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ADMINISTRATIVE  
HEARINGS

## Campaign Finance and Public Disclosure Board

### STATEMENT OF NEED AND REASONABLENESS

**Amendment and or Repeal of Rules Governing Lobbyist Registration and Reporting, Filing Written Complaints with the Board, Changes and Corrections to Documents filed with the Board, Statements of Economic Interest filed by Terminating Public Officials, and Definitions Related to Campaign Finance Activities, *Minnesota Rules*, Chapters 4503, 4505, 4511, 4515, 4520, and 4525.**

### INTRODUCTION

The goal of the Campaign Finance and Public Disclosure Board (the Board) in promulgating this set of administrative rules is to make the reporting and requirements for lobbyists and terminating public officials less burdensome, clarify provisions of Chapter 10A that set qualifications for candidates to receive public financing, provide an additional method to lodge a complaint with the Board, and repeal two redundant rules.

Specifically under current rules each lobbyist that represents an entity (individual or organization) that employs more than one lobbyist must submit three reports yearly to the Board. Those reports can either supply required disclosure information, or at the option of the lobbyist, indicate another lobbyist representing the same entity who is reporting the required lobbying disbursement information for the lobbyist. This procedure produces the lobbying disclosure required by statute, but also produces thousands of reports each reporting period that contain nothing more than the name of another lobbyist who is providing lobbying disbursement information for multiple lobbyists. The rules relating to lobbying (4511.0100 through 4511.0500) are designed to make the disclosure of lobbying disbursements less of a burden to lobbyists, and to eliminate the administrative costs of processing thousands of unnecessary and uninformative reports annually.

The proposed rules also provide necessary clarification of new statutory provisions regulating candidates who wish to qualify for public subsidy payments. During the 2001 Special Session the legislature changed the requirements for, and timing of, public subsidy payments from the general account to candidates. Those changes include paying the general account money after the primary election rather than after the general election, and adding a new requirement that candidates must spend or promise to spend a percentage of the general account payment by a certain date. The proposed rule (4503.1450) incorporates these statutory requirements into the procedures of the Board.

The proposed rules also address the disclosure requirements for public officials. Currently individuals who are terminating their status as public officials are required to file a statement of economic interest at the time of their termination. In many cases this information is redundant to information already on file with the Board. The proposed amendment to 4505.0900 will eliminate the need to file a statement of economic interest at the time of termination if there have been no changes from the officials most recent statement.

The proposed rules also allow the use of a form on which complaints may be submitted to the Board, (4525.0200), and repeal two rules the Board views as redundant and potentially in conflict with statutory requirements (4515.0700 and 4520.0700).

### **ALTERNATIVE FORMAT**

Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact

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-TTY users may call the Board at (800) 627-3529.

### **STATUTORY AUTHORITY**

The Board's general statutory authority to adopt the proposed rule is set forth in Minnesota Statutes, section 10A.02, subd. 13, which provides:

“Chapter 14 applies to the board. The board may adopt rules to carry out the purposes of this chapter.”

Under this statute, the Board has the necessary statutory authority to adopt the proposed rule. This statutory authority was adopted and effective prior to January 1, 1996, and so Minnesota Statutes, section 14.125, does not apply.

### **REGULATORY ANALYSIS**

Minnesota Statutes, section 14.131, sets out six factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (6) below quote these factors and then give the agency's response.

**“(1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule”**

The rules cover many clients of the Board including lobbyists, entities that multiple lobbyists, candidates who wish to receive public subsidy, public officials, members of the public who wish to examine disclosure information on lobbyists or public officials, and individuals who wish to lodge a formal complaint with the Board.

Lobbyists that represent entities that employ multiple lobbyists are a class of persons that will be dramatically affected by the proposed rules. The proposed rules will benefit lobbyists that represent entities with more than one lobbyist by eliminating the need to file reports that contain no information other than the name of the lobbyist whose report contains the required disclosure of lobbying disbursements. The general public will benefit from the proposed rules by reducing the number of lobbyist reports that must be examined to determine lobbying disbursements for a given entity.

Public officials are a class of persons affected by the proposed rule that eliminates the need to file redundant statements of economic interest with the Board at the time of termination. In that filing reports with the Board is burdensome, public officials will benefit from the rule change.

