

## CHAPTER 14

### ADMINISTRATIVE PROCEDURE

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#### 14.03 NONAPPLICABILITY.

*[For text of subsds 1 and 2, see M.S.1994]*

**Subd. 3. Rulemaking procedures.** The definition of a rule in section 14.02, subdivision 4, does not include:

- (1) rules concerning only the internal management of the agency or other agencies that do not directly affect the rights of or procedures available to the public;
- (2) rules of the commissioner of corrections relating to the placement and supervision of inmates serving a supervised release term, the internal management of institutions under the commissioner's control, and rules adopted under section 609.105 governing the inmates of those institutions;
- (3) rules relating to weight limitations on the use of highways when the substance of the rules is indicated to the public by means of signs;
- (4) opinions of the attorney general;
- (5) the systems architecture plan and long-range plan of the state education management information system provided by section 121.931;
- (6) the data element dictionary and the annual data acquisition calendar of the department of children, families, and learning to the extent provided by section 121.932;
- (7) the occupational safety and health standards provided in section 182.655;
- (8) revenue notices and tax information bulletins of the commissioner of revenue;
- (9) uniform conveyancing forms adopted by the commissioner of commerce under section 507.09; or
- (10) the interpretive guidelines developed by the commissioner of human services to the extent provided in chapter 245A.

**History:** 1995 c 207 art 2 s 1; 1Sp1995 c 3 art 16 s 13

#### 14.04 AGENCY ORGANIZATION; GUIDEBOOK.

To assist interested persons dealing with it, each agency shall, in a manner prescribed by the commissioner of administration, prepare a description of its organization, stating the gen-

eral course and method of its operations and where and how the public may obtain information or make submissions or requests. The commissioner of administration shall publish these descriptions at least once every four years commencing in 1981 in a guidebook of state agencies. Notice of the publication of the guidebook shall be published in the State Register and given in newsletters, newspapers, or other publications, or through other means of communication.

**History:** 1995 c 233 art 2 s 5

#### 14.05 GENERAL AUTHORITY.

*[For text of subd 1, see M.S.1994]*

**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.

**Subd. 3. Authority to withdraw proposed rule.** An agency may withdraw a proposed rule any time prior to filing it with the secretary of state. It shall publish notice that the proposed rule has been withdrawn in the State Register. If a rule is withdrawn, the agency may again propose it for adoption, either in the original or modified form, but the agency shall comply with all procedures of sections 14.05 to 14.28.

*[For text of subd 4, see M.S.1994]*

**Subd. 5. Review and repeal of rules.** By December 1 of each year, an agency shall submit a list of all the rules of the agency to the governor, the legislative commission to review administrative rules, and the revisor of statutes. The list must identify any rules that are obsolete and should be repealed. The list must also include an explanation of why the rule is obsolete and the agency's timetable for repeal.

**History:** 1995 c 233 art 2 s 6,7,56

#### 14.06 REQUIRED RULES.

(a) Each agency shall adopt rules, in the form prescribed by the revisor of statutes, setting forth the nature and requirements of all formal and informal procedures related to the administration of official agency duties to the extent that those procedures directly affect the rights of or procedures available to the public.

(b) Upon the request of any person, and as soon as feasible and to the extent practicable, each agency shall adopt rules to supersede those principles of law or policy lawfully declared by the agency as the basis for its decisions in particular cases it intends to rely on as precedents in future cases. This paragraph does not apply to the public utilities commission.

**History:** 1995 c 233 art 2 s 8

**14.07 FORM OF RULE.**

*[For text of subs 1 to 4, see M.S.1994]*

**Subd. 6. Style and form revisions.** The revisor of statutes may periodically prepare style and form revisions of rules to clarify, modernize, or simplify the text without material change to the rules' substance or effect. Before beginning any revision, the revisor shall consult the agency whose rules will be subject to the revision. After the revision is prepared, the revisor shall present it to the agency and receive its consent to proceed to seek adoption of the revision. Upon receiving consent, the revisor shall seek adoption of the rules in accordance with sections 14.05 to 14.28. However, the need and reasonableness statement and any hearing shall be restricted to the issue of whether any material change in the substance and effect of the rule is proposed by the revisor. The revisor shall mail notice of any hearing to the persons registered with the agency whose rules are the subject of the revision. The revisor shall pay all costs to publish notices in the State Register and to replenish the agency's stock of rules which exist at the time the revisor adopts the revised rules.

*[For text of subd 7, see M.S.1994]*

**History:** 1995 c 233 art 2 s 56

**14.08 APPROVAL OF RULE AND RULE FORM; COSTS.**

(a) Two copies of a rule adopted pursuant to section 14.26 shall be submitted by the agency to the chief administrative law judge. The chief administrative law judge shall send one copy of the rule to the revisor on the same day it is submitted by the agency under section 14.26. Within five days after receipt of the rule, excluding weekends and holidays, the revisor shall either return the rule with a certificate of approval of the form of the rule to the chief administrative law judge or notify the chief administrative law judge and the agency that the form of the rule will not be approved.

