

CHAPTER 14

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GENERAL PROVISIONS

14.01 CITATION.

Sections 14.01 to 14.70, may be cited as the Administrative Procedure Act.

History: 1957 c 806 s 1; 1961 c 136 s 1; 1963 c 633 s 1; 1969 c 9 s 6; 1969 c 599 s 1; 1975 c 380 s 1; 1976 c 2 s 1; 1977 c 430 s 1; 1977 c 443 s 1,8; 1978 c 674 s 2; 1979 c 50 s 2; 1979 c 332 art 1 s 8; 1980 c 615 s 2; 1981 c 253 s 3,4,7; 1982 c 424 s 130

14.02 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 14.01 to 14.70 the terms defined in this section have the meanings ascribed to them.

Subd. 2. **Agency.** "Agency" means any state officer, board, commission, bureau, division, department, or tribunal, other than a judicial branch court and the tax court, having a statewide jurisdiction and authorized by law to make rules or to adjudicate contested cases. "Agency" also means the capitol area architectural and planning board.

Subd. 3. **Contested case.** "Contested case" means a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing. "Contested case" does not include hearings held by the department of corrections involving the discipline or transfer of inmates or other hearings relating solely to inmate management.

Subd. 4. **Rule.** "Rule" means every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by it or to govern its organization or procedure. It does not include (a) 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; (b) rules of the commissioner of corrections relating to the internal management of institutions under the commissioner's control and those rules governing the inmates thereof prescribed pursuant to section 609.105; (c) rules of the division of game and fish published in accordance with section 97.53; (d) 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; (e) opinions of the attorney general; (f) the systems architecture plan and long range plan of the state education management information system provided by section 121.931; (g) the data element dictionary and the annual data acquisition calendar of the department of education to the extent provided by section 121.932; (h) the comprehensive statewide plan of the crime control planning board provided in section 299A.03; (i) special terms and conditions for an interim certificate of confirmation of the Minnesota cable communications board provided in section 238.09; (j) occupational safety and health standards provided in section 182.655; or (k) rules of the commissioner of public safety adopted pursuant to section 169.128.

History: 1957 c 806 s 1; 1959 c 263 s 3; 1961 c 136 s 1; 1963 c 633 s 1; Ex1967 c 1 s 6; 1969 c 9 s 6; 1969 c 567 s 3; 1969 c 1129 art 2 s 1, art 3 s 1; 1973 c 254 s 3; 1973 c 654 s 15; 1975 c 271 s 6; 1975 c 359 s 23; 1975 c 380 s 1; 1976 c 2 s 1; 1976 c 68 s 1,2; 1976 c 134 s 78; 1977 c 430 s 7; 1977 c 443 s 1; 1978 c 674 s 2,3; 1979 c 50 s 2; 1979 c 332 art 1 s 8; 1980 c 615 s 2; 1981 c 253 s 3,4,47; 1982 c 424 s 130

NOTE: The crime control planning board, in subdivision 4, clause (h), was repealed by Laws 1981, Chapter 356. In addition to the exclusions listed in subdivision 4, the following are also excluded from rulemaking procedures: 40.075 (guidelines for conservation tillage demonstration program of the state soil and water conservation board); 43A.04 and 43A.18 (certain internal procedures of the department of employee relations to implement employee relations laws are generally exempt; the commissioner's pay plan for state employees is specifically exempt); 115A.21 (guidelines by waste management board for selection of hazardous waste disposal site); 116.07 (hazardous waste storage permits of pollution control agency); 124.565 (setting of tuition by the state board of vocational education at post-secondary vocational institution); 144.705 (commissioner of health's comparative price list of medical procedures and services of hospitals and health providers); 210A.26 (secretary of state's forms for candidate's financial reports); 256E.05 (amendment or repeal of rules of commissioner of public welfare mandating county or community social service programs); 518.64 (forms of department of public welfare for child support enforcement); 574.262 (eligibility standards of businesses owned by economically disadvantaged persons for indemnified bid bonds on state work).

14.03 APPLICABILITY.

Subdivision 1. **Administrative procedure generally.** The administrative procedure act in sections 14.01 to 14.70 does not apply to (a) agencies directly in the

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legislative or judicial branches, (b) emergency powers in sections 12.31 to 12.37, (c) the department of military affairs, (d) the comprehensive health association provided in section 62E.10, (e) the tax court provided by section 271.06, or (f) the regents of the University of Minnesota.

Subd. 2. **Contested case procedure.** The contested case procedures of the administrative procedure act provided in sections 14.57 to 14.70 do not apply to (a) the Minnesota municipal board, (b) the commissioner of corrections, (c) the unemployment insurance program and the social security disability determination program in the department of economic security, (d) the director of mediation services, (e) the workers' compensation division in the department of labor and industry, (f) the workers' compensation court of appeals, (g) the board of pardons, or (h) the public employment relations board.

History: 1969 c 599 s 1; 1977 c 443 s 8; 1957 c 806 s 1; 1961 c 136 s 1; 1963 c 633 s 1; 1969 c 9 s 6; 1969 c 599 s 1; 1975 c 380 s 1; 1976 c 2 s 1; 1977 c 430 s 1; 1977 c 443 s 1,8; 1978 c 674 s 2; 1979 c 50 s 2; 1979 c 332 art 1 s 8; 1980 c 615 s 2; 1981 c 253 s 3,4,7; 1982 c 424 s 130; 1983 c 274 s 18; 1984 c 640 s 1

NOTE: In addition to the exemptions in subdivision 1, the following are also exempt from the entire administrative procedure act: 11A.04 (all procedures and policies of the state board of investment); 12.21 (executive order of the governor on state personnel matters during an emergency); 15.50 (standards and policies for repair, alteration, furnishing, appearance, and cleanliness of public and ceremonial areas of the state capitol building under the Capitol Area Architectural and Planning Board); 16.07 (regulations regarding certain open market purchases of supplies, materials, equipment, and services by the commissioner of administration); 16.756 (standards and procedures of the commissioner of administration on use by state employees of commuter vans); 17.56, 17.57, and 17.64 (promotional orders and rules of agriculture research and promotion councils); 43A.04 (certain internal management policies of the department of employee relations); 48.221, 50.175, 51A.361, and 52.17 (all relating to commissioner of commerce's reserve requirements for financial institutions); 60A.201 (list of lines of insurance believed unavailable by commissioner of commerce); 60B.25 (employment of staff by commissioner of commerce to liquidate insurance company); 79.34 (activities of reinsurance association and commissioner of commerce with respect to reinsurance association); 79.075 (workers' compensation rate adjustments by commissioner of commerce); 114.13 (hearings of South Dakota - Minnesota boundary waters commission); 115A.09 (waste management board hearing on preferred area for hazardous waste disposal); 115A.11 (hazardous waste management plan of the waste management board); 115A.24 (certificate of need for hazardous waste disposal by waste management board); 116.44 (list of sensitive natural resource areas of pollution control agency); 129.121 (rules of state high school league); 136A.40 (rules of the Minnesota Higher Education Facilities Authority); 169.06 (commissioner of transportation's specifications for traffic control devices); 169.124 (rules and standards of the commissioner of public safety for reimbursement of cost of alcohol problem assessment programs); 169.128 (rules to revoke licenses for intoxication); 174.03 (state transportation plan, priorities, and schedule of commissioner of transportation); 244.09 (sentencing guidelines); 256B.02 (drug formulary and dispensing fee determination of the commissioner of human services); 290.06 (inflation adjustment of income tax bracket by commissioner of revenue); 325G.35 (opinions of attorney general of contract's compliance with statutory plain language requirement); 458A.03 (St. Cloud Transit Commission exempt but required to follow procedures like the APA); 473.153 (hearing on selected sites for sewage sludge disposal by the metropolitan council); 473.405 (Metropolitan Transit Commission exempt but required to follow procedures like the APA); 473.803 (hearings on sites selected by metropolitan counties for solid waste disposal); 16A.64, 16A.67, 16A.671, 84B.08, 85A.05, 115A.58, 116.17, 121.215 (renumbered 136C.43), 124.46, 136.40, 167.50, 174.51, 360.302, and 475A.06 (all relating to bonding or certificates of indebtedness).

