

## CHAPTER 14

## ADMINISTRATIVE PROCEDURE

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## 14.03 NONAPPLICABILITY.

*[For text of subs 1 and 2, see M.S.1996]*

**Subd. 3. Rulemaking procedures.** (a) 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) an application deadline on a form; and the remainder of a form and instructions for use of the form to the extent that they do not impose substantive requirements other than requirements contained in statute or rule;

(3) the curriculum adopted by an agency to implement a statute or rule permitting or mandating minimum educational requirements for persons regulated by an agency, provided the topic areas to be covered by the minimum educational requirements are specified in statute or rule;

(4) procedures for sharing data among government agencies, provided these procedures are consistent with chapter 13 and other law governing data practices.

(b) The definition of a rule in section 14.02, subdivision 4, does not include:

(1) 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;

(2) 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;

(3) opinions of the attorney general;

(4) 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;

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

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

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

(8) the interpretive guidelines developed by the commissioner of human services to the extent provided in chapter 245A.

**Subd. 3a. Policy for future exclusions.** The legislature will consider granting further exemptions from the rulemaking requirements of this chapter for rules that are necessary to comply with a requirement in federal law or that are necessary to avoid a denial of funds or services from the federal government that would otherwise be available to the state.

**History:** 1997 c 187 art 5 s 2,3

#### 14.05 GENERAL AUTHORITY.

*[For text of subs 1 to 4, see M.S.1996]*

**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 coordinating commission, 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:** 1997 c 98 s 5

#### 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 shall 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 reference library when it becomes available for public review.

**History:** 1997 c 98 s 6

#### 14.14 HEARING ON RULE.

*[For text of subd 1, see M.S.1996]*

**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 on it and may remove names for which there is a negative reply or no reply within 60 days. The agency shall, at least 30 days before 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 must include either a copy of the proposed rule or a description of its nature and effect 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 notify 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 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 chief administrative law judge 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.

*[For text of subs 1b to 3, see M.S.1996]*

**History:** 1997 c 98 s 7

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

*[For text of subs 1 to 3, see M.S.1996]*

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 coordinating commission for the commission's advice and comment. The agency may 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.1996]*

**History:** 1997 c 98 s 8

#### 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 publishing 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 that differ from the proposed rule must 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 that 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 chief administrative law judge 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 sub-

stance of the changes made from the proposed rule, and must state that a free copy of the 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.1996]*

**History:** 1997 c 98 s 9

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

Within 180 days after issuance of the administrative law judge's report, the agency shall 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 may not adopt the withdrawn rules without again following the procedures of sections 14.05 to 14.28. It shall report to the legislative coordinating commission, 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 commission if the review is required by law.

**History:** 1997 c 98 s 10

#### **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 must be given by publication in the State Register and by United States mail to persons who have registered their names with the agency under section 14.14, subdivision 1a. The mailed notice must include either a copy of the proposed rule or a description of its nature and effect 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 notify 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 must 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 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 must include a statement advising the public:

(1) that the public has 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 must 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 chief administrative law judge 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.1996]*

**History:** 1997 c 98 s 11

#### **14.225 DUAL NOTICE RULES.**

The chief administrative law judge shall adopt rules prescribing the form and content of the notice authorized by section 14.22, subdivision 2. The rules may provide for a consolidated notice that satisfies the requirements of sections 14.14, 14.22, and 14.50, and the requirements of the rules of the office of administrative hearings.

**History:** 1997 c 98 s 12

#### **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 must 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 reference library when it becomes available to the public.

**History:** 1997 c 98 s 13

#### **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 must be given on the same day that the record is submitted. If the proposed rule has been modified, the notice must state that fact, and must also state that a free copy of the proposed rule, as modified, is available upon request from the agency. The rule and these materials must 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 coordinating commission, other appropriate legislative committees, and the governor.

*[For text of subd 2, see M.S.1996]*

Subd. 3. **Review.** (a) Within 14 days, the administrative law judge shall approve or disapprove the rule as to its legality and its form to the extent that 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 for the disapproval 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 coordinating commission, and the revisor of statutes and advise the agency and the revisor of statutes of actions that will correct the defects. The rule may 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 coordinating commission for the commission's advice and comment. The agency may 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.