If the chief administrative law judge disapproves a rule, the agency may modify it and the agency shall submit two copies of the modified rule to the chief administrative law judge who shall send a copy to the revisor for approval as to form as described in this paragraph.

(b) One copy of a rule adopted after a public hearing shall be submitted by the agency to the revisor for approval of the form of the rule. Within five working days after receipt of the rule, the revisor shall either return the rule with a certificate of approval to the agency or notify the agency that the form of the rule will not be approved.

(c) If the revisor refuses to approve the form of the rule, the revisor's notice shall revise the rule so it is in the correct form.

(d) The chief administrative law judge shall assess an agency for the actual cost of processing rules under this section. Each agency shall include in its budget money to pay the assessments. Receipts from the assessment must be deposited in the administrative hearings account created in section 14.54.

**History:** 1995 c 233 art 2 s 9

**14.09 PETITION FOR ADOPTION OF RULE.**

Any person may petition an agency requesting the adoption, amendment, or repeal of any rule. The petition shall be specific as to what action is requested and the need for the action. Upon receiving a petition an agency shall have 60 days in which to make a specific and detailed reply in writing as to its planned disposition of the request and the reasons for its planned disposition of the request. If the agency states its intention to hold a public hearing on the subject of the request, it shall proceed according to sections 14.05 to 14.28. The chief administrative law judge shall prescribe by rule the form for all petitions under this section and may prescribe further procedures for their submission, consideration, and disposition.

**History:** 1995 c 233 art 2 s 10

**14.10 [Repealed, 1995 c 233 art 2 s 57]****14.101 ADVICE ON POSSIBLE RULES.**

**Subdivision 1. Required notice.** In addition to seeking information by other methods designed to reach persons or classes of persons who might be affected by the proposal, an

agency, at least 60 days before publication of a notice of intent to adopt or a notice of hearing, shall solicit comments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency by causing notice to be published in the State Register. The notice must include a description of the subject matter of the proposal, the types of groups and individuals likely to be affected, and indicate where, when, and how persons may comment on the proposal and whether and how drafts of any proposal may be obtained from the agency.

This notice must be published within 60 days of the effective date of any new statutory grant of required rulemaking.

**Subd. 2. Advisory committees.** Each agency may also appoint committees to comment, before publication of a notice of intent to adopt or a notice of hearing, on the subject matter of a possible rulemaking under active consideration within the agency. The membership of those committees must be published at least annually in the State Register.

**Subd. 3. Effect of good faith compliance.** If an agency has made a good faith effort to comply with this section, a rule may not be invalidated on the grounds that the contents of this notice are insufficient or inaccurate.

**History:** 1995 c 233 art 2 s 11

**14.11** [Repealed, 1995 c 233 art 2 s 57]

#### **14.111 FARMING OPERATIONS.**

Before an agency adopts or repeals rules that affect farming operations, the agency must provide a copy of the proposed rule change to the commissioner of agriculture, no later than 30 days prior to publication of the proposed rule in the State Register.

A rule may not be invalidated for failure to comply with this section if an agency has made a good faith effort to comply.

**History:** 1995 c 233 art 1 s 1

**14.115** [Repealed, 1995 c 233 art 2 s 57]

**14.12** [Repealed, 1995 c 233 art 2 s 57]

#### **14.125 TIME LIMIT ON AUTHORITY TO ADOPT, AMEND, OR REPEAL RULES.**

An agency shall publish a notice of intent to adopt rules or a notice of hearing within 18 months of the effective date of the law authorizing or requiring rules to be adopted, amended, or repealed. If the notice is not published within the time limit imposed by this section, the authority for the rules expires. The agency shall not use other law in existence at the time of the expiration of rulemaking authority under this section as authority to adopt, amend, or repeal these rules.

An agency that publishes a notice of intent to adopt rules or a notice of hearing within the time limit specified in this section may subsequently amend or repeal the rules without additional legislative authorization.

**History:** 1995 c 233 art 2 s 12

#### **14.131 STATEMENT OF NEED AND REASONABLENESS.**

Before the agency orders the publication of a rulemaking notice required by section 14.14, subdivision 1a, the agency must prepare, review, and make available for public review a statement of the need for and reasonableness of the rule. The statement of need and reasonableness must be prepared under rules adopted by the chief administrative law judge and must include the following to the extent the agency, through reasonable effort, can ascertain this information:

(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;

(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;

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

(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;

(5) the probable costs of complying with the proposed rule; and

(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.