The corrections board, in subdivision 2, clause (b), was abolished by Laws 1981, Chapter 360, Section 4, even though the statutes establishing it were not repealed. Laws 1983, chapter 274, section 18 instructed the revisor to change the term "corrections board" to "commissioner of corrections." In addition to the exclusions listed in subdivision 2, the following are also excluded from contested case procedure: 3.737 (denial of compensation to livestock owners by commissioner of agriculture for destroyed livestock); 115A.35 (supplementary review hearing of the waste management board); 120.17 (appeal hearing by commissioner of education on educational placement of handicapped children); 256.045 (state or local hearings on welfare matters); 270.11, 273.1104, and 298.09 (all hearings of commissioner of revenue on valuations for tax purposes).

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 process whereby the public may obtain information or make submissions or requests. The commissioner of administration shall publish these descriptions at least in every odd-numbered year commencing in 1981 in a guidebook

of state agencies. Notice of the publication of the guidebook shall be published in the state register.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130

RULEMAKING; PROCEDURE APPLICABLE TO ALL RULES

14.05 GENERAL AUTHORITY.

Subdivision 1. **Authority to adopt original rules restricted.** Each agency shall adopt, amend, suspend, or repeal its rules in accordance with the procedures specified in sections 14.01 to 14.70, and only pursuant to authority delegated by law and in full compliance with its duties and obligations. If a law authorizing rules is repealed, the rules adopted pursuant to that law are automatically repealed on the effective date of the law's repeal unless there is another law authorizing the rules. Except as provided in section 14.06, sections 14.01 to 14.70 shall not be authority for an agency to adopt, amend, suspend, or repeal rules.

Subd. 2. **Authority to modify proposed rule.** 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.

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 14.36.

Subd. 4. **Authority to grant variance to rule.** Unless otherwise provided by law, an agency may grant a variance to a rule. Before an agency grants a variance, it shall adopt rules setting forth procedures and standards by which variances shall be granted and denied. An agency receiving a request for a variance shall set forth in writing its reasons for granting or denying the variance. This subdivision shall not constitute authority for an agency to grant variances to statutory standards.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130

14.06 REQUIRED RULES.

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.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130

14.07 FORM OF RULE.

Subdivision 1. **Rule drafting assistance provided.** The revisor of statutes shall:

(1) maintain an agency rules drafting department to draft or aid in the drafting of rules or amendments to rules for any agency in accordance with subdivision 3 and the objective or other instructions which the agency shall give the revisor; and,

(2) prepare and publish an agency rules drafting guide which shall set out the form and method for drafting rules and amendments to rules, and to which all rules shall comply.

Subd. 2. Approval of form. No agency decision to adopt a rule or emergency rule, including a decision to amend or modify a proposed rule or proposed emergency rule, shall be effective unless the agency has presented the rule to the revisor of statutes and the revisor has certified that its form is approved.

Subd. 3. Standards for form. In determining the drafting form of rules the revisor shall:

(1) minimize duplication of statutory language;

(2) not permit incorporations into the rules by reference of publications or other documents which are not conveniently available to the public;

(3) to the extent practicable, use plain language in rules and avoid technical language; and

(4) amend rules by showing the portion of the rule being amended as necessary to provide adequate notice of the nature of the proposed amendment, as it is shown in the latest compilation or supplement, or, if not yet published in a compilation or supplement, then as the text is shown in the files of the secretary of state, with changes shown by striking and underlining words.

Subd. 4. Incorporations by reference. (a) An agency may incorporate by reference into its rules the text from Minnesota Statutes, Minnesota Rules, United States Statutes at Large, United States Code, Laws of Minnesota, Code of Federal Regulations, the Federal Register, and other publications and documents which are determined by the revisor of statutes, to be conveniently available to the public. If the rule incorporates by reference other publications and documents, the rule must contain a statement of incorporation. The statement of incorporation by reference must include the words "incorporated by reference"; must identify by title, author, publisher, and date of publication the standard or material to be incorporated; must state whether the material is subject to frequent change; and must contain a statement of availability. When presented with a rule for certification pursuant to subdivision 2 and this subdivision, the revisor of statutes should indicate in the certification that the rule incorporates by reference text from other publications or documents. If the revisor certifies that the form of a rule is approved, that approval constitutes the revisor's finding that the publication or other document other than one listed by name in this subdivision, and which is incorporated by reference into the rules, is conveniently available to the public.

(b) For the purposes of paragraph (a), "conveniently available to the public" means available for loan or inspection and copying to a person living anywhere in Minnesota through a statewide interlibrary loan system or in a public library without charge except for reasonable copying fees and mailing costs.

Subd. 5. [Repealed, 1984 c 640 s 33]

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 14.36. 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.

Subd. 7. Technical changes. The revisor may approve the form of a rule amendment which does not meet the requirements of subdivision 3, clause (4), if, in the revisor's judgment, the amendment does not change the substance of the rule and the amendment is:

- (a) a relettering or renumbering instruction;
- (b) the substitution of one name for another when an organization or position is renamed;
- (c) the substitution of a reference to Minnesota Statutes for a corresponding reference to Laws of Minnesota;
- (d) the correction of a citation to rules or laws which has become inaccurate since the rule was adopted because of repealing or renumbering of the rule or law cited; or
- (e) the correction of a similar formal defect.

This subdivision does not limit the revisor's authority to make the changes described in clauses (a) to (e) during the publication process under section 14.47.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50,57; 1981 c 253 s 5-19,37-46; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1983 c 210 s 1; 1984 c 640 s 2,3

14.08 REVISOR OF STATUTE'S APPROVAL OF RULE FORM.

(a) Two copies of a rule adopted pursuant to the provisions of section 14.26 or 14.32 shall be submitted by the agency to the attorney general. The attorney general shall send one copy of the rule to the revisor on the same day as it is submitted by the agency under section 14.26 or 14.32. 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 attorney general or notify the attorney general and the agency that the form of the rule will not be approved.

