



## MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

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December 5, 2012

Legislative Reference Library  
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Re: In The Matter of the Possible Amendment to Rules of the Minnesota Office of Administrative Hearings-Municipal Boundary Adjustment Unit Governing Petitions, Receipt of Evidence and Hearings in Municipal Boundary Adjustment Matters, *Minnesota Rules*, Chapter 6000; RD4123/AR 1077

Dear Librarian:

The Minnesota Office of Administrative Hearings-Municipal Boundary Adjustment Unit (OAH-MBAU) intends to adopt amendments to rules governing petitions, receipt of evidence and hearings in Municipal Boundary Adjustment Unit matters. We plan to publish a Dual Notice in the December 24, 2012 State Register.

The OAH-MBAU has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the OAH-MBAU is sending the Library an electronic copy of the Statement of Need and Reasonableness.

If you have any questions about these rules, please contact Star Holman, State Program Administrator Senior, Municipal Boundary Adjustment Unit at 651-361-7909 or [star.holman@state.mn.us](mailto:star.holman@state.mn.us).

Yours very truly,

  
Timothy J. O'Malley  
Assistant Chief Administrative Law Judge  
Municipal Boundary Adjustment Unit

TJO:sjh

Enclosure: Statement of Need and Reasonableness

**Minnesota Office of Administrative Hearings**  
Municipal Boundary Adjustment Unit

**STATEMENT OF NEED AND REASONABLENESS (SONAR)**

**Proposed Amendment to Rules Governing Petitions, Receipt of Evidence and Hearings in Municipal Boundary Adjustment Matters, *Minnesota Rules*, Chapter 6000.**

**I. INTRODUCTION**

The Office of Administrative Hearings (OAH), Municipal Boundary Adjustment Unit (MBAU) proposes to amend the rules governing its proceedings in order to align *Minnesota Rules*, Chapter 6000 with a 2005 Executive Order and statutory changes. By way of Reorganization Order No. 192, dated February 2, 2005, Governor Tim Pawlenty transferred the functions, powers, duties and responsibilities of the MBAU in the Department of Administration to OAH. Pursuant to *Minnesota Statutes*, section 16B.37, subdivision 2, that transfer became effective on March 9, 2005.

MBAU began work on potential rules revisions in January of 2012. Advisory committees were not used and there were no public hearings for stakeholders prior to issuing the Request for Comments. The MBAU published a Request for Comments in the *State Register* on Monday May 21, 2012 (36 SR 1427). MBAU notified affected parties of the Request for Comments through multiple resources. The Additional Notice Plan on page 4 outlines the efforts MBAU utilized to notify affected parties. Three comments were received from the public in response to the Request for Comments.

**II. ALTERNATIVE FORMAT**

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Star Holman, Municipal Boundary Adjustment Unit, P.O. Box 64620, St. Paul, Minnesota, 55164-0620, email: [star.holman@state.mn.us](mailto:star.holman@state.mn.us), Telephone: (651) 361-7909, Fax: (651) 361-7936, TTY users may call the MBAU at (651) 361-7878.

**III. STATUTORY AUTHORITY**

The MBAU's statutory authority to adopt rules is stated in Minnesota Statutes section 414.01, subdivision 10, which provides: "To carry out the duties and powers imposed upon the chief administrative law judge under this chapter, the chief administrative law judge may adopt rules, that are reasonably necessary, in accordance with the procedure prescribed in the general laws relating to departments and agencies of the state."

Under this statute, the MBAU has the necessary statutory authority to adopt the proposed rules.

#### IV. REGULATORY ANALYSIS

**(1) Persons affected.** *The following are the classes of persons who probably will be affected by the proposed rules, including classes that will bear the costs of the proposed rules, and classes that will benefit from the proposed rules:*

The persons who may be affected by the proposed rules, including those who would bear costs or receive benefits, are those who choose to participate in boundary adjustment proceedings.

**(2) Costs to government agencies.** *The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rules and any anticipated effect on state revenues are as follows:*

MBAU does not anticipate that the clarifications and revisions of its current rules will result in additional costs to it or to any other agency. By amending *Minnesota Rule 6000.3400* to correct the filing fee for concurrent detachment and annexation matters, MBAU projects that it will result in \$47.00 in additional filing fees per year.

