least 30 days before the end of the comment period. The notice as published must contain the statements required by ~~part 2010.0300,~~ item ~~E~~ G.

~~I. Four~~ L. Three copies of the rule as adopted. Any modification made to the proposed rule must be reflected on the rule as adopted and be approved as to form by the revisor of statutes.

~~J.~~ M. If the agency is a multimember agency as provided in *Minnesota Statutes*, section 15.0597, subdivision 1a, the certificate

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

of the multimember agency's resolution adopting the rule. The resolution must be adopted at a meeting duly called and attended by a quorum.

The resolution must approve and adopt the rule and authorize a named individual to sign the findings of fact, conclusions, and order adopting the rule and perform the necessary acts to provide that the rule has the force and effect of law. If the multimember agency is so empowered, the resolution may also authorize the named person to modify the rule under stated circumstances or as necessary to obtain the approval of the rule by the attorney general. For the recommended format of the resolution, see part 2010.9925.

~~K.~~ N. The findings of fact, conclusions, and order adopting the rule which must contain the following:

(1) a statement that proper notice of intent to adopt a rule without a public hearing was given;

(2) a statement that the statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the *State Register* and was available to the public;

(3) ~~for rules that establish or adjust fees, a statement that before the notice of intent to adopt rules was submitted to the *State Register*, a copy of the notice and the proposed rule was sent to the chairs of the house appropriations committee and senate finance committee~~ a statement that all other notice and procedural requirements have been complied with;

(4) a statement that all persons were given the opportunity to submit comment on the proposed rule for 30 days after the notice of intent to adopt a rule without a public hearing was given;

(5) a statement of the number of written letters with comments received, the number of persons that requested a public hearing ~~and~~, the number of persons that requested a public hearing and withdrew their request, and the number of requests for notice of submission to the attorney general;

(6) if any changes were made between the rule as proposed and the rule as adopted, findings of fact and conclusions supporting the reasons for the changes and explaining why the changes do not constitute substantial changes as provided in the attorney general rules, part 2010.1000, item D;

(7) ~~if the agency received no requests for a hearing, or received no submissions or comments on the rule required to be submitted to the attorney general by item L, or received no requests for notice of submission of the adopted rule to the attorney general, an applicable statement to that effect; and~~

~~(8)~~ a statement that the rule as adopted is needed and reasonable and that the rule is hereby ordered to be adopted; and ~~the date on which the order is signed.~~

~~The findings of fact, conclusions, and order adopting the rule must be signed by a person authorized to adopt the rule or authorized to sign the findings of fact, conclusions, and order adopting the rule.~~

(8) the signature of the person authorized to adopt the rule or authorized to sign the findings of fact, conclusions, and order adopting the rule and the date on which the order is signed.

For the recommended format of the findings of fact, conclusions, and order, see part 2010.9930.

~~L.~~ O. All written requests, withdrawals of requests for a hearing, submissions, or comments on the rule received by the agency except requests solely for copies of the rule or of the statement of need and reasonableness.

~~M.~~ P. The declaration of the attorney in the attorney general's office who represents the agency. The declaration must state:

(1) that the attorney has examined the rule and the rulemaking record;

(2) that the Administrative Procedure Act and this chapter ~~2010~~ have been followed with a listing of any exceptions; and

(3) for attorney general billing purposes, the four-digit docket client code is _____. For the recommended format, see part 2010.9935.

~~N.~~ Q. ~~The notice of submission of the rule to the attorney general, if applicable. If any persons requested notification of the date of submission of the rule to the attorney general.~~ If any persons requested to be informed that the rule has been submitted to the attorney general, the notice of submission that was sent to those persons as required by *Minnesota Statutes*, section 14.26. The notice must be given on the same day the rule is submitted to the attorney general. The notice must contain the following:

(1) the date of submission of the rule to the attorney general;

(2) if the proposed rule has been modified, the notice must state that fact and must state that a free copy of the rule as modified is available upon request from the agency or that a copy of the rule as modified is enclosed with this notice;

(3) the attorney general rule review time period of 14 calendar days;

(4) a statement that comments may be submitted to the attorney general and that any comments submitted must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule and make a reference to the attorney

general standards of review as set forth in part 2010.1000;

(5) the length of the ~~comment~~ period for submitting comments to the attorney general and the calendar date of the last day of the eight calendar day comment period. In calculating the comment period, the date the documents were submitted to the attorney general is not included. Saturdays, Sundays, and legal holidays are included. The last day of the period so calculated is included unless it is a Saturday, Sunday, or legal holiday, in which event, the period runs until the next day which is not a Saturday, Sunday, or legal holiday;

(6) a statement that upon written request to the attorney general a copy of the attorney general decision will be provided;

(7) the address of the attorney general division where comments and requests must be submitted; and

(8) a statement that any written comments to the attorney general must also be submitted simultaneously to a named person for the agency and the address of that person.

For the recommended format of the statement, see part 2010.9940.

~~O.~~ R. If the agency sent out the notice of submission of the rule to the attorney general as required by *Minnesota Statutes*, section 14.26, the affidavit of mailing notice of submission of the rule to the attorney general~~, if applicable~~. The affidavit must state that a copy of the notice of submission of the rule to the attorney general was mailed to all persons and associations who requested the notification. For the recommended format of the affidavit, see part 2010.9945.

**2010.0400 DOCUMENTS NECESSARY FOR REVIEW OF EMERGENCY RULE.**

To submit an emergency rule to the attorney general for review and approval pursuant to *Minnesota Statutes*, section 14.32, the agency must submit to the attorney general the following documents:

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

E. The notice of intent to adopt the emergency rule as mailed. The notice must be ~~signed by a person authorized to adopt the rule or authorized to sign and give notice of the intent to adopt the emergency rule~~ mailed at least 28 days before the end of the comment period and must contain the following:

(1) A statement that the agency intends to adopt the emergency rule ~~pursuant to authority of [citation to the specific statutory authority to adopt the emergency rule] and is~~ following the procedures ~~set forth~~ in the Administrative Procedure Act for adopting emergency rules in *Minnesota Statutes*, sections 14.29 to 14.36.

(2) A citation to the specific statutory authority to adopt the emergency rule.

(3) A statement that all persons have 25 days after publication, or a longer period of time as specified in the notice, to submit data and views on the proposed emergency rule or any part or subpart of the rule in writing. The statement must include the calendar date of the last day of the comment period. In calculating the comment period, the date of the publication in the *State Register* or the date of mailing, whichever is later, is not included. Saturdays, Sundays, and legal holidays are included in the calculation. The last day of the period so calculated is included unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. The *State Register* is published on Mondays except when Monday is a legal holiday in which case it is published on a Tuesday.

~~(3)~~ (4) A statement of the manner in which persons may submit written comments to the agency.

~~(4)~~ (5) A statement that the proposed emergency rule is attached to the notice; or, if the proposed rule is not attached to the notice sent to persons on the agency rulemaking mailing list, a statement describing the nature and effect of the proposed rule.

~~(5)~~ (6) A statement that a free copy of the proposed emergency rule is available upon request from the agency and the manner in which the request may be made.

~~(6)~~ (7) A statement that the proposed emergency rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed emergency rule as noticed.

~~(7)~~ (8) A statement that the emergency rule and its supporting documents will be submitted to the attorney general for review as to legality and form to the extent form relates to legality; a statement that any person may request notification of the date of submission to the attorney general; and a statement of the manner in which the request must be made.

~~(8)~~ (9) A statement of the effective period of the proposed emergency rule in accordance with *Minnesota Statutes*, section 14.35.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

~~(9)~~ (10) If required by *Minnesota Statutes*, section 14.11, subdivision 1, a statement relating to the expenditure of public money by local public bodies.

~~(10)~~ (11) Any other notices required by law or rule to be included in the notice of intent to adopt an emergency rule.

(12) The signature of the person authorized to adopt the emergency rule or authorized to sign and give notice of the intent to adopt the emergency rule.

For the recommended format of the notice, see part ~~2010.9950~~ 2010.9951.

F. If the emergency rule establishes or adjusts fees, evidence that the agency sent a copy of the notice of intent and the proposed rule to the chairs of the house appropriations committee and senate finance committee before the agency submitted the notice of intent to the *State Register* as required by *Minnesota Statutes*, section 16A.128, subdivision 2a. Evidence shall be in the form of the dated correspondence to the chairs or an affidavit of mailing. For the recommended format of the affidavit, see the second paragraph in part 2010.9913.

G. The affidavit of mailing the notice of intent to adopt the emergency rule. The notice must be mailed at least 28 days before the end of the comment period. The affidavit or affidavits must state that the mailing list maintained by the agency pursuant to *Minnesota Statutes*, section 14.30 is accurate, complete, and current and that the notice of intent to adopt the emergency rule was mailed to all persons and groups whose names appear on the list. If the person who mailed the notice is not the same person who can attest to the accuracy of the mailing list, separate affidavits signed by the appropriate person must be submitted. For the recommended format of the affidavit, see part 2010.9920.

~~G.~~ H. A copy or photocopy of the notice of intent to adopt the emergency rule as published in the *State Register*. The publication date must be at least 25 days before the end of the comment period. The notice as published must contain the statements required by ~~part 2010.0400,~~ item E.

~~H. Four~~ I. Three copies of the emergency rule as adopted. Any modifications made to the proposed rule must be reflected on the rule as adopted and be approved as to form by the revisor of statutes.