If the attorney general disapproves a rule, the agency may modify it and the agency shall submit two copies of the modified rule to the attorney general 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 indicate the reason for the refusal and specify the modifications necessary so the form of the rule will be approved.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1983 c 210 s 2; 1984 c 640 s 4

14.09 PETITION FOR ADOPTION OF RULE.

Any interested person may petition an agency requesting the adoption, suspension, 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. 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 14.36. The attorney general shall prescribe by rule the form for all petitions under this section and may prescribe further procedures for their submission, consideration, and disposition.

History: 1957 c 806 s 5; 1975 c 380 s 6; 1981 c 253 s 21; 1982 c 424 s 130

14.10 SOLICITATION OF OUTSIDE INFORMATION.

When an agency seeks to obtain information or opinions in preparing to propose the adoption, amendment, suspension, or repeal of a rule from sources outside of the agency, the agency shall publish notice of its action in the state register and shall afford all interested persons an opportunity to submit data or views on the subject of concern in writing or orally. Such notice and any written material received by the agency shall become a part of the rulemaking record to be submitted to the attorney general or administrative law judge under section 14.14, 14.26, or 14.32.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1984 c 640 s 5,32

14.11 SPECIAL NOTICE OF RULEMAKING.

Subdivision 1. Fiscal note on rule in notice. If the adoption of a rule by an agency will require the expenditure of public moneys by local public bodies, the appropriate notice of the agency's intent to adopt a rule shall be accompanied by a written statement giving the agency's reasonable estimate of the total cost to all local public bodies in the state to implement the rule for the two years immediately following adoption of the rule if the estimated total cost exceeds \$100,000 in either of the two years. For purposes of this subdivision, local public bodies shall mean officers and governing bodies of the political subdivisions of the state and other officers and bodies of less than state wide jurisdiction which have the authority to levy taxes.

Subd. 2. Agricultural land. If the agency proposing the adoption of the rule determines that the rule may have a direct and substantial adverse impact on agricultural land in the state, the agency shall comply with the requirements of sections 17.80 to 17.84.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1982 c 512 s 6

14.115 SMALL BUSINESS CONSIDERATIONS IN RULEMAKING.

Subdivision 1. Definition. For purposes of this section, "small business" means a business entity, including its affiliates, that (a) is independently owned and operated; (b) is not dominant in its field; and (c) employs fewer than 50 full-time employees or has gross annual sales of less than \$4,000,000. For purposes of a specific rule, an agency may define small business to include more employees if necessary to adapt the rule to the needs and problems of small businesses.

Subd. 2. Impact on small business. When an agency proposes a new rule, or an amendment to an existing rule, which may affect small businesses as defined by this section, the agency shall consider each of the following methods for reducing the impact of the rule on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements for small businesses;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rule.

In its statement of need and reasonableness, the agency shall document how it has considered these methods and the results.

Subd. 3. Feasibility. The agency shall incorporate into the proposed rule or amendment any of the methods specified under subdivision 2 that it finds to be feasible, unless doing so would be contrary to the statutory objectives that are the basis of the proposed rulemaking.

Subd. 4. Small business participation in rulemaking. In addition to the requirements under section 14.14, the agency shall provide an opportunity for small businesses to participate in the rulemaking process, utilizing one or more of the following methods:

(a) the inclusion in any advance notice of proposed rulemaking of a statement that the rule will have an impact on small businesses which shall include a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons; or

(b) the publication of a notice of the proposed rulemaking in publications likely to be obtained by small businesses that would be affected by the rule; or

(c) the direct notification of any small business that may be affected by the rule; or

(d) the conduct of public hearings concerning the impact of the rule on small businesses.

Subd. 5. Compliance. If an administrative law judge or the attorney general finds that an agency has failed to comply with subdivisions 1 to 4, the rules shall not be adopted.

Subd. 6. Agency review of rules. Each agency shall, during the five-year period beginning with the effective date of this section, review the current rules of the agency which were in effect prior to that date and shall consider methods of reducing their impact on small businesses as provided under subdivision 2. If a method appears feasible, the agency shall propose an amendment to the rule. No review is necessary for a rule that is repealed during the five-year period. This subdivision shall not apply to rules governing licensure of occupations listed in section 116J.70, subdivision 2a, clause (3), paragraphs (a) to (pp).

Subd. 7. Applicability. This section does not apply to:

(a) emergency rules adopted under sections 14.29 to 14.36;

(b) agency rules that do not affect small businesses directly, including, but not limited to, rules relating to county or municipal administration of state and federal programs;

(c) service businesses regulated by government bodies, for standards and costs, such as nursing homes, long-term care facilities, hospitals, providers of medical care, day care centers, group homes, and residential care facilities; and

(d) agency rules adopted under section 16.085.

Subd. 8. **LCRAR review.** The legislative commission to review administrative rules shall review the implementation of this section, and shall include in the biennial report required by section 14.40 a report on the implementation of this section.

History: 1983 c 188 s 1; 1984 c 640 s 32; 1984 c 655 art 1 s 2,3

14.12 DEADLINE TO PUBLISH NOTICE.

The agency shall, within 180 days after the effective date of a law requiring rules to be promulgated, unless otherwise specified by law, publish an appropriate notice of intent to adopt a rule in accordance with sections 14.05 to 14.36. If an agency has not given this notice, it shall report to the legislative commission to review administrative rules, other appropriate committees of the legislature, and the governor its failure to do so, and the reasons for that failure.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1983 c 210 s 3; 1984 c 640 s 6

RULEMAKING; PROCEDURE APPLICABLE TO CONTROVERSIAL RULES

14.13 [Repealed, 1984 c 640 s 33]

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.

History: 1984 c 640 s 7,32

14.14 HEARING ON RULE.

Subdivision 1. **Required hearing.** When a public hearing is required under section 14.25 or when an agency decides to proceed directly to a public hearing, the agency shall proceed under the provisions of sections 14.14 to 14.20 and hold a public hearing affording all affected interests an opportunity to participate.

Subd. 1a. **Notice of rule hearing.** Each agency shall maintain a list of all persons who have registered with the agency for the purpose of receiving notice of rule hearings. 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 and may give notice of its intention in newsletters, newspapers or other publications or through other means of communi-

cation. 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, 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.

Subd. 2. **Establishment of need and reasonableness of rule.** At the public hearing the agency shall make an affirmative presentation of facts establishing the need for and reasonableness of the proposed rule and fulfilling any relevant substantive or procedural requirements imposed on the agency by law or rule. The agency may, in addition to its affirmative presentation, rely upon facts presented by others on the record during the rule proceeding to support the rule adopted.

Subd. 2a. **Hearing procedure.** When a hearing is held on a proposed rule, it shall be conducted by an administrative law judge assigned by the chief administrative law judge. The administrative law judge shall ensure that all persons involved in the rule hearing are treated fairly and impartially. The agency shall submit into the record the jurisdictional documents, including the statement of need and reasonableness, and any written exhibits in support of the proposed rule. The agency may also present additional oral evidence. Interested persons may present written and oral evidence. The administrative law judge shall allow questioning of agency representatives or witnesses, or of interested persons making oral statements, in order to explain the purpose or intended operation of a proposed rule, or a suggested modification, or for other purposes if material to the evaluation or formulation of the proposed rule. The administrative law judge may limit repetitive or immaterial oral statements and questioning.