**(3) Less costly methods.** *The determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rules is as follows:*

MBAU has determined that the least costly method of revising its rules to reflect current statutes and the best practices in hearings is to undertake rule-making. MBAU is not aware of a lower cost, less intrusive method of making these changes.

**(4) Alternative methods.** *The description of any alternative methods for achieving the purpose of the proposed rules that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rules is as follows:*

Because the current version of MBAU's rules do not match more-recent changes to Chapter 414, a revision of MBAU's administrative rules, of some kind, is necessary. MBAU considered both good cause exempt rulemaking and standard rulemaking as methods of making the needed changes.

Under good cause exempt rulemaking, MBAU could have codified the changes made by the Legislature into its new rules, through a streamlined process. Minn. Stat. § 14.388, permits state agencies to modify rules so as to "incorporate specific changes set forth in applicable statutes when no interpretation of law is required."

However, by undertaking standard rulemaking, MBAU has the opportunity to propose changes to its rules that are beyond the precise terms of the new statutes. Standard rulemaking permits the MBAU to propose changes that incorporate some best-practices for hearings and make needed clarifications to its rules. MBAU believes that this broader set of revisions will benefit its stakeholders.

**(5) Cost of compliance.** *The probable costs of complying with the proposed rules, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals are as follows:*

The only cost associated with complying with the proposed rules amendments is the increase in filing fees for concurrent detachment and annexation filings. By correcting an error in the filing fee schedule for concurrent detachment and annexation filings, the MBAU estimates collecting an additional \$47.00 per year in filing fees. MBAU does not anticipate any significant costs with complying with the proposed rules amendments.

**(6) Cost and consequences of not adopting proposed rules.** *The probable costs or consequences of not adopting the proposed rules, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals are as follows:*

The key consequence of not adopting the proposed rules amendments is the continued confusion of the public. The revisions will remove any reference to the Minnesota Municipal Board which was terminated in 1999 and clarify the role of OAH in boundary adjustment proceedings.

The monetary cost associated with not adopting the proposed rules amendments is the loss of revenue. By correcting an error in the filing fee schedule, the MBAU will collect approximately \$47.00 per year in additional filing fees.

**(7) Differences between proposed rules and federal regulations.** *The assessment of any differences between the proposed rules and existing federal regulations and a specific analysis of the need for and reasonableness of each difference is as follows:*

No relationship exists between the proposed rules and federal regulations.

**(8) Cumulative effect of the rule with other federal and state regulations.** *An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.*

The proposed rules cover areas that are not addressed by federal law or other Minnesota state laws. Therefore, this consideration is not applicable.

## **V. ADDITIONAL STATUTORY REQUIREMENTS**

### **PERFORMANCE BASED RULES**

The proposed rules amendments were completed with the goal of aligning *Minnesota Rules*, Chapter 6000 with a 2005 Executive Order and statutory changes to Chapter 414. Revisions were also made to eliminate obsolete and confusing language as well as

correct an error in the filing fee requirement for concurrent detachment and annexation. The proposed amendments have incorporated best practices in hearings and made necessary revisions without imposing any unnecessary duties or burdens to those participating in boundary adjustment proceedings.

## **ADDITIONAL NOTICE PLAN**

Minnesota law (Minnesota Statutes, section 14.131 and 14.23) requires that the SONAR contain a description of MBAU's efforts to provide additional notice to persons who may be affected by the proposed amendments to the rules.

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in an order dated October 3, 2012 by Steve M. Mihalchick, Administrative Law Judge.

The efforts MBAU will utilize to publicize and notify affected parties of the proposed rule amendments are as follows:

- Publishing the Request for Comments, Dual Notice of Intent to Adopt and text of the proposed rule amendments in the State Register.
- Mailing or emailing a copy of the Request for Comments and the Dual Notice of Intent to Adopt to all persons who had requested to be on OAH's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a.
- Emailing the Request for Comments and the Dual Notice of Intent to Adopt to the following:
  - Secretary of State's Office
  - State Demographer's Office
  - Attorney General's Office
  - Department of Health
  - Department of Revenue
  - Department of Natural Resources-Division of Water
  - Minnesota Pollution Control Agency
  - State Auditor's Office
  - Office of the Legislative Auditor
  - MnDOT Geographic Information and Mapping Section
  - MN Local Government Boundaries Stakeholders
  - Department of Administration-MnGEO
  - Metropolitan Council
  - Minnesota Association of Townships
  - League of Minnesota Cities
  - Association of Metropolitan Municipalities
  - Association of Small Cities
  - Coalition of Greater Minnesota Cities

