

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Amendments to Rules
Governing Commissioner Filed Returns
Minnesota Rules, Part 8160.0620

**ORDER ON REVIEW
OF RULES UNDER
MINN. STAT. § 14.388
AND MINN. R. 1400.2400**

This matter came before Administrative Law Judge Kimberly M. Middendorf upon the application of the Minnesota Department of Revenue (Department) for a legal review under Minn. Stat. § 14.388 (2020).

On May 17, 2021, the Department filed documents with the Office of Administrative Hearings seeking review and approval of the above-entitled rules under Minn. Stat. § 14.388 and Minn. R. 1400.2400 (2019).

Based upon a review of the written submissions by the Department, and for the reasons set out in the Memorandum which follows below,

IT IS HEREBY DETERMINED THAT:

1. The rules were adopted in compliance with the procedural requirements of Minn. Stat. Ch. 14 (2020), and Minn. R. Ch. 1400 (2019).
2. According to Minn. Stat. §§ 270C.06 and 297E.06, subd. 4(e), the Department has the statutory authority to adopt these proposed rules using the good cause exemption rulemaking process.
3. The proposed changes to Minn. R. 8160.0620, subp. 1(B) and subp. 6 incorporate specific changes set forth in applicable statutes when no interpretation of law is required and do not alter the sense, meaning, or effect of the rule. These changes are consistent with Minn. Stat. § 14.388 subd. 1 (3) and (4). The Department has established that it may utilize the good cause exemption in connection with this rulemaking.

IT IS HEREBY ORDERED THAT:

The amendments to Minn. R. 8160.0620 are **APPROVED**.

Dated: May 27, 2021


Kimberly Middendorf
Administrative Law Judge

MEMORANDUM

I. Introduction

The Department seeks to revise Minn. R. 8160.0620 by amending subparts 1 and 6. The Department requests approval of these revisions pursuant to Minn. Stat. § 14.388, subd. 1(3) and (4), which provides that:

If an agency for good cause finds that the rulemaking provisions of this chapter are unnecessary, impracticable, or contrary to the public interest when adopting, amending, or repealing a rule to . . . incorporate specific changes set forth in applicable statutes when no interpretation of law is required or make changes that do not alter the sense, meaning, or effect of a rule . . . the agency may adopt, amend, or repeal the rule after satisfying the requirements of subdivision 2 and section 14.386, paragraph (a), clauses (1) to (4).

The Office of Administrative Hearings must review the Department's filing and must approve or disapprove the rule within 14 days after submission of the rule by the agency.¹ As part of that review, the Office of Administrative Hearings must determine whether the agency has provided adequate justification for its use of the good cause exemption,² as well as determining whether the rule meets the requirements of Minn. R. 1400.2100, items A and D to G (2019).³

II. Notice and Comment

An agency proposing to adopt, amend, or repeal a rule under Minn. Stat. § 14.388 must give electronic notice of its intent in accordance with Minn. Stat. § 16E.07, subd. 3 (2020), and notice by United States mail or electronic mail to persons who have registered their names with the agency under Minn. Stat. § 14.14, subd. 1a (2020).⁴ The agency must give such notice no later than the date the agency submits the proposed rule for review to the Office of Administrative Hearings and must include:

- (1) the proposed rule, amendment, or repeal;
- (2) an explanation of why the rule meets the requirements of the good cause exemption . . . ; and,
- (3) a statement that interested parties have five business days after the date of the notice to submit comments to the Office of Administrative Hearings.

¹ Minn. Stat. § 14.386(a)(3); Minn. R. 1400.2400, subp. 3.

² Minn. Stat. § 14.388, subd. 1.

³ Minn. R. 1400.2400, subp. 3.

⁴ Minn. Stat. § 14.388, subd. 2.