Subd. 3. **Hearing transcript.** If the agency, the chief administrative law judge, or the attorney general requests, the administrative law judge shall cause a transcript to be prepared of the hearing.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1983 c 210 s 4; 1983 c 301 s 64; 1984 c 640 s 8,9,32

14.15 ADMINISTRATIVE LAW JUDGE'S REPORT.

Subdivision 1. **Time of preparation.** After allowing written material to be submitted and recorded in the hearing record for five working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the administrative law judge, the administrative law judge assigned to the hearing shall write a report as provided for in section 14.50. Prior to writing the report, the administrative law judge shall allow the agency and interested persons three business days after the submission period ends to respond in writing to any new information submitted. During the three-day period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. Additional evidence may not be submitted during this three-day period. The written responses shall be added to the rulemaking record.

Subd. 2. **Deadline to complete report; extensions.** The report shall be completed within 30 days after the close of the hearing record unless the chief administrative law judge, upon written request of the agency or the administrative law judge, orders an extension. An extension shall not be granted if the chief administrative law judge determines that an extension would prohibit a rule from being adopted or becoming effective until after a date for adoption or effectiveness as required by statute. The report shall be available to all affected persons upon request for at least five working days before the agency takes any further action on the rule.

Subd. 3. **Finding of substantial change.** If the report contains a finding that a rule has been modified in a way which makes it substantially different from that which was originally proposed, or that the agency has not met the requirements of sections 14.13 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.

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 delay adoption longer than 30 days after the commission has received the agency's submission. Advice of the commission shall not be binding on the agency.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1983 c 210 s 5-7; 1984 c 640 s 10,32

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 substantial change. 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.

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.

Subd. 2. **Correction of defects.** If the chief administrative law judge approves the administrative law judge's finding of a defect and advises the agency of actions which will correct the defect pursuant to subdivision 3 of section 14.15, the agency must either withdraw the rule or make the modifications required. The agency shall then resubmit the rule to the chief administrative law judge for a determination as to whether the defects have been corrected.

Subd. 3. **Filing.** After the agency has adopted the rule, the agency 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 filed to the revisor of statutes.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1984 c 640 s 11,32

14.17 [Repealed, 1984 c 640 s 33]

14.18 PUBLICATION OF ADOPTED RULE; EFFECTIVE DATE.

A rule is effective after it has been subjected to all requirements described in sections 14.13 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 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.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1983 c 210 s 9

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, suspension, 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 14.36. 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, the attorney general, or the legislative commission to review administrative rules if the review is required by law.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1983 c 210 s 10; 1984 c 640 s 32

14.20 APPROVAL OF FORM.

No rule shall be filed with the secretary of state or published in the state register unless the revisor of statutes has certified that the rule's form is approved.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130

**RULEMAKING; PROCEDURE APPLICABLE TO
NONCONTROVERSIAL RULES**

14.21 [Repealed, 1984 c 640 s 33]

14.22 NOTICE OF PROPOSED ADOPTION OF RULES.

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. 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, and a citation to the most specific statutory authority for the proposed 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) that any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed;

(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 attorney general for review will be mailed to any person requesting to receive the notice.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1983 c 210 s 12; 1984 c 640 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 shall be available to the public. For at least 30 days following the notice, the agency shall afford all interested persons an opportunity to request a public hearing and to submit data and views on the proposed rule in writing.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1984 c 640 s 13

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 substantial change.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130

14.25 PUBLIC HEARING REQUIRED.

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, and a notice of the public hearing shall be published in the state register. 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.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1984 c 640 s 14

14.26 ADOPTION OF PROPOSED RULE; SUBMISSION TO ATTORNEY GENERAL.

If no hearing is required, the agency shall submit to the attorney general 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 attorney general. 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 attorney general 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.

Even if the 180-day period expires while the attorney general reviews the rule, if the attorney general 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, or 14.29 to 14.36.

The attorney general shall approve or disapprove the rule as to its legality and its form to the extent the form relates to legality, including the issue of substantial change, and determine 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 within 14 days. If the rule is approved, the attorney general 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 attorney general shall state in writing the reasons and make recommendations to overcome the deficiencies, and the rule shall not be filed in the office of the secretary of state, nor published until the deficiencies have been overcome. The attorney general shall send a statement of reasons for disapproval of the rule to the agency, the chief administrative law judge, the legislative commission to review administrative rules, and to the revisor of statutes.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1983 c 210 s 13; 1984 c 640 s 15,32

14.27 PUBLICATION OF ADOPTED RULE; EFFECTIVE DATE.

The rule is effective upon publication of the notice of adoption in the state register in the same manner as provided for adopted rules in section 14.18.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130

14.28 APPROVAL OF FORM.

No rule shall be filed with the secretary of state or published in the state register unless the revisor of statutes has certified that the rule is approved as to form.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130

RULEMAKING; PROCEDURE APPLICABLE TO EMERGENCY RULES**14.29 AUTHORITY FOR USE OF EMERGENCY RULES PROCEDURE; EXPIRATION OF AUTHORITY.**

Subdivision 1. When an agency is directed by statute, federal law or court order to adopt, amend, suspend or repeal a rule in a manner that does not allow for compliance with sections 14.14 to 14.28, or if an agency is expressly required or authorized by statute to adopt emergency rules, the agency shall adopt emergency rules in accordance with sections 14.29 to 14.36.

Subd. 2. Unless an agency is directed by federal law or court order to adopt, amend, suspend, or repeal a rule in a manner that does not allow for compliance with sections 14.14 to 14.28, no agency may adopt an emergency rule later than 180 days after the effective date of the statutory authority, except as provided in subdivision 3. If emergency rules are not adopted within the time allowed, the authority for the rules expires. The time limit of this section does not include any days used for review by the attorney general. If the 180-day period expires while the attorney general is reviewing the rule and the attorney general disapproves the rule, the agency may resubmit the rule to the attorney general after taking corrective action. The resubmission must occur within five working days after the agency receives written notice of disapproval. If the rule is again disapproved by the attorney general, it is withdrawn.