All clients of the Board are effected by, and will benefit from, the rule providing a standard form for lodging complaints with the Board. The form is not restrictive in that complaints may be submitted in other formats; therefore it creates no additional burden, but provides an additional means for submitting a complaint.

Candidates wishing to qualify for public subsidy payments are a class of persons affected by the rule. The proposed rules do provide for an additional form on which candidates may agree to a statutorily required general account public subsidy agreement. To the extent that the general account public subsidy agreement represents additional paperwork and requirements to candidates it does represent a non monetary cost bore by those candidates. However, in that the form and requirements provided in the rules reflect statutory requirements the rules do not affect a class of persons (candidates) who are not already impacted by Minnesota Statutes Chapter 10A. The rules clarify ambiguous references in the statutes that will make compliance with the intent of the statute easier.

The repeal of sections 4515.0700 and 4520.0700 do not affect or benefit any class of persons because the rules are redundant restatements of requirements found in Minnesota Statutes.

**“(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues”**

The adoption of the proposed rules related to lobbyist reports (4511.0100 through 4511.0500) will reduce production and mailing costs to the Board. Using current lobbyist registration numbers the Board mails 2561 reports to lobbyists who represent entities with more than one lobbyist. The proposed rules could reduce that mailing to 677 reports, a reduction of 1884 pieces. Under current postage and reproduction costs the smaller mailing will save the Board approximately \$800 per reporting period. There are three reporting periods per year, for an approximate saving of \$2,400 per calendar year.

The Board will have one time costs associated with the design of new and modified forms. No other costs to the Board are anticipated as a result of the adoption of the proposed rules. The Board’s activities are largely self-contained therefore, no other agencies costs are affected by these rules. The adoption of these rules will not effect state revenues.

**“(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule”**

The proposed rules will reduce the cost of providing required disclosure by lobbyists who represent entities with more than one lobbyist, and from some terminating public officials. The disclosure of lobbying disbursements and economic interest statements that remain in the rules are reflective of statutory requirements, and cannot be eliminated or lessened by administrative rules.

The proposed rules related to candidates seeking public subsidy payments are reflective of statutory requirements and cannot be less costly or intrusive. The rules clarify requirements in the statute in order to make it easier for candidates meet qualification standards and supply required disclosure.

In all aspects of rule drafting the Board examined less intrusive methods of implementing statutory requirements. Indeed the primary motivation of the Board was to reduce the burden of compliance to its clients. However, the statutes that form the framework for these rules are in part disclosure statutes. Disclosure statutes by their nature are intrusive and impose some costs on those covered by the statute. Board staff made themselves available to receive comments and concerns from those covered by the provisions of the rules. To make the rules any less intrusive than they are would result in the failure of the Board to collect disclosure required by statute and necessary to accomplish its purpose.

**“(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule”**

Disclosure, which is a primary purpose of Chapter 10A, can be accomplished by only one method: requiring persons subject to the law to provide required disclosure. The statutes require that disclosure, and the rules implement it. No alternative to the rules requiring disclosure was seriously considered.

Similarly, the rules related to candidate requirements to receive public subsidy funds are required by statute. No alternative to the requirements or the candidate agreements that put the requirements in place was considered.

**“(5) the probable costs of complying with the proposed rule”**

Lobbyists that represent entities with more than one lobbyist will benefit from reduced costs under the proposed rules. The specific cost saving per lobbyist will depend on the complexity of their lobbying disbursements and the number of entities they represent. As a class lobbyists will save thousands of dollars in mailing costs and hundreds of person hours in time as a result of the proposed rules.

Terminating public officials will also benefit from reduced costs if they have had no change in their statement of economic interest from the most recent filing with the Board. Because the number of public officials who fall in this category is relatively small, and the

disclosure requirement occurs only once, the cost saving is modest. Nonetheless it does represent a savings to those covered by the rule. The other proposed rules do not add to the cost of disclosure or compliance.

**“(6) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference”**

There are no federal regulations applicable here; therefore this factor does not apply.