For rules setting, adjusting, or establishing regulatory, licensure, or other charges for goods and services, the statement of need and reasonableness must include the comments and recommendations of the commissioner of finance and must address any fiscal and policy concerns raised during the review process, as required by section 16A.1285.

The statement must also describe the agency's efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

The agency shall send a copy of the statement of need and reasonableness to the legislative commission to review administrative rules when it becomes available for public review.

**History:** 1995 c 233 art 2 s 13

**14.1311** [Repealed, 1995 c 233 art 2 s 57]

#### **14.14 HEARING ON RULE.**

*[For text of subd 1, see M.S.1994]*

**Subd. 1a. Notice of rule hearing.** (a) Each agency shall maintain a list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings. The agency may inquire as to whether those persons on the list wish to maintain their names thereon and may remove names for which there is a negative reply or no reply within 60 days. The agency shall, at least 30 days prior to the date set for the hearing, give notice of its intention to adopt rules by United States mail to all persons on its list, and by publication in the State Register. The mailed notice shall include either a copy of the proposed rule or a description of the nature and effect of the proposed rule and an announcement that a free copy of the proposed rule is available on request from the agency. Each agency may, at its own discretion, also contact persons not on its list who may be affected by the rule being proposed. In addition, each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication. The notice in the State Register must include the proposed rule or an amended rule in the form required by the revisor under section 14.07, together with a citation to the most specific statutory authority for the proposed rule, a statement of the place, date, and time of the public hearing, a statement that persons may register with the agency for the purpose of receiving notice of rule proceedings and notice that a rule has been adopted, and other information as required by law or rule. When an entire rule is proposed to be repealed, the agency need only publish that fact, giving the citation to the rule to be repealed in the notice.

(b) The legislative commission to review administrative rules may authorize an agency to omit from the notice of rule hearing the text of any proposed rule, the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient if:

(1) knowledge of the rule is likely to be important to only a small class of persons;

(2) the notice of rule hearing states that a free copy of the entire rule is available upon request to the agency; and

(3) the notice of rule hearing states in detail the specific subject matter of the omitted rule, cites the statutory authority for the proposed rule, and details the proposed rule's purpose and motivation.

**Subd. 1b. Farming operations.** When a public hearing is conducted on a proposed rule that affects farming operations, at least one public hearing must be conducted in an agricultural area of the state.

*[For text of subs 2 to 3, see M.S.1994]*

**History:** 1995 c 233 art 1 s 2; art 2 s 14

#### 14.15 ADMINISTRATIVE LAW JUDGE'S REPORT.

*[For text of subs 1 and 2, see M.S.1994]*

**Subd. 3. Finding of substantial difference.** If the report contains a finding that a rule has been modified in a way which makes it substantially different, as determined under section 14.05, subdivision 2, from that which was originally proposed, or that the agency has not met the requirements of sections 14.131 to 14.18, it shall be submitted to the chief administrative law judge for approval. If the chief administrative law judge approves the finding of the administrative law judge, the chief administrative law judge shall advise the agency and the revisor of statutes of actions which will correct the defects. The agency shall not adopt the rule until the chief administrative law judge determines that the defects have been corrected or, if applicable, that the agency has satisfied the rule requirements for the adoption of a substantially different rule.

**Subd. 4. Need or reasonableness not established.** If the chief administrative law judge determines that the need for or reasonableness of the rule has not been established pursuant to section 14.14, subdivision 2, and if the agency does not elect to follow the suggested actions of the chief administrative law judge to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not adopt the rule until it has received and considered the advice of the commission. However, the agency is not required to wait for the commission's advice for more than 60 days after the commission has received the agency's submission.

*[For text of subd 5, see M.S.1994]*

**History:** 1995 c 233 art 2 s 15,16

#### 14.16 ADOPTION OF RULE; CHIEF ADMINISTRATIVE LAW JUDGE; FILING OF RULE.

**Subdivision 1. Review of modifications.** If the report of the administrative law judge finds no defects, the agency may proceed to adopt the rule. After receipt of the administrative law judge's report, if the agency makes any modifications to the rule other than those recommended by the administrative law judge, it must return the rule to the chief administrative law judge for a review on the issue of whether the rule as modified is substantially different, as determined under section 14.05, subdivision 2, from the rule as originally proposed. If the chief administrative law judge determines that the modified rule is substantially different from that which was originally proposed, the chief administrative law judge shall advise the agency of actions which will correct the defects. The agency shall not adopt the modified rule until the chief administrative law judge determines that the defects have been corrected or, if applicable, that the agency has satisfied the rule requirements for the adoption of a substantially different rule.

The agency shall give notice to all persons who requested to be informed that the rule has been adopted and filed with the secretary of state. This notice shall be given on the same day that the rule is filed.