*[For text of subd 4, see M.S.1996]*

**History:** 1997 c 98 s 14,15

#### **14.38 EFFECT OF ADOPTION OF RULES.**

*[For text of subs 1 to 4, see M.S.1996]*

Subd. 5. [Repealed, 1997 c 187 art 5 s 36]

Subd. 6. [Repealed, 1997 c 187 art 5 s 36]

Subd. 7. [Repealed, 1997 c 187 art 5 s 36]

Subd. 8. [Repealed, 1997 c 187 art 5 s 36]

Subd. 9. [Repealed, 1997 c 187 art 5 s 36]

*[For text of subs 10 and 11, see M.S.1996]*

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

(a) A rule adopted, amended, or repealed by an agency, under a statute enacted after January 1, 1997, 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.

A statute enacted after January 1, 1997, authorizing or requiring rules to be adopted but excluded from the rulemaking provisions of chapter 14 or from the definition of a rule does not excuse compliance with this section unless it makes specific reference to this section.

(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:

(1) any group or rule listed in section 14.03, subdivisions 1 and 3, except as otherwise provided by law;

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

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

(4) game refuges designated by the commissioner of natural resources under section 97A.085.

(e) If a statute provides that a rule is exempt from chapter 14, and section 14.386 does not apply to the rule, the rule has the force of law unless the context of the statute delegating the rulemaking authority makes clear that the rule does not have force of law.

**History:** 1997 c 187 art 5 s 4

**14.387** [Repealed, 1997 c 187 art 5 s 36]

### **14.389 EXPEDITED PROCESS.**

**Subdivision 1. Application.** This section applies when a law requiring or authorizing rules to be adopted states that this section must or may be used to adopt the rules. When a law refers to this section, the process in this section is the only process an agency must follow for its rules to have the force and effect of law. Sections 14.19 and 14.366 apply to rules adopted under this section.

**Subd. 2. Notice and comment.** The agency must publish notice of the proposed rule in the State Register and must mail the notice to persons who have registered with the agency to receive mailed notices. The mailed notice must include either a copy of the proposed rule or a description of the nature and effect of the proposed rule and a statement that a free copy is available from the agency upon request. The notice in the State Register must include the proposed rule or the amended rule in the form required by the revisor under section 14.07, and a citation to the most specific statutory authority for the rule, including authority for the rule to be adopted under the process in this section. The agency must allow 30 days after publication in the State Register for comment on the rule.

**Subd. 3. Adoption.** The agency may modify a proposed rule if the modifications do not result in a substantially different rule, as defined in section 14.05, subdivision 2, paragraphs (b) and (c). If the final rule is identical to the rule originally published in the State Register, the agency must publish a notice of adoption in the State Register. If the final rule is different from the rule originally published in the State Register, the agency must publish a copy of the changes in the State Register. The rule is effective upon publication in the State Register.

**Subd. 4. Legal review.** Before publication of the final rule in the State Register, the agency must submit the rule to an administrative law judge in the office of administrative hearings. 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.

**Subd. 5. Option.** A law authorizing or requiring rules to be adopted under this section may refer specifically to this subdivision. If the law contains a specific reference to this subdivision, as opposed to a general reference to this section:

(1) the notice required in subdivision 2 must include a statement that a public hearing will be held if 100 or more people request a hearing. The request must be in the manner specified in section 14.25; and

(2) if 100 or more people submit a written request for a public hearing, the agency may adopt the rule only after complying with all of the requirements of chapter 14 for rules adopted after a public hearing.

**History:** 1997 c 187 art 5 s 5

#### 14.431 PERIODIC REVIEW OF ADMINISTRATIVE RULES.

Subdivision 1. **Definitions.** The terms defined in section 3.986, subdivision 1, apply to this section.

Subd. 2. **Significant financial impact.** The commissioner of finance shall review, every five years, rules adopted after June 30, 1998, that have significant financial impact upon political subdivisions. In this section, "significant financial impact" means requiring local political subdivisions to expand existing services, employ additional personnel, or increase local expenditures. The commissioner shall determine the costs and benefits of each rule-making and submit a report to the legislative coordinating commission with its opinion, if any, for the continuation, modification, or elimination of the rules in the rulemaking.