Subd. 3. Any agency which is authorized to issue bonds to obtain funds for implementation of its programs and which is authorized by other law to adopt emergency rules governing those programs may continue to adopt those rules as emergency rules without regard to the 180-day time limits specified in subdivision 2 or Laws 1984, chapter 640, section 30.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1984 c 640 s 16,32

14.30 NOTICE OF PROPOSED ADOPTION OF EMERGENCY RULE.

The proposed emergency rule shall be published with a notice of intent to adopt emergency rules in the state register, and the same notice shall be mailed to all persons registered with the agency to receive notice of any rulemaking proceedings. The notice shall include a statement advising the public that a free copy of the proposed rule is available on request from the agency and that notice of the date of submission of the proposed emergency rule to the attorney general will be mailed to

any person requesting to receive the notice. For at least 25 days after publication the agency shall afford all interested persons an opportunity to submit data and views on the proposed emergency rule in writing.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1982 c 562 s 1; 1984 c 640 s 17

14.31 MODIFICATIONS OF PROPOSED EMERGENCY RULE.

The proposed emergency rule may be modified if the modifications are supported by the data and views submitted to the agency.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1984 c 640 s 18

14.32 SUBMISSION OF PROPOSED EMERGENCY RULE TO ATTORNEY GENERAL.

The agency shall submit to the attorney general the proposed emergency rule as published, with any modifications. On the same day that it is submitted, the agency shall mail notice of the submission to all persons who requested to be informed that the proposed emergency rule has been submitted to the attorney general. If the proposed emergency rule has been modified, the notice shall state that fact, and shall state that a free copy of the proposed emergency rule, as modified, is available upon request from the agency. The attorney general shall review the proposed emergency rule as to its legality, review its form to the extent the form relates to legality, and shall approve or disapprove the proposed emergency rule and any modifications on the tenth working day following the date of receipt of the proposed emergency rule from the agency. The attorney general shall send a statement of reasons for disapproval of the rule to the agency, the chief administrative law judge, the legislative commission to review administrative rules, and to the revisor of statutes.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1983 c 210 s 14; 1984 c 640 s 19,32

14.33 EFFECTIVE DATE OF EMERGENCY RULE.

The emergency rule shall take effect five working days after approval by the attorney general. The attorney general shall file two copies of the approved emergency rule with the secretary of state. The secretary of state shall forward one copy of each approved and filed emergency rule to the revisor of statutes. Failure of the attorney general to approve or disapprove a proposed emergency rule within ten working days is approval.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1984 c 640 s 20

14.34 PUBLICATION OF APPROVAL.

As soon as practicable, notice of the attorney general's decision shall be published in the state register and the adopted rule shall be published in the manner as provided for adopted rules in section 14.18.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130

14.35 EFFECTIVE PERIOD OF EMERGENCY RULE.

Emergency rules adopted under sections 14.29 to 14.36 shall be effective for the period stated in the notice of intent to adopt emergency rules which may not be longer than 180 days. The emergency rules may be continued in effect for an additional period of up to 180 days if the agency gives notice of continuation by publishing notice in the state register and mailing the same notice to all persons registered with the agency to receive notice of any rulemaking proceedings. The continuation shall not be effective until these notices have been mailed. No emergency rule shall remain in effect on a date 361 days after its original effective date. The emergency rules may not be continued in effect after 360 days without following the procedure of sections 14.14 to 14.28.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1982 c 562 s 1; 1984 c 640 s 21

14.36 APPROVAL OF FORM OF EMERGENCY RULE.

No approved emergency rule shall be filed with the secretary of state or published in the state register unless the revisor of statutes has certified that the emergency rule's form is approved.

History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1984 c 640 s 22

14.365 OFFICIAL RULEMAKING RECORD.

The agency shall maintain the official rulemaking record for every rule adopted pursuant to sections 14.05 to 14.36. 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, the administrative law judge, or the attorney general pertaining to the rule;
- (3) the statement of need and reasonableness for the rule, if any;
- (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 or first submitted to the attorney general;
- (7) the attorney general's written statement of required modifications and of approval or disapproval, if any;
- (8) any documents required by applicable rules of the office of administrative hearings or of the attorney general;
- (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: 1984 c 640 s 23,32

LEGAL STATUS OF RULES

14.37 EFFECT OF PUBLICATION.

Subdivision 1. **State register publication.** The publication or citation of a rule or order in the state register in a manner as required by sections 14.01 to 14.70 raises a rebuttable presumption that:

- (1) The rule or order was duly adopted, issued, or promulgated;
- (2) The rule or order was duly filed with the secretary of state and available for public inspection at the day and hour endorsed thereon; and
- (3) The copy of the rule or order published in the state register is a true copy of the original.

Judicial notice shall be taken of material published in the state register.

Subd. 2. **Compiled rules.** The text of the rules in the first compilation published by the revisor is prima facie evidence of the text of the rules as against any previous documents. However, the previous documents may be used to construe the text of a rule. Except as provided in section 14.47, subdivision 6, the compilation shall not be construed as repealing any unpublished rule. The rules published in the compilation shall be construed as continuations of prior rules and not as new rules.

Any subsequent compilation or supplement published by the revisor and containing his certificate is prima facie evidence of the administrative rules in all courts and proceedings. Except as provided in section 14.47, subdivision 6, a compilation or supplement shall not be construed as repealing an unpublished rule. If there is any material inconsistency through omission or otherwise between the first compilation, a subsequent compilation or supplement, the state register, and a rule filed with the secretary of state, and the omission or change was not due to the provisions of section 14.47, subdivision 6 or the correction of an obvious error or unintentional omission as required by subdivision 3, the rule filed with the secretary shall prevail.

History: 1945 c 590 s 4,5; 1975 c 380 s 10,11; 1977 c 443 s 6; 1980 c 615 s 57; 1981 c 253 s 37-46; 1982 c 424 s 130

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 14.36 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.

Subd. 2. **Retroactive application.** Every existing rule, regardless of whether it might be known as a substantive, procedural, or interpretive rule, shall have the force and effect of law retroactive to the date on which the rule became effective if:

(a) the rule was adopted in compliance with the provisions of the administrative procedure act in effect at the time the rule was adopted;

(b) the rule was approved by the attorney general before becoming effective; and

(c) the adopting agency had statutory authority to adopt the rule.

Subd. 3. **Limitation.** Subdivisions 1 and 2 do not apply to any rule specifically held not to have the force and effect of law by the state supreme court before May 8, 1981.

Subd. 4. **Amendments; repealers; suspended rules.** Each rule hereafter amended, suspended, or repealed is amended, suspended, or repealed five working days after the appropriate notice is published in the state register unless a later date is required by law or specified in the rule.

Subd. 5. **Exempt agencies.** Any rules adopted, amended, suspended, or repealed by any agency but excluded from the administrative procedure act by section 14.03, subdivision 1, shall have the force and effect of law upon compliance with the procedures of subdivision 7. However, subdivisions 5 to 9 do 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; or
- (3) rules of the regents of the University of Minnesota.

Subd. 6. **Exempt rules.** Rules adopted, amended, suspended, or repealed by any agency but excluded from the definition of "rule" in section 14.02, subdivision 4, shall have the force and effect of law upon compliance with subdivision 7.

However, subdivisions 5 to 9 do not apply to:

(1) 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; or,

(2) opinions of the attorney general; or,

(3) rules published in accordance with section 97.53.

Subd. 7. **Procedure for exempt agencies and exempt rules.** The subdivision 5 and 6 rules have the force and effect of law if:

(1) the revisor of statutes approves the form of the rules by certificate;

(2) two copies of the rules with the revisor's certificate are filed in the office of the secretary of state; and,

(3) a copy is published in the state register.

Subd. 8. **Effective date of exempt agency rules and exempt rules.** The rules become effective five working days after publication in the state register. The secretary of state shall forward one copy of each rule to the revisor of statutes. Rules filed in accordance with subdivisions 5 to 9, as they were in effect on the date the rules were filed, shall be included in Minnesota Rules.

Subd. 9. **Status of future exemptions.** Any law exempting an agency or rule from sections 14.01 to 14.70 shall not be construed as preventing an agency from complying with subdivisions 5 to 9, unless the law specifically provides to the contrary.