~~I.~~ J. If the agency is a multimember agency as provided in *Minnesota Statutes*, section 15.0597, subdivision 1a, the certificate of the multimember agency's resolution adopting the emergency rule. The resolution must be adopted at a meeting duly called and attended by a quorum.

The resolution must approve and adopt the rule and authorize a named individual to sign the findings of fact, conclusions, and order adopting the rule and perform the necessary acts to provide that the emergency rule has force and effect of law. If the multimember agency is so empowered, the resolution may also authorize the named person to modify the rule under stated circumstances or as necessary to obtain approval of the rule by the attorney general. For the recommended format of the resolution, see part 2010.9925.

~~J.~~ K. The findings of fact, conclusions, and order adopting the emergency rule which must contain the following:

(1) a statement that proper notice of intent to adopt a rule was given;

(2) a statement that all other notice and procedural requirements have been complied with;

(3) a statement that all persons were given the opportunity to submit written comment for at least 25 days after publication of the notice of intent to adopt the emergency rule;

(4) a statement of the number of written letters with comments received and the number of requests for notice of submission of the adopted emergency rule to the attorney general;

~~(3)~~ (5) if any changes were made between the emergency rule as proposed and the emergency rule as adopted, findings of fact and conclusions supporting the reasons for the changes and explaining why the changes do not constitute substantial changes as provided in attorney general rule part 2010.1000, item D;

~~(4) if the agency received no submissions or comments on the rule required to be submitted to the attorney general pursuant to item K. or received no requests for notice of submission of the adopted emergency rule to attorney general; an applicable statement to that effect; and~~

(6) a statement that the authority for use of emergency rule procedures has not expired pursuant to *Minnesota Statutes*, section 14.29;

~~(5)~~ (7) a statement that the emergency rule is hereby ordered to be adopted; and

(8) the signature of the person authorized to adopt the emergency rule or authorized to sign the findings of fact, conclusions, and order adopting the emergency rule and the date on which the order is signed.

~~The findings of fact, conclusion, and order adopting the emergency rule must be signed by a person authorized to adopt the emergency rule or authorized to sign the findings of fact, conclusions, and order adopting the emergency rule.~~ For the recommended format of the findings of fact, conclusions, and order, see part 2010.9955.

~~K.~~ L. All written requests, submissions, and comments on the rule received by the agency except requests solely for copies of the rule.

~~L.~~ M. The declaration of the attorney in the attorney general's office who represents the agency. The declaration must state:

(1) that the attorney has examined the rule and the rulemaking record;

(2) that the Administrative Procedure Act and chapter 2010 have been followed with a listing of any exceptions; and

(3) for attorney general billing purposes, the four-digit docket client code is _____. For the recommended format, see part 2010.9935.

~~M. The notice of submission of the emergency rule to the attorney general, if applicable.~~ N. If any persons requested ~~notification of the date of submission of the emergency rule~~ to be informed that the rule has been submitted to the attorney general, the notice of submission of the emergency rule as required by *Minnesota Statutes*, section 14.32. The notice must be mailed on the same day the rule is submitted to the attorney general. The notice must contain the following:

(1) the date of submission of the emergency rule to the attorney general;

(2) if the proposed emergency rule has been modified, the notice must state that fact and must state that a free copy of the emergency rule as modified is available upon request from the agency or that a copy of the rule as modified is enclosed with this notice;

(3) the attorney general rule review time period of ten working days;

(4) a statement that comments may be submitted to the attorney general and that any comments submitted must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule and make a reference to the attorney general standards of review as set forth in part 2010.1000;

(5) the length of the ~~comment~~ period for submitting comments to the attorney general and the calendar date of the last day of the seven working day comment period. In calculating the comment period, the date the documents were submitted to the attorney general is not included. Saturdays, Sundays, and legal holidays are not included in the calculation. The last day of the comment period so calculated is included;

(6) a statement that upon written request to the attorney general a copy of the attorney general decision will be provided;

(7) the address of the attorney general division where comments and requests must be submitted; and

(8) a statement that any written comments to the attorney general must also be submitted simultaneously to a named person for the agency and the address of that person.

For the recommended format of the statement, see part 2010.9960.

~~N.~~ O. If the agency sent out the notice of submission of the emergency rule to the attorney general as required by *Minnesota Statutes*, section 14.32, the affidavit of mailing the notice of submission of the emergency rule to the attorney general~~, if applicable~~. The affidavit must state that a copy of the notice of submission of the rule to the attorney general was mailed to all persons and associations who requested the notification. For the recommended format of the affidavit, see part 2010.9945.

**2010.0500 RULE SUBMISSION AND AGENCY FAILURE TO SUBMIT REQUIRED DOCUMENTS.**

Subpart 1. **Rule submission.** A rule is considered submitted to the attorney general when the rule and the record consisting of the required documents are received at the Office of the Attorney General, Public Finance Division located at ~~515 Transportation Building, John Ireland Boulevard~~ 525 Park Street, Suite 500, Saint Paul, Minnesota ~~55155~~ 55103.

Subp. 2. **Failure to submit required documents.** Failure to submit all the required documents makes a submission incomplete. The attorney general must promptly inform the agency of the missing documents. If the missing documents include the required ~~four~~ three copies of the rule as adopted, findings of fact, conclusions and order, declaration of the attorney in the attorney general's office who represents the agency, or the statement of need and reasonableness for a rule adopted without a public hearing, the rule review period will not be initiated. For other missing documents, if the agency submits the missing documents to the attorney general within the attorney general review period, the submission shall be deemed complete and the period of review shall continue to run. If the missing documents are not submitted within the review period, the rule must either be withdrawn from review or rejected by the attorney general.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

**2010.0700 STATEMENT OF NEED AND REASONABLENESS.**

The statement of need and reasonableness must contain a summary of the evidence and arguments that support both the need for and reasonableness of the proposed agency action of adopting a rule without a public hearing. In justifying the need for and reasonableness of the action, the agency must explain what circumstances have created the need for the rule or its amendment which required administrative action and why the proposed rulemaking action is an appropriate solution for meeting the need. The statement must explain the evidence relied upon and how that evidence rationally relates to the choice of action taken. A general statement of statutory implementation or restating the proposed rule will not suffice. The statement of need and reasonableness must also contain the following:

A. if required by *Minnesota Statutes*, section 14.115, a statement documenting the agency's consideration of methods for reducing the impact of the rule on small businesses and the results pursuant to *Minnesota Statutes*, section 14.115, subdivision 2. If the small business considerations in the rulemaking section are not applicable, the basis for the agency's exemption must be stated in the statement of need and reasonableness;

B. if the agency's notice of intent to adopt the rule does not contain the statement of estimated costs to local public bodies pursuant to *Minnesota Statutes*, section 14.11, subdivision 1, because the reasonable estimate of the total cost to public bodies to implement the rule for the two years following the adoption of the rule is less than $100,000, a statement that *Minnesota Statutes*, section 14.11, is not applicable and the basis for that statement;

C. if required by *Minnesota Statutes*, section 16A.128, subdivision 1, the approval of the commissioner of finance if the rule sets or adjusts a fee charged; ~~and~~

D. the signature of the person authorized to adopt the rule or authorized to adopt the rule pursuant to the certificate of authorizing resolution and the date the statement was signed; and

~~C.~~ E. any information required by any other law or rule to be included in the statement of need and reasonableness.

**2010.1000 STANDARDS OF REVIEW.**

A rule must be disapproved by the attorney general if:

A. The rule as submitted is not a statement of general applicability and future effect adopted to implement or make specific the law enforced or administered by ~~the~~ that agency or to govern ~~the agency's~~ its organization or procedures.

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

H. The rule is unreasonable by failing to comport with substantive due process because it is not rationally related to the objective sought to be achieved.

I. The rule is vague or ambiguous in violation of the constitutional principles of due process or equal protection.

~~I.~~ J. The rule, by its terms, cannot have the force and effect of law.

~~J.~~ K. The rule is unconstitutional or~~, in the case of emergency rules, is unreasonable~~ illegal.

**2010.1100 WITHDRAWAL OF RULE FROM REVIEW BY ATTORNEY GENERAL.**

The agency may withdraw a rule from review by the attorney general. To withdraw a rule after it has been submitted to the attorney general, a written order of withdrawal of the rule from review must be submitted to the attorney general. The written order must state the date of withdrawal and be signed by a person authorized to adopt the rule or sign the findings of fact, conclusions, and order adopting the rule. Upon receipt of the written order of withdrawal, the attorney general shall return the submitted documents to the agency.

**2010.1200 DISAPPROVAL.**

If a rule is disapproved, the attorney general must state in writing the reasons for disapproval and make recommendations to overcome the deficiencies. The statement of the reasons for disapproval must be sent to the agency, the chief administrative law judge, the legislative commission to review administrative rules, the revisor of statutes, and persons who requested to receive a copy of the decision. Upon disapproval, the review period terminates and the rule must neither be filed in the office of the secretary of state nor published unless the rule is resubmitted and approved upon resubmission. Upon disapproval, the attorney general shall return the submitted documents to the agency.

**2010.1300 RESUBMISSION.**

Subpart 1. **Resubmission.** To resubmit a rule which was withdrawn or disapproved by the attorney general, the following documents must be submitted:

A. All documents that were previously submitted to the attorney general for review that were returned to the agency upon withdrawal or disapproval.