**History:** 1997 c 231 art 11 s 5

#### 14.47 PUBLICATION IN COMPILED FORM.

Subdivision 1. **Plan of publication and supplementation.** The revisor of statutes shall:

(1) formulate a plan for the compilation of all permanent agency rules and, to the extent practicable, other rules, adopted pursuant to the Administrative Procedure Act or filed pursuant to the provisions of section 14.38, subdivisions 5 to 9 or section 14.386 which were in effect at the time the rules were filed or subdivision 11, including their order, classification, arrangement, form, and indexing, and any appropriate tables, annotations, cross references, citations to applicable statutes, explanatory notes, and other appropriate material to facilitate use of the rules by the public, and for the compilation's composition, printing, binding, and distribution;

(2) publish the compilation of permanent agency rules and, if practicable, other rules, adopted pursuant to the Administrative Procedure Act or filed pursuant to the provisions of section 14.38, subdivisions 5 to 9 or section 14.386 which were in effect at the time the rules were filed or subdivision 11, which shall be called "Minnesota Rules";

(3) periodically either publish a supplement or a new compilation, which includes all rules adopted since the last supplement or compilation was published and removes rules incorporated in prior compilations or supplements which are no longer effective;

(4) include in Minnesota Rules a consolidated list of publications and other documents incorporated by reference into the rules after June 30, 1981, and found conveniently available by the revisor under section 14.07, subdivision 4, indicating where the publications or documents are conveniently available to the public; and

(5) copyright any compilations and or supplements in the name of the state of Minnesota.

*[For text of subs 2 to 5, see M.S.1996]*

Subd. 6. **Omission of text.** (a) For purposes of any compilation or publication of the rules, the revisor, unless the attorney general objects, may omit any extraneous descriptive or informative text that is not an operative portion of the rule. The revisor may also omit effective date provisions, statements that a rule is repealed, prefaces, appendices, guidelines, organizational descriptions, explanations of federal or state law, and similar material. The revisor shall consult with the agency, the attorney general, the legislative coordinating commission, and the chief administrative law judge before omitting text from publication.

(b) For the purposes of any compilation or publication of the rules, the revisor, unless the attorney general objects, may omit any rules that, by their own terms, are no longer effective.

tive or have been repealed directly by the agency, repealed by the legislature, or declared unconstitutional or otherwise void by a court of last resort. The revisor shall consult the agency involved, the attorney general, the chief administrative law judge, and the legislative coordinating commission before omitting a rule from publication.

*[For text of subd 7, see M.S.1996]*

**Subd. 8. Sales and distribution of compilation.** Any compilation, reissue, or supplement published by the revisor shall be sold by the revisor for a reasonable fee and its proceeds deposited in the general fund. An agency shall purchase from the revisor the number of copies of the compilation or supplement needed by the agency. The revisor shall provide without charge copies of each edition of any compilation, reissue, or supplement to the persons or bodies listed in this subdivision. Those copies must be marked with the words "State Copy" and kept for the use of the office. The revisor shall distribute:

(a) 25 copies to the office of the attorney general;

(b) two copies to the leader of each caucus in the house of representatives and the senate, two copies to the legislative reference library, and one copy each to the house of representatives research department and the office of senate counsel and research;

(c) three copies to the revisor of statutes for transmission to the Library of Congress for copyright and depository purposes;

(d) 150 copies to the state law library;

(e) ten copies to the law school of the University of Minnesota; and

(f) one copy of any compilation or supplement to each county library maintained pursuant to section 134.12 upon its request, except in counties containing cities of the first class. If a county has not established a county library pursuant to section 134.12, the copy will be provided to any public library in the county upon its request.

*[For text of subd 9, see M.S.1996]*

**History:** 1997 c 98 s 16; 1997 c 187 art 5 s 6; 1997 c 202 art 2 s 8

## 14.62 DECISIONS, ORDERS.

*[For text of subds 1 and 2, see M.S.1996]*

**Subd. 3. Award of fees and other expenses.** Fees and expenses must be awarded as provided in sections 15.471 to 15.474.

*[For text of subd 4, see M.S.1996]*

**History:** 1997 c 7 art 2 s 68