STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

In the Matter of the Proposed Adoption of the Attorney General Rule Governing Procedures for the Review of Rules Adopted Without a Hearing and Emergency Rules as to Legality

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The subject of this proceeding is the proposal of a new Attorney General rule governing the procedures for the review of the legality of rules. The Attorney General reviews rules adopted by state agencies without a public hearing or through the emergency rule process as to legality and form to the extent form relates to legality. This Statement of Need and Reasonableness justifies the need for and reasonableness of this proposed rulemaking action as required by Minn. Stat. § 14.131 (Supp. 1985) and Minn. Rules pt. 1400.0500.

This Statement of Need and Reasonableness consists of six sections. Section II discusses the statutory authority to adopt these rules. Section III explains the purpose of amending the existing Attorney General rule. Section IV highlights the changes this proposed rule makes to the existing rule for those familiar with the present Attorney General rule. Section V contains the need for and reasonableness of the proposed subparts of the rule. Finally, Section VI responds to various other statutory and rulemaking requirements, such as Minn. Stat. § 14.115, subd. 2, which requires documentation of how the Attorney General considered the methods of reducing the impact of the proposed rule on small businesses.

II. STATUTORY AUTHORITY

The Attorney General is required by Minn. Stat. §§ 14.26 and 14.32 to review rules adopted by state agencies without a hearing or through the emergency rule

process as to legality and to form to the extent form relates to legality. To accomplish this responsibility, the Attorney General must review certain documents to verify compliance with the Administrative Procedure Act (APA). The agencies, as well as the public, need to know in advance what the Attorney General is looking for in his review and what documents the Attorney General must review. Such requirements and procedures are required by Minn. Stat. §§ 14.06 and 14.05 to be promulgated as rules in accordance with the APA.

Accordingly, the Attorney General must promulgate a rule to set forth the procedures for the submission and the review of rules so that a determination may be made as to whether the agency has complied with the law. In addition, Minn. Stat. § 14.09 requires the Attorney General to prescribe by rule the form and procedures for petitions for rulemaking actions. The Legislature has acknowledged that the Attorney General has promulgated a rule on rulemaking in Minn. Stat. § 14.365(8).

III. PURPOSE OF AMENDMENT

Since January of 1971 the Office of the Attorney General has reviewed state agencies' rules as to their legality. The existing Attorney General rule regarding administrative rule review, Minn. Rules pts. 2000.0200 through 2000.1000, and 2000.9900 through 2000.9985, was last amended in 1981. Since that time, the APA has been amended several times. Thus, the primary purpose of this rulemaking is to update the rule to correspond and comply with the APA as amended since 1981.

Another objective of amending the rule is to acquire a workable, useful and informative framework for the promulgation of rules for both the agency and the public. To this end, various statutory requirements were consolidated and incorporated in the rule so that all procedural requirements from statutes and rules would be located in one place. Further, an attempt was made to merge some documents and eliminate other unnecessary documents to reduce agency time and

expense in the promulgation of rules. At the same time, standards of legality and various notices to the public are proposed which enhance information available to the public and, thus, contribute to the public's opportunities to participate in the administrative process of state government.

IV. HIGHLIGHTS OF CHANGES FROM PRESENT ATTORNEY GENERAL RULE

It is proposed that the present Attorney General rule on review be repealed and be replaced by an entirely new chapter. This is necessary because of the many changes in the text and organization of the present rule. However, for the most part the new proposed rule is substantively the same as the existing rule, albeit significantly reorganized.

For those persons who are familiar with the present Attorney General rule, this section will extract and highlight the changes in the rulemaking process from the existing Attorney General rule.

First, several documents have been deleted or merged with other documents. For example, the Order for Publication (2000.0400 subp. 1 C and 2000.0500 subp. 2) have been deleted. Instead, to evidence the authorization for publication, an authorized person is required to sign the Notice. Several documents have been merged together. For example, the Order for Adoption has been merged with the Findings of Facts and Conclusions, and the Affidavit of Mailing has been merged with the Certification of Mailing List. With respect to this latter document, the proposed rule provides that these documents may be separated if different persons must attest to the different requirements.

Multi-member agencies now have an option to provide a continuing delegation of authority to initiate rulemaking to replace the certification of authorizing resolution which must be passed every time the agency initiates rulemaking. See, 2010.0300 C and 2010.0400 C.

The rule as proposed is proposed to be be submitted in two forms (the copy with a Certificate of Approval as to form by the revisor attached and the version as published in the State Register) whereas the present rule required one or the other. Finally, many of the notices and documents are required by the proposed rule to be more informative, both for the public as well as the Attorney General.

Aside from the documents, many of the procedural rules have been expanded. For example, the procedures for withdrawals (2010.1100) and resubmissions (2010.1300) have been set out for the first time. In addition, the comment period for emergency rules has been set out for the first time (seven working days) (2010.0900, subp. 2). The standards of review of legality and the requirements for the Statement of Need and Reasonableness have been significantly expanded to be more comprehensive and accurate. (2010.1000 and 2010.0700)

V. NEED AND REASONABLENESS

General

The proposed Attorney General rule in Chapter 2010 consists of essentially four segments. First part 0300[1/] lists what documents must be submitted for rules adopted without a public hearing. Second, part 0400 lists the documents necessary for submittal of emergency rules. Third, parts 0500 through 1400 set forth the various procedural requirements of the submission and review of rules, such as the comment deadline and the standards of review of legality. Finally, parts 9900 through 9960 consist of sample forms to assist in complying with parts 0300 and 0400.

Frequently, in explaining the need and reasonableness of a part in this chapter, a reference will be made that the part repeats a requirement imposed by law. For example, the APA requires that certain statements must be in a particular notice. As

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[1/]For brevity, a citation to a part in Minnesota Rules, Chapter 2010 will often be only to the last four digits, such as 0300 for part 2010.0300

discussed previously in Section III of this Statement, applicable statutory requirements are consolidated and incorporated in the proposed Attorney General rule. This is necessary so that the rule centralizes the assorted legal requirements that the Attorney General examines in his review of rules. In these circumstances, where the rule repeats a particular statute or rule, this Statement will merely make a reference to the statute. The need for and reasonableness of the reaffirming rule rests in the statute. It must be pointed out that these circumstances are different from the situation where a statute imposes a requirement and the rule does more than repeat the statute, but explains how the requirement must be met. For example, if a statute requires the Attorney General to prescribe by rule the procedures and form for a petition, selected procedures and forms must be individually justified in the statement.

Since most of the proposed parts in chapter 2010 derive substantively from the existing Attorney General rule in chapter 2000, the following discussion will, if applicable, refer to the existing corresponding rule in chapter 2000 as well as the former Minnesota Code of Agency Rules (MCAR).

2010.0200 Authority

This part defines the applicability and scope of the Attorney General rule and is necessary to acquaint the readers with the material that follows. The section presently exists in the proposed-to-be-repealed pt. 2000.0200 and 1 MCAR § 1.201.

2010.0300 Documents Necessary for Review of a Rule Adopted Without a Public Hearing

This part sets forth the documents required by the Attorney General for review of a rule adopted without a public hearing. Each document required by this part is necessary to demonstrate that the procedures followed by the agency in promulgating this rule have conformed to the law.

2010.0300 A

If the agency has solicited outside information or opinions in preparing to propose a rule from sources outside the agency, Minn. Stat. § 14.10 requires that

notice be published of the intent to solicit outside information or opinion. To establish that there has been compliance with Minn. Stat. § 14.10, a copy or photocopy of the notice as published in the State Register must be submitted to the Attorney General. The present and proposed-to-be repealed Attorney General rule also requires this submission, see pt. 2000.0400, subp. 1B and 1 MCAR § 1.202 D.

To assist the agency in complying with 0300 A, a recommended format of the Notice is set out in part 2010.9900. For most of the documents or notices required by parts 0300 or 0400, sample or recommended formats are set forth at the end of Chapter 2010 in parts 2010.9900 through 2010.9960. There is a need and the objective is to assist the agencies in complying with the Attorney General rule as well as provide the public with understandable and useful notices. Inserting these samples in the rule is reasonable because they are enclosed with the substantive requirements and thus are readily available.

2010.0300 B

Minn. Stat. § 14.09 provides that any interested person may petition an agency requesting the adoption, suspension, amendment, or repeal of a rule. If the agency initiates rulemaking pursuant to a petition, the petition is a part of the record as a basis for the agency's action and, therefore, must be submitted. Submission of the petition is required by the proposed-to-be repealed pt. 2000.0400, subp. 1H and 1 MCAR § 1.203 M.

The substantive requirements of the form and procedures for petitions are set out in part 0600 and the prescribed form is provided in part 9905. This document is listed in subpart B to complete 0300 as a checklist for all the required documents.

2010.0300 C

If the agency authorized to initiate the rulemaking action is a state board, commission, council, committee, authority, task force or other similar multi-member

agency as provided in Minn. Stat. § 15.0597, subd. 1a, evidence is necessary to establish that the multi-member agency authorized the initiation of the rulemaking and to document its delegation of authority to give such notice. Subpart C provides that this may be done one of two ways:

First, a certificate of the multi-member agency's authorizing resolution may be submitted. This certificate must be passed and approved by the multi-member agency before each notice of the proposed adoption of a rule is published and mailed. The certificate is virtually identical to the present and proposed-to-be-repealed 2000.0400, subp. 1 D and 1 MCAR § 1.203 F.

Or, the multi-member agency may submit a copy of a delegation of authority which expressly authorizes an individual to initiate rulemaking without a public hearing as needed or under certain circumstances as set out in the delegation. This document differs from the certificate of authorizing resolution which authorizes initiation of a specified rule, whereas the delegation of authority may apply to more than one set of rules. It is important to note that, although no Board action is required to initiate rulemaking if there is a proper delegation of authority, nevertheless specific Board action is still required to adopt the rule. See 0300 J.