B. A supplemental findings of fact, conclusions, and order adopting the rule. The order must be signed by a person authorized to adopt the rule or authorized to sign the findings of fact, conclusion, and order adopting the rule. If any modifications were made to the rule since the rule was withdrawn or disapproved, findings of facts and conclusions must be set forth supporting the reasons for the changes and ~~explain~~ explaining why the changes do not constitute substantial changes.

~~B.~~ C. A supplemental certificate of the multimember agency's resolution if:

(1) the agency is a multimember agency as provided in *Minnesota Statutes*, section 15.0597, subdivision 1a;

(2) modifications were made to the rule since the rule was withdrawn or disapproved; and

(3) the certificate of the agency's resolution submitted in accordance with part 2010.0300, item ~~J~~ M, or 2010.0400, item ~~I~~ J does not authorize the modification by the person who signed the supplemental findings of fact, conclusions, and order. The supplemental certificate of the agency's resolution must be in accordance with part 2010.0300, item ~~J~~ M or 2010.0400, item ~~I~~ J.

~~C.~~ D. If any modifications were made to the rule as adopted since the rule was withdrawn or disapproved, ~~four~~ three copies of the rule as adopted with the modifications reflected and approved as to form by the revisor of statutes.

~~D.~~ E. A new notice of submission of the rule to the attorney general mailed to any persons who requested notification pursuant to *Minnesota Statutes*, section 14.26 or 14.32. The notice of submission to the attorney general must comply with part 2010.0300, item ~~N~~ Q or 2010.0400, item ~~M~~ N.

~~E.~~ F. The affidavit of mailing for the notice of submission of the rule to the attorney general, if applicable. The affidavit must comply with part 2010.0300, item ~~O~~ R or 2010.0400, item ~~N~~ O.

~~F.~~ G. Any other documents necessary to demonstrate that the procedural or substantive deficiencies have been remedied.

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

**2010.1400 APPROVAL OF RULE.**

Subpart 1. **Approval.** If the rule is approved, the attorney general shall promptly file two copies of the rule with the secretary of state. The attorney general shall send a copy of the approval memo ~~must be sent~~ and the approved rule to the agency~~.~~. The attorney general shall also send a copy of the approval memo to the chief administrative law judge, the legislative commission to review administrative rules, and persons who requested to receive a copy of the decision.

Subp. 2. **Return of record.** Upon approval of a rule, the attorney general shall return ~~to the agency one approved copy of the rule, any extra copies of documents and any petitions, requests, submissions, or comments directed~~ the submitted documents to the agency. The agency is required pursuant to *Minnesota Statutes*, section 14.365, to maintain the official rulemaking record for every rule adopted.

**2010.9913 RECOMMENDED AFFIDAVIT OF MAILING THE STATEMENT OF NEED AND REASONABLENESS TO THE LEGISLATIVE COMMISSION TO REVIEW ADMINISTRATIVE RULES AND MAILING THE FEE NOTICE TO COMMITTEE CHAIRS.**

NOTE: The following affidavit may be used when the same person mailed both the statement of need and reasonableness to the legislative commission to review administrative rules and the fee notice pursuant to *Minnesota Statutes*, section 16A.128, subdivision 2, paragraph (a). If different persons mailed the two notices, the two paragraphs must be split into separate affidavits signed by the appropriate persons. If the proposed rule does not establish or adjust fees, do not use the second paragraph. For emergency rules, do not use the first paragraph as it is inapplicable.

In the Matter of the Proposed Adoption
of the Rule of the State _____
Governing _____

AFFIDAVIT OF
MAILING THE
STATEMENT OF NEED
AND REASONABLENESS
TO THE LEGISLATIVE
COMMISSION TO REVIEW
ADMINISTRATIVE RULES
AND THE FEE NOTICE
TO COMMITTEE CHAIRS

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

STATE OF MINNESOTA)
_____)ss.
COUNTY OF [_____])

TO COMMITTEE CHAIRS

_____, being sworn says:

That on the _____ day of _____, 19____, when the Statement of Need and Reasonableness became available to the public, I mailed the Statement of Need and Reasonableness to the Legislative Commission to Review Administrative Rules by depositing in the [United States mail, with postage prepaid] [State of Minnesota Interoffice Mail System], a copy thereof.

NOTE: The following paragraph is applicable only if the rule establishes or adjusts fees.

_____, being sworn says:

That on the _____ day of _____, 19____, before this agency submitted notice to the *State Register* of intent to adopt a rule that establishes or adjusts fees, I mailed a copy of the notice of intent and the proposed rule to the chairs of the house appropriations committee and senate finance committee by depositing in the [United States mail, with postage prepaid] [State of Minnesota Interoffice Mail System], a copy thereof.

_____
[Name]

Subscribed and sworn to before me
this _____ day of _____, 19____.

_____
[Title]

_____

**2010.9916 RECOMMENDED NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING.**

**STATE OF MINNESOTA**

**DEPARTMENT OF _____**

In the Matter of the Proposed Adoption
of the Rule of the State_____
Governing _____

NOTICE OF INTENT
TO ADOPT A RULE
WITHOUT A
PUBLIC HEARING

The [agency name] intends to adopt a permanent rule without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You have 30 days to submit written comments on the proposed rule and may also request that a hearing be held on the rule.

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

[Name, agency, address, telephone number, and fax number]

**Subject of Rule and Statutory Authority.** The proposed rule is about [title or subject of rule]. The statutory authority to adopt this rule is [specific statutory citation]. A copy of the proposed rule is published in the *State Register* and attached to this notice as mailed. [If the proposed rule is not attached to the mailed notice, then this notice must include an informative statement describing the nature and effect of the proposed rule and include the announcement that: A free copy of the rule is available upon request from the agency contact person listed above.]

**Comments.** You have until _____ p.m., _____ [calendar date of the end of the 30-day comment period; see part 2010.0300, item G, subitem (3), for how to count the days] to submit written comment in support of or in opposition to the proposed rule and any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

**Request for a Hearing.** In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by _____ p.m. on _____. Your written request for a public hearing must include your name and address. You are encouraged to identify the portion of the proposed rule which caused your request, the reason for the request, and any changes you want made to the proposed rule. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

**Modifications.** The proposed rule may be modified as a result of public comment. The modifications must be supported by data and views submitted to the agency and may not result in a substantial change in the proposed rule as [attached and] printed in the *State Register*. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

**Statement of Need and Reasonableness.** A statement of need and reasonableness is now available from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule.

**Small Business Considerations.** [If applicable and selected, see *Minnesota Statutes*, section 14.115, subdivision 4.]

**Expenditure of Public Money by Local Public Bodies.** [If applicable, see *Minnesota Statutes*, section 14.11, subdivision 1.]

**Impact on Agriculture Lands.** [If applicable, see *Minnesota Statutes*, section 14.11, subdivision 2.]

[Other notices required by law or chosen to be inserted in this notice.]

**Adoption and Review of Rule.** If no hearing is required, after the end of the comment period the agency may adopt the rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you wish to be so notified, or wish to receive a copy of the adopted rule, submit your request to the agency contact person listed above.

_____

[Name]

_____

[Title]

Dated: _____

**2010.9920 RECOMMENDED AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING OR AN EMERGENCY RULE AND CERTIFICATE OF MAILING LIST.**

NOTE: If the person who can attest to the accuracy of the mailing list is not the same person who mailed the notices of intent, then the two paragraphs in this recommended form must be separated into two affidavits signed by the appropriate persons.

In the Matter of the Proposed Adoption
of the Rule of the State _____
Governing _____

AFFIDAVIT OF
MAILING THE
NOTICE OF INTENT
TO ADOPT [A
RULE WITHOUT
A PUBLIC HEARING]
[AN EMERGENCY
RULE] AND
CERTIFICATE OF
MAILING LIST

STATE OF MINNESOTA )
)ss.
COUNTY OF [_____] )

_____, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to *Minnesota Statutes*, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state _____ rulemaking mailing list is accurate, complete, and current as of this _____ day of _____, 19____.

That on the _____ day of _____, 19____, at least [33 days for rules without a public hearing] [28 days for emergency rules] prior to the end of the comment period, at the City of [_____], County of [_____], State of Minnesota, I mailed the ~~attached Notice of Intent to Adopt [A Rule Without a Public Hearing] [an Emergency Rule]~~ _____ (state what was mailed, for example: (1) Notice of Intent and (2) the proposed rule) by depositing in the [State of Minnesota Central Mail System for United States mailing] [United States mail], a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

_____
[Name]

Subscribed and sworn to before me
this _____ day of _____, 19____.

_____
[Title]

_____

**2010.9930 RECOMMENDED FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING THE RULE WITHOUT PUBLIC HEARING.**

**STATE OF MINNESOTA**

**DEPARTMENT OF _____**

In the Matter of the Proposed Adoption
of the Rule of the State _____
Governing _____

FINDINGS OF FACT,
CONCLUSIONS, AND
ORDER ADOPTING
RULE WITHOUT
PUBLIC HEARING

**FINDINGS**

1. Notice of the [Commissioner's] [Board's] [Commission's] intent to adopt the above-entitled rule was published in the *State Register* on _____, 19____ and was sent by United States mail to all persons on the list maintained by the agency pursuant to *Minnesota Statutes*, sections 14.14, subdivision 1a and 14.22 on _____, 19____.

2. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the *State Register* and was available to the public. ~~[For rules that establish or adjust fees after July 1, 1987: Before the notice was submitted to the *State Register*, a copy of the notice of intent to adopt rules without a public hearing and the proposed rule was sent to the chairs of the house appropriations committee and senate finance committee.]~~

3. All of the notice and procedural requirements in *Minnesota Statutes*, chapter 14, and other applicable law have been complied with.

4. All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. The 30-day comment period expired on _____.

5. ~~[~~The agency received _____ letters of comments and submissions on the rule. The agency received _____ requests for notice of submission to the attorney general. The agency received _____ requests for a public hearing [, of which _____ were subsequently withdrawn]. Therefore, ~~the agency did not receive request~~ there are not 25 or more outstanding requests for a public hearing ~~from 25 or more persons which were not withdrawn.]~~ ~~or [No requests for a public hearing on the rule were received by the agency.]~~.

~~[If applicable: No submissions or comments on the rule were received by the agency. No requests for notice of submission to the attorney general were received by the agency.]~~

~~Based on the comments and evidence in the record before the agency, I find the following:~~

[If any changes were made between the rule as proposed and the rule as adopted, findings of fact and conclusions supporting the reasons for the changes and ~~explanations~~ explaining why the changes do not constitute substantial changes as provided in the attorney general rules, part 2010.1000, item D must be set forth.]

~~The above-captioned rule is needed and reasonable.~~

6. The statement of need and reasonableness together with these findings, establish and justify the rational basis for the need for and reasonableness of the rule [as amended].

**CONCLUSIONS**

1. The _____ duly acquired and has jurisdiction over this proceeding.

2. The _____ published and served timely and adequate notice of intent to adopt the rule without a public hearing.

3. All relevant legal and procedural requirements of statute and rule have been complied with.

4. [If the proposed rule was amended] The modifications to the proposed rule are supported by the record and do not result in a substantial change.

5. The rule [as amended] is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as _____ [as modified] is adopted this _____ day of _____, 19_____, pursuant to authority vested in [me] [the Board] [the Commission] by *Minnesota Statutes*, section _____.

[Name] _____
[Title] _____

**2010.9940 RECOMMENDED NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO ATTORNEY GENERAL.**

**STATE OF MINNESOTA**

**DEPARTMENT OF _____**

In the Matter of the Proposed Adoption of the Rule of the State _____ Governing _____

NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with *Minnesota Statutes*, section 14.26:

PLEASE TAKE NOTICE that the above-captioned rule as adopted ~~has been~~ will be submitted to the Office of the Attorney General on the date of this notice, _____, 19_____, for review as to legality and form to the extent form relates to legality. The proposed rule, the rule as adopted, all the notices, the Statement of Need and Reasonableness, all written comments and requests for a hearing received, and other required documents also have been submitted to the Attorney General.

[(If the proposed rule has been modified:) The proposed rule which was published in the *State Register* and made available to the public on _____, 19_____, has been modified. A free copy of the rule as modified as well as the findings of fact, conclusions, and order explaining the amendments and adopting the rule ~~is~~ are available upon request from _____. (or) A copy of the rule as modified ~~is~~ and the findings of fact, conclusions, and order are enclosed with this notice.]

The rule must be approved or disapproved by the Attorney General within 14 calendar days of the date of submission to the Attorney General. You may submit written comments to the Attorney General on the legality of the rule. Any written comments must be submitted ~~within~~ by 4:30 p.m., _____ (date,) 19_____, (which is eight calendar days of the date of submission of the rule to the Attorney General). Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. The Attorney General standards for review are set forth in *Minnesota Rules*, part 2010.1000. You may receive a copy of the Attorney General decision upon written request to the Attorney General. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
Public Finance Division
~~515 Transportation Building~~
~~John Ireland Boulevard~~
525 Park Street, Suite 500
Saint Paul, Minnesota ~~55155~~ 55103
Telephone Number: (612) 297-2040
Fax Number: (612) 297-2576

Any written comments submitted to the Attorney General must be submitted simultaneously to:

[Name, address, ~~and phone telephone~~ number, and
Fax number (Fax number is optional)
of appropriate person in the agency]

[Name] _____
[Title] _____

Dated: _____

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

**2010.9945 RECOMMENDED AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING OR EMERGENCY RULE TO ATTORNEY GENERAL.**

In the Matter of the Proposed Adoption
of the Rule of the State _____
Governing _____

AFFIDAVIT OF
MAILING THE NOTICE
OF SUBMISSION OF
[RULE ADOPTED
WITHOUT PUBLIC
HEARING]
[EMERGENCY RULE]
TO THE ATTORNEY
GENERAL

STATE OF MINNESOTA)
)ss.
COUNTY OF [_____] )

_____, being sworn says:

That on the _____ day of _____, 19____, in the City of [_____], County of [_____], State of Minnesota, I mailed the ~~attached~~ Notice of Submission to the Attorney General by depositing in the [State of Minnesota Central Mail System for United States mailing] [United States mail], a copy thereof, with postage prepaid, to all persons and associations who requested notice that the rule in the above-entitled matter has been submitted to the Attorney General.

_____
[Name]

Subscribed and sworn to before me
this _____ day of _____, 19____.

_____
[Title]

_____

**2010.9946 RECOMMENDED DUAL NOTICE.**

**STATE OF MINNESOTA**

**DEPARTMENT OF _____**

In the Matter of the Proposed Adoption
of the Rule of the State _____
Governing _____

**DUAL NOTICE:**

Notice of Intent to Adopt a Rule Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing are Received

**Introduction.** The [agency name] intends to adopt a permanent rule without a public hearing following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rule by [date of the end of the 30-day comment period], a public hearing will be held on [scheduled hearing date]. To find out whether the rule will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after [date 1, end of the 30-day comment period] and before [date 2, the scheduled hearing date].

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

[Name, agency, address, telephone number, and fax number]

**Subject of Rule and Statutory Authority.** The proposed rule is about [title or subject of rule]. The statutory authority to adopt the rule is [specific statutory citation]. A copy of the proposed rule is published in the *State Register* and attached to this notice as mailed. [If the proposed rule is not attached to the mailed notice, then this notice must include an informative statement describing the nature and effect of the proposed rule and issues involved and include the announcement that: A free copy of the rule is available upon request from [the agency contact person].]

**Comments.** You have until _____ p.m. on _____ to submit written comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

**Request for a Hearing.** In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by _____ p.m. on _____. Your written request for a public hearing must include your name, address, and telephone number. You are encouraged to identify the portion of the proposed rule which caused your request, the reason for the request, and any changes you want made to the proposed rule. If 25 or more persons submit a written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing.

**Modifications.** The proposed rule may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must not result in a substantial change in the proposed rule as [attached and] printed in the *State Register* and must be supported by data and views submitted to the agency or presented at the hearing. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

**Cancellation of Hearing.** The hearing scheduled for [date] will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rule. If you requested a public hearing, the agency will notify you before the scheduled hearing whether or not the hearing will be held. You may also call [agency contact person] at [telephone number] after [date after the end of the 30-day comment period] to find out whether the hearing will be held.

**Notice of Hearing.** If 25 or more persons submit written requests for a public hearing on the rule, a hearing will be held following the procedures in *Minnesota Statutes*, sections 14.14 to 14.20. The hearing will be held on [date] in the [place] beginning at [time] and will continue until all interested persons have been heard. The hearing will continue, if necessary, at additional times and places as determined during the hearing by the administrative law judge. The administrative law judge assigned to conduct the hearing is [name]. Judge [name] can be reached at the Office of Administrative Hearings, [current address and telephone number].

**Hearing Procedure.** If a hearing is held, you and all interested or affected persons including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time prior to the close of the hearing record. All evidence presented should relate to the proposed rule. You may also mail written material to the administrative law judge to be recorded in the hearing record for five working days after the public hearing ends. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the administrative law judge at the hearing. Comments received during this period will be available for review at the Office of Administrative Hearings. You and the agency may respond in writing within five business days after the submission period ends to any new information submitted. All written materials and responses submitted to the administrative law judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. No additional evidence may be submitted during the five-day period. This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.0200 to 1400.1200 and *Minnesota Statutes*, sections 14.14 to 14.20. Questions about procedure may be directed to the administrative law judge.

**Statement of Need and Reasonableness.** A statement of need and reasonableness is now available from the agency contact person. This statement describes the need for and reasonableness of each provision of the proposed rule. It also includes a summary of all the evidence and argument which the agency anticipates presenting at the hearing, if one is held. The statement may also be reviewed and copies obtained at the cost of reproduction from the Office of Administrative Hearings.

**Small Business Considerations.** [If applicable and selected, see *Minnesota Statutes*, section 14.115, subdivision 4.]

**Expenditure of Public Money by Local Public Bodies.** [If applicable, see *Minnesota Statutes*, section 14.11, subdivision 1.]

**Impact on Agriculture Lands.** [If applicable, see *Minnesota Statutes*, section 14.11, subdivision 2.]

[Other notices required by law or chosen to be inserted in this notice.]

**Lobbyist Registration.** *Minnesota Statutes*, chapter 10A requires each lobbyist to register with the Ethical Practices Board. Questions regarding this requirement may be directed to the Ethical Practices Board at [current address and telephone number of the Ethical Practices Board].