- Minnesota Clerks and Finance Officers Association
  - Association of Minnesota Counties
  - Minnesota Association of County Officers
  - Minnesota County Engineers Association
  - Minnesota Association of County Planning and Zoning Administrators
  - Minnesota Association of County Surveyors
  - Minnesota County Geographic Information Systems Association
  - Wright-Hennepin Electric Association
  - Wright County
  - Rochester-Olmsted Planning Department
  - City of Winona
  - Northwest Regional Development Commission
  - Arrowhead Regional Development Commission
  - Region Five Regional Development Commission
  - Mid-Minnesota Regional Development Commission
  - Upper MN Valley Regional Development Commission
  - East Central RDC Regional Development Commission
  - Southwest RDC Regional Development Commission
  - Region Nine Regional Development Commission
  - MnDOT District 1 Engineer
  - MnDOT District 2 Engineer
  - MnDOT District 3 Engineer
  - MnDOT District 4 Engineer
  - MnDOT Metro District Engineer
  - MnDOT District 6 Engineer
  - MnDOT District 7 Engineer
  - MnDOT District 8 Engineer
- Publishing the proposed rules, the Request for Comments, the Dual Notice of Intent to Adopt, and the SONAR on the MBAU's website at [www.mba.state.mn.us](http://www.mba.state.mn.us).
  - Notifying the Minnesota Legislature per Minnesota Statutes, section 14.116.
  - Publishing a notice in the Minnesota Association of Townships Newspaper and the League of Minnesota Cities Bulletin.

### **CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT**

As required by Minnesota Statutes, section 14.131, the MBAU will consult with Minnesota Management and Budget (MMB). On the same day the MBAU sends the documents to the Governor's Office for review and approval, copies will also be sent to MMB. These filings will occur prior to publishing the Dual Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The MBAU will submit a copy of the cover correspondence and any response received from the MMB to OAH at the hearing or with the documents it submits

for review to the assigned judge.

## **DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION**

As required by Minnesota Statutes, section 14.128, subdivision 1, the MBAU has determined that the proposed rules amendments will not require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules because there are no substantive changes to the current hearing practice.

## **COST OF COMPLYING FOR SMALL BUSINESS OR CITY**

### **Agency Determination of Cost**

As required by Minnesota Statutes, section 14.127, the MBAU has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city because there are no substantive changes to requirements and participation in boundary adjustment proceedings is voluntary.

## **VI. RULE BY RULE ANALYSIS**

### **Overview**

The primary reason that the proposed rules amendments are necessary is to align *Minnesota Rules*, Chapter 6000 with a 2005 Executive Order and statutory changes. By way of Reorganization Order No. 192, dated February 2, 2005, Governor Tim Pawlenty transferred the functions, powers, duties and responsibilities of the MBAU in the Department of Administration to OAH. Pursuant to *Minnesota Statutes*, section 16B.37, subdivision 2, that transfer became effective on March 9, 2005. The proposed rules amendments were also needed to eliminate obsolete or confusing language as well as correct the filing fee requirement for concurrent detachment and annexation filings.

### **6000.0100 DEFINITIONS. Subpart 1. Statement of Purpose.**

The title has been changed from "Scope" to "Statement of Purpose."

### **6000.0100 DEFINITIONS. Subpart 2. Parties.**

This part has been amended and rewritten for clarity without making any substantive changes to requirements.

### **6000.0100 DEFINITIONS. Subpart 5. Person**

Since 1999, the OAH has held the required hearings for MBAU pursuant to Chapter 414. Therefore, a definition of "person" has been added to align this rule with the procedures of 1400.5100 Subpart 8.

#### **6000.0110 COMMENCEMENT OF PETITION.**

This part has been amended for clarity without making any substantive changes to requirements.

#### **6000.0200 FORM OF PETITION. Subpart 2. Body.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes by removing a reference to "board" and replacing it with "chief administrative law judge or the delegate of the chief administrative law judge."