Both the certificate of the multi-member agency authorizing resolution and the delegation of authority must be adopted at a meeting duly called and attended by a quorum; and must direct and delegate to an individual the authority to sign and give notice of the multi-member agency's proposed adoption of the rule without a public hearing. These required contents are necessary to establish the multi-member agency authorization to initiate rulemaking.

2010.0300 D

Minn. Stat. § 14.26 requires the agency to submit the proposed rule to the Attorney General. In addition, Minn. Stat. §§ 14.20 and 14.28 require that no rule shall

be published in the State Register unless the Revisor of Statutes has certified that the rule is approved as to form. To assure that the requirements of these laws have been met, subpart D requires that a copy of the proposed rule with an attached certificate of approval as to form by the Revisor of Statutes is submitted.

In addition, a copy of the proposed rule is necessary when the proposed rule is not all new material, but is an amendment to an existing rule. The Attorney General is not authorized to re-review existing language in a rule. However, the Revisor of Statutes' version of the rule as adopted does not distinguish between currently effective language and language to be reviewed. The rule as proposed does display the amendments by underscoring new language and/or striking deleted language and thus is necessary to be submitted to facilitate the Attorney General's review of the appropriate language.

The submission of the rule as proposed with the certificate of approval as to form attached is a new requirement, for the present rule only required that the copy of the rule as published in the State Register be submitted. See, pt. 2000.0400, subp. 4 and 1 MCAR § 1.203 E.

2010.0300 E

It is necessary that the Notice of proposed adoption of a rule without a public hearing be submitted to the Attorney General for review for compliance with Minn. Stat. § 14.22. Essentially, subpart E is a checklist of the required contents of this Notice. There is a need for the various statutory content requirements to be consolidated in one working list, and it is reasonable to consolidate these requirements in the Attorney General rule which is readily available to interested parties. In addition, subpart E imposes some additional language in this notice. In general, the purpose for requiring additional language is to acquire a more informative and complete notice while imposing virtually no additional hardship on the agency in inserting a few more sentences in the Notice.

Item (1) of the proposed subp. E repeats the language required by Minn. Stat. § 14.22 to be in the Notice ("a statement that the agency proposes to adopt a rule without a public hearing" and "the citation to the most specific statutory authority for the proposed rule"). Further, it is reasonable for the notice to make reference to the statutory procedures the agency will follow in promulgating the rule (". . . and is following the procedures set forth in Minn. Stat. §§ 14.22-14.28") so that persons not familiar with the APA may refer to the appropriate statutes.

Items (2) and (3) repeat the language required by Minn. Stat. §§ 14.22(1) and 14.22(2) respectively. Item (4) repeats Minn. Stat. § 14.22(3) with one addition. The paragraph codifies the position of the Attorney General's Office that a request for a hearing may be subsequently withdrawn. If the agency receives 25 or more requests for a hearing, but sufficient number of the requests are withdrawn so that less than 25 requests for a hearing remain, a public hearing is not required under Minn. Stat. § 14.25. Item (4) codifies and informs the public of this position.

Items (5) and (6) of subp. E repeat the language required by Minn. Stat. §§ 14.22(4) and 14.22(5) respectively. Item (7) requires that the Notice state what procedures will be followed if a public hearing is required. The need is again to inform persons not familiar with the APA of the appropriate statutes and it is reasonable and not burdensome to require agencies to make this referral.

Item (8) recites Minn. Stat. § 14.22(6) with the additional language that such amendments to the proposed rule may not result in a substantial change. This additional language informs the public of this prohibition as provided by Minn. Stat. § 14.24.

Item (9) repeats Minn. Stat. § 14.22(7) and a portion of § 14.26 and adds a statement that the manner of the request for notice must be inserted in the Notice to complete the Notice.

Item (10) repeats a sentence from the first paragraph of Minn. Stat. § 14.22 which provides that if an entire rule is proposed to be deleted, the content of the rule need not be published, only a citation to the rule. The requirement is repeated here for the benefit of the agency.

Item (11) recites a portion of the first paragraph of Minn. Stat. § 14.22.

Item (12), which informs interested persons that a Statement of Need and Reasonbleness is available, is required to be inserted in the Notice as a reasonable and efficient means of complying with Minn. Stat. § 14.23, which requires the agency to make the Statement available to the public for at least 30 days following the notice.

Item (13) essentially refers to Minn. Stat. § 14.11, subd. 1, which provides that if the adoption of the rule will require expenditure of public monies by local public bodies, appropriate consideration and notice must be made. Incidentally, Minn. Stat. § 14.11, subd. 2, which relates to rules which may adversely impact agricultural lands, only applies to rules adopted with a public hearing. See, Minn. Stat. § 17.83. Therefore, no reference to Minn. Stat. § 14.11, subd. 2 is made in subp. E.

Item (14) refers to Minn. Stat. § 14.115, subd. 4, for the purpose of alerting the agency and interested persons that the agency may be required to comply with Minn. Stat. § 14.115, and if so, the agency may elect to comply with § 14.115, subd. 4(a).

Item (15) refers to Minn. Stat. § 16A.128, subd. 2a (Laws of 1985, First Special Session, Ch. 13, § 101) which, if applicable, requires that the notice of intent to adopt the rule must state whether a hearing will be held. To implement this requirement, and to inform persons that a hearing need not be held unless 20 percent of persons who will be required to pay the fee request a public hearing, paragraph (15) requires these statements be included in the notice. Further, this paragraph provides that, under these circumstances, 0300 E(4) is replaced with the more specific subitem.

The purpose of item (16) is to alert interested persons that this list in subp. E may not be exhaustive, for example, individual state agencies' enabling statutes may provide additional notice requirements.

Finally, item (17) requires the person authorized to adopt the rule or authorized pursuant to 0300 C, to sign the Notice. This is a new requirement from the present rule and is necessary because the Order for Notice of Intent to Adopt the Rule has been deleted. See, proposed-to-be repealed part 2000.0400, subp. C and 1 MCAR § 1.203 E. It is necessary that the person authorized to give this Notice, sign the document to evidence his or her approval and authorization.

2010.0300 F

The Statement of Need and Reasonableness is required to be submitted to the Attorney General pursuant to Minn. Stat. § 14.26. In addition, the Attorney General must review the Statement of Need and Reasonableness to assure compliance with Minn. Stat. §§ 14.23 and 14.26 ("whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rule"). As referred to in subp. F, the substantive requirements of the Statement of Need and Reasonableness are provided in part 0700. The statement is listed here to complete the checklist.

2010.0300 G

Minn. Stat. § 14.22 requires that the Notice of proposed adoption of rules be mailed to persons who have registered their names with the agency pursuant to section 14.14, subd. 1a. To assure that this law is observed and that the list maintained by the agency is accurate and complete in accordance with section 14.14, subd. 1a, an affidavit is necessary. Additionally, the affidavit is necessary to evidence that the Notice was mailed at least 30 days before the rule was adopted by the agency in compliance with Minn. Stat. § 14.23.

If the person who mailed the notices is the same person who can certify that the rulemaking mailing list as accurate and complete, one affidavit attesting to both may be submitted. See the recommended format, pt. 2010.9920. If the person who mailed the Notices cannot attest as to the accuracy of the list, then separate affidavits may be submitted. The part is a reasonable method of ascertaining that the requirement is met while accommodating the circumstances of the agency. This affidavit is required, albeit in separate affidavits, in the present and proposed-to-be repealed rule, pt. 2000.0400, subp. 1E and subpt. 3 and 1 MCAR § 1.203 H and I.

2010.0300 H

Minn. Stat. § 14.26 requires that the Notice of proposed adoption of the rule as published in the State Register be submitted to the Attorney General. The Attorney General in his review must verify that the Notice was indeed published in the State Register as required in accordance with Minn. Stat. § 14.22 and that the agency did not adopt the rule until at least 30 days after publication.

2010.0300 I

Minn. Stat. § 14.26 requires that the Rule as Adopted be submitted to the Attorney General. Four copies of the Rule as Adopted is necessary in order for the statutory requirements to be met and for the submitting agency and the Attorney General's Office to retain a stamped and approved copy of the adopted rule for their individual files. Specifically, the four copies of the rule, if approved by the Attorney General are distributed as follows: two copies of the approved rule are promptly filed by the Attorney General's Office with the Office of the Secretary of State, who then forwards one copy of the rule to the Revisor of Statutes (as required by Minn. Stat. § 14.26); the third copy of the stamped and approved rule is returned to the submitting agency; and a fourth copy is retained in the permanent files of the Office of the Attorney General. Four copies of the rule are required to be submitted in the

present and proposed-to-be repealed rule pt. 2000.0400, subpt. 5 and 1 MCAR § 1.203 A.

If the agency modifies the rule as proposed pursuant to Minn. Stat. § 14.24, the modifications must be reflected on the rule as adopted by underscoring new language and/or striking deleted language. The modifications are required to be displayed so that the Attorney General may determine whether the modifications are a substantial change. This part further provides that any modifications must be approved as to form by the Revisor's Office. "Approval by the Revisor" is not the same as "certificate of approval of the form of the rule" as provided in Minn. Stat. § 14.08(a). Rather, approval is generally accomplished by the agency submitting, before the rule is submitted to the Attorney General, any modifications to the Revisor of Statutes. The modifications are then typed in the Rule as Adopted, approved and returned to the agency. The agency then submits the appropriate copies of the rule to the Attorney General for review.