### **COMMISSIONER OF FINANCE REVIEW OF CHARGES**

Minnesota Statutes, section 16A.1285, does not apply because the proposed rule does not set or adjust fees or charges.

### **IMPACT ON FARMING OPERATIONS**

These proposed rules do not have a significant impact on farming operations, and therefore, the requirements of Minnesota Statutes, section 14.111 do not apply.

### **PERFORMANCE BASED RULES**

Minnesota Statutes, sections 14.002 and 14.131, requires the statement of need and reasonableness to describe how the agency, in developing the rules, considered an implemented performance based standards that emphasize superior achievement in meeting the Board’s regulatory objectives and maximum flexibility for the regulated party and the Board in meeting those goals.

The regulatory objectives of the Board in regards to lobbyists include securing statutorily required disclosure, minimizing the reporting overhead to lobbyists and the entities they represent, presenting the required disclosure to the public in an efficient and understandable manner, and administering the lobbyist disclosure program within the confines of a limited budget.

These objectives are not always complimentary, and must be balanced in relation to each other while drafting administrative rules. For example: current-reporting requirements for a lobbyist who represents an entity that employs more than one lobbyist require the lobbyist to either file a report of their lobbying disbursements, or file a report naming another lobbyist who is providing the disbursement information on their report. In either case, a report is filed with the Board, who in turn makes the information available to the public. This process secures the required disclosure, and provides flexibility to the regulated party. This process fails however to reduce reporting overhead to the lowest level possible. Indeed, the process creates a flow of paper reports that contain no meaningful disclosure other than a redirect to another report.

The proposed rules correct the weaknesses of the current requirements by dramatically reducing the reports required by certain lobbyists, while maintaining the flexibility of the regulated party to choose the reporting method that best meets their needs, and most importantly maintaining the required disclosure to the public. In specific, proposed part 4511.0200 provides that a lobbyist who will report lobbying disbursements through another lobbyist identify the reporting lobbyist at the time of registration. That completes the reporting requirement for that

lobbyist (barring unusual circumstances, which are provided for in the proposed rules). This change provides superior performance to the regulated party and to the agency by reducing the paperwork overhead and the related costs of production, postage, processing, and storage. Note that the required disclosure is provided to the Board, but in a more efficient, less burdensome manner.

Similarly, part 4505.0900 provides for greater efficiency in meeting Board objectives by eliminating the need for a terminating public official to file information that is already on record with the Board. A new statement of economic interest is required at the time of termination only if there has been a change in the holdings or compensation of the official from the most recent statement. Again, the goal of maintaining the required level of disclosure is met while reducing unnecessary reporting overhead.

Flexibility is at the heart of proposed part 4525.0200, which provides an additional method for filing a complaint with the Board. Complaints must be in submitted in writing, as required by statute. Use of the form however, is optional. By providing a form, the Board can provide to the complainant a template to use in supplying information needed by the Board to conduct an investigation.

The administrative objectives of the Board in relation to the public finance program include informing candidates of the requirements to qualify for public funds, insure that only candidates who qualify receive funding, make public subsidy payments in a timely manner, and securing the return of unused public subsidy funds. Part 4503.1450 is a new rule in response to modifications in Minnesota Statutes regulation distribution of public subsidy payments from the general account (there are also party account public subsidy payments which are outside the scope of this rule). The proposed rule helps the Board achieve its objectives by incorporating new statutory requirements into an existing agreement, but is flexible in that it allows for a separate agreement for those candidates who have a public subsidy agreement already in place. Additionally, the rule provides the means for calculating an estimate of the general account payment for eligible candidates and provides those candidates with needed information in a timely manner. In doing so, the rule informs regulated parties of their specific requirements, which in turn makes administration of the program more efficient for the Board. The same information provides flexibility to candidates because the earlier candidates receive information on the minimum amount that must be spent to comply with the requirements of the program the more choices the candidate can make on how to disburse the funds.

## **ADDITIONAL NOTICE**

The Campaign Finance and Public Disclosure Board is responsible for administrative rules needed to implement Chapter 10A of the Minnesota Statutes, the Ethics in Government Act. Among other subjects the act regulates and provides disclosure for public officials, state candidates, lobbyists and lobbyist associations.

