

[For the letter author: This sample letter addressed to the ALJ is for you to use when responding to comments about proposed rules made at or after a hearing. You might choose this format or prefer to design your own. There are no rigid guidelines for the response letter format. Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the Paragraph tool. Do not forget to delete this information.]

[date]

The Honorable [Name]

Administrative Law Judge

Office of Administrative Hearings

600 North Robert Street

P.O. Box 64620

Saint Paul, Minnesota 55164-0620

# Re: In the Matter of the Proposed Rules of the Department of [Name] [Governing/about/for] [Topic]; OAH Docket No. [Number]; Governor’s Revisor’s ID Number [Number]

Dear Judge [Name]:

This letter contains the Department of [Name]’s responses to comments it has received.

1. The Department of [Name] has met its burden to show that the proposed rule is needed and reasonable.

Minnesota Statutes, section 14.14, subdivision 2, requires the Department of [Name] to “make an affirmative presentation of facts establishing the need for and reasonableness of the proposed rules . . . .” [In making its affirmative presentation, the Department must show that its action has a rational basis. See Beck, G., and M. Konar-Steenberg, section 22.1, [Minnesota Administrative Procedure, Third Edition https://mitchellhamline.edu/minnesota-administrative-procedure/.](https://mitchellhamline.edu/minnesota-administrative-procedure/) (2014)]

The Department has stated its affirmative presentation in its Statement of Need and Reasonableness, which the Department relies on to establish the need for and reasonableness of the proposed rules. The Department’s evidence clearly meets the rational basis standard and compels one to conclude that the proposed rules of the Department of [Name] are needed and reasonable.

2. The Department of [Name] has responded to the comments made and issues raised during the hearing and comment period.

[For example: The proposed Department of [Name] rules governing [topic] generated a great deal of interest as shown by the attendance at the public hearing and the written submissions made since the hearing. Many comments were made and many issues were raised during this time. We have summarized these comments and issues in the order of the subpart or item that they relate to. The Department’s response follows each comment or issue.]

[The following examples are excerpts from the 3/5/90 letter sent to Administrative Law Judge Steve Mihalchick in response to comments made during and after the Department of Public Safety’s hearing on Driver Training Rules. The original letter was almost 25 pages long. (Note: the names of the persons and organizations who commented at the rule hearing have been replaced with AB, CD, EF, etc.)]

[Rules Cite] Part 7411.0100, subpart 17. Instruction time.

[Comment] AB asked if “instruction” included both classroom and laboratory. He preferred that classroom instruction would have some reasonable break-time provision.

[Our Response] Break time is not counted as instruction time under the proposed rules. Note that the proposed requirement merely changes the wording and not the meaning of the former requirement. The former requirement said: “A one-hour lesson shall mean one hour of actual instruction.” The Department will not change this subpart.

[Rules Cite] Part 7411.0610, subpart 8. 40 hours of required training for car, bus, and truck instructors.

[First Comment] CD proposed that the number of hours of training required to become an instructor be increased from 40 hours to 80 hours. He also proposed that the instructor training correspond to that required by the Board of Teaching, with the exception of the practicum and organization and administration requirements. He attested to the increasing complexity of the driving task as the reason for recommending this increase in instructor training. EF made a similar recommendation. He urged that the Department increase the required instructor training to include the following three courses required by the board of teaching: driver education classroom; driver education laboratory; and driver education practicum.

[Second Comment] The XYZ Driving Schools Association recommended that we adopt the requirements for training instructors put forward by national professional associations such as North American Driver Education Association and Driving Schools of America. These requirements would involve 20 hours of classroom and 30 to 60 hours of laboratory training for a person to qualify as an instructor. XYZ pointed out that this training was greatly different than the training required by the board of teaching.

[Third Comment] GH, IJ, KL, MN, AB, and others recommended that the training requirement of 40 hours remain unchanged. GH stated he was a licensed teacher and a licensed driver training instructor and that the training his program gives to all of its instructors is better than the training he received as a teacher. IJ asked whether proof could be provided that one kind of instructor training was any better than any other and stated that there was no evidence that training beyond the 40 hours was necessary for an instructor to be qualified. MN said that 40 hours of training is often not enough for her instructors, but that she felt the decision to give more training should be left up to the owner of the program.