2010.0300 J

As discussed earlier in the Statement justifying subp. C of 0300, if the agency adopting the rule is a state board, commission, council, committee, authority, task force, or other similar multi-member agency as provided in Minn. Stat. § 15.0597, subd. 1a, a resolution by the multi-member agency adopting the rule is required to document the agency's official act of adopting the rule and to evidence that it was adopted by the proper authority. In addition, it is also necesssary to show who was delegated the authority to complete the necessary work so that the rules have force and effect of law. Unlike 0300 C which authorizes initiation of general rulemaking, 0300 J requires specific action by the multi-member agency for each set of rules to be adopted.

The certificate of the multi-member agency's resolution adopting is presently required and is virtually unchanged from the present and proposed-to-be repealed pt. 2000.0400, subp. 1A and 1 MCAR § 1.203 B2. One change is the incorporation of the explicit authorization to revise the rule under certain circumstances as permitted under 1300, subp. 1B.

2010.0300 K

It is necessary that the agency document its official act in adopting the rule. The Findings of Fact, Conclusions and Order document this official act and also recite and confirm that the agency complied with various statutory requirements. The purpose of this requirement is to assure that the agency checks and attests that the various statutory requirements have been satisfied and documents how the requirements were met.

Items (1), (2), (3) and (4) reaffirm that the requirements of Minn. Stat. §§ 14.22, 14.23, 14.23 and 14.25 respectively, were met.

Item (5) requires the agency, if any modifications were made to the rule as proposed, to set forth findings of fact and conclusions. These findings are necessary to establish the basis for the agency's adoption of the rule. As with all its important decisions, the agency must support its act of amendments by written findings or reasons. See, Reserve Mining v. Minnesota Pollution Control Agency, 364 N.W.2d 411, 414 (Minn. App. 1985). Findings of Fact and Conclusions are necessary to be made in the present but proposed-to-be repealed Minn. Rules pt. 2000.0400, subp. 1F and 1 MCAR § 1.203 K. There is a change in that these proposed rules merge the order adopting the rule with the findings of fact and conclusions.

Another change is that, in the findings of fact and conclusions, the agency is now required to discuss why the changes do not constitute substantial changes as provided in part 1000 D. The purpose of this requirement is to assure that the agency considers

and attests that its modifications are not substantial changes. It is necessary and important that the public, as well as the Attorney General, know and understand the agency's position and arguments on this issue. Requiring the agency to affirmatively set forth its arguments is not burdensome. First, the agency is already required by law to consider and assure that its changes to the proposed rule are not substantial. Minn. Stat. § 14.24. The change simply requires the agency to articulate its position and arguments in writing. Second, the Attorney General's definition of substantial change has been delineated and thus is not difficult to discuss and apply. Third, the burden should be on the agency to affirmatively justify its amendments rather than the public to affirmatively inquire of the agency as to its arguments for a particular amendment.

The Attorney General's Office recognizes that many modifications may be routine, such as typographical corrections; or repetitive, such as numerous changes for one reason. In such instances, a consolidated discussion of the substantial change application, rather than individual application, is appropriate and acceptable.

Item (6) is a new requirement, causing the agency to affirmatively state when it has not received certain requests or comments on the rule. The purpose of this insertion is to assist the Attorney General in his review. For example, 0300 L requires, with limited exceptions, that all written requests, submissions, or comments on the rule be submitted to the Attorney General. The Attorney General needs to know if none are submitted.

Item (7) completes the Order for Adoption of the rule. Finally, subp. K requires that the document be signed by the proper authority, who is authorized either by statute or pursuant to a resolution adopted in accordance with pt. 0300 J. Again, it is necessary to document that the Findings of Fact, Conclusions and Order is approved and authorized by the proper authority.

2010.0300 L

In reviewing a rule for compliance with the APA, it is necessary for the Attorney General to have access to the rulemaking record. Minn. Stat. § 14.26 requires that any written comments received by the agency must be submitted to the Attorney General. In addition, Minn. Stat. § 14.10 provides that "any written material received by the agency shall become a part of the rulemaking record to be submitted to the Attorney General . . . ." Finally, Minn. Stat. § 14.365(2) provides that the official rulemaking record shall contain "all written petitions, requests, submissions or comments received by the agency . . . ."

It is necessary for the Attorney General to have access to all the requests for a public hearing to ascertain whether 25 or more persons requested a hearing. It is also necessary for the Attorney General to review requests to be notified of submission of the rule to the Attorney General to ascertain whether Minn. Stat. § 14.26 has been observed. Finally, it is necessary for the Attorney General to have access to the written comments, data or views submitted to support the rule and modifications.

There is no need, however, for the Attorney General to review correspondence which solely request a copy of the rule or a copy of the Statement of Need and Reasonableness. It must be noted that if requests for such copies also contain comments on the rule, or a request to be apprised when the rule is submitted for review by the Attorney General, the document is required to be submitted to the Attorney General.

2010.0300 M

As provided in the present and proposed-to-be repealed rule, pt. 2000.0400, subp. 1J and 1 MCAR § 1.203 0, this declaration (formerly called certificate) provides assurances that the attorney who represents the agency has reviewed the rule and its supporting documents. Since the Attorney General reviews the submitted rule as to legality and form to the extent form relates to legality, the attorney in the Attorney

General's Office who represents the agency must be prepared and familiar with the rule and the entire rulemaking proceeding in the event that questions or legal issues arise. It is logical that the attorney who would be defending the rule in court also be prepared when the rule is before the Attorney General.

In addition, the 1985 legislature now requires the Attorney General to assess state agencies for the actual cost of reviewing and approving or disapproving a rule as to its legality (Minn. Stat. §§ 14.08(d), 14.26, and 14.32, Laws of 1985, First Special Session, Chapter 13, Sections 81, 82 and 83). In order to bill the correct agency or division, the Attorney General needs to know the four digit docket client code of the appropriate agency. The agency attorney is the one most familiar with the appropriate agency or division of the agency as well as the attorney general docket system. Therefore, the declaration now requires the agency attorney to affirmatively provide the four digit Attorney General's client code.

2010.0300 N

Minn. Stat. § 14.26 requires the agency to give notice to all persons who requested to be informed that the rule is submitted to the Attorney General. The Notice, if applicable, is required to be submitted to the Attorney General to assure that its contents comply with the APA and the Attorney General rule. Subpart N repeats the requirement in section 14.26 that any such Notice must be given the same day the rule is submitted to the Attorney General.

Item (1) requires the notice to state the date of submission of the rule to the Attorney General. This date is important for three reasons: first, to apprise the reader of the Attorney General review deadline; second, to apprise the reader how long he or she has to submit comments on the legality of the rule; and third, to assure that the Notice is given on the same day that the record is submitted as required by section 14.26.

Item (2) repeats language required by section 14.26 to be cited in this notice.

Item (3) is required to be in the Notice to inform the reader of the comment and review deadline so that he or she does not have to refer to the laws.

To avoid commentators expending time and energy communicating non-legal concerns to the Attorney General, for example policy issues, item (4) informs the reader that comments must address legal concerns. In addition, to notify and provide a guide as to what legal concerns or issues the Attorney General considers, a reference must be made to the Attorney General standards of rule review in pt. 1000.

Item (5) requires the agency to give the address of the division of the Office of the Attorney General which reviews the rule. Stating the address will avoid the problems which arise when the comments are received in the wrong office.

Item (6) requires the commentator to submit a copy of any written comments submitted to the Attorney General to the agency at the same time. The Notice must also give the name and address of the agency person to whom such comments must be submitted. This is to avoid the time delay in getting the comments to the appropriate person.

2010.0300 O

Minn. Stat. § 14.26 requires the agency to give notice to all persons who requested to be informed when the rule is submitted to the Attorney General, and to give such Notice on the same day the rule is submitted. To verify compliance with this statute, an affidavit is necessary in which an agency person attests that a copy of the Notice of submission of the rule to the Attorney General was sent to all persons who requested such notification. The present and proposed-to-be repealed rule pt. 2000.0400, subpt. 1K and 1 MCAR § 1.203 P also requires this submission.

2010.0400 Documents Necessary for Review of Emergency Rules

For the most part, 0400 mirrors 0300, documents necessary for review of a rule adopted without a public hearing. Thus, in some instances, the basis of the need and

reasonableness is the same for both sections. When the justifications for a document required for an emergency rule is the same as for the rule adopted without a public hearing, the discussion will refer to the corresponding Section in 0300.

Part 0400 sets forth the documents required by the Attorney General for review of an emergency rule. Each document required by this part is necessary to demonstrate that the procedures followed by the agency in promulgating this rule have conformed to the law.

2010.0400 A

If the agency has solicited outside information or opinions in preparing to propose a rule, a copy or photocopy of the Notice of Solicitation of Outside Opinion is required to be submitted. The basis of the need for and reasonableness of this submission is the same as for a rule adopted without a public hearing under 0300 A. See page 5 of this Statement for this discussion.

2010.0400 B

If the agency initiates emergency rulemaking pursuant to a petition, a copy of the petition must be submitted to the Attorney General. The justification for this submission is the same as for a petition for a rule adopted without a public hearing, 0300 B. See page 6 of this Statement.

2010.0400 C

If the agency is a multi-member agency, either a certificate of the multi-member agency's authorizing resolution or a copy of the delegation of authority must be submitted. The justification for this submission is the same as for a rule adopted without a public hearing, 0300 C. See page 6 of this Statement.

It must be noted that any delegation of authority must expressly authorize initiation of emergency rulemaking, a simple delegation of authority to intiate rulemaking without a public hearing will not suffice.

2010.0400 D

Minn. Stat. §§ 14.20 and 14.36 provide that no rule shall be published in the State Register unless the Revisor of Statutes has certified that the rule is approved as to form. To verify that the agency complied with this law, subpart D requires a submission of a copy of the proposed rule with a certificate of approval as to form by the Revisor of Statutes attached. For additional discussion on this requirement, see page 7 of this Statement, justifying the corresponding document for rules adopted without a public hearing.