It is these four groups that the Board wishes to reach through this plan. By providing additional notice to these persons, either individually or through organizations that represent these persons, the Board believes it will have met its obligation to provide a good faith effort to alert all

individuals who would potentially like to comment on the rules that the Board is proposing to adopt.

The additional notice plan contains the following elements:

1. Provide information on the Notice of Intent to Adopt and the proposed rules to the Minnesota Governmental Relations Council (the Council). The Council is the professional association for lobbyist in Minnesota, with membership including over 400 lobbyists registered with the Board. The Council has participated in previous rule making efforts by the Board that impacted lobbyists, and is very active in representing the interests of lobbyists.
2. The Board will mail the Notice of Intent to Adopt and the proposed rules to all lobbyist associations who have more than one lobbyist registered with the Board. Currently there are 669 lobbyist associations with multiple lobbyists. The mailing will encourage the associations to forward the Notice and the proposed rules to any of their lobbyist that might be interested in the rulemaking efforts of the Board.
3. The Board will provide the Notice of Intent to Adopt and the proposed rules to the Republican and Democratic caucuses in the State House and Senate. These four organizations are very active in representing the interests of incumbent office holders and potential candidates for their parties
4. The Board will provide the Notice of Intent to Adopt and the proposed rules to state central committees of the four registered political parties in Minnesota; Republican, Democrat, Green, and Independence. These four organizations are active in representing candidates, and potential candidates for state level office.
5. The Board will make available the Notice of Intent to Adopt and the proposed rules at training sessions the Board will conduct during the comment period. Starting in January the Board will hold monthly training on software and compliance issues through out the spring for candidates and political committees. Students at these training sessions are often newly registered with the Board, or intend to register with the Board, and therefore may be affected by the proposed rules.
6. The Notice of Intent to Adopt and the proposed rules (as well as the statement of need and reasonableness) will be placed on the Board web site, and will be linked to numerous topic areas (pages) within the site. In particular the Notice of Intent to Adopt Rules Without a Public Hearing will be referenced from pages used by public officials seeking information or downloadable forms for use in making Statements of Economic Interest.
7. The Board maintains a list of individuals interested in rule making, and a list of persons interested in the general operations of the Board. The Notice of Intent to Adopt Rules Without a Public Hearing and the proposed rules will be sent to the approximately 140 individuals on those lists. These two lists contain the individuals from all cliental groups

serviced by the Board, and are likely to be both interested in, and affected by, the proposed rules.

8. The Notice of Intent to Adopt, the proposed rules, and the statement of need and reasonableness will be sent to the legislators required by Minnesota Statutes, section 14.116.

## **RULE-BY-RULE ANALYSIS**

**Part 4503.1450, subpart 1**, provides the form and content of the public subsidy agreement requirements found in Minnesota Statutes 10A.31, subdivision 7. This is needed because the public subsidy program for candidates is voluntary, and requires the candidate to enter into a binding agreement in order to receive said funds. The subpart requires candidates to spend or be *legally obligated* to spend *at least* 50 percent of the general account public subsidy payment by the end of the reporting period before the general election. This is a needed clarification of the statutory language that requires the candidate to spend or *promise* to spend 50 percent by the end of the reporting period. It is reasonable to substitute legally obligated for promise because the disclosure requirements of Chapter 10A already require reporting of disbursements the candidate is legally obligated to make. There is no requirement, or method, to report a promise. It is also reasonable to require candidates to spend at least 50 percent of their public subsidy funds by the required date because in practice it would be close to impossible for a candidate to find the right combination of expenditures to equal exactly 50 percent of any given amount at a specific point in time. Other provisions of the agreement required by the subpart are needed and reasonable because they are required by statute.

**Part 4503.1450, subpart 2**, provides a block to candidates receiving additional public funding at future elections until unexpended general account funds are repaid to the Board. The subpart is needed to provide the mechanism to enforce the requirements of the agreement on candidates who do not return unused general account funds. The subpart clarifies statutory language that provides that the funds must be either repaid or discharged. It is necessary to provide who or what has the authority to discharge the obligation, and reasonable to provide that a court is the body which can determine circumstances in which the debt need not be repaid.