Compliance with public notice requirements regarding rules to be adopted under the good cause exemption is particularly important. “Exempt rulemaking is an exceptional procedure,”⁵ that bypasses full notice and hearing procedures designed to comply with one of the stated purposes of the Administrative Procedure Act, to “increase public participation on the formulation of administrative rules.”⁶

In this proceeding, the Department provided notice as required by statute. The Department provided electronic notice to the public of this rulemaking under Minn. Stat. § 16E.07, subd. 3(2), by publishing notice of its intent to adopt the proposed rule revisions on its website.⁷ The Department also sent notice by U.S. Mail or by email to all persons and associations on the rulemaking mailing list who provided the Department with their mailing or email address.⁸ The Department also certified the accuracy of its mailing list as of May 12, 2021.⁹

The Department’s notice was accompanied by a copy of the proposed rules, along with the Findings and Statement of Supporting Reasons regarding the rulemaking, which are to be incorporated by reference into the Commissioner’s Order Adopting Rules. The notice and accompanying documents specifically explain the Department’s use of the good cause exemption. Finally, the notice advised that interested parties had five business days after the date of the notice to submit comments to the Office of Administrative Hearings.

The period for any public comments regarding the proposed revisions to Minn. R. 8160.0620 closed at 4:30 p.m., on May 24, 2021. The Office of Administrative Hearings received two comments regarding the use of the good cause exemption.

III. The Rules are Approved

Minn. Stat. § 270C.06 (2020) provides that “[t]he commissioner shall, from time to time, make, publish, and distribute rules for the administration and enforcement of state revenue laws.” Minn. Stat. § 297E.06, subd. 4(e), authorizes the commissioner to prescribe standards for annual financial audits. Minn. R. 8160.0620 governs the requirements for commissioner-filed returns (CFR). The Department contends that the rule revision of subpart 1 is required to conform the rule to statutory changes, as opined by the Minnesota Supreme Court in *Berglund v. Commissioner of Revenue*.¹⁰ The amended rule removes the signature requirement. The proposed amendment of subpart 6 does not change the substance of the rule.

⁵ *Jewish Cmty. Action v. Comm’r of Public Safety*, 657 N.W.2d 604, 610 (Minn. Ct. App. 2003) (citing *Buschmann v. Schweiker*, 676 F.2d 352, 357 (9th Cir. 1982)).

⁶ Minn. Stat. § 14.001(5).

⁷ See Certificate of Mailing and Notice of Submission of Rules Proposed for Adoption without a Public Hearing to the Office of Administrative Hearings.

⁸ *Id.*; see also Minn. Stat. § 14.14, subd. 1a.

⁹ See Certificate of Accuracy of the Mailing List.

¹⁰ 877 N.W.2d 780 (Minn. 2016) (concluding that signature requirement of Minn. R. 8160.0620 was inconsistent with governing statutes).

Both commenters objected to use of the good cause exemption, because they believe removal of the requirement for the commissioner to “sign” the affected returns may affect taxpayer rights and they believe additional time should be afforded to allow interested persons to consider the rule amendment. However, as the Minnesota Supreme Court observed, the signature requirement of the rule conflicts with the statutory requirements for CFRs. Because of this conflict, the rule’s signature requirement is void and unenforceable as a matter of law. Its removal, therefore, necessarily has no effect on taxpayer rights and can achieve no end but to eliminate a potential source of confusion for taxpayers. This is the type of situation for which the Legislature created the good cause exemption.

The Administrative Law Judge determines that the Department has statutory authority to adopt the proposed rules. The Administrative Law Judge further determines that the Department has established it may use the good cause exemption permitted under Minn. Stat. § 14.388, subd. 1(3), in order to “incorporate specific changes set forth in applicable statutes when no interpretation of law is required.” The changes to subpart 1 proposed by the Department are necessitated by statutory revisions and no interpretation of law is required. Further, because the changes to subpart 6 do not change the substance of the rule, use of the good cause exemption is permissible under Minn. Stat. § 14.388, subd. 1(4). Finally, the rules may be approved under the standards articulated in Minn. R. 1400.2100(A), (D)-(G).

K. J. M.