**Adoption Procedure if No Hearing.** If no hearing is required, after the end of the comment period the agency may adopt the rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you want to be so notified, or wish to receive a copy of the adopted rule, submit your request to [agency contact person] listed above.

**Adoption Procedure After the Hearing.** If a hearing is held, after the close of the hearing record, the administrative law judge

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will issue a report on the proposed rule. You may request to be notified of the date on which the administrative law judge's report will be available, after which date the agency may not take any final action on the rule for a period of five working days. If you want to be notified about the report, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the administrative law judge. You may also request notification of the date on which the rule is adopted and filed with the Secretary of State. The agency's notice of adoption must be mailed on the same day that the rule is filed. If you want to be notified of the adoption, you may so indicate at the hearing or send a request in writing to the agency contact person at any time prior to the filing of the rule with the Secretary of State.

Date:_____

_____

[Name]

_____

[Title]

**2010.9951 RECOMMENDED NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE.**

**STATE OF MINNESOTA**

**DEPARTMENT OF _____**

| | |
|---|---|
| In the Matter of the Proposed Adoption of Emergency Rule of the State _____ Governing _____ | NOTICE OF INTENT TO ADOPT AN EMERGENCY RULE |

The [agency name] intends to adopt an emergency rule following the procedures set forth in the Administrative Procedure Act, *Minnesota Statutes*, sections 14.29 to 14.36. You may submit written comments on the proposed emergency rule within 25 days.

**Agency Contact Person.** Comments or questions on rule must be submitted to:

[Name, agency, address, telephone number, and fax number]

**Subject of Emergency Rule and Statutory Authority.** The proposed emergency rule is about [title or subject of rule]. The statutory authority to adopt this emergency rule is [specific statutory citation]. A copy of the proposed rule is published in the *State Register* and attached to this notice as mailed. [If the proposed rule is not attached to the mailed notice, then this notice must include an informative statement describing the nature and effect of the proposed rule.] A free copy of the proposed emergency rule is available upon request from the agency contact person listed above.

**Comments.** You have until _____ p.m., _____ [calendar date of the end of the 25-day comment period; see part 2010.0400, item E, subitem (3), for how to count the days] to submit written data and views on the proposed emergency rule or any part or subpart of the emergency rule. Your comment must be in writing and received by the agency contact person by the due date.

**Modifications.** The proposed emergency rule may be modified as a result of public comment. The modifications must be supported by data and views submitted to the agency and may not result in a substantial change in the proposed emergency rule as [attached and] printed in the *State Register*. If the proposed emergency rule affects you in any way, you are encouraged to participate in the rulemaking process.

**Expenditure of Public Money by Local Public Bodies.** [If applicable, see *Minnesota Statutes*, section 14.11, subdivision 1.]

**Impact on Agriculture Lands.** [If applicable, see *Minnesota Statutes*, section 14.11, subdivision 2.]

[Other notices required by law or chosen to be inserted in this notice.]

**Adoption and Review of Emergency Rule.** After the end of the comment period, the agency may adopt the emergency rule. The rule and supporting documents will then be submitted to the attorney general for review as to legality and form to the extent form relates to legality. You may request to be notified of the date the rule is submitted to the attorney general or be notified of the attorney general's decision on the rule. If you wish to be so notified, or wish to receive a copy of the adopted rule, submit your request to the agency contact person listed above.

**Effective Period for Emergency Rule.** The emergency rule will take effect five working days after approval by the attorney general and be effective for _____days. The emergency rule will be continued in effect for an additional _____ days if the agency gives notice of continuation in accordance with *Minnesota Statutes*, section 14.35.
filing of the rule with the Secretary of State.

Date:_____

_____

[Name]

_____

[Title]

**2010.9955 RECOMMENDED FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULE.**

**STATE OF MINNESOTA**

**DEPARTMENT OF _____**

In the Matter of the Proposed Adoption of the Rule of the State _____ Governing _____

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING EMERGENCY RULE

**FINDINGS**

1. Notice of the [Commissioner's] [Board's] [Commission's] intent to adopt the above-entitled emergency rule was published in the *State Register* on _____, 19____ and was sent by United States mail to all persons on the list maintained by the agency pursuant to *Minnesota Statutes*, section 14.30 on _____, 19____.

2. All of the notice and procedural requirements in *Minnesota Statutes*, chapter 14, and other applicable law have been complied with.

3. All persons were given the opportunity to submit written comment on the rule for at least 25 days after notice of proposed rulemaking. The 25-day comment period expired on _____.

~~[If applicable: No~~ 4. The agency received _____ letters of comments and submissions ~~or comments~~ on the rule ~~were~~. The agency received ~~by the agency. No~~ _____ requests for notice of submission to the attorney general ~~were received by the agency]~~.

[If any changes were made between the rule as proposed and the rule as adopted, findings of fact and conclusions supporting the reasons for the changes, and ~~explanations~~ explaining why the changes do not constitute substantial changes as provided in the attorney general rules part 2010.1000, item D must be set forth.]

**CONCLUSIONS**

1. The _____ duly acquired and has jurisdiction over this proceeding.

2. The authority for use of emergency rule procedures has not expired pursuant to *Minnesota Statutes*, section 14.29.

3. The _____ published and served timely and adequate notice of intent to adopt the emergency rules.

4. All relevant legal and procedural requirements of statute and rule have been complied with.

5. [If the proposed rule was amended] The modifications to the proposed rule are supported by the record and do not result in a substantial change.

**NOW, THEREFORE, IT IS ORDERED** that the rule identified as _____ [as modified] is adopted this _____ day of _____, 19____, pursuant to authority vested in [me] [the Board] [the Commission] by *Minnesota Statutes*, section _____.

[Name] _____

[Title] _____

**2010.9960 RECOMMENDED NOTICE OF SUBMISSION OF THE EMERGENCY RULE TO ATTORNEY GENERAL.**

**STATE OF MINNESOTA**

**DEPARTMENT OF _____**

In the Matter of the Proposed Adoption of the Rule of the State _____ Governing _____

NOTICE OF SUBMISSION OF EMERGENCY RULE TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with *Minnesota Statutes*, section 14.32:

**PLEASE TAKE NOTICE** that the above-captioned emergency rule as adopted ~~has been~~ will be submitted to the Office of the Attorney General on the date of this notice, _____, 19____, for review as to legality and form to the extent form

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relates to legality. The proposed emergency rule, the rule as adopted, all the notices, all written comments received and other required documents also have been submitted to the Attorney General.

[(If the proposed emergency rule has been modified:) The proposed emergency rule which was published in the *State Register* and made available to the public on _____, 19____, has been modified. A free copy of the emergency rule as modified as well as the findings of fact, conclusions, and order explaining the amendments and adopting the rule ~~is~~ are available upon request from _____. (or) A copy of the rule as modified ~~is~~ and the findings of fact, conclusions, and order are enclosed with this notice.]

The rule must be approved or disapproved by the Attorney General on the tenth working day following date of receipt of the rule. You may submit written comments to the Attorney General. Any written comments must be submitted ~~within~~ by 4:30 p.m. _____, 19____, seven working days of the date of this notice. Your comments must address only the issue of legality of the rule or the legality of the specific parts or subparts of the rule. The Attorney General standards for review are set forth in *Minnesota Rules*, part 2010.1000. You may receive a copy of the Attorney General decision upon written request to the attorney general. Your comments or requests for the decision must be directed to:

The Office of the Attorney General
Public Finance Division
~~515 Transportation Building~~
~~John Ireland Boulevard~~
525 Park Street, Suite 500
Saint Paul, Minnesota ~~55155~~ 55103
Telephone: (612) 297-2040
Fax Number: (612) 297-2576

Any written comments submitted to the Attorney General must be submitted simultaneously to:

[Name, address, ~~and phone~~ telephone number,
and Fax number (Fax number is optional)
of appropriate person in the agency]

_____
[Name]

_____
[Title]

Dated: _____

**REPEALER.** *Minnesota Rules*, parts 2010.9915; and 2010.9950, are repealed.

# Minnesota Housing Finance Agency

## Proposed Permanent Rule Relating to American Indian Housing

### Notice of Intent to Adopt a Rule Without a Public Hearing

**NOTICE IS HEREBY GIVEN** that the Minnesota Housing Finance Agency intends to adopt the above rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* section 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes* 462A.06, subd. 4 and 11.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period ending November 18, 1992. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Susan K. Noren, Legal Division
Minnesota Housing Finance Agency

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
PUBLIC FINANCE DIVISION

In the Matter of the Proposed Amendment to the Attorney General Rule Governing Rule Review and Adoption of the Sample "Dual Notice" Form

**AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING**

STATE OF MINNESOTA }
}ss.
COUNTY OF RAMSEY }

Cheryl Rice, being sworn says:

That on the 14th day of October, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the **Notice of Intent to Adopt a Rule Without a Public Hearing and the proposed rule** by depositing in the State of Minneosta Central Mail System for United States mailing and/or the State Interoffice Mail System, copies thereof, to all one hundred and three persons and asociations on the attached mailing list.

Cheryl Rice
CHERYL RICE

Subscribed and sworn to before
me this 23rd day of October, 1992.

