



# JOINT FORCE HEADQUARTERS

North Dakota National Guard

PO Box 5511

Bismarck, North Dakota 58506-5511

September 13, 2007

Office of the Adjutant General

Administrative Rules Committee  
ATTN: North Dakota Legislative Counsel  
600 East Boulevard  
Bismarck, ND 58505-0360

Dear Senator Fischer and Committee Members:

In response the questions posed by the July 31, 2007 letter from Mr. Walstad, the Department of Emergency Services provides the following information to aid in the study of agency exemption under the AAPA:

1. Does the Department of Emergency Services require exemption from the rulemaking provisions of NDCC Chapter 28-32, the adjudicative proceedings provisions of Chapter 28-32, or both? Please explain

***Answer: Yes. DES requests continued exemption from both the rulemaking and adjudicative provisions of Chapter 28-32. The rationale is that DES provides Homeland Security Grants and expenditures but is generally bound by federal rules and guidelines. If the grant process were subject to either the rulemaking or adjudicative hearing process there would be significant delay in the process and expenditure of funds. Because the federal rules and guidelines have been changing yearly it would be nearly impossible to create a state process. In addition, because we demonstrated the ability to manage the Hazard Mitigation Grant Program (HMPG), and have an approved Enhanced mitigation plan and a demonstrated commitment to mitigation activities we have been designated by FEMA a "Managing State" which provides DES with much greater authority in managing HMPG without FEMA involvement. This speeds up the process and eliminates bureaucracy. Adding layers with Chapter 28-32 requirements will not add to the process, it will create delay and jeopardize our status as a "Managing State."***

2. Does the Department of Emergency Services make any rules, for purposes other than internal management, which are of general statewide application and might affect rights or duties of persons outside your agency? Please Explain.

***Answer: Yes. In the execution of our grants and other federal funds, we have rules established to ensure the process is efficient, timely, and that the funds are spent in accordance with federal rules and guidelines. We also establish processes and procedures for reporting and tracking of grant funds.***

3. Does the Department of Emergency Services hold hearings to act on complaints, applications, or appeals? If so, what rules govern the conduct of the hearing and rights of the parties?

***Answer: Yes. DES serves as an agent for disaster and Homeland Security grants. We also, as a "Managing State," serve as an initial appeal agent for disaster grants as an agent of FEMA. Federal rules control the process.***

4. Do you believe the exemption for your agency under subsection 2 of NDCC Section 28-32-01 should be continued unchanged, modified, or eliminated?

***Answer: Yes. DES has been operating with an exemption from the AAPA since its inception. We are not aware of any particular case where the rights of a particular citizen have been negatively impacted and there was not recourse through other avenues. We currently have the ability to execute federal grants in the timely fashion and agency action generally does not affect the rights of an individual citizen but impacts the duties and responsibilities of local government and personnel.***

If any member needs additional information to aid the analysis we would be pleased to respond. I thank you for your consideration.

Sincerely,



David Sprynczynatyk  
Major General, NDNG  
The Adjutant General

Cc:

Greg Wilz, Director Department of Homeland Security  
Russ Timmreck, Director State Radio.