Subd. 10. **Previously filed rules; previously exempt agencies.** Rules excluded from the administrative procedure act in Minnesota Statutes 1978, Section 15.0411, Subdivision 2, but included in the rulemaking provisions of the act in Minnesota Statutes 1980, Section 15.0411, Subdivision 2, have the force and effect of law and shall be published by the revisor of statutes pursuant to section 14.47, to the extent the rules are still in effect, if the rules were:

(1) adopted by an agency; and,

(2) filed with the secretary of state before April 25, 1980.

Subd. 11. **Unfiled rules; previously exempt agencies.** Rules excluded from the administrative procedure act in Minnesota Statutes 1978, Section 15.0411, Subdivision 2, but included in the rulemaking provisions of the act in Minnesota Statutes 1980, Section 15.0411, Subdivision 2, shall have the force and effect of law and be published by the revisor of statutes pursuant to section 14.47, to the extent the rules are still in effect, if:

(1) the rules were adopted by an agency;

(2) the rules were not filed with the secretary of state before April 25, 1980; and,

(3) a copy of the rules which were effective on April 25, 1980, but unfiled with the secretary of state are filed with both the secretary of state and the revisor of statutes before September 1, 1981.

History: 1957 c 806 s 3; 1963 c 822 s 1; 1969 c 399 s 1; 1974 c 344 s 4-7; 1975 c 380 s 3-5; 1977 c 443 s 3; 1980 c 615 s 12,13,51; 1981 c 109 s 1-3; 1981 c 253 s 20; 1Sp1981 c 4 art 4 s 9; 1982 c 424 s 130; 1983 c 138 s 1; 1984 c 640 s 24

14.385 EFFECT OF NONPUBLICATION OF EXEMPT RULES.

No rule, as defined in section 14.02, subdivision 4, which is exempt from the rulemaking provisions of this chapter has the force and effect of law as of January 1, 1985, unless prior to that date it has been submitted to the revisor for publication in Minnesota Rules.

The revisor has the same editorial powers over these rules as the revisor has over nonexempt rules.

History: 1984 c 640 s 25

LEGISLATIVE REVIEW OF RULES

14.39 LEGISLATIVE COMMISSION TO REVIEW ADMINISTRATIVE RULES; COMPOSITION; MEETINGS.

A legislative commission for review of administrative rules, consisting of five senators appointed by the committee on committees of the senate and five representatives appointed by the speaker of the house of representatives shall be appointed. The commission shall meet at the call of its chairman or upon a call signed by two of its members or signed by five members of the legislature. The legislative commission chairmanship shall alternate between the two houses of the legislature every two years.

History: 1974 c 355 s 69; 1975 c 271 s 6; 1980 c 615 s 1; 1980 c 618 s 26; 1981 c 112 s 1,2; 1981 c 253 s 1; 1981 c 342 art 2 s 1; 1982 c 424 s 130

14.40 REVIEW OF RULES BY COMMISSION.

The commission shall promote adequate and proper rules by agencies and an understanding upon the part of the public respecting them. The jurisdiction of the commission includes all rules as defined in section 14.02, subdivision 4. The commission also has jurisdiction of rules which are filed with the secretary of state in accordance with section 14.38, subdivisions 5, 6, 7, 8, 9, and 11 or were filed with the secretary of state in accordance with the provisions of section 14.38, subdivisions 5 to 9, which were in effect on the date the rules were filed. It may hold public hearings to investigate complaints with respect to rules if it considers the complaints meritorious and worthy of attention. It may, on the basis of the testimony received at the public hearings, suspend any rule complained of by the affirmative vote of at least six members provided the provisions of section 14.42 have been met. If any rule is suspended, the commission shall as soon as possible place before the legislature, at the next year's session, a bill to repeal the suspended rule. If the bill is not enacted in that year's session, the rule is effective upon adjournment of the session unless the agency has repealed it. If the bill is enacted, the rule is repealed. The commission shall make a biennial report to the legislature and governor of its

activities and include its recommendations to promote adequate and proper rules and public understanding of the rules.

History: 1974 c 355 s 69; 1975 c 271 s 6; 1980 c 615 s 1; 1980 c 618 s 26; 1981 c 112 s 1,2; 1981 c 253 s 1; 1981 c 342 art 2 s 1; 1982 c 424 s 130; 1984 c 655 art 1 s 4

14.41 PUBLIC HEARINGS BY STATE AGENCIES.

By a vote of a majority of its members, the commission may request any agency issuing rules to hold a public hearing in respect to recommendations made pursuant to section 14.40, including recommendations made by the commission to promote adequate and proper rules by that agency and recommendations contained in the commission's biennial report. The agency shall give notice as provided in section 14.14, subdivision 1 of a hearing thereon, to be conducted in accordance with sections 14.05 to 14.36. The hearing shall be held not more than 60 days after receipt of the request or within any other longer time period specified by the commission in the request.

History: 1974 c 355 s 69; 1975 c 271 s 6; 1980 c 615 s 1; 1980 c 618 s 26; 1981 c 112 s 1,2; 1981 c 253 s 1; 1981 c 342 art 2 s 1; 1982 c 424 s 130

14.42 REVIEW BY STANDING COMMITTEES.

Before the commission suspends any rule, it shall request the speaker of the house and the president of the senate to refer the question of suspension of the given rule or rules to the appropriate committee or committees of the respective houses for the committees' recommendations. No suspension shall take effect until the committees' recommendations are received, or 60 days after referral of the question of suspension to the speaker of the house and the president of the senate. However, the recommendations shall be advisory only.

History: 1974 c 355 s 69; 1975 c 271 s 6; 1980 c 615 s 1; 1980 c 618 s 26; 1981 c 112 s 1,2; 1981 c 253 s 1; 1981 c 342 art 2 s 1; 1982 c 424 s 130

14.43 NOTICE OF SUSPENSION.

In addition to the other requirements of this section, no suspension shall take effect until notice has been published in compliance with section 14.38, subdivision 4. The commission shall send the notice to the state register.

History: 1974 c 355 s 69; 1975 c 271 s 6; 1980 c 615 s 1; 1980 c 618 s 26; 1981 c 112 s 1,2; 1981 c 253 s 1; 1981 c 342 art 2 s 1; 1982 c 424 s 130

JUDICIAL REVIEW OF RULES

14.44 DETERMINATION OF VALIDITY OF RULE.

The validity of any rule may be determined upon the petition for a declaratory judgment thereon, addressed to the court of appeals, when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question, and whether or not the agency has commenced an action against the petitioner to enforce the rule.

History: 1957 c 806 s 6; 1982 c 424 s 130; 1984 c 640 s 26

14.45 RULE DECLARED INVALID.

In proceedings under section 14.44, the court shall declare the rule invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rulemaking procedures. Any party to proceedings under section 14.44, including the agency, may appeal an adverse decision of the court of appeals to the supreme court as in other civil cases.