*[For text of subs 2 and 3, see M.S.1994]*

**History:** 1995 c 233 art 2 s 17

#### 14.18 PUBLICATION OF ADOPTED RULE; EFFECTIVE DATE.

**Subdivision 1. Generally.** A rule is effective after it has been subjected to all requirements described in sections 14.131 to 14.20 and five working days after the notice of adoption is published in the State Register unless a later date is required by law or specified in the rule. If the rule adopted is the same as the proposed rule, publication may be made by publish-

ing notice in the State Register that the rule has been adopted as proposed and by citing the prior publication. If the rule adopted differs from the proposed rule, the portions of the adopted rule which differ from the proposed rule shall be included in the notice of adoption together with a citation to the prior State Register publication of the remainder of the proposed rule. The nature of the modifications must be clear to a reasonable person when the notice of adoption is considered together with the State Register publication of the proposed rule, except that modifications may also be made which comply with the form requirements of section 14.07, subdivision 7.

If the agency omitted from the notice of proposed rule adoption the text of the proposed rule, as permitted by section 14.14, subdivision 1a, paragraph (b), the legislative commission to review administrative rules may provide that the notice of the adopted rule need not include the text of any changes from the proposed rule. However, the notice of adoption must state in detail the substance of the changes made from the proposed rule, and must state that a free copy of that portion of the adopted rule that was the subject of the rulemaking proceeding, not including any material adopted by reference as permitted by section 14.07, is available upon request to the agency.

*[For text of subd 2, see M.S.1994]*

**History:** 1995 c 233 art 2 s 18

#### **14.19 DEADLINE TO COMPLETE RULEMAKING.**

The agency shall, within 180 days after issuance of the administrative law judge's report, submit its notice of adoption, amendment, or repeal to the State Register for publication. If the agency has not submitted its notice to the State Register within 180 days, the rule is automatically withdrawn. The agency shall not adopt the withdrawn rules without again following the procedures of sections 14.05 to 14.28. It shall report to the legislative commission to review administrative rules, other appropriate committees of the legislature, and the governor its failure to adopt rules and the reasons for that failure. The 180-day time limit of this section does not include any days used for review by the chief administrative law judge or the legislative commission to review administrative rules if the review is required by law.

**History:** 1995 c 233 art 2 s 19,56

#### **14.22 NOTICE OF PROPOSED ADOPTION OF RULES.**

**Subdivision 1. Contents.** (a) Unless an agency proceeds directly to a public hearing on a proposed rule and gives the notice prescribed in section 14.14, subdivision 1a, the agency shall give notice of its intention to adopt a rule without public hearing. The notice shall be given by publication in the State Register and by United States mail to persons who have registered their names with the agency pursuant to section 14.14, subdivision 1a. The mailed notice shall include either a copy of the proposed rule or a description of the nature and effect of the proposed rule and an announcement that a free copy of the proposed rule is available on request from the agency. Each agency may, at its own discretion, also contact persons not on its list who may be affected by the rule being proposed. In addition, each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication. The notice in the State Register shall include the proposed rule or the amended rule in the form required by the revisor under section 14.07, a citation to the most specific statutory authority for the proposed rule, a statement that persons may register with the agency for the purpose of receiving notice of rule proceedings and notice that a rule has been submitted to the chief administrative law judge, and other information as required by law or rule. When an entire rule is proposed to be repealed, the notice need only state that fact, giving the citation to the rule to be repealed in the notice. The notice shall include a statement advising the public:

- (1) that they have 30 days in which to submit comment in support of or in opposition to the proposed rule and that comment is encouraged;
- (2) that each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed;

(3) that if 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held;

(4) of the manner in which persons shall request a public hearing on the proposed rule;

(5) of the requirements contained in section 14.25 relating to a written request for a public hearing, and that the requester is encouraged to propose any change desired;

(6) that the proposed rule may be modified if the modifications are supported by the data and views submitted; and

(7) that if a hearing is not required, notice of the date of submission of the proposed rule to the chief administrative law judge for review will be mailed to any person requesting to receive the notice.

In connection with the statements required in clauses (1) and (3), the notice must also include the date on which the 30-day comment period ends.

(b) The legislative commission to review administrative rules may authorize an agency to omit from the notice of intent to adopt the text of any proposed rule, the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient if:

(1) knowledge of the rule is likely to be important to only a small class of persons;

(2) the notice of intent to adopt states that a free copy of the entire rule is available upon request to the agency; and

(3) the notice of intent to adopt states in detail the specific subject matter of the omitted rule, cites the statutory authority for the proposed rule, and details the proposed rule's purpose and motivation.