Wendy L. Wilts
Notary Public

WENDY L. WILTS
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES JANUARY 14, 1997

MARY MARTIN
ATTORNEY AT LAW
60 E MARIE AVE, #204
WEST ST PAUL MN 55118

GARY JOHNSON
LAW DEPARTMENT
NORTHERN STATES POWER
414 NICOLLET MALL
MINNEAPOLIS MN 55401

PAUL MARINAC
ASST DEPUTY REVISOR
700 STATE OFFICE BLDG

WILLIAM BROWN
CHIEF ADMIN LAW JUDGE
100 WASHINGTON SQUARE #1700
MINNEAPOLIS MN 55415

KENNETH BJORK
DEPT OF TRANSPORTATION
308 DOT BLDG

METRO WASTE CONT COMM
230 E 5TH ST
ST PAUL MN 55101

COMMISSIONER
JOBS AND TRAINING
390 NORTH ROBERT ST
ST PAUL MN 55101

DOROTHY MCCLUNG
DEPT OF REVENUE
10 RIVER PARK PLAZA
ST PAUL MN 55146

PEGGY BYRNE
STATE PLANNING AGENCY
3RD FLOOR
CENTENNIAL OFFICE BLDG
ST PAUL MN 55155

BURL HAAR
DEPT OF PUBLIC SERVICE
7TH FLOOR AM CTR BLDG
160 EAST KELLOGG BLVD
ST PAUL MN 55101

RICHARD GOMSRUD COUNSEL
DEPARTMENT OF COMMERCE
133 E 7TH ST
ST PAUL MN 55101

JOHN HOEFT
METROPOLITAN COUNCIL
230 E 5TH ST
ST PAUL MN 55101

DANIEL J MCINERNEY JR
LEONARD STREET & DEINARD
150 S FIFTH ST #2300
MINNEAPOLIS MN 55402

DIRECTOR
DEPT OF ED, ED STATS
737 CAPITOL SQUARE
550 CEDAR ST
ST PAUL MN 55101

EDWARD RICO
DEPT OF VET'S AFFAIRS
2ND FLOOR VETS BLDG
ST PAUL MN 55155

PENNY JOHNSON
ASSISTANT GENERAL COUNSEL
DEPT OF LABOR & IND
443 LAFAYETTE RD

DAN LIPSCHULTZ
MINNESOTA PUC
780 AMERICAN CENTER BLDG
150 E KELLOGG BLVD

BETSY PARKER
DEPT OF TRANS
100 STOCKYARDS RD
ST PAUL MN

PROF LARRY BAKKEN
HAMLINE LAW SCHOOL
HEWITT & SNELLING AVES
ST PAUL MN 55164

PROF NEIL HAMILTON
WM MITCHELL COLLEGE
875 SUMMIT AVE
ST PAUL MN 55105

PROF MEL GOLDBERG
WM MITCHELL COLLEGE
875 SUMMIT AVE
ST PAUL MN 55105

CHUCK SLOCUM
MN BUSINESS PARTNERSHIP
105 CENTER BLDG
MPLS MN 55402

POPHAM HAIK SCHNOBRICH
KAUFMAN
3300 PIPER JAFFRAY TOWER
MINNEAPOLIS MN 55402

ALVIN KLEINBECK
BLDG CODES
408 METRO SQUARE BLDG

BOB JOHNSON
INSURANCE FED OF MN
1310 PIONEER BLDG
ST PAUL MN 55101

JAMES T SHIELDS
379 UNIVERSITY AVE
ST PAUL MN 55103

MARK S ANDERSON
SHIRLEY A BRANTINGHAM
MN ASSOC OF COMM & IND
480 CEDAR ST
300 HANOVER BLDG
ST PAUL MN 55101

STEVE MIHALCHICK
1820 49TH AVE NE
COLUMBIA HEIGHTS MN 5542

MS SCHUMACHER
NEWS ASSISTANT
MINNEAPOLIS TRIBUNE
425 PORTLAND AVE
MINNEAPOLIS MN 55488

PD BRICK/C HOSSMAN
PICKANDS MATHER & CO
SUITE 811
200 W SUPERIOR ST
DULUTH MN 55802

TJ MANTHEY
PICKANDS MATHER & CO
1100 SUPERIOR AVENUE NE
CLEVELAND OH 44114

CHARLES A KOREGER
EXECUTIVE DIRECTOR
QSS INC
PO BOX 838
FARIBAULT MN 55021

GEORGE C MASTER
GENERAL COUNSEL
MINNESOTA GAS COMPANY
300 PEAVEY BLDG
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730 SECOND AVENUE SOUTH
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EX DIRECTOR COUNCIL 96
MINNESOTA ARROWHEAD DIST
211 WEST SECOND ST
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MINNESOTA BOARD ON AGING
204 METRO SQUARE BLDG
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PHILLIPS LEG SERV INC
459 RICE ST
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TANKS & SPILLS SEC
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SHARON MEYER
PROG DEV SEC
DIV OF HAZ WASTE
MPCA
520 LAFAYETTE

CAROL NANKIVEL
PROG DEV SEC
MPCA DIV OF HAZ WASTE
520 LAFAYETTE

JOHN HOLCK
PROG DEV SEC
DIVISION OF SOLID WASTE
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520 LAFAYETTE

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211 DOT BLDG

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DEP'T OF PUBLIC SAFETY
208 DOT BLDG

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STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
PUBLIC FINANCE DIVISION

In the Matter of the Proposed Amendment
to the Attorney General Rule
Governing Rule Review and Adoption
of the Sample "Dual Notice" Form

**AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING**

STATE OF MINNESOTA }
}ss.
COUNTY OF RAMSEY }

Cheryl Rice, being sworn says:

That on the 13th day of October, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the **Notice of Intent to Adopt a Rule Without a Public Hearing and the proposed rule** via the United States Mail, copies thereof, to the persons listed below.

Paul Marinac
Asst Deputy Revisor
700 State Office Bldg
St. Paul, MN 55155

William Brown
Chief Admin Law Judge
100 Washington Square #1700
Minneapolis, MN 55415

Cheryl Rice
CHERYL RICE

Subscribed and sworn to before
me this 22nd day of October, 1992.

Wendy L. Wilts
Notary Public

WENDY L. WILTS
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES JANUARY 14, 1997

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
PUBLIC FINANCE DIVISION

In the Matter of the Proposed Amendment to the Attorney General Rule Governing Rule Review and Adoption of the Sample "Dual Notice" Form

**AFFIDAVIT OF PERSONAL SERVICE**

STATE OF MINNESOTA }
}ss.
COUNTY OF RAMSEY }

Patty Nolte, being sworn says:

That on the 13th day of October, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, I personally served Maryanne Hruby the **Statement of Need and Reasonableness** by handing to and leaving with the receptionist.

Patty Nolte
PATTY NOLTE

Subscribed and sworn to before me
this 13th day of October, 1992.

Wendy L. Wilts
Notary Public

WENDY L. WILTS
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES JANUARY 14, 1997

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
PUBLIC FINANCE DIVISION

In the Matter of the Proposed Amendment to the Attorney General Rule Governing Rule Review and Adoption of the Sample "Dual Notice" Form

**AFFIDAVIT OF PERSONAL SERVICE AND CERTIFICATE OF MAILING LIST**

STATE OF MINNESOTA }
}ss.
COUNTY OF RAMSEY }

Patty Nolte, being sworn says:

That on the 13th day of October, 1992, at the City of St. Paul, County of Ramsey, State of Minnesota, I personally served Maryanne Hruby the **Notice of Intent to Adopt a Rule Without a Public Hearing and the proposed rule** by handing to and leaving with Receptionist.

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Stat. §§ 14.14,subd. 1a and 14.22 or 14.30, that their names be placed on the state Attorney General's rulemaking mailing list is accurate, complete, and current as of the 14th day of October, 1992.

Patty Nolte
PATTY NOLTE

Subscribed and sworn to before me
this 22nd day of October, 1992.

Wendy L. Wilts
Notary Public

WENDY L. WILTS
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES JANUARY 14, 1997

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

In the Matter of the Proposed
Amendments to the Attorney General
Rule and Adoption of the
"Dual Notice" Sample Form.

**DECLARATION OF COUNSEL**

I, MARTHA J. CASSERLY, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0050.

Martha J. Casserly

MARTHA J. CASSERLY
Special Assistant Attorney General

Dated: December 29, 1992.

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

In the Matter of the Proposed Amendments to the Attorney General Rule and Adoption of the "Dual Notice" Sample Form.

**FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE AMENDMENTS**

## FINDINGS

1. Notice of the Attorney General's intent to adopt the above-entitled rule was published in the State Register on October 19, 1992 and was sent by United States and State Inter-Office mail to all persons on the Attorney General rulemaking mailing list maintained pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 on October 14, 1992.

2. The statement of need and reasonableness was prepared before the notice of intent to adopt the rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and made available to the public.

3. All of the notices and procedural requirements in the Minnesota Administrative Procedure Act, ("APA"), Minn. Stat. ch. 14 (1992), and other applicable law have been complied with.

4. All persons were given the opportunity to submit comments on the rule for 30 days after notice of proposed rulemaking. The 30-day comment period expired on November 19, 1992.

5. The Attorney General's Office received written comments and submissions on the rule. The Attorney General received no requests for notification of submission of the rule to the Attorney General.

6. The Attorney General received 30 requests for a public hearing, of which 7 were subsequently withdrawn. Therefore, there are not 25 or more outstanding requests for a public hearing.