History: 1957 c 806 s 7; 1977 c 443 s 4; 1982 c 424 s 130; 1983 c 247 s 7; 1984 c 640 s 27

PUBLIC ACCESS TO AGENCY RULES**14.46 PUBLICATION IN STATE REGISTER.**

Subdivision 1. Contents. The commissioner of administration shall publish a state register containing all notices for hearings concerning rules, giving time, place and purpose of the hearing and the full text of the action being proposed. Further, the register shall contain all rules, amendments, suspensions, or repeals thereof, pursuant to the provisions of this chapter. The commissioner shall further publish any executive order issued by the governor which shall become effective 15 days after publication except as provided in section 4.035, subdivision 2. The commissioner shall further publish any official notices in the register which a state agency requests him to publish. Such notices shall include, but shall not be limited to, the date on which a new agency becomes operational, the assumption of a new function by an existing state agency, or the appointment of commissioners. The commissioner may prescribe the form, excluding the form of the rules, and manner in which agencies submit any material for publication in the state register, and he may withhold publication of any material not submitted according to the form or procedures he has prescribed.

The commissioner of administration may organize and distribute the contents of the register according to such categories as will provide economic publication and distribution and will offer easy access to information by any interested party.

Subd. 2. Form and manner. The commissioner of administration shall publish the state register whenever necessary, except that no material properly submitted to him for publication shall remain unpublished for more than ten working days.

The state register shall have a distinct and permanent masthead with the title "state register" and the words "state of Minnesota" prominently displayed. All issues of the state register shall be numbered and dated.

To the extent that editing, composition, printing, distribution or other work on the state register cannot be performed in the department of administration, or it is uneconomical to do so, the commissioner shall obtain competitive bids and enter into contracts to have the services performed by the lowest responsible bidder. The duration of any contracts shall not exceed the end of the state's fiscal biennium.

Subd. 3. Submission of items for publication. Any state agency which desires to publish a notice of hearing, rule or regulation or change thereof shall submit a copy of the entire document, including dates when adopted, and filed with the secretary of state, to the commissioner of administration in addition to any other copies which may be required to be filed with the commissioner by other law.

The revisor of statutes shall provide assistance to the commissioner if requested. Alternatively, the commissioner may designate a contract compositor to whom the assistance is to be supplied. The assistance, in either case, shall consist of furnishing a machine readable computer tape, or similar services, for rules which are available

in the revisor's computer data base and for which a written copy has been submitted by an agency to the commissioner for publication in the state register.

Subd. 4. **Cost; distribution.** When an agency properly submits a rule, proposed rule, notice, or other material to the commissioner of administration, the commissioner shall then be accountable for the publication of the same in the state register. The commissioner of administration shall require each agency which requests the publication of rules, proposed rules, notices, or other material in the state register to pay its proportionate cost of the state register unless other funds are provided and are sufficient to cover the cost of the state register.

The state register shall be offered for public sale at a location centrally located as determined by the commissioner of administration and at a price as the commissioner of administration shall determine. The commissioner of administration shall further provide for the mailing of the state register to any person, agency, or organization if so requested, provided that reasonable costs are borne by the requesting party. The supply and expense appropriation to any state agency is deemed to include funds to purchase the state register. Ten copies of each issue of the state register, however, shall be provided without cost to the legislative reference library and ten copies to the state law library. One copy shall be provided without cost to a public library in each county seat in the state or, if there is no public library in a county seat, to a public library in the county as designated by the county board. The commissioner shall advise the recipient libraries of the significance and content of the state register and shall encourage efforts to promote its usage.

Subd. 5. **Publication account.** A state register publication account is created in the state treasury. All receipts from the sale of the state register shall be deposited in the account. All funds in the state register publication account in the state treasury are appropriated annually to the commissioner of administration to carry out the provisions of subdivisions 1 to 4.

History: 1974 c 344 s 8; 1975 c 380 s 12-15; 1977 c 305 s 3,4; 1977 c 323 s 1; 1977 c 443 s 7; 1980 c 615 s 25,52-54; 1982 c 424 s 130

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, emergency agency rules, adopted pursuant to the administrative procedure act or filed pursuant to the provisions of section 14.38, subdivisions 5 to 9 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, emergency rules, adopted pursuant to the administrative procedure act or filed pursuant to the provisions of section 14.38, subdivisions 5 to 9 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.

Subd. 2. **Restrictions on compilation.** The revisor of statutes shall not:

(1) alter the sense, meaning, or effect of any rule in the course of compiling or publishing it;

(2) aid an agency in the preparation of any statement concerning the need for or reasonableness of a rule except as provided by section 14.07, subdivision 6;

(3) act as legal counsel for an agency before an administrative law judge except as provided by section 14.07, subdivision 6.

Subd. 3. **Source of text.** In order to ensure that the complete text of rules is included in the first compilation published pursuant to subdivision 1, clause (2), and containing the revisor's certificate, the revisor may use the Minnesota Code of Agency Rules, the State Register, the rule files of the secretary of state, the files of individual agencies, the records of the administrative law judge's office, and the records of the attorney general. The revisor is not required to compare the text of a rule as shown by the other possible source documents with the text of the rule in the secretary of state's file.

If any comparison of documents shows there is a material discrepancy in the text of the rule, the revisor shall include in Minnesota Rules the text in the secretary of state's files unless the discrepancy between the secretary of state's files and any of the other documents is the result of an obvious unintentional omission or clerical error. The text published by the revisor shall correct those omissions and errors. The revisor shall add an appropriate footnote describing the apparent discrepancy in text. Before publication of Minnesota Rules, the revisor shall also notify the agency whose rules are affected, the attorney general, the chief administrative law judge, and the legislative commission to review administrative rules about the omission or error.

If any comparison of documents shows that a rule has been filed with the secretary of state but apparently has not been published in the state register as required by law the revisor may, unless the attorney general objects, include the rule in Minnesota Rules or omit the rule if the rule was a repeal but shall add an appropriate footnote describing the apparent fault. Before publication of Minnesota Rules, the revisor shall notify the agency whose rules are affected, the attorney general, the chief administrative law judge, and the legislative commission to review administrative rules about the apparent lack of publication.

If a comparison of documents shows that a rule as adopted in the state register has apparently not been filed with the secretary of state, the revisor may not publish the rule in Minnesota Rules unless the attorney general approves the publication. Before publication of Minnesota Rules the revisor shall notify the agency affected, the attorney general, the chief administrative law judge and the legislative commission to review administrative rules of the apparent lack of filing of the rule. If the revisor publishes the rule, the revisor shall add an appropriate footnote describing the apparent lack of filing.

Subd. 4. **Certification and filing of compilation.** The revisor of statutes shall file with the secretary of state one copy of each compilation or supplement which is published. The first compilation shall contain the revisor's certificate that the rules contained in it have been incorporated into the compilation in the manner required by law and that the incorporation is correct. Each copy thereafter shall contain the revisor's certificate that the rules added to the compilation or supplement have been compared to the original rules filed with the secretary of state and are correctly incorporated into the compilation.