*[For text of subd 2, see M.S.1994]*

**History:** 1995 c 233 art 2 s 20

#### **14.23 STATEMENT OF NEED AND REASONABLENESS.**

Before the date of the section 14.22 notice, the agency shall prepare a statement of need and reasonableness which shall be available to the public. The statement of need and reasonableness must include the analysis required in section 14.131 and the comments and recommendations of the commissioner of finance, and must address any fiscal and policy concerns raised during the review process, as required by section 16A.1285. The statement must also describe the agency's efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rules or must explain why these efforts were not made. For at least 30 days following the notice, the agency shall afford the public an opportunity to request a public hearing and to submit data and views on the proposed rule in writing.

The agency shall send a copy of the statement of need and reasonableness to the legislative commission to review administrative rules when it becomes available to the public.

**History:** 1995 c 233 art 2 s 21

**14.235** [Repealed, 1995 c 233 art 2 s 57]

#### **14.24 MODIFICATIONS OF PROPOSED RULE.**

The proposed rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantially different rule, as determined under section 14.05, subdivision 2, from the rule as originally proposed. An agency may adopt a substantially different rule after satisfying the rule requirements for the adoption of a substantially different rule.

**History:** 1995 c 233 art 2 s 22

#### **14.25 PUBLIC HEARING.**

**Subdivision 1. Requests for hearing.** If, during the 30-day period allowed for comment, 25 or more persons submit to the agency a written request for a public hearing of the proposed rule, the agency shall proceed under the provisions of sections 14.14 to 14.20. The written request must include: (1) the name and address of the person requesting the public hearing; and (2) the portion or portions of the rule to which the person objects or a statement



that the person opposes the entire rule. A notice of the public hearing must be published in the State Register and mailed to those persons who submitted a written request for the public hearing. Unless the agency has modified the proposed rule, the notice need not include the text of the proposed rule but only a citation to the State Register pages where the text appears.

A written request for a public hearing that does not comply with the requirements of this section is invalid and must not be counted by the agency for purposes of determining whether a public hearing must be held.

**Subd. 2. Withdrawal of hearing requests.** If a request for a public hearing has been withdrawn, the agency must give written notice of that fact to all persons who have requested the public hearing. The notice must explain why the request is being withdrawn, and must include a description of any action the agency has taken or will take that affected or may have affected the decision to withdraw the request. The notice must also invite persons to submit written comments to the agency relating to the withdrawal. The notice and any written comments received by the agency is part of the rulemaking record submitted to the administrative law judge under section 14.14 or 14.26. The administrative law judge shall review the notice and any comments received and determine whether the withdrawal is consistent with section 14.001, clauses (2), (4), and (5).

This subdivision applies only to a withdrawal of a hearing request that affects whether a public hearing must be held and only if the agency has taken any action to obtain the withdrawal of the hearing request.

**History:** 1995 c 233 art 2 s 23

#### **14.26 ADOPTION OF PROPOSED RULE; SUBMISSION TO ADMINISTRATIVE LAW JUDGE.**

**Subdivision 1. Submission.** If no hearing is required, the agency shall submit to an administrative law judge assigned by the chief administrative law judge the proposed rule and notice as published, the rule as proposed for adoption, any written comments received by the agency, and a statement of need and reasonableness for the rule. The agency shall give notice to all persons who requested to be informed that these materials have been submitted to the administrative law judge. This notice shall be given on the same day that the record is submitted. If the proposed rule has been modified, the notice shall state that fact, and shall state that a free copy of the proposed rule, as modified, is available upon request from the agency. The rule and these materials shall be submitted to the administrative law judge within 180 days of the day that the comment period for the rule is over or the rule is automatically withdrawn. The agency shall report its failure to adopt the rules and the reasons for that failure to the legislative commission to review administrative rules, other appropriate legislative committees, and the governor.

**Subd. 2. Resubmission.** Even if the 180-day period expires while the administrative law judge reviews the rule, if the administrative law judge rejects the rule, the agency may resubmit it after taking corrective action. The resubmission must occur within 30 days of when the agency receives written notice of the disapproval. If the rule is again disapproved, the rule is withdrawn. An agency may resubmit at any time before the expiration of the 180-day period. If the agency withholds some of the proposed rule, it may not adopt the withheld portion without again following the procedures of sections 14.14 to 14.28.

**Subd. 3. Review.** (a) The administrative law judge shall, within 14 days, approve or disapprove the rule as to its legality and its form to the extent the form relates to legality, including the issues of whether the rule if modified is substantially different, as determined under section 14.05, subdivision 2, from the rule as originally proposed, whether the agency has the authority to adopt the rule, and whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rule. If the rule is approved, the administrative law judge shall promptly file two copies of it in the office of the secretary of state. The secretary of state shall forward one copy of each rule to the revisor of statutes. If the rule is disapproved, the administrative law judge shall state in writing the reasons and make recommendations to overcome the defects.