**Part 4503.1450, subpart 3**, is needed to determine the amount that a candidate must spend in order to comply with the terms of the agreement. It is reasonable to use the September 1 certification from the Department of Revenue because it is the earliest certification received, and will therefore provide the most lead-time to candidates in spending the required amount of general account funds by the reporting deadline.

The amendment to **part 4505.0900, subpart 4**, is needed to simplify the process of terminating a public official status. The subpart provides that a statement of economic interest does not have to be filed if there have been no changes from the most recent statement filed with

the Board. It is reasonable to eliminate the redundant filing of information that has been previously disclosed to the Board.

**Part 4511.0100, subpart 1a**, defines the lobbyist responsible for reporting disbursements made by the entity the lobbyist represents. The definition is needed provide a distinction between reporting the disbursements of a lobbying entity and reporting the disbursements of other lobbyists representing the same entity. The definition is reasonable because it reduces the number of lobbyists who must report the disbursements of an entity to the lowest possible number, and makes it possible for the public to identify the lobbyist report that contains the required disclosure.

The amendment to **part 4511.0100, subpart 7**, defines the lobbyist responsible for reporting disbursements made by two or more lobbyists. This is the key to proposed rules on lobbyist reports. The “reporting lobbyist” is needed to provide the required disclosure to the Board while at the same time eliminating the need for all lobbyists of an entity to file reports. The definition is reasonable because the use of a reporting lobbyist is not required, and lobbyist are given the greatest flexibility possible in that they can report individually, through a reporting lobbyist, or a combination of the two options.

**Part 4511.0200, subpart 2**, requires a lobbyist who wishes to report disbursements through a reporting lobbyist to identify the name and registration number of the reporting lobbyist on their registration. The subpart also requires that a change to the identity of the reporting lobbyist, or in the use of a reporting lobbyist, must be reported to the Board through an amended registration within 10 days. It is reasonable to require the identification of the reporting lobbyist so that the Board can mail reports only to those lobbyist who will be providing disclosure to the Board. It is also reasonable to assume that a two-week period for lobbyist to modify their registration is sufficient. The 10-day period is also consistent with the period for changes found in Minnesota Statutes, 10A.025, subdivision 4.

**Part 4511.0200, subpart 3**, provides for the registration of a lobbyist who will be responsible for the reporting of disbursements made by the entity the lobbyist represents. The registration is needed so that the Board can mail disclosure reports to the right individuals. The identification of designated lobbyist on the registration is reasonable to insure that the Board and the public can identify who is responsible for providing disclosure, and who is responsible if disclosure is not provided.

**Part 4511.0200, subpart 4**, provides for the registration of a lobbyist who will be responsible for the reporting of disbursements of two or more lobbyists representing the same entity. The registration and identification of lobbyist that will be included in the report of disbursements is needed to insure that full disclosure is provided for all lobbyists, and that the Board can mail reports to the appropriate individuals. This is a reasonable procedure in that it allows reporting lobbyist to update the list of individuals they are reporting for on their registration within 10 days, or on the report they submit to the Board. This additional method of amending the list of lobbyist is in recognition that the lobbyists employed by an entity over the course of a year can change frequently.

**Part 4511.0400, subpart 1**, provides the procedures used when a lobbyist terminates their registration with the Board. The modification to the subpart is needed to provide a method of terminating for lobbyists who file a statement of termination with the Board, but who have reported disbursements through a reporting lobbyist. It is reasonable to allow a lobbyist to terminate with the final report of disbursements made to the Board in the same manner as all other reports, namely through a reporting lobbyist. To do otherwise would be to expect an individual who may never of completed a report to learn the reporting requirements as a prerequisite to terminate their registration.

**Part 4511.0400, subpart 2**, provides the procedures used when a reporting lobbyist terminates with the Board. In particular, the subpart provides that the termination of a reporting lobbyist reverts the reporting responsibility back to each lobbyist listed on the registration of the terminating reporting lobbyist. This is needed to clarify that the termination of the reporting lobbyist does not effect the requirement to provide disclosure of lobbying disbursements. The rule is reasonable in that failing to revert the responsibility to report to each individual lobbyist would provide an exception to the disclosure requirements contrary to statutory provisions.