2010.0400 E

Minn. Stat. § 14.30 requires a state agency to publish and mail a Notice of Proposed Adoption of Emergency Rule. This statute, as well as various others, provide statutory content requirements of this Notice. It is necessary that this notice be submitted to the Attorney General to review for compliance with the law. It is needed and reasonable that the Attorney General consolidate and list in his rule what he is looking for to assure that the Notice complies with all legal requirements. In addition, to provide an adequate, complete and informative Notice, this subpart imposes a few additional content requirements which are not burdensome for the agency to insert in the Notice.

Item (1) of the proposed subpart E is required to be inserted in the Notice to apprise readers as to what the notification is about. Furthermore, interested persons need to know the agency's statutory authority to promulgate the emergency rule as well as a reference to the appropriate procedural statutes in the APA which will be followed. All this information is useful and necessary to inform the reader. Furthermore, this information is reasonable in that it is virtually identical to the parallel Notice of proposed adoption of a rule adopted without a public hearing.

Item (2) recites the language in Minn. Stat. § 14.30 which provides that for at least 25 days after publication the agency shall afford all interested persons an opportunity to submit data and views on the proposed emergency rule in writing. In order to effectuate this objective, it is necessary and reasonable that the Notice include this statement.

To achieve the objective of section 14.30, persons must be informed of the manner in which written comments may be submitted to the agency. Item (3) therefore requires this information to be in the Notice.

In order for the mailed notice to be an adequate notice, it must include a statement explaining what the proposed rulemaking action is about. To this end, item (4) repeats the corresponding paragraph in the Notice for proposed adoption of the rule without a public hearing. The imposition on the agency is not burdensome for the agency has the choice of either including a statement summarizing the nature of the rule or enclosing the rule with the notice. In any event, the agency is required by statute to provide a free copy of the rule upon request.

Item (5) repeats Minn. Stat. § 14.30 which requires the Notice to advise the public that a free copy of the proposed rule is available upon request from the agency and requires the agency to state the manner in which such a request may be made to complete the notification.

Item (6) requires the agency to inform the public that the rule may be modified in accordance with Minn. Stat. §§ 14.31 and 14.05, subd. 2. Again, the objective is an informative Notice.

Item (7) repeats Minn. Stat. § 14.30 which requires the Notice to advise the public that notice of the date of submission of the proposed emergency rule to the Attorney General will be mailed to any person requesting the same. To complete this notice, the notice is required to state to whom such requests must be made.

Item (8) refers to Minn. Stat. § 14.35 which requires that the Notice state the effective period of the rule.

Item (9) essentially is a reference to Minn. Stat. § 14.11, subd. 1, which provides that if the adoption of the rule will require expenditure of public monies by local public bodies, appropriate consideration and notice must be made. Incidentally, Minn. Stat. §§ 14.11, subd. 2 and 14.115 do not apply to emergency rules.

The purpose of item (10) is to alert interested persons that the list in subpart E may not be exhaustive; for example, individual state agencies' enabling statutes may provide additional notice requirements.

Finally, item (11) is a new requirement requiring the person authorized to adopt the rule or authorized pursuant to 0400 C to sign the Notice. See page 11 discussing this new requirement for 0300 E(17).

2010.0400 F

Minn. Stat. § 14.30 requires that the Notice of Proposed Adoption of Emergency Rules be mailed to persons who have registered their names with the agency to receive such notice. 0400 F requires the submission of an affidavit or affidavits verifying that the list is accurate and the notices were mailed. See page 11 discussing the justifications for this submission for 0300 G.

2010.0400 G

Minn. Stat. § 14.30 requires that the Notice of proposed adoption of emergency rule be published in the State Register. To verify that the Notice was indeed published and that the agency did not adopt the rule for at least 25 days after publication, a copy or photocopy of the Notice as published is required to be submitted..

2010.0400 H

Minn. Stat. § 14.32 requires submission of the adopted emergency rule and Minn. Stat. $14.33 requires two copies of the rule to be filed with the Secretary of State.

Therefore, as with rules adopted without a public hearing, four copies of the rule as adopted are required to be submitted. See page 12 of this statement justifying this requirement for 0300 I.

2010.0400 I

If the agency is a multi-member agency, a resolution adopting the rule is required. The justification for submitting this resolution to the Attorney General is the same as for a rule adopted without a public hearing. See page 13 of this statement for 0300 J.

2010.0400 J

It is necessary that the agency document its official act in adopting the rule. The Findings of Fact, Conclusions and Order documents this official act and also recites and confirms that the agency complied with various statutory requirements. The purpose of this confirmation is to assure that the agency checks and attests that the various statutory requirements have been satisfied.

Items (1) and (2) reaffirm that the requirements of Minn. Stat. § 14.30 and 0400 E were met.

Item (3) requires the agency, if any modifications were made to the rule as proposed, to set forth findings of fact and conclusions. The justification for this requirement is the same as is required for rules adopted without a public hearing. See page 14 discussing this requirement for 0300 K(5).

Item (4) corresponds with item K(6) of 0300 of the rule adopted without a public hearing. Consequently, the need for and reasonableness is the same. See page 15 for this discussion.

Item (5) completes the Order for Adoption of the emergency rule. Finally, this document is required to be signed by a person authorized by statute, or by a resolution adopted in accordance with 0400 I. It is necessary and reasonable to document that

the Findings of Fact, Conclusions and Order is approved and authorized by the proper authority.

2010.0400 K

In reviewing a rule for compliance with the APA, it is necessary for the Attorney General to have access to the supporting rulemaking record. Minn. Stat. § 14.365(2) provides that the official rulemaking record shall contain "all written petitions, requests, submissions or comments received by the agency . . . ." In addition Minn. Stat. § 14.10 provides that "any written material received by the agency shall become a part of the rulemaking record to be submitted to the Attorney General . . . ." The Attorney General needs to have access to these comments, submissions and requests to verify that various statutes have been complied with and to review, if needed, the data and views submitted to support the rule and modifications.

The rule provides an exception for the submission of written requests solely for a copy of the rule. In some instances numerous requests for these copies are received and it serves no purpose to submit these requests to the Attorney General. It must be noted that if requests for such copies also contain comments on the rule, or a request to be apprised when the rule is submitted for review by the Attorney General, the document is required to be submitted to the Attorney General.

2010.0400 L

The declaration of the attorney in the Attorney General's Office for the emergency rule is also required to be submitted. The justification for requiring this document is discussed at page 16 of this Statement for 0300 M.

2010.0400 M

Minn. Stat. § 14.32 requires that on the same day the rule is submitted to the Attorney General, the agency must mail notice of such submission to all persons who requested to be informed that the proposed emergency rule has been submitted to the

Attorney General. This Notice, if applicable, is required to be submitted to the Attorney General to assure that its contents meet the APA and Attorney General rule requirements.

Item (1) requires the Notice to state the date of submission of the rule to the Attorney General. This is necessary, first, because the law requires this (Minn. Stat. § 14.30), second, to apprise interested persons as to the Attorney General review deadline and the deadline for comments, and third, to assure that the Notice is given on the same day that the record is submitted.

Item (2) repeats the language required by section 14.32 to be cited in the Notice.

Item (3) is required to be in the Notice as a benefit to the public to inform and summarize the comment and review deadlines so that the reader does not have to refer to the laws.

Items (4), (5) and (6) correspond with 0300 N(4), N(5) and N(6) respectively for the Notice of submission of rule adopted without a public hearing. Therefore, the need for and reasonablness of these items are the same. See page 18 of this Statement.

2010.0400 N

To verify that the Minn. Stat. § 14.32 regarding Notice of submission of the rule to the Attorney General has been met, the affidavit in which an agency person attests that this law was complied with is necessary .

2010.0500 Rule Submission and Agency Failure to Submit Required Documents

This rule substantially expands and clarifies present and proposed-to-be repealed part 2000.0600 and 1 MCAR § 1.205. Subpart 1 of part 0500 defines rule submission and subpart 2 discusses the failure to submit the required documents.

It is necessary to define in the rule what constitutes "submission of the rule to the Attorney General" for several reasons. First, it is necessary to specify what will trigger the review period for the Attorney General review. Second, the agency needs

to be informed where to deliver the required documents. Third, it is necessary to avoid the recurring problem of rules being submitted to other divisions of the Attorney General's Office, for example, the main office or the division where the agency's attorney is assigned. In such circumstances, it is often several days before the rule is received by the appropriate division and disputes often arise as to when the review period begins to run. To avoid these problems, subpart 1 sets forth the location of where the rule must be submitted in order to trigger the rule review period.

Subpart 2 addresses the concerns of missing documents. For the most part, a missing document is a result of the agency inadvertently failing to submit a required document which they have in their possession. Under these circumstances, it would serve no purpose to terminate the review period when the missing document could be submitted within a day or two. Therefore, a rule is needed to set out under what circumstances the Attorney General will or will not initiate the rule review period when the required documents are not submitted.

The rule provides that, with three exceptions, if the agency submits the missing documents to the Attorney General within the review period, the review period continues to run and is not terminated. The three exceptions and the explanation for the exceptions are as follows: (1) four copies of the rule as adopted are needed to be submitted to trigger the review so that the Attorney General may comply with his statutory requirement to promptly submit copies of the rule to the Revisor of Statutes (Minn. Stat. § 14.08(a)), (2) The Statement of Need and Reasonableness is required because, along with the rule, it is often quite lengthy and requires extensive review. The other documents, on the other hand, may be reviewed rather quickly and (3) It is necessary that the Findings of Fact, Conclusions and Order be initially submitted to assure and verify that the document was completed, authorized and available at the time the rule was submitted. A few days delay on this document would frustrate public participation within this limited review period.