[Our Response] There is no consensus of opinion and no proof that any one kind of training for instructors is better than any other. The Department is willing to listen to evidence and is open to recommendations based on this evidence regarding training requirements for instructors. However, at this time, the Department will not change the proposed rules regarding training requirements for instructors because there is no proof that instructors produced under the present system are inadequate. Further, it should be noted that the present 40 hour requirement is a minimum standard. Programs are free to give more training as necessary to satisfy the program that an instructor is properly prepared to begin teaching.

[Rules Cite] Part 7411.0700, items A and B. “Satisfactory” completion of instruction.

[First Comment] The XYZ Driving Schools Association recommended that references to “satisfactorily” or “successfully” completing instruction should be deleted because they are ambiguous. XYZ recommended that the certificates and verifications of course completion should be issued when the student has completed the required hours of instruction.

[Second Comment] CD recommended that the Department establish criteria for successfully completing or passing the driver training course.

[Our Response] As stated earlier in this letter at part 7411.0510, subpart 7, it has been Department policy to interpret “satisfactory” or “successful” completion of instruction to mean that the student has completed the required topics and hours of instruction. This interpretation is based on the Department’s position that driver training programs provide instruction, but the state has the responsibility to test a student to determine whether the student is qualified to obtain a driver’s license. The recommendation of XYZ is clearly consistent with Department policy. The Department proposes to change part 7411.0700, subpart 8, as follows:

[Our Proposed Change to the Rules]

 A. The authorized official shall furnish the student:

 (1) a certificate of course completion within 15 calendar days after a student ~~satisfactorily~~ completes instruction, including both the required course of classroom instruction and the required course of laboratory instruction; or

 (2) a verification statement of completion of classroom instruction within 15 calendar days after the student ~~satisfactorily~~ completes the required course of classroom instruction and notifies the program that the student intends to complete laboratory instruction with another program.

 B. The authorized official shall notify the department’s driver and vehicle services division within a reasonable period of time of when a student who is 15 years of age fails to continue or ~~successfully~~ complete the required automobile driver training course, including laboratory instruction.

[Rationale why the change is not substantial] This change clarifies ambiguous requirements and accurately reflects the Department’s long-standing interpretation of the meaning of “satisfactory” or “successful” completion of instruction. The change does not make the rules substantially different. The scope of the proposed rules included the issue of satisfactory or successful completion of instruction. Clarification of the rules consistent with long-standing interpretation is a logical outgrowth of the notice and the comments made in response. Interested parties received fair warning that this could be an issue as is shown by the submission of testimony on both sides of this issue. Finally, the effects of the rule will not be greatly different from the effects of the rule as proposed.

The Department has addressed the many concerns raised during the hearing and comment period. The Department has shown that the rules are needed and reasonable. We respectfully submit that the Administrative Law Judge should recommend adoption of these rules.

Respectfully submitted,

[Name], Commissioner

Department of [Name]

[Note: There is no statutory requirement that the Commissioner or Director sign this response but it is a good idea to have management review and sign off to get their buy-in.]

**Notes on Substantial Difference.** The limitations on changing proposed rules are stated in Minnesota Statutes, section 14.05, subdivision 2, which prohibits an agency from modifying proposed rules so that they are substantially different from the proposed rules.

“14.05 GENERAL AUTHORITY.

Subd. 2. **Authority to modify proposed rule.** (a) An agency may modify a proposed rule in accordance with the procedures of the administrative procedure act. However, an agency may not modify a proposed rule so that it is substantially different from the proposed rule in the notice of intent to adopt rules or notice of hearing.

(b) A modification does not make a proposed rule substantially different if:

(1) the differences are within the scope of the matter announced in the notice of intent to adopt or notice of hearing and are in character with the issues raised in that notice;

(2) the differences are a logical outgrowth of the contents of the notice of intent to adopt or notice of hearing and the comments submitted in response to the notice; and

(3) the notice of intent to adopt or notice of hearing provided fair warning that the outcome of that rulemaking proceeding could be the rule in question.

(c) In determining whether the notice of intent to adopt or notice of hearing provided fair warning that the outcome of that rulemaking proceeding could be the rule in question the following factors must be considered:

(1) the extent to which persons who will be affected by the rule should have understood that the rulemaking proceeding on which it is based could affect their interests;

(2) the extent to which the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of intent to adopt or notice of hearing; and

(3) the extent to which the effects of the rule differ from the effects of the proposed rule contained in the notice of intent to adopt or notice of hearing.”