#### **6000.0400 REPRESENTATION.**

This part has been amended and rewritten for clarity without making any substantive changes to requirements.

#### **6000.0500 PLEADINGS.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes by removing a reference to "board" and replacing it with "chief administrative law judge or the delegate of the chief administrative law judge."

#### **6000.0600 PETITION AS EVIDENCE.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes by removing a reference to "board" and replacing it with "chief administrative law judge or the delegate of the chief administrative law judge."

#### **6000.0700 AMENDMENTS.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes by removing a reference to "board" and replacing it with "chief administrative law judge or the delegate of the chief administrative law judge."

#### **6000.0800 FILING OF PETITION.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes by removing a reference to "board" and replacing it with "chief administrative law judge or the delegate of the chief administrative law judge." A title of "Certification" as well as punctuation have been added to Part B for clarification. Part C has been amended to include the title "Map" and has been rewritten for clarity. Part D. Description has been added as M.S. § 414.0325 Subd. 1(d) and M.S. § 414.041 Subd. 1(c) have references to a description.

#### **6000.0900 CONTINUANCES.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and



statutory changes by removing a reference to “board” and replacing it with “presiding administrative law judge.”

#### **6000.1150 PREHEARING CONFERENCE.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes. Since 1999, the OAH has held the required hearings for MBAU pursuant to Chapter 414. Therefore, the language has been rewritten to align this rule with the procedures of Part 1400.6500.

#### **6000.1200 PUBLIC HEARINGS.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes by removing a reference to “board” and replacing it with “presiding administrative law judge.”

#### **6000.1310 EXAMINATION OF WITNESSES.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes. Since 1999, the OAH has held the required hearings for MBAU pursuant to Chapter 414. Therefore, the language has been rewritten to align this rule with the procedures of Part 1400.7800.

#### **6000.1400 EXHIBITS.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes by removing references to “board” and “presiding officer” and replacing these references with “presiding administrative law judge.”

#### **6000.1510 ORDER OF PROCEDURE.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes. Since 1999, the OAH has held the required hearings for MBAU pursuant to Chapter 414. Therefore, the language has been rewritten to align this rule with the procedures of Part 1400.7800.

#### **6000.1600 FAILURE TO APPEAR.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes by removing a reference to “board” and replacing it with “presiding administrative law judge.”

#### **6000.1700 ADMISSION OF EVIDENCE.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes. Since 1999, the OAH has held the required hearings for MBAU

pursuant to Chapter 414. Therefore, the language has been rewritten to align this rule with the procedures of Part 1400.7300.

**6000.1900 EVIDENCE IN A PROCEEDING. Subpart 1. Notice of certain facts.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes. Since 1999, the OAH has held the required hearings for MBAU pursuant to Chapter 414. Therefore, the language has been rewritten to align this rule with the procedures of Part 1400.7300.

**6000.1900 EVIDENCE IN A PROCEEDING. Subpart 2. Record of proceedings.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes by removing a reference to “board” and replacing it with “chief administrative law judge, delegate of the chief administrative law judge, or presiding administrative law judge.” A reference to an electronic recording device has been removed without making any substantive changes to requirements.

**6000.2210 SUBPOENAS. Subpart 1. Generally.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes. Since 1999, the OAH has held the required hearings for MBAU pursuant to Chapter 414. Therefore, the language has been rewritten to align this rule with the procedures of Part 1400.7000.

**6000.2210 SUBPOENAS. Subpart 3. Service.**

This part has been amended and rewritten for clarity without making any substantive changes to requirements.

**6000.2500 REQUESTS FOR WRITTEN OR ORAL ARGUMENTS.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes. Since 1999, the OAH has held the required hearings for MBAU pursuant to Chapter 414. Therefore, the language has been rewritten to align this rule with the procedures of Part 1400.7800.

**6000.2600 FILING AND SERVICE OF WRITTEN ARGUMENTS.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes by removing references to “board” and “executive director” and replacing these references with “presiding administrative law judge.”

**6000.3000 REQUEST FOR ADDITIONAL HEARING.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes by removing references to “board” and replacing these references with “presiding administrative law judge.”

#### **6000.3100 REQUEST FOR AMENDMENT.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes by removing references to “board” and replacing these references with “presiding law judge.” The sentence referencing relief being informally sought by telegram has been removed. These amendments will not result in any substantive changes to requirements.