(b) The written disapproval must be submitted to the chief administrative law judge for approval. If the chief administrative law judge approves of the findings of the administrative

law judge, the chief administrative law judge shall send the statement of the reasons for disapproval of the rule to the agency, the legislative commission to review administrative rules, and the revisor of statutes and advise the agency and the revisor of statutes of actions that will correct the defects. The rule shall not be filed in the office of the secretary of state, nor published until the chief administrative law judge determines that the defects have been corrected or, if applicable, that the agency has satisfied the rule requirements for the adoption of a substantially different rule.

(c) If the chief administrative law judge determines that the need for or reasonableness of the rule has not been established, and if the agency does not elect to follow the suggested actions of the chief administrative law judge to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not adopt the rule until it has received and considered the advice of the commission. However, the agency is not required to wait for the commission's advice for more than 60 days after the commission has received the agency's submission.

(d) The administrative law judge shall disregard any error or defect in the proceeding due to the agency's failure to satisfy any procedural requirements imposed by law or rule if the administrative law judge finds:

(1) that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process; or

(2) that the agency has taken corrective action to cure the error or defect so that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process.

**Subd. 4. Costs.** The office of administrative hearings shall assess an agency for the actual cost of processing rules under this section. Each agency shall include in its budget money to pay the assessment. Receipts from the assessment must be deposited in the administrative hearings account created in section 14.54.

**History:** 1995 c 233 art 2 s 24

**14.29** [Repealed, 1995 c 233 art 2 s 57]

**14.30** [Repealed, 1995 c 233 art 2 s 57]

**14.305** [Repealed, 1995 c 233 art 2 s 57]

**14.31** [Repealed, 1995 c 233 art 2 s 57]

**14.32** [Repealed, 1995 c 233 art 2 s 57]

**14.33** [Repealed, 1995 c 233 art 2 s 57]

**14.34** [Repealed, 1995 c 233 art 2 s 57]

**14.35** [Repealed, 1995 c 233 art 2 s 57]

**14.36** [Repealed, 1995 c 233 art 2 s 57]

#### **14.365 OFFICIAL RULEMAKING RECORD.**

The agency shall maintain the official rulemaking record for every rule adopted pursuant to sections 14.05 to 14.28. The record shall be available for public inspection. The record required by this section constitutes the official and exclusive agency rulemaking record with respect to agency action on or judicial review of the rule. The record shall contain:

(1) copies of all publications in the State Register pertaining to the rule;

(2) all written petitions, requests, submissions, or comments received by the agency or the administrative law judge pertaining to the rule;

(3) the statement of need and reasonableness for the rule;

(4) the official transcript of the hearing if one was held, or the tape recording of the hearing if a transcript was not prepared;

(5) the report of the administrative law judge, if any;

(6) the rule in the form last submitted to the administrative law judge under sections 14.14 to 14.20 or first submitted to the administrative law judge under sections 14.22 to 14.28;

- (7) the administrative law judge's written statement of required modifications and of approval or disapproval by the chief administrative law judge, if any;
- (8) any documents required by applicable rules of the office of administrative hearings;
- (9) the agency's order adopting the rule;
- (10) the revisor's certificate approving the form of the rule; and
- (11) a copy of the adopted rule as filed with the secretary of state.

**History:** 1995 c 233 art 2 s 25

#### 14.366 PUBLIC RULEMAKING DOCKET.

- (a) Each agency shall maintain a current, public rulemaking docket.
- (b) The rulemaking docket must contain a listing of the precise subject matter of each possible proposed rule currently under active consideration within the agency for proposal, the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of its present status within the agency.
- (c) The rulemaking docket must list each pending rulemaking proceeding. A rulemaking proceeding is pending from the time it is begun, by publication of the notice of solicitation, the notice of intent to adopt, or notice of hearing, to the time it is terminated, by publication of a notice of withdrawal or the rule becoming effective. For each rulemaking proceeding, the docket must indicate:
  - (1) the subject matter of the proposed rule;
  - (2) a citation to all published notices relating to the proceeding;
  - (3) where written comments on the proposed rule may be inspected;
  - (4) the time during which written comments may be made;
  - (5) the names of persons who have made written requests for a public hearing, where those requests may be inspected, and where and when the hearing will be held;
  - (6) the current status of the proposed rule and any agency determinations with respect to the rule;
  - (7) any known timetable for agency decisions or other action in the proceeding;
  - (8) the date of the rule's adoption;
  - (9) the date the rule was filed with the secretary of state; and
  - (10) when the rule will become effective.