7. Based on the comments received, the Attorney General is modifying the proposed rule. Listed below are the justifications for the modifications as well as responses to the more substantive comments on the proposed rule.

**General Application and 2010.0300 F (page 1, line 24)**

Laura Nehl-Trueman and Dave Orren of the Department of Public Safety ("Public Safety") suggest that the word "the" be inserted before "recommended." Numerous other grammatical or style corrections were also suggested and adopted throughout the rule. These minor changes are not substantial as they do not expand the scope of the rule to include new classes of persons, do not introduce any new subject matter and do not make

such a substantive change so as to invite reaction because they do not change the impact or administration of the rule in any respect.

**2010.0300 G(3) (page 2, line 12)**
**2010.0400 E(3) (page 8, line 35)**

Bruce Nelson of the Department of Public Service ("Public Service") noted discrepancies in the four explanations of how to count the calendar days. Some of the definitions stated the "end of the next day," others did not. Public Service also questioned what "the end of the date" meant; whether it is midnight or the end of the working day. For consistency and clarity, therefore, the phrase "end of the" was deleted. The change is not substantial in that no new groups of persons will be affected, it is not a new subject matter, and it is not such a change to invite reaction because it merely corrects the definition so that it is consistent with the other definitions and with the statute.

**2010.0300 G(3) (page 2, line 6)**
**2010.0400 E(3) (page 8, line 29)**

Public Safety suggests several changes in the paragraph explaining how to count the days. The suggestion to insert the number of days of the period has not been adopted as it would lengthen an already too long an explanation. Public Safety also suggests that "whichever is later" be deleted from the paragraph. The suggestion is not adopted because it is necessary to make sure that agencies begin the count from the latter-sent notice. For example, if the agency mails the notice after the publication date, but counts the days of the period from the earlier publication date, its comment period is too short. To avoid this repeated error by agencies, it is necessary to specify from which notice the count should begin.

**2010.0300 G(7) (page 2, line 27)**

Carol R. Nankivel of the Minnesota Pollution Control Agency ("PCA") requests that the Notice of Intent require that persons "must," rather than are "encouraged to" identify the portion of the rule addressed. Such a change, however, would conflict with Minn. Stat. § 14.22(5) which requires that the notice state that the "requester is encouraged" to identify the portion of the proposed rule addressed. The Attorney General rule cannot conflict with the statute, therefore, this comment cannot be adopted.

**2010.0300 G(5) (page 2, line 19)**
**2010.9930 (page 24, line 33)**

PCA also suggests that the word "individual" be inserted between "written" and "request" for a hearing. Such an addition could be construed to require the requests for hearing be made individually, or separately. There is no such restriction on the type or format for a written request for hearing in the APA, therefore, to add limitations on the format of requests may conflict with the APA. For this reason, the suggestion is not adopted.

However, a common question raised is whether a petition signed by different individuals counts as one request for a hearing or multiple requests depending on the number of persons signing the petition. The answer is to count the number of different individuals signing their names and addresses requesting a hearing. To clarify and to assist

in the counting of requests, the sample Findings form (2010.9930, page 24) has been amended to have the agency count and declare the number of individuals who requested a hearing. This change is not substantial as it has no affect or change on how to count the number of requests, rather it clarifies and incorporates the long-standing interpretation into the rule.

**2010.0300 G(11) (page 3, lines 8-10)**

Public Safety inquired as to the meaning of the phrase "entire rule" when the agency is proposing a repealer. The wording from this rule part is quoted verbatim from Minn. Stat. § 14.22. This question or issue has not arisen with frequency in the past so that an interpretation has developed to be incorporated into the rule. In any event, it is the Revisor's Office that has identified what constitutes the term "rule," as well as "part," "subpart," "item" and "subitem."

**2010.0300 H (page 4, line 5)**
**2010.0400 F (page 10, line 3)**
**2010.9913 (page 20, line 22)**

In the fall of 1992, it was announced that there would no longer be a house appropriations committee, but rather the appropriations responsibilities have been distributed to various other committees. In the meantime, Minn. Stat. § 16A.128 and these corresponding rule parts require certain notification to the chair of the house appropriations committee. While Minn. Stat. § 16A.128 has yet to be amended, rather than taking the likely risk that the rule will soon reference the wrong committee, these rule parts were amended to simply reference the stated notice requirements of section 16A.128. These amendments are not substantial as no new subject matter has been added, the scope of the rule has not been expanded, and it is not such a change as to invite reaction because it merely refers to the requirements of the law, however it will change.

**2010.0300 I (page 4, lines 12-18)**

Stephanie L. Schwartz of the Department of Human Services ("DHS") objects to Part 2010.0300 I requiring agencies to submit copies of the correspondence should they fail to meet the 180 day deadline specified in Minn. Stat. § 14.12. If the agency has failed to adopt the rule in accordance with specific statutory requirements, the rule is invalid and cannot be approved. White Bear Lake Center v. Minnesota Department of Public Welfare, 319 N.W.2d 7, 9 (Minn. 1982). See also Minn. Stat. § 14.05, subd. 1. In his review of a rule as to its legality, the Attorney General must assure that all procedural requirements for adopting the rule have been satisfied. Minn. Rules pt. 2010.1000 B. Included as one of the various APA procedural requirements is section 14.12. Thus, in order to approve the rule, the Attorney General must assure that this statutory provision, should it be applicable, has been complied with. The easiest, and least burdensome way to establish and confirm compliance is to submit photocopies of the required correspondence. DHS also asked how the harmless error doctrine would be applied should the agency not provide this notice. The harmless error doctrine requires the agency to take "corrective action to cure the error for defect" (Minn. Stat. § 14.26, subd. 3(2)) and it is possible to correct this error by simply sending the notices. Furthermore, not providing the required notices to the named officials would deprive them of the opportunity to be made aware of this problem, possibly conflicting with section 14.26, subd. 3(1). Item I does not require

anything beyond what the statute requires, it simply requires the agency to confirm its compliance with the law.

**2010.0300 N(3) (page 5, line 27)**
**2010.0400 K(2) (page 11, line 13)**

The word "other" has been deleted from the Findings since no other procedural requirements are listed, it is incorrect to title this catch-all paragraph as "other" procedural requirements. This language change is not substantial as it has no effect nor changes the meaning of the paragraph whatsoever.

**2010.0300 N(5) (page 5, line 33)**
**2010.0400 K(4) (page 11, line 18)**
**2010.9930 (page 24, line 30)**
**2010.9955 (page 34, line 19)**

DHS objects to the Attorney General requiring the Findings to state how many comments were received, citing the burden placed on agencies. It was not intended to place an additional burden on agencies, rather the intent was to clarify a confusing portion of the Sample Findings form. The Attorney General therefore amends the rule to require, not a count of the number of comments received, but rather the agency must state whether or not written comments were received. This amendment is not substantial as it is not a new subject matter, does not expand the scope of the rule, nor is a controversial change as to invite reaction because it reduces the burden on state agencies.

The agency must continue, however, to "count" the number of requests for a public hearing and so advise the Attorney General of its count because the APA draws a bright line at 25 as the number of requests which will trigger a public hearing.

Public Safety and Commissioner John B. Lennes, Jr., of the Department of Labor and Industry ("Labor and Industry") inquired as what comments "count" as a comment, and what comments must be included in the record. Minn. Stat. § 14.25 requires the agency to submit to the Attorney General "any written comments received by the agency." Therefore, all comments <u>on the rule</u> must be submitted as part of the rulemaking record. Thus, comments received in response to the notice to solicit outside opinion, written comments received during the rulemaking proceeding even if before the comment period if they are about the rule, are part of the rulemaking record. As to whether comments received <u>after</u> the comment period deadline are a part of the rulemaking record is a discretionary decision up to the agency.

**2010.0300 Q and R (page 7, line 1)**

Labor and Industry suggests that references to the notices of submission to the Attorney General all state that the notice be "mailed" on the same date that the rule is submitted to the Attorney General. The reason the current rule for permanent rules required the notice be "given" or "sent" is because Minn. Stat. § 14.26 states "given" rather than mailed. In contrast, for emergency rules, section 14.32, subd. 1, states that this notice is "mailed" on the same date as the submission. While there may be a question whether the rule goes beyond the scope of the APA in clarifying what "given" means, in reviewing the legality of the rule, the Attorney General must determine whether proper notice was given, and has interpreted the term "given" to be "mailed." Therefore, it is reasonable to advise

everyone as to the interpretation of that statutory requirement, so that agencies will know how to comply with it. Therefore, Labor and Industry's suggestion has been adopted. This modification is not substantial because no new classes of persons are being included, it does not expand the scope of the rule, and is not such a change as to invite any reaction because it clarifies a potentially unclear point and codifies a long-standing interpretation.

**2010.0700 B (page 15, lines 4-11)**

Public Safety requests that we delete the requirement that the agency discuss the basis for why section 14.11 is not applicable, citing the recent experience with the Department of Employee Relations' rules on this topic. This concern however, or most of it, is directed to the statute, not the rule. Regardless of how it is interpreted, the agency must determine whether the statute applies and the rule part merely requires the agency to document its view in writing. For these reasons, the suggestion is not adopted.