**Part 4511.0400, subpart 3**, provides the procedures used when a designated lobbyist terminates with the Board. In particular, the lobbying entity is responsible to appoint another lobbyist as the designated lobbyist. This is needed to insure that the Board can identify who is responsible for disclosing the expenditures of the entity. Making the entity responsible is reasonable because the entity must supply the designated lobbyist with the required information and trust to designated lobbyist to make timely and accurate reports. In short the entity should have the right to choose the individual that will represent it through reports to the Board.

**Part 4511.0500, subparts 1 and 2**, are needed to incorporate the concepts of designated and reporting lobbyists into the lobbyist reporting procedure. In specific:

**Items A and B.** These items are modified to incorporate the terms designated and reporting lobbyists. The procedures and effect of the two items are not changed by the inclusion of the terms designated and reporting lobbyists. It is reasonable to use terms defined in parts 4511.0100, subparts 1a and 7 in order to be consistent and provide and much clarity as possible to the rules.

**Item C.** This modification is needed because the name and registration number of the reporting lobbyist will now be supplied on the registration of the lobbyist. It is reasonable to modify this requirement in order to eliminate the burden of submitting reports containing no disclosure information other than the name of the reporting lobbyist.

**Item D.** This item is needed to provide the timeframe in which a lobbyist must provide disbursement information to the reporting lobbyist. Board staff had discussions with lobbyists who indicated that five days is a reasonable period of time for the reporting lobbyist to incorporate disbursement information from a lobbyist into the report and still meet the reporting deadline.

**Item E.** This item is needed to clarify that the reporting dates, periods, and late fees contained in Minnesota Statutes, section 10A.04, apply to reporting lobbyists. The item also requires the Board to notify reporting lobbyists, and the lobbyist they are reporting in behalf of, when a reporting deadline is missed. Additionally, the item sets the procedure to use in imposing late filing fees. It is reasonable to apply the same notification and late fee procedure to a reporting lobbyist that is applied to a lobbyist who reports directly to the Board. The Board considered fining only the reporting lobbyist when a report deadline is missed; but concluded that would provide an incentive to miss deadlines by imposing a late fee that was proportionally smaller than would be imposed on lobbyists who reported directly to the Board.

**Item F.** The item is needed to identify any lobbyist not included in a report submitted by a reporting lobbyist, and to provide a means of securing the missing disclosure. Discussions with lobbyist alerted the Board to the possibility that despite good faith effort, reporting lobbyist may not be able to obtain disclosure information from all lobbyists in a timely manner. It is reasonable to hold a lobbyist who failed to provide disbursement information in a timely manner to responsible for that omission. To do otherwise would be to place the ultimate responsibility for disclosure on the reporting lobbyist, when it must be placed on the lobbyist who actually made the expenditure.

The amendment to **part 4511.0500, subpart 3**, shifts the reporting of a lobbying entity's officers and board of directors from the reporting lobbyist to the designated lobbyist of the entity. The reporting of officers and board of directors is needed to account for disclosure information that is required by statute. It is reasonable to have the designated lobbyist report this information because the designated lobbyist is already in contact with the entity to obtain disbursement amounts. It is more convenient to the public to have all information related to the lobbying entity on one report.

The amendment to **part 4511.0500, subpart 5**, incorporates the term "designated lobbyist". The amendment is needed for consistency. The amendment has no other effect on the requirements of the subpart.

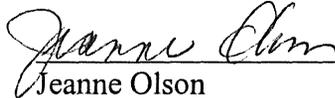
The amendment to **part 4525.0200, subpart 2**, provides for the use of a form when lodging a complaint with the Board. The subpart is needed to provide a consistent means to provide information to the Board. It is reasonable to provide a form as a matter of customer service and to provide some guidance as to the information the Board needs to start and investigation. The use of the form is optional.

The repeal of parts **4515.0700** and **4520.0700** is needed because both parts have been supplanted by the statutory requirement found in Minnesota Statutes 10A.025, subdivision 4. It is reasonable to eliminate administrative rules that do not provide clarification or procedures to statutory requirements.

**CONCLUSION**

Based on the foregoing, the proposed rule is both needed and reasonable.

7 January 2002



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