**History:** 1995 c 233 art 2 s 26

#### 14.38 EFFECT OF ADOPTION OF RULES.

Subdivision 1. **Original rules.** Every rule, regardless of whether it might be known as a substantive, procedural, or interpretive rule, which is filed in the office of the secretary of state as provided in sections 14.05 to 14.28 shall have the force and effect of law five working days after its notice of adoption is published in the State Register unless a different date is required by statute or a later date is specified in the rule. The secretary of state shall keep a permanent record of rules filed with that office open to public inspection.

*[For text of subs 2 to 11, see M.S.1994]*

**History:** 1995 c 233 art 2 s 56

#### 14.386 PROCEDURE FOR ADOPTING EXEMPT RULES; DURATION.

- (a) A rule adopted, amended, or repealed by an agency, under a statute authorizing or requiring rules to be adopted but excluded from the rulemaking provisions of chapter 14 or from the definition of a rule, has the force and effect of law only if:
  - (1) the revisor of statutes approves the form of the rule by certificate;
  - (2) the office of administrative hearings approves the rule as to its legality within 14 days after the agency submits it for approval and files two copies of the rule with the revisor's certificate in the office of the secretary of state; and
  - (3) a copy is published by the agency in the State Register.

(b) A rule adopted under this section is effective for a period of two years from the date of publication of the rule in the State Register. The authority for the rule expires at the end of this two-year period.

(c) The chief administrative law judge shall adopt rules relating to the rule approval duties imposed by this section and section 14.388, including rules establishing standards for review.

(d) This section does not apply to rules adopted, amended, or repealed under section 14.388.

This section also does not apply to:

- (1) rules implementing emergency powers pursuant to sections 12.31 to 12.37;
- (2) rules of agencies directly in the legislative or judicial branches;
- (3) rules of the regents of the University of Minnesota;
- (4) rules of the department of military affairs;
- (5) rules of the comprehensive health association provided in section 62E.10;
- (6) rules of the tax court provided by section 271.06;
- (7) rules concerning only the internal management of the agency or other agencies, and which do not directly affect the rights of or procedure available to the public;
- (8) rules of the commissioner of corrections relating to the placement and supervision of inmates serving a supervised release term, the internal management of institutions under the commissioner's control, and rules adopted under section 609.105 governing the inmates of those institutions;
- (9) rules relating to weight limitations on the use of highways when the substance of the rule is indicated to the public by means of signs;
- (10) opinions of the attorney general;
- (11) the systems architecture plan and long-range plan of the state education management information system provided by section 121.931;
- (12) the data element dictionary and the annual data acquisition calendar of the department of children, families, and learning to the extent provided by section 121.932;
- (13) the occupational safety and health standards provided in section 182.655;
- (14) revenue notices and tax information bulletins of the commissioner of revenue;
- (15) uniform conveyancing forms adopted by the commissioner of commerce under section 507.09;
- (16) game and fish rules of the commissioner of natural resources adopted under section 84.027, subdivision 13, or sections 97A.0451 to 97A.0459; or
- (17) experimental and special management waters designated by the commissioner of natural resources under sections 97C.001 and 97C.005.

**History:** 1995 c 233 art 2 s 27; 1Sp1995 c 3 art 16 s 13

#### **14.387 LEGAL STATUS OF EXISTING EXEMPT RULES.**

A rule adopted on or before May 26, 1995, and which was not adopted under sections 14.05 to 14.28 or their predecessor provisions, does not have the force and effect of law on and after July 1, 1997, and the authority for the rule expires on that date.

This section does not apply to:

- (1) rules implementing emergency powers under sections 12.31 to 12.37;
- (2) rules of agencies directly in the legislative or judicial branches;
- (3) rules of the regents of the University of Minnesota;
- (4) rules of the department of military affairs;
- (5) rules of the comprehensive health association provided in section 62E.10;
- (6) rules of the tax court provided by section 271.06;
- (7) rules concerning only the internal management of the agency or other agencies, and which do not directly affect the rights of or procedure available to the public;
- (8) rules of the commissioner of corrections relating to the placement and supervision of inmates serving a supervised release term, the internal management of institutions under the

commissioner's control, and rules adopted under section 609.105 governing the inmates of those institutions;

(9) rules relating to weight limitations on the use of highways when the substance of the rules is indicated to the public by means of signs;

(10) opinions of the attorney general;

(11) the systems architecture plan and long-range plan of the state education management information system provided by section 121.931;

(12) the data element dictionary and the annual data acquisition calendar of the department of education to the extent provided by section 121.932;

(13) the occupational safety and health standards provided in section 182.655;

(14) revenue notices and tax information bulletins of the commissioner of revenue;

(15) uniform conveyancing forms adopted by the commissioner of commerce under section 507.09;

(16) game and fish rules of the commissioner of natural resources adopted under section 84.027, subdivision 13, or sections 97A.0451 to 97A.0459; or

(17) experimental and special management waters designated by the commissioner of natural resources under sections 97C.001 and 97C.005.