**2010.0700 item D (page 15, line 15-18)**

Public Safety suggests that the phrase "or authorized to adopt the rule" be replaced with "pursuant to statute or." This suggestion is adopted as it makes the sentence read easier. This modification has no effect on the application of the rule as it simply clarifies how one may be authorized to sign the document, therefore it is not a substantial change.

Labor and Industry again objects to the requirement that the Statement of Need and Reasonableness be signed by the appropriate person, citing the additional burden. One of the reasons for requiring the signature is to ensure that the statement is available before the rule is published. "Notice" of the notice of intent is given, not when the notice is signed, but when it is published and mailed. Consequently, in reviewing the record, the Attorney General checks the date of the statement against the dates the notices were published and mailed. While cognizant of the additional burden placed on agencies, only three rulemaking documents are required to be signed by the agency head--the Notice of Intent, the Findings and the Statement.

**2010.1000 B (page 15, lines 31-33)**

Several commentators inquired or cited the new "harmless error doctrine" in Minn. Stat. §§ 14.26, subd. 3 and 14.32, subd. 2, adopted by the 1992 Minnesota Legislature. In order to ensure that everyone is aware of the application of the new (to Minnesota) doctrine, it should be incorporated into the standards of legality with respect to procedural defects. Adding this language is not a substantial change because it is not a new subject because the proposed rule already amended and discussed various topics on the issues of legality. The addition does not expand the scope of the rule, nor is such a change to invite reaction because there is no change in effect on anyone. The Attorney General will apply this doctrine whether or not it is cited in the rule. However, the standards of legality should cite the doctrine so that the list is more complete, informative and useful for all involved.

**2010.1000, items C and H (page 16, lines 1 and 4-5)**

Labor and Industry objects to the proposed standard for "unreasonableness," claiming that it expands the authority of the scope of the Attorney General's review and is redundant. As discussed in the Statement of Need and Reasonableness, separately

identifying "reasonableness" as a legal issue and specifying its standard actually narrows the scope of the Attorney General's review. The scope of the application of this legal issue is as dictated by the court decision.

As to the duplication concern, as explained in the Statement of Need and Reasonableness, the intent of this amendment was to consolidate repeated citations to the legal issue of "reasonableness." However, as Labor and Industry correctly points out, one of the duplicating references was inadvertently not deleted. Accordingly, the last clause in part 2010.1000 C, referencing "has no reasonable relationship to statutory purposes" has been deleted because it is redundant with the new part H.

The phrase "by failing to comport with substantive due process" in part 2010.1000 H has also been deleted because it does not define "unreasonableness," but rather explains the source for this definition. Labor and Industry was concerned that the phrase is redundant with subparts I and K and appeared to expand the definition. While the objective of the proposed language was to carefully quote the Mammenga court decision verbatim, the Attorney General agrees that the quoted phrase is not crucial to the definition, but rather explains the source of the legal issue and therefore agrees to delete the phrase.

Both these deletions are not substantial changes because they do not introduce any new subject matter as the issue of reasonableness and its standard was discussed in the proposed rule, they do not expand the scope of the rule and are not controversial as to invite any reaction to the change because they merely delete redundant and unnecessary sections. Upon these two amendments, Labor and Industry withdrew 7 of their requests for a hearing, resulting in less than 25 requests for a hearing received.

**2010.9910 (page 19, lines 5, 13-14)**

Housing and Finance noted that since the Statement of Need and Reasonableness must now be signed, the authorizing resolution should be amended to authorize the signing of the Statement. The Attorney General agrees with this suggestion, and so modifies the sample resolution form. This amendment is not a substantial change because no new groups of people are being included in the rule, it is not a new subject matter and is not a change as to invite reaction as it simply corresponds the form with the new requirement. Finally, at the end of the resolution, the phrase "acts incidental thereto" was deleted in favor of a clearer and less legalese phrase that the person is "authorized to perform any acts necessary to initiate the rulemaking comment period." Questions have been raised as to the scope of this authorization, and the adopted amendment clarifies the extent of the tasks covered by this authorization.

**2010.9913 (page 20, line 31)**
**2010.9920 (page 24, line 1)**
**2010.9945 (page 27,line 35)**

PCA suggests that the words "notary public" be added to the sample affidavit forms. The Attorney General agrees with this suggestion as it clarifies that the person who signs this signature block is a notary public. This addition is not a substantial change as it does not expand the scope of the rule to new groups of people, it is not a significant new subject matter nor makes any major substantive change as to invite reaction. Affidavits require

notary public attestation; adding this title under the signature block avoids confusion for those unfamiliar with affidavits.

**2010.9916 (page 20, line 45)**

Public Safety suggests that we clarify in the introduction paragraph of the Notice of Intent that any request for a hearing must be in writing. The Attorney General agrees, and the phrase "submit a written" is inserted between the words "also" and "request." This change is not a substantial change because by law (section 14.25), the request must be in writing. However, to avoid any possible misunderstanding, the notice repeats at the outset that any such requests must be in writing.

**2010.9916 (page 21, line 6)**
**2010.9946 (page 28, line 17)**
**2010.9951 (page 32, line 22)**

Public Safety requests that the reference to the fax number be deleted as it may crate confusion as to whether comments and requests may be sent by fax. Whether or not to invite comments by fax is a decision up to the agency. Consequently, the three notices of intent have been modified to make clear that it is the agency's option whether or not to invite comments by fax. Clarifying that the listing of the fax number is optional is not a substantial change as it does not expand the scope of the rule, nor is a new subject matter as listing the fax number was proposed, nor is such a change to invite reaction as it merely clarifies that this decision is up to the agency.

**2010.9916 (page 21, line 31)**

Public Safety inquires as to why the Notice of Intent for rules adopted without a public hearing does not require persons to include their phone numbers. The reason is that Minn. Stat. § 14.22(5) requires only that persons provide their name and address and does not mention phone numbers.

**2010.9940 (page 26, line 5)**
**2010.9960 (page 35, line 28)**

Public Safety suggests that the words "have been" be replaced with "will be." This comment has been adopted so that the language parallels the language in the previous paragraph stating that the rule "will be" submitted to the Attorney General. This change is not substantial because there is no impact on anyone to make this language consistent with previous paragraph.

**2010.9940 (page 26, line 8)**
**2010.9960 (page 35, line 32)**

Public Safety suggests that the phrase "made available to the public on [date]" be deleted as it is unclear as to what this refers. The Attorney general agrees, and deletes the phrase and replaces it with "mailed to all interested persons on [date]." This change is not substantial as the agency already had to provide a certain date, and the modification merely clarifies what information is being requested.

**2010.9940 (page 26, line 20)**
**2010.9960 (page 36, line 4)**

Public Safety suggests that the word "of" be replaced with "after." The Attorney General agrees with this syntax correction.

**2010.9945 (page 27, line 8)**
**2010.9955 (page 34, line 2)**
**2010.9960 (page 35, line 16)**

Public Safety suggests that the term "Emergency" be added before "Rule" for the documents for Emergency Rules. The Attorney General agrees as the forms must make clear that they are referencing emergency rules, not regular rules. The change is not substantial because it merely clarifies the reference to which type of rule.

**2010.9946 (page 27, lines 42-46)**

Public Service suggests that the dual notice caption be in all caps so that the caption parallels the other notices. The Attorney General agrees with this style suggestion and has so modified the form.

**2010.9946 (page 27, lines 44-46)**

Public Safety suggests that the wording in the second caption parallel the wording in the first caption. The Attorney General does not adopt this recommendation as it must make clear that a hearing will not be held unless 25 or more requests are actually received by the agency, rather than requests merely made.

**2010.9946 (page 28, line 7)**

Jane Nelson of the Department of Health advised the Attorney General's Office that an administrative law judge made minor modifications to the Dual Notice form, in particular adding the phrase "thirty days" throughout the notice. After further consultation with Chief Administrative Law Judge Bill Brown, "within 30 days or" was added to the introductory paragraph to correspond with the statute. Thirty days was not added throughout the notice, however, because it would be redundant and possibly confusing for those who receive the notice late, rather the deadline date remains.

**2010.9946 (page 28, line 25)**

Public Safety suggests that the phrase "and issues involved" be deleted. This phrase was taken from the Office of Administrative Hearings Rule 1400.0300, subp. 1a C (3) which requires the notice of hearing to state the "issues involved." The dual notice is to contain the requirements of both the Attorney General rule and the OAH's rule. For these reasons, the suggestion was not adopted.

**General Discussion on "Rule"**

Public Safety suggests that the recommended forms use the plural "rules." However, the Revisor's Office's guidelines are that the reference to "Rule" be in the singular, and the Attorney General rule language should be consistent with the guidelines.

8. The statement of need and reasonableness, together with these findings, establish and justify the rational basis for the need for and reasonableness of the rule as amended.

## CONCLUSION

1. The Attorney General duly acquired and has jurisdiction over this proceeding.

2. The Attorney General published and served timely and adequate notice of intent to adopt the rule without a public hearing.

3. All relevant legal and procedural requirements of the statute and rule have been complied with.

4. The modifications to the proposed rule are supported by the record and do not result in a substantial change.

5. The rule as amended is needed and reasonable.

**Now, therefore, IT IS ORDERED** that the rule identified as the Attorney General Rule as modified is adopted this 30 day of December, 1992, pursuant to the authority vested in me by Minn. Stat. § 14.06.

Dated: 12/30/92.

HUBERT H. HUMPHREY III
Attorney General

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