2010.0600 Petition for Adoption of a Rule

The Attorney General has been directed by Minn. Stat. § 14.09 to prescribe by rule the form of all petitions under this section and may prescribe procedures for the petition submission, consideration and disposition. Parts 0300 B and 0400 B provide that if the agency initiates rulemaking pursuant to a petition, the petition must be submitted to the Attorney General as part of the record. This part, 0600, sets forth the content requirements and procedures for submission, consideration and disposition of the petition. Part 0600 is virtually identical to proposed-to-be repealed part 2000.0300, subpart 3 and 1 MCAR § 1.202 Q.

Subpart 1 sets out the content requirements of the petition. In addition, part 2010.9905 sets out the prescribed form of the petition. Since these two parts correspond with each other, the need and reasonableness of the required form and contents will be discussed conjunctively. The purpose of these parts is to obtain a simple and easily understood form for most persons to complete, yet to provide a useful and insightful petition for the agency to consider.

First, the agency needs to know who is petitioning for the rulemaking action so, at the very least, it will know whom to contact for questions and to respond to (0600 subpart 1 A). Second, as provided in 0600, subpart 1 B, the petition form provides a simple checklist for the petitioners to easily indicate what rulemaking action is requested.

Third, as provided in 0600, subpart 1 C, the petition form requires the petitioner to explain the need or reason for the rulemaking request. Minn. Stat. § 14.09 requires this information to be in the petition.

Finally, the petition form requires either the proposed language, or if the petitioner is unable to propose new language, a detailed description of the nature of the rule desired. This is necessary so that the agency may ascertain how the petitioner suggests that his or her petition be implemented.

Subpart 2 of 0600 requires the petition to be served either personally or by first class mail to the department head or executive director of the agency. This is necessary to assure that the person responsible for acting on the proposed rulemaking proceeding will be aware of the rule.

Finally, requiring the agency to act within sixty days responding specifically to all the issues raised in writing and to state the planned disposition of the request reflects the statutory requirements of Minn. Stat. § 14.09. Moreover, to verify that the person authorized to adopt the rule approves of the agency response, such authorized individual or member or officer of the multi-member agency must sign the response.

2010.0700 Statement of Need and Reasonableness

For rules adopted without a public hearing in accordance with the procedures set out in Minn. Stat. §§ 14.22 through 14.28, the agency must affirmatively present its position of the need for and reasonableness of the agency action. Minn. Stat. § 14.23. This document is required to be submitted to the Attorney General as part of the rulemaking record. See, 0300 F. This part discusses substantive requirements of the Statement because there is a need to educate and inform drafters, as well as the public, as to what constitutes a legally sufficient Statement of Need and Reasonableness.

The Statement of Need and Reasonableness is a crucial document the importance of which cannot be overstated. It is a useful document for the agency in that it forces the agency to think through its proposal when supporting it. The general requirement that agencies explain their administrative determinations is not an idle exercise in legislative or judicial officiousness. Manufactured Housing Institute v. Pettersen, 347 N.W.2d 238, 244 (Minn. 1984). The Statement of Need and Reasonableness is not disimilar to agency's findings and conclusions which courts have held its to ensure

"furtherance of even-handed application of law, rather than impermissible whim, improper influence, or misplaced zeal." Reserve Mining Co. v. Herbst, 256 N.W.2d 808, 825 (1977), quoting Greater Boston Television Cor. v. F.C.C., 444 F.2d 841, 852 (D.C.Cir. 1970), cert. denied, 403 U.S. 923, 91 S.Ct. 2229, 29 L.Ed.2d 701 (1971).

Accordingly, Part 0700 first exemplifies what constitutes "need for" and "reasonableness of" a proposed administrative rulemaking action ("what circumstances have created the need for the agency rulemaking action and why the proposed action is an appropriate solution for meeting the need").

Next, to apprise the agency, as well as the public, as to what legal standard the Attorney General utilizes in reviewing the need and reasonableness statement, part 0700 repeats what the APA directed the Attorney General to review ("whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rule" Minn. Stat. § 14.26)), which is similar to the standard set out in the Minnesota Supreme Court decision of Manufactured Housing Institute v. Pettersen, 347 N.W.2d 238, 244 (Minn. 1984). ("Statement must explain the evidence relied upon and how that evidence rationally relates to the choice of action taken").

Finally, part 0700 states a common and recurring problem with Statements which have not and will not be approved by the Attorney General. A Statement which merely and solely rephrases a rule or declares that the "rule implements the statute" without further discussion, does not justify the agency rulemaking action. For example, the statement must explain why a particular method to implement the statute was chosen. Because of this frequent problem, it is necessary to enunciate this prohibition in the rule.

In addition, part 0700 provides a short checklist of additional requirements, which, if applicable, must be included in the Statement of Need and Reasonableness. Subpart A of 0700 refers to Minn. Stat. § 14.115, subd. 2, for the purpose of alerting

the agency and interested persons that, if Section 14.115 is applicable, the agency must document in the Statement how it considered reducing the impact of the rule on small businesses.

Subpart B refers to Minn. Stat. § 16A.128, subd. 1 for the purpose of alerting agencies that, if the rule is establishing or adjusting the fee by rule, in accordance with section 16A.128, subd. 1, the Statement must include the Commissioner of Finance's approval.

Finally, the purpose of subpart C is to alert interested persons that this checklist in part 0700 may not be exhaustive, for example individual state agencies' enabling statutes may impose additional requirements.

2010.0800 Rule Review Time Period

Part 0800 assembles in one location various legal implications of the Attorney General period of rule review. Subpart 1 covers rules adopted without a public hearing while subpart 2 covers emergency rules.

Minn. Stat. § 14.26 requires the Attorney General to approve or disapprove a rule adopted without a public hearing within 14 days. The first sentence of subpart 1 recites this statutory deadline. There is a need to promulgate a rule as to how the prescribed period of time will be computed so as to avoid confusion and disputes and to notify interested persons. The computation method set forth in subpart 1 is adopted from Rule 6.01 of the Minnesota Rules of Civil Procedure for district courts. It is reasonable to adopt a familiar and widely accepted calculation method.

Further, subpart 1 restricts the Attorney General to approving an initial submission of a rule on the ninth through fourteenth day. As provided in part 0900, interested persons may submit comments to the Attorney General. However, this right is effectively nullified if the Attorney General approves the rule on the first day of the review period, thus providing interested persons no opportunity to submit

comments. Therefore, to provide an effective comment period, the Attorney General may not approve an initial submission of a rule for eight calendar days.

Finally, to complete the incorporation of the issues involved in the period of review, subpart 2 of part 0800 recites the statutory deadline for Attorney General review of emergency rules from Minn. Stat. § 14.32. To inform persons of the Attorney General's interpretation as well as to avoid confusion and disputes, the method of computing "tenth working day" is set out. The Legislature has provided that, in contrast to the deadline of 14 days for rules adopted without a public hearing, the emergency rule is to be approved or disapproved on the "tenth working day." It is implicit by the usage of the word "working" that the Legislature intended that Saturdays, Sundays and legal holidays be excluded in the computation. Therefore, subpart 2 adopts the corresponding computation method adopted from Rule 6.01 of the Minnesota Rules of Civil Procedure for district courts. It is reasonable to adopt a familiar and widely accepted computation method.

2010.0900 Written Comments to the Attorney General

Implicit in the statutory directive in the APA to agencies to notify interested persons of the submission of adopted rules to the Attorney General is that such persons have the opportunity to submit arguments and data relative to the legality of the rule. The present and proposed-to-be repealed rule, part 2000.0700, subpart 2 and 1 MCAR § 1.206 C also provide for a written comment period.

Subpart 1 governs the procedures for written comments. Since the Attorney General has the authority to review rules only as to legality and form to the extent form relates to legality, any comments to the Attorney General outside the scope of issue of legality would be useless. Therefore, to avoid commentators expending time and energy communicating non-legal concerns, (i.e. arguing policy issues), part 0900 informs and requires such commentators to address the issue of legality only. In

addition, to facilitate Attorney General review, such comments must address the specific rule or specific problem, to avoid a broad and general discussion on the rule.

The interchange of arguments and responses is facilitated by requiring commentators to submit a copy of their comments to the agency at the same time they submit comments to the Attorney General and by requiring the agency in turn to submit a copy of its response, if any, to commentators as well as the Attorney General. This is necessary and crucial in light of the tight time frame of the comment and review period.

Subpart 2 governs the comment period. The eight calendar day comment deadline for rules adopted without a public hearing is the same as in the present and proposed-to-be repealed rule, part 2000.0700, subpart 2 and 1 MCAR § 1.206 C. Eight calendar days provides sufficient time for interested persons to submit comments, taking into consideration time for receipt by mail of the notice of submission, but also provides adequate time for the agency to respond, if it chooses, and gives the Attorney General sufficient time to review comments and act upon the rule within the fourteen day deadline.

For emergency rules, seven working days was selected as sufficient emergency rule comment period. There is no emergency rule comment period provided in the present Attorney General rule. Without a comment deadline, however, comments received on the last day of Attorney General review period would frustrate a complete and adequate review.

It must be noted that a seven working day comment period will always be longer than an eight calendar day comment period. Therefore, as justified for rules adopted without a hearing, seven working days is adequate time for the public to submit comments and assures agency sufficient response time. Finally, subpart 2 references other subparts in the rule for the address of the Attorney General address as well as the computation method.

2010.1000 Standards of Review

Part 1000 substantially expands and updates the Attorney General's standards of review in the present and proposed-to-be repealed rule 2010.0800 and 1 MCAR § 1.206 D. To implement his statutory responsibility of reviewing and approving rules adopted without a public hearing and emergency rules, the Attorney General must make specific or set standards for "legality of rules". Policies which make specific the law enforced or administered by the agencies are interpretive rules. Minnesota-Dakotas Retail Hardware Association v. State, 279 N.W.2d 360, 364 (Minn. 1979). Interpretive rules fall within the statutory definition of 'rule' and therefore must be promulgated according to the Minnesota APA rulemaking procedures. Cable Communications Board v. Nor-West Cable, 356 N.W.2d 658, 667 (Minn. 1984). Part 1000 is therefore necessary to allow the Attorney General to announce in advance how he will implement his authority and to provide agencies and interested persons with guidance as to basis of arguments for or against a rule.