**History:** 1995 c 233 art 2 s 28,56

#### **14.388 GOOD CAUSE EXEMPTION.**

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:

(1) address a serious and immediate threat to the public health, safety, or welfare;

(2) comply with a court order or a requirement in federal law in a manner that does not allow for compliance with sections 14.14 to 14.28;

(3) incorporate specific changes set forth in applicable statutes when no interpretation of law is required; or

(4) 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 section 14.386, paragraph (a), clauses (1) to (3). The agency shall incorporate its findings and a brief statement of its supporting reasons in its order adopting, amending, or repealing the rule.

In review of the rule under section 14.386, the office of administrative hearings shall determine whether the agency has provided adequate justification for its use of this section.

Rules adopted, amended, or repealed under clauses (1) and (2) are effective for a period of two years from the date of publication of the rule in the State Register.

Rules adopted, amended, or repealed under clause (3) or (4) are effective upon publication in the State Register.

**History:** 1995 c 233 art 2 s 29

#### **14.48 CREATION OF OFFICE OF ADMINISTRATIVE HEARINGS; CHIEF ADMINISTRATIVE LAW JUDGE APPOINTED; OTHER ADMINISTRATIVE LAW JUDGES APPOINTED.**

A state office of administrative hearings is created. The office shall be under the direction of a chief administrative law judge who shall be learned in the law and appointed by the governor, with the advice and consent of the senate, for a term ending on June 30 of the sixth calendar year after appointment. Senate confirmation of the chief administrative law judge shall be as provided by section 15.066. The chief administrative law judge may hear cases and shall appoint additional administrative law judges and compensation judges to serve in the office as necessary to fulfill the duties prescribed in chapters 14 and 176. The chief administrative law judge may delegate to a subordinate employee the exercise of a specified statutory power or duty as deemed advisable, subject to the control of the chief administrative law judge. Every delegation must be by written order filed with the secretary of state. All administrative law judges and compensation judges shall be in the classified service except

that the chief administrative law judge shall be in the unclassified service, but may be removed only for cause. All administrative law judges shall have demonstrated knowledge of administrative procedures and shall be free of any political or economic association that would impair their ability to function officially in a fair and objective manner. All workers' compensation judges shall be learned in the law, shall have demonstrated knowledge of workers' compensation laws and shall be free of any political or economic association that would impair their ability to function officially in a fair and objective manner.

**History:** 1995 c 233 art 2 s 30

#### 14.51 PROCEDURAL RULES.

The chief administrative law judge shall adopt rules to govern: (1) the procedural conduct of all hearings, relating to both rule adoption, amendment, suspension or repeal hearings, contested case hearings, and workers' compensation hearings, and to govern the conduct of voluntary mediation sessions for rulemaking and contested cases other than those within the jurisdiction of the bureau of mediation services; and (2) the review of rules adopted without a public hearing. The procedural rules shall be binding upon all agencies and shall supersede any other agency procedural rules with which they may be in conflict. The procedural rules shall include in addition to normal procedural matters provisions relating to the procedure to be followed when the proposed final rule of an agency is substantially different, as determined under section 14.05, subdivision 2, from that which was proposed. The procedural rules shall establish a procedure whereby the proposed final rule of an agency shall be reviewed by the chief administrative law judge on the issue of whether the proposed final rule of the agency is substantially different than that which was proposed or failure of the agency to meet the requirements of chapter 14. The rules must also provide: (1) an expedited procedure, consistent with section 14.001, clauses (1) to (5), for the adoption of substantially different rules by agencies; and (2) a procedure to allow an agency to receive prior binding approval of its plan regarding the additional notice contemplated under sections 14.101, 14.131, 14.14, 14.22, and 14.23. Upon the chief administrative law judge's own initiative or upon written request of an interested party, the chief administrative law judge may issue a subpoena for the attendance of a witness or the production of books, papers, records or other documents as are material to the matter being heard. The subpoenas shall be enforceable through the district court in the district in which the subpoena is issued.

**History:** 1995 c 233 art 2 s 31

#### 14.61 AGENCY DECISION IN CONTESTED CASE.

In all contested cases the decision of the officials of the agency who are to render the final decision shall not be made until the report of the administrative law judge as required by sections 14.48 to 14.56, has been made available to parties to the proceeding for at least ten days and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of the officials who are to render the decision. This section does not apply to a contested case under which the report or order of the administrative law judge constitutes the final decision in the case.

**History:** 1995 c 264 art 9 s 1

#### 14.62 DECISIONS, ORDERS.

*[For text of subs 1 to 3, see M.S.1994]*

**Subd. 4. Applicability.** This section does not apply to a contested case under which the report or order of the administrative law judge constitutes the final decision in the case.

**History:** 1995 c 264 art 9 s 2