#### **6000.3400 SCHEDULE OF FILING FEES. Subpart 1. Incorporation of a municipality.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes by removing a reference to “board.” A reference to M.S. § 414.02 has been included for clarification of the fee for incorporation of a municipality. These amendments will not result in any substantive changes to requirements.

#### **6000.3400 SCHEDULE OF FILING FEES. Subpart 2. Annexation of an entire town to a municipality.**

This part has been rewritten and includes a reference to M.S. § 414.031, subd. 1(a)(4) for clarification of the fee for annexation of an entire town to a municipality. These amendments will not result in any substantive changes to requirements.

#### **6000.3400 SCHEDULE OF FILING FEES. Subpart 3. Annexation of property by chief administrative law judge’s order.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes by removing references to “board” and replaces these references with “chief administrative law judge.” A reference to M.S. § 414.031 has been included for clarification of the fee for annexation by chief administrative law judge’s order. These amendments will not result in any substantive changes to requirements.

#### **6000.3400 SCHEDULE OF FILING FEES. Subpart 4. Orderly Annexation.**

This part has been rewritten and includes a reference to M.S. § 414.0325 for clarification of the fees for orderly annexation. These amendments will not result in any substantive changes to requirements.

#### **6000.3400 SCHEDULE OF FILING FEES. Subpart 5. Annexation by Ordinance.**

This part has been rewritten and includes a reference to M.S. § 414.033 for clarification of the fee for annexation by ordinance. These amendments will not result in any substantive changes to requirements.

#### **6000.3400 SCHEDULE OF FILING FEES. Subpart 6. Consolidation of two or more municipalities.**

This part has been rewritten and includes a reference to M.S. § 414.041 for clarification of the fee for consolidation of two or more municipalities. These amendments will not result

in any substantive changes to requirements.

**6000.3400 SCHEDULE OF FILING FEES. Subpart 7. Detachment of property from a municipality.**

This part has been rewritten and includes a reference to M.S. § 414.06 for clarification of the fee for detachment of a property from a municipality. These amendments will not result in any substantive changes to requirements.

**6000.3400 SCHEDULE OF FILING FEES. Subpart 8. Concurrent detachment and annexation of incorporated land.**

A correction has been made to the per acre filing fee requirement for concurrent detachment and annexation by increasing the fee from \$4.00 to \$5.00. The filing fees were increased in 1988 but an increase in concurrent detachment and annexation was inadvertently omitted. By correcting this omission, the per acre fees for boundary adjustments pursuant to M.S. § 414.06, M.S. § 414.061, M.S. § 414.033, and portions of M.S. § 414.031 will be consistent. This part has also been rewritten and includes a reference to M.S. § 414.061 for clarification of the fee for concurrent detachment and annexation.

**6000.3400 SCHEDULE OF FILING FEES. Subpart 9. Waiver of fees.**

This part has been amended to align Chapter 6000 with a 2005 Executive Order and statutory changes by removing a reference to "board" and replacing the reference with "chief administrative law judge or the delegate of the chief administrative law judge."

**LIST OF WITNESSES**

If these proposed rules amendments go to hearing, the MBAU anticipates calling agency staff to testify in favor of the proposed rules.

**LIST OF EXHIBITS**

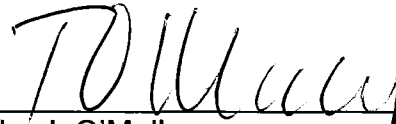
In support of the need for and reasonableness of the proposed rules amendments, the MBAU anticipates that, if a hearing is held, it will enter the following exhibits into the record:

1. Rules of the Minnesota Municipal Board Parts 6000.0100 to 6000.3400 (May 6, 1985).
2. Minnesota Municipal Board Petitions and Hearings Chapter 6000 (August 29, 1988).
3. State of Minnesota Department of Administration Reorganization Order No. 192.
4. Laws of Minnesota for 2008, Chapter 196, Article 1.
5. Elements of the rulemaking record maintained under Minnesota Statutes, section 14.365.

**CONCLUSION**

Based on the foregoing, the proposed rules are both needed and reasonable.

November 13, 2012



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Timothy J. O'Malley  
Assistant Chief Administrative Law Judge  
Municipal Boundary Adjustment Unit