2010.1000 A

Minn. Stat. § 14.02, subd. 4 defines a rule. If an agency proposes language which would not fit within the statutory definition of a rule, it cannot be approved by the Attorney General as a rule. Therefore, subpart A incorporates this definition in the standards of legality.

2010.1000 B

All rules must be adopted in accordance with specific notice and comment procedures established by law and the failure to comply with the necessary procedures results in the invalidity of the rule. White Bear Lake Care Center v. Minnesota Department of Public Welfare, 319 N.W.2d 7, 9 (Minn. 1982). See, also, Minn. Stat. § 14.05, subd. 1. Subpart B incorporates this requirement and specifies the law includes the APA, the agency's enabling act, the Attorney General rule, which has the force and effect of law and other applicable law.

2010.1000 C

Minn. Stat. § 14.05, subd. 1 authorizes agencies to adopt rules only pursuant to authority delegated by law and section 14.26 instructs the Attorney General to determine whether the agency has the authority to adopt the rule. In addition, the Minnesota Supreme Court has held that:

> It is a fundamental tenet of administrative law that the powers of an administrative agency can only be exercised in the manner prescribed by its legislative authorization. Neither agencies nor courts may under the guise of statutory interpretation enlarge the agency's powers beyond that which was contemplated by the legislative body.

Waller v. Powers Department Store, 343 N.W.2d 655, 657 (Minn. 1984) (citations omitted), accord., McKee v. County of Ramsey, 310 Minn. 192, 195, 245 N.W.2d 460, 462 (1976). Hence, an agency may not adopt a rule which conflicts with a statute. J.C. Penney Co., Inc., v. Commissioner of Economic Security, 353 N.W.2d 243, 246 (Minn. App. 1984).

Accordingly, subpart C embraces this policy by providing that the Attorney General will not approve rules which exceed statutory authority, conflict with statutes or other relevant law, or have no reasonable relationship to the statutory purposes.

2010.1000 D

Minn. Stat. § 14.05, subd. 2 provides that an agency may not modify a proposed rule so that it is substantially different from the proposed rule as noticed. The Attorney General's review is to include the issue of substantial change (Minn. Stat. § 14.26).

There is probably no concept in rulemaking more fraught with confusion or more disputed than the doctrine of substantial change. The substantial change doctrine has not yet been addressed by the Minnesota Appellate Courts. Therefore, there is a compelling need for the Attorney General rule to delineate under what circumstances a proposed rule is considered substantially changed.

It is virtually impossible to define the concept of substantial change to cover every possible scenario or without essentially rephrasing the words "substantial change." As the United States Supreme Court has observed, it is impossible to draw a standard set of specifications as to what is a constitutionally adequate notice, to be mechanically applied in every situation. Schroeder v. City of New York, 371 U.S. 208, 212, 83 S.Ct. 279, 282, 9 L.Ed 2nd 255, 259 (1962).

As a result, the Attorney General proposes a rule which incorporates the intent and purpose of the doctrine as well as follows judicial interpretations of this issue from other jurisdictions:

> An adopted rule is considered substantially different from the proposed rule as noticed if it introduces significant new subject matter which a reasonable person, on the basis of the rulemaking notice, would not have anticipated would be raised during the rulemaking proceeding.

The discussion which follows will expand on the sources and justifications for this proposal; first, the intent and purpose of the substantial change doctrine and second judicial interpretations of this issue in other jurisdictions.

The intent and purpose of the substantial change concept arises from two fundamental, but competing, interests. The first is notice; the concept is rooted in the constitutional right to notice reasonably calculated to apprise interested parties of the pendency of the action and to afford them the opportunity to participate in the proceeding. The substantial change issue arises when the adopted rule is so substantially different from the proposed rule that affected persons have been deprived of notice and opportunity to respond to the changes now in the adopted rule. In examining whether there has been adequate notice, it is helpful to be mindful of the objectives and purposes of the notice requirement for agency rulemaking.

The first objective of notice is to inform and introduce public participation and fairness to affected parties after governmental authority has been delegated to unrepresentative agencies. (National Association of Home Health Agencies v.

Schweiker, 690 F.2d 932, 949 (D.C. Cir. 1982) cert. denied, 459 U.S. 1205, 103 S.Ct. 1193, 80 L.Ed.2d 649 (1983)). The second purpose is to assure the agency will have before it the facts and information relevant to a particular administrative problem as well as suggestions for alternative solutions. Id., Bassett v. State Fish and Wildlife Commission, 27 Or.App. 639, 556 P.2d 1382, 1386 (1976). Third, notice improves the quality of agency rulemaking by ensuring that agency regulations will be tested by exposure to diverse public comments. Small Refiner Lead Phase-Down Task Force v. Environmental Protection Agency, 705 F.2d 506, 547 (D.C. Cir. 1983). And finally, by giving affected parties an opportunity to develop evidence in the record to support their objections to a rule, notice enhances the quality of judicial review. Id.

The second interest giving rise to the substantial change doctrine is the public's interest in expedition and finality. There is no dispute that an agency may promulgate a final rule that differs in some particulars from its proposal (Minn. Stat. § 14.05, subd. 2; "Parties have no right to insist that a rule remain frozen in its vestigal form", South Terminal Corp., v. Environmental Protection Agency, 504 F.2d 646, 659 (1st Cir. 1974)). The comment period or hearing is intended to educate the agency to approaches different from its own; in shaping the final rule it may and should draw on the comments tendered. Id. The comment period or hearing should be a working period where new ideas can be raised and incorporated without always returning to the drawing board. To confine the agency to the terms of the proposed rule would negate the basic purpose of the comment period. It would be ludicrous to interpret the substantial change doctrine to impose upon agencies the sisyphean task of endlessly initiating new rulemaking proceedings every time it incorporates new suggestions.

While not utilizing the exact language, this proposed definition is generally supported by virtually all judicial case law. A significant number of courts in other jurisdictions have devised various formulas for the extent to which an agency may

make changes in a final rule without additional notice and comment opportunity. The most widely adopted standard appears to be the "logical outgrowth" test[2/]

However, this test as well as other general formulas rephrase rather than answer the underlying question of whether notice was adequate to apprise interested persons that the rule as proposed may be changed. In the final analysis, each case must turn on how well the notice given serves the policies underlying the notice discussed earlier. Small Refiner Lead Phase - Down Task Force v. Environmental Protection Agency, 705 F2d. 506, 547 (D.C. Cir. 1983).

To this end, the proposed definition expands and develops the "logical outgrowth" test so widely adopted in federal courts by incorporating the concern of the substantial change concept whether a reasonable person should have anticipated the change to be raised during the rulemaking proceeding.

Further, in an effort to be as specific as possible, the proposed definition provides if a final rule introduces a significant new subject matter which persons would not anticipate being raised, it is a substantial change. The "same subject" specificity is supported in other jurisdiction case law and statutes.[3/]

In closing, rather than attempting to create a definition of substantial change without reference to judicial precedent, the Attorney General has proposed the same

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[2/]Changes in the original rule must be a "logical outgrowth" of the notice and comments already given and "in character with the original scheme". Chocolate Mfrs. Assn. of United States v. Block, 755 F.2d 1098, 1105 (4th Cir. 1985), BASF Wyandotte Corp., v. Costle, 598 F.2d 637, 642 (1st Cir. 1979) cert. denied, 444 U.S. 1096, 100 S.Ct. 1063, 62 L.Ed.2d 784 (1980), South Terminal Corp., v. Environmental Protection Agency, 504 F.2d 646, 658-9 (1st Cir. 1974) Sierra Club v. Costle, 657 F.2d 298, 352 (D.C. Cir. 1981) Taylor Diving and Salvage Co., v. U.S. Department of Labor, 599 F.2d 622, 626 (5th Cir. 1979).

[3/]Western Oil and Gas Association v. Air Resource Board, 37 Cal.3d 502, 208 Cal. Rptr. 850, 865, 691 P.2d 606, 621 (1984); American Bankers v. Division of Consumer Counsel, 220 Va. 773, 263 S.E.2d 867, 877, (1980); Alaska Act Section 44.62.200 (b); Chevron U.S.A., Inc., v. LeResche 663 P.2d 923, 929 (Alaska 1983); State Board of Insurance v. Deffebach, 631 S.W.2d 794, 801 (Tex. App. 1982), Bassett v. State Fish and Wildlife Commission, 27 Or. App. 639, 556 P.2d 1382, 1384 (1976).

standard as the courts have consistently applied. It must be noted that there is virtually no judicial support for a more stringent definition than that proposed by the Attorney General. If the legislature intended a different or more stringent standard, it would have so provided in the APA.

2010.1000 E

Minn. Stat. § 14.26 instructs the Attorney General to determine whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rule. Subpart E incorporates this requirement and clarifies that this criterion does not apply to emergency rules. (Agencies promulgating emergency rules are not required to prepare a statement of need and reasonableness, see sections 14.131 and 14.23.) The discussion concerning "rational basis for the need for and reasonableness of" is on page 28 of this statement justifying part 0700.

2010.1000 F

An agency's rule is legally infirm if the rule, by itself, provides the agency unbridled discretion. This concept is closely related to the constitutional prohibition of void for vagueness, however, because of the continuous reoccurance of this problem in administrative rules, it has developed into a separate concept. This section will distinguish between a rule which provides unbridled discretion from a permissible discretionary rule by first explaining why such a rule delegating unbridled discretion is impermissible and then follow with a brief discussion as to what comports permissible discretion.

In discussing the concept, it is useful to work with examples of improper agency discretion in rules. In a typical statutory grant, the legislature instructs the agency as follows:

> The Commissioner shall adopt rules to set standards for qualifications and methods of calculation.

Under this legislative grant, the agency has considerable discretion in establishing the standards of qualifications or selecting the specific method of

calculation. However, under this statute, the agency would not have the authority to adopt the following rule:

> The Commissioner may grant a license if the applicant meets appropriate financial qualifications.

Under this example, the agency has set forth no specific standards whatsoever as to what consitutes "appropriate qualifications". By failing to make specific discernible standards, applicants are given no information or guide as to how they may qualify for a license. Thus this rule fails to give adequate notice to interested persons.

Even if the language contained specific criteria, the criteria may be effectively nullified by the word "may", such as in the following example:

> The Commissioner may grant a license if the applicant has fully paid the fee.

Under this example, even if the applicant has fully paid the fee, the Commissioner may still not grant the license. Thus, applicants have no idea when or under what circumstances a license may be granted although he or she has paid the fee. Requiring a specific standard in rules is consistent with the statutory definition of a rule (a rule must implement or make specific the law enforced or administered). Minn. Stat. § 14.02, subd. 4. In addition, requiring more specific language to avoid excessive agency discretion assures that the rule will be applied in a consistent manner. Blocher Outdoor Advertising Co., v. Minnesota Department of Transportation, 347 N.W.2d 88, 91 (Minn. App. 1984).

Another reason for not permitting an agency to grant its administrative officers unbounded discretion is that such grant authorizes the agency to circumvent the APA. In the example above ("if the applicant meets appropriate qualifications"), the rule permits the administrative officer to create and apply qualification criteria without fulfilling the APA rulemaking procedures. Such ad hoc rulemaking power is invalid. See, Minn. Stat. § 14.05, subd. 1, White Bear Lake Care Center v. Minnesota Department of Public Welfare, 319 N.W.2d 7, 9 (Minn. 1982).

There are several exceptions to the general rule prohibiting unfettered agency discretion: First if the enabling state expressly authorizes such agency discretion, then the rules adopted thereunder are not required to be more restrictive. The second exception is prosecutorial discretion power. See, 2 K. DAVIS, ADMINISTRATIVE LAW TREATISE, Chapter 9 (1979).

Further, a rule may grant discretionary power to administrative officers if the rule furnishes a reasonably clear policy or standard which controls and guides the administrator so that the rule takes effect by virtue of its terms and not according to the whim and caprice of the administrative officer. Lee v. Delmont, 228 Minn. 101, 112, 36 N.W.2d 530, 538 (1949); Anderson v. Commissioner of Highways, 267 Minn. 308, 311-12, 126 N.W.2d 778, 780-81 (1964).

In determining the propriety of administrative discretion, the determination must be made on a case by case basis, since what may be a "reasonably clear standard" in one industry may be a meaningless generality in another. Further, it is not necessary that a rule contain explicit definitions of every term, In re Charges of Unprofessional Conduct Against N.P., 361 N.W.2d 386, 394 (Minn. 1985), or be more precise if in the context of the regulatory scheme, it is not feasible. Can Manufacturers Institute v. State of Minnesota, 289 N.W.2d 416, 423 (Minn. 1979).

Accordingly, in a rule that sets forth specific discernible standards to control and guide the administrative officer, the administrative officer has considerable discretion in deciding whether a particular applicant has satisfied the standard. More importantly, such standards allow both the applicant and the reviewing court to understand the rules of the game, and consequently, provide a basis for determining whether the administrative officer acted in an arbitrary or capricious manner.

2010.1000 G

Generally, it is improper for an administrative agency to delegate its powers to another agency, person or body without statutory authorization. Muehring v. School

District No. 31 of Stearns County, 224 Minn. 432, 28 N.W.2d 655, 658 (1947). This issue usually arises in the context of a rule adopting standards developed by another agency or body, or when a rule adopts or incorporates a statute or federal law which has been subsequently amended.

The Minnesota Supreme Court has held that it is not an improper delegation of authority for an administrative agency to adopt the standards developed by another agency or body with expertise in that area (Application of Hansen, 275 N.W.2d 790, 796-97 (Minn. 1978), appeal dismissed, 441 U.S. 938, 99 S.Ct. 2154, 60 L.Ed.2d 1040 (1979)), or if there is a rational basis for adopting such standards or verification (Draganosky v. Minnesota Board of Psychology, 367 N.W.2d 521, 525 (Minn. 1985)).

Further, adoption or incorporation of federal legislation in futuro is permissible if the state program is auxiliary in nature and seeks to achieve uniformity in the implementation of national programs and policies. Wallace v. Commissioner of Taxation, 289 Minn. 220, 184 N.W.2d 588 (1971), Minnesota Recipients Alliance v. Noot, 313 N.W.2d 584, 587 (Minn. 1981). Even if the programs are not "auxiliary" to federal statutes, if there are "good reasons" to coordinate the federal and state eligibility requirements, and it is the agency who will be making the ultimate determination which directly affects the applicant, the Minnesota Supreme Court has upheld the adoption of federal legislation in rules. Minnesota Energy and Economic Development Authority v. Prunty, 351 N.W.2d 319, 352 (Minn. 1984).

The nondelegation issue also arises when a rule adopts or incorporates a statute or federal law which has been subsequently amended. In Wallace v. Commissioner of Taxation, supra, the court held that a state law incorporating certain internal revenue code provisions incorporate those provisions as of the date the law was enacted and not when the provisions might be amended by Congress. Some courts have distinguished this case, noting that this decision was based on statutory interpretation

as well as based on a specific constitutional provision. Minnesota Energy and Economic Development Authority v. Printy, supra. Further, the issue of subsequent amendments has been addressed by the Minnesota Legislature in Minn. Stat. § 645.31, subd. 2:

> When an act adopts the provisions of another law by reference it also adopts by reference any subsequent amendments of such other law, except where there is clear legislative intention to the contrary.[4/]

2010.1000 H

The constitutional right to Due Process includes the right to adequate notice of rules with regulated parties are expected to comply. A rule which is vague or ambiguous fails to give adequate notice. The Minnesota Supreme Court has held in a case involving a rule in a disciplinary investigation by the Lawyers Professional Responsibility Board that a rule is unconstitutionally vague:

> If it fails to give a person of ordinary intelligence a reasonable opportunity to know what is prohibited or fails to provide sufficient standards for enforcement. . . . Due Process, however, does not require that a rule contain an explicit definition of every term. All that is necessary is that the rule prescribe general principals so that those subject to the rule are reasonably able to determine what conduct is appropriate.

In re Charges of Unprofessional Conduct Against N.P., 361 N.W.2d 386, 394 (Minn. 1985) (citations omitted.) See also, Thompson v. City of Minneapolis, 300 N.W.2d 763, 768 (Minn. 1980; Can Manufacturers Institute Inc., v. Minnesota Pollution Control Agency, 289 N.W.2d 416, 422 (Minn. 1979).

However, when a statute or rule is not concerned with criminal conduct or first amendment considerations, federal courts have stated that courts must be fairly lenient in evaluating a claim of vagueness. Exxon Corp. v. Busbee, 644 F.2d 1030, 1033 (5th Cir. 1981), cert. denied 454 U.S. 340, 102 S.Ct. 430, 70 L.Ed.2d 239 (1981).

4/Minn. Stat. § 645.001 provides that, unless specifically provided to the contrary by law or rule, the provisions of Chapter 645 govern all rules becoming effective after June 30, 1981.

> [T]o constitute a deprivation of due process, it must be "so vague and indefinite as really to be no rule or standard at all." A.B. Small Co. v. American Sugar Refining Co., 267 U.S. 233, 239, 45 S.Ct. 295, 297, 69 L.Ed 589 (1925). To paraphase, uncertainty in this statute is not enough for it to be unconstitutionally vague; rather it must be substantially incomprehensible.

Exxon Corp. v. Busbee, supra.

In addition to notice concerns, vague or ambiguous rules also carry the risk of unequal application of the law. Without a specific framework or guidelines, there is less control for the administrative officer to act according to his whim or caprice.

2010.1000 I

Minn. Stat. § 14.38 provides that every effective rule has the force and effect of law. If the rule, by its terms cannot have force and effect of law, the rule cannot be approved by the Attorney General. A primary example is non-rules, such as statements of mere philosophical purpose or commentary inserted in the rules. An illustration of a "non-rule" is one which states: "the application should submit four copies of the form"

The concern with non-rules is the inappropriateness of rulemaking for a purpose other than to "implement or make specific" or to "govern its organization or procedure" Minn. Stat. § 14.02, subd. 4. Further, such non-rules confuse the reader. For example, a rule which states "four copies should be submitted" gives the impression it is mandatory, when in fact it is not.

With these concerns in mind, certain non-rules are permissible under the following circumstances: when the purpose of the statement is to assists parties in complying with the law and when the statement does not add confusion or abuse the purpose of rulemaking.

2010.1000 J

Finally, a rule cannot be approved by the Attorney General if it is unconstitutional or unreasonable. Constitutional concerns include void for vagueness

(separately designated in part 1000 H), overbroad classifications and classifications which violate the equal protection clause.

A rule is unconstitutionally overbroad "if its terms prohibit conduct or speech which cannot be prohibited under the United States Constitution, even if some conduct which it reaches is in fact punishable". Thompson v. City of Minneapolis, 300 N.W.2d 763, 768 (Minn. 1980). In addition, a rule may not violate the equal protection clause of the constitution. If no fundamental right or suspect class is involved, a classification in a rule is impermissible if it is not rationally related to a legitimate government objective. State by Spannaus v. Hopf, 323 N.W.2d 746, 753 (Minn. 1982).

Finally, to be valid, a rule must be reasonable. Juster Brothers v. Christgau, 214 Minn. 108, 7 N.W.2d 501, 507 (1943). "A rule is reasonable if rationally related to the end sought to be achieved and not in light of its application to a particular party." Broen Memorial Home v. Minnesota Department of Human Services, 364 N.W.2d 436, 440 (Minn. App. 1985) quoting Blocher Outdoor Advertising Company, Inc., v. Minnesota Department of Transporation, 347 N.W.2d 88, 91 (Minn. App. 1984).

2010.1100 Withdrawal of Rule from Review by Attorney General

This part is a new rule which incorporates the statutory authority of agency to withdraw a rule from Attorney General review and specifies the procedures for how the agency may withdraw its rule from Attorney General consideration.

Minn. Stat. § 14.05, subd. 3 provides that any agency may withdraw a proposed rule any time prior to filing it with the Secretary of State. Accordingly, agencies may withdraw a rule after it has been submitted to the Attorney General prior to filing with the Secretary of State. To assure that the person authorized to adopt the rule consents to its withdrawal and to clarify the date of withdrawal, it is necessary that such withdrawal be in writing, dated and signed by an authorized person and is submitted to the Attorney General.

2010.1200 Disapproval

Minn. Stat. §§ 14.26 and 14.32 require the Attorney General, when he has disapproved a rule, to state in writing the reasons for disapproval and make recommendations to overcome the deficiencies. The two statutory sections further order that the statement of the reasons for disapproval of the rule must be sent to the agency, the chief administrative law judge, the legislative commission to review administrative rules, and to the revisor of statutes. Finally, these two statutory sections provide that the rule shall neither be filed in the office of the secretary of state nor published until the deficiencies have been overcome.

Part 1200 incorporates all of these statutory requirements in the rule to complete the rule and clarifies that the rule review period is terminated and that the rule may not be filed or published until it has been approved by the Attorney General. The present and proposed-to-be-repealed part 2000.0900, subparts 1 and 2 and 1 MCAR § 1.206A 3 & 4 also included these statutory requirements.

2010.1300 Resubmissions

This is a new, separate and substantially expanded section. Subpart 1 lists the documents required to be submitted if a rule has been previously rejected or withdrawn and subpart 2 governs the time period for resubmissions.

When a rule, which was either withdrawn from Attorney General's consideration or disapproved by him, is resubmitted to the Attorney General, there is usually no need to submit an entirely new set of documents as the Attorney General retains most of the documents from the original submission. See, 1400 subp. 2. There is a need to specify in the rule what documents must be submitted in a resubmission.

Item A requires a Supplemental Findings of Fact, Conclusions and Order. This document ensures that the person authorized to adopt the rule or sign the order is aware and approves of the resubmission. It precludes submission of rule changes

without the consent of an authorized person. As with the original findings conclusions and order, if the rule was modified since it was withdrawn or disapproved, findings of fact and conclusions must be set out. See, discussion on page 14 of this statement justifying these requirements for the original findings.

Item B articulates the circumstances when a multi-member agency must acknowledge its approval for a resubmission. For the most part, changes in the rule occurs because the Attorney General requires such amendments in order for the rule to be approved. As provided in part 0300 J and 0400 I, the delegatee is authorized to do what is necessary to assure the adoption and effectiveness of the rule as long as any amendment does not raise "singificant new legal issues". This standard is proposed as a threshold at which acquiescence of the multi-member agency is expressly necessary.

If the rule was modified since it was withdrawn or rejected by the Attorney General, item C requires four copies of the rule approved by the revisor of statutes. These requirements are necessary for rules to be approved. See page 12 for the discussion of the justification for these requirements.

Items D and E require a new notice of submission to the Attorney General and accompanying affidavit of mailing if any persons requested notification pursuant to Minn. Stat. §§ 14.26 or 14.32. This requirement is not in the present rules and is expressed for the first time to make clear that in a resubmission, another notice of submission must be sent. Minn. Stat. § 14.26 and 14.32 provide that persons be informed when a rule is submitted to the Attorney General. It is implicit that this requirement also encompass resubmissions.

Subpart 2 provides that, with one exception, the time period for review is the same as for initial submission. For non-controversial rules, the Attorney General has the authority to approve a rule within 14 days. By rule, the Attorney General has limited its review to the 9th through the 14th day to provide an effective comment

period. Under certain circumstances, there is no need to have a second full comment period. Subpart 2 specifies the circumstances under which the eight day comment period does not apply, therefore allowing the rule to be approved on the first through the 14th day. This is different from the present and proposed-to-be repealed rule 2000.0900, subpt. 3 and 1 MCAR § 1.206 C which provides a shorter review period and no comment period.

The Attorney General does not have the authority to shorten the time period for approval of emergency rules as they must be approved on a certain day, rather than within a time frame.

2010.1400 Approval of a Rule

Minn. Stat. § 14.26 requires the Attorney General, if he approves the rule, to promptly file two copies of the rule in the Office of the Secretary of State. Subpart 1 of 1400 includes this requirement and provides that the approval memo is to be sent to the agency, the chief administrative law judge and the legislative commission to review administrative rules. With the exception of the revisor of statutes, these officials are the same as those who are required by § 14.26 to receive the disapproval memo. There is no need to send a copy of the approval memo to the Revisor of Statutes when he receives a copy of the approved and stamped rule from the Secretary of State (Minn. Stat. § 14.26).

It is necessary for the Attorney General to retain in his files the records and documents supporting his review of the rule. Therefore, most of the documents submitted will be retained by the Attorney General. However, while the comments and requests are required to be submitted to the Attorney General, such documents often are cumbersome. There is no need to retain the often voluminous records which would more logically be retained by the agency and in fact are required to be retained by the agency (Minn. Stat. § 14.365(8)). Consequently, subpart 2 of 1400 provides that

upon approval of a rule, the Attorney General shall return to the agency one approved copy of the rule (see page 12 discussing the whereabouts of the other copies), any extra copies of documents and any petitions, requests, submissions or comments directed to the agency. 1400 updates the proposed-to-be repealed pt. 2000.1000 and 1 MCAR § 1.206 A 1 and 2.

2010.9900, 2010.9910 through 2010.9960 Recommended Notices

Parts 9900 and 9910 through 9960 are exhibits which demonstrate how the agency may comply with parts 0300 and 0400. There is a need and the objective is to assist the agency in complying with the substantative requirements of these documents. Inserting these forms in the Attorney General rules is reasonable so as to provide readily available samples. The present-and-proposed-to-be repealed parts 2000.9900 through 2000.9985 and 1 MCAR § 1.207 also contained these sample formats. There have been requests to retain these exhibits. See, Memo from Bob Hamper, Department of Human Services Rules Unit, dated April 25, 1985, comment submitted in response to solicitation of outside information and opinion. The need and reasonableness for the content of these forms are contained in the discussion of the substantive requirements in parts 0300 and 0400.

However, as the title of each format clearly states, these recommended formats are just that, recommended. Their sole purpose is to assist in the compliance with the substantive requirements of the law and there is little room for confusion as the exhibits are clearly designated "recommended" forms. Thus, agencies may certainly tailor their notices and documents to serve their individual needs and circumstances, or to comply with the substantive requirements.

Repealer

With the exception of three parts (2000.5100, 2000.5200 and 2000.9990), all of the rules in chapter 2000 are proposed to be repealed. As discussed previously,

because of the numerous and extensive amendments necessary, it is easier and simpler to replace chapter 2000 with an entirely new rule. Most of the present parts and subparts have been incorporated in the new rule.

Minn. Rules pt. 2000.5100, 2000.5200 and 2000.9990 which govern the Uniform Traffic Tickets, remain in effect. The authorizing statute for these parts, Minn. Stat. § 169.99, subd. 2, requires the Attorney General to promulgate rules establishing the Uniform Traffic Ticket.

VI OTHER STATUTORY REQUIREMENTS

Minn. Stat. § 14.115 requires agencies, when proposing a new rule 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.

The Attorney General rule generally directly impacts or regulates state agencies in their promulgation of rules pursuant to the APA. Small businesses for the most part are impacted indirectly by these regulations; for example, by the type of Notices received. In addition, small businesses are affected, as with other interested persons, by the public comment deadline. Consequently, the Attorney General considered all of the methods for reducing the impact of the rule on small businesses as listed in Minn. Stat. § 14.115, subd. 2.

Most of the listed methods for reducing the impact of the rule on small businesses are not applicable to the proposed rule (i.e. compliance or reporting requirements for small businesses or performance standards for small businesses). However, the Attorney General has consistently throughout the rule proposed more informative and useful notices for all interested persons and associations. Further, within the confines of the APA, the Attorney General provided as long a public comment period as possible, leaving state agencies and Attorney General minimum

period to respond. Therefore, to the limited extent possible, the Attorney General has proposed a rule to encourage small business participation, as well as that of all interested persons, in the administrative process of state government.

Minn. Stat. § 14.11, subd. 2 is inapplicable as the proposed rule will not have any direct and substantial adverse impact on agricultural land. Sections 115.43, subd. 1, 116.07, subd. 6 and 144A.29, subd. 4 do not apply to the Attorney General. Section 16A.128 subd. 1 is inapplicable because the proposed rule does not set any fee. A fiscal note is not required pursuant to section 3.982 as the rule will not force any local agency or school district to incur costs. And finally, the Attorney General does not intend to call any witnesses outside his staff to testify on his behalf at the hearing on this rule.

CONCLUSION

Based on the foregoing, the Attorney General rule proposed to be set forth in Minn. Rules Chapter 2010 is needed to assist state agencies in the promulgation of their rules and is reasonable in encouraging public participation in the administrative process of state government.

December 12, 1985.

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