Subd. 5. **Powers of revisor.** (a) In preparing a compilation or supplement, the revisor may renumber rules, paragraphs, clauses or other parts of a rule; combine or divide rules, paragraphs, clauses or other parts of a rule; rearrange the order of rules, paragraphs, clauses, or other parts of a rule; move paragraphs, clauses, or other parts of a rule to another rule; remove redundant language; make minor punctuation and grammatical changes to facilitate the renumbering, combining, dividing, and rearranging of rules or parts of rules; change reference numbers to agree with renumbered rules, paragraphs, clauses or other parts of a rule; change reference numbers to agree with renumbered statutes or parts of statutes; substitute the proper rule, paragraph, clause, or other part of a rule for the term "this rule," "the preceding rule" and the like; substitute numbers for written words and written words for numbers; substitute the term "rule" for the term "regulation" when "regulation" refers to a Minnesota rule; substitute the date on which the rule becomes effective for the words "the effective date of this rule," and the like; change capitalization, punctuation, and forms of citation for the purpose of uniformity; convert citations of Laws of Minnesota to citations of Minnesota Statutes; correct manifest clerical or typographical errors; correct all misspelled words; correct manifest grammatical and punctuation errors; and make other editorial changes to ensure the accuracy and utility of the compilation or supplement.

(b) The revisor shall provide headnotes as catch words to rules and, if appropriate, to paragraphs, clauses, or other parts of a rule. The headnotes are not part of the rule even if included with the rule when adopted. The revisor shall change headnotes to clearly indicate the subject matter of the rules. "Headnote" means any text functioning as catch words to the substance of text and not itself communicating the substantive content of the rule.

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 which 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 commission to review administrative rules, and with the chief administrative law judge before omitting any 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 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 not remove a rule which is suspended and not fully repealed, but shall, if practicable, note the fact of suspension in Minnesota Rules. The revisor shall consult the agency involved, the attorney general, the chief administrative law judge, and the legislative commission to review administrative rules before omitting a rule from publication.

Subd. 7. **Equipment used by revisor.** Insofar as economically feasible, the revisor shall utilize the same equipment, computer assistance and procedures for drafting agency rules and publishing compilations and supplements as for preparing bill drafts and statutory publications.

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 one copy of any compilation or supplement to each county library maintained pursuant to section 134.12 or 375.33 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 or 375.33, the copy will be provided to any public library in the county upon its request.

Subd. 9. **Contracting for publication of Minnesota Rules.** Notwithstanding any provision of law to the contrary, the revisor of statutes may obtain competitive bids from and enter into contracts with the lowest responsible bidder for compiling, editing, indexing, composition, printing, binding, distribution, or other services, if the work either cannot be performed by the revisor or it is uneconomical for the revisor to do so.

History: 1980 c 615 s 57,58; 1981 c 253 s 37-46; 1982 c 424 s 130; 1983 c 210 s 15-17; 1984 c 640 s 32

OFFICE OF ADMINISTRATIVE HEARINGS

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 shall appoint additional administrative law judges and compensation judges to serve in his office as necessary to fulfill the duties prescribed in sections 14.48 to 14.56. 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 from his position 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: 1975 c 380 s 16; 1977 c 443 s 9,10; 1980 c 509 s 2; 1980 c 615 s 26-33; 1981 c 346 s 2-6; 1Sp1981 c 4 art 4 s 40; 1982 c 424 s 130; 1983 c 305 s 5; 1984 c 640 s 32

14.49 TEMPORARY ADMINISTRATIVE LAW JUDGES.

When regularly appointed administrative law judges or compensation judges are not available, the chief administrative law judge may contract with qualified individuals to serve as administrative law judges or compensation judges. Such temporary administrative law judges or compensation judges shall not be employees of the state.

History: 1975 c 380 s 16; 1977 c 443 s 9,10; 1980 c 509 s 2; 1980 c 615 s 26-33; 1981 c 346 s 2-6; 1Sp1981 c 4 art 4 s 40; 1982 c 424 s 130; 1984 c 640 s 32

14.50 HEARINGS BEFORE ADMINISTRATIVE LAW JUDGE.

All hearings of state agencies required to be conducted under this chapter shall be conducted by an administrative law judge assigned by the chief administrative law judge. All hearings required to be conducted under chapter 176 shall be conducted by a compensation judge assigned by the chief administrative law judge. In

assigning administrative law judges or compensation judges to conduct such hearings, the chief administrative law judge shall attempt to utilize personnel having expertise in the subject to be dealt with in the hearing. Only administrative law judges learned in the law shall be assigned to contested case hearings. Only compensation judges shall be assigned to workers' compensation matters. It shall be the duty of the administrative law judge to: (1) advise an agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected interests; (2) conduct only hearings for which proper notice has been given; (3) see to it that all hearings are conducted in a fair and impartial manner. Except in the case of workers' compensation hearings involving claims for compensation it shall also be the duty of the administrative law judge to make a report on each proposed agency action in which the administrative law judge functioned in an official capacity, stating his findings of fact and his conclusions and recommendations, taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action, (ii) fulfilled all relevant substantive and procedural requirements of law or rule, and (iii) in rulemaking proceedings, demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts.

History: 1975 c 380 s 16; 1977 c 443 s 9,10; 1980 c 509 s 2; 1980 c 615 s 26-33; 1981 c 346 s 2-6; 1Sp1981 c 4 art 4 s 40; 1982 c 424 s 130; 1984 c 640 s 32

NOTE: Hearings of the registrar of motor vehicles on motor vehicle dealers' licenses under section 168.27 are exempt from this section.

14.51 PROCEDURAL RULES FOR HEARINGS.

The chief administrative law judge shall adopt rules to govern the procedural conduct of all hearings, relating to both rule adoption, amendment, suspension or repeal hearings, contested case hearings, and workers' compensation hearings. Temporary rulemaking authority is granted to the chief administrative law judge for the purpose of implementing Laws 1981, Chapter 346, Sections 2 to 6, 103 to 122, 127 to 135, and 141. The procedural rules for hearings shall be binding upon all agencies and shall supersede any other agency procedural rules with which they may be in conflict. The procedural rules for hearings shall include in addition to normal procedural matters provisions relating to recessing and reconvening new hearings when the proposed final rule of an agency is substantially different from that which was proposed at the public hearing. The procedural rules shall establish a procedure whereby the proposed final rule of an agency shall be reviewed by the chief administrative law judge to determine whether or not a new hearing is required because of substantial changes or failure of the agency to meet the requirements of sections 14.13 to 14.18. Upon his 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: 1975 c 380 s 16; 1977 c 443 s 9,10; 1980 c 509 s 2; 1980 c 615 s 26-33; 1981 c 346 s 2-6; 1Sp1981 c 4 art 4 s 40; 1982 c 424 s 130; 1984 c 640 s 32

14.52 COURT REPORTERS; AUDIO RECORDINGS.

The office of administrative hearings may maintain a court reporter system and in addition to or in lieu thereof may contract with nongovernmental sources for court reporter services. The court reporters may additionally be utilized as the chief administrative law judge directs. Unless the chief administrative law judge determines that the use of a court reporter is more appropriate, an audio magnetic

recording device shall be used to keep a record at any hearing which takes place under this chapter. In all cases, the chief administrative law judge shall use audio magnetic recording devices to keep the record of hearings except when there are more than two primary parties in a case and the chief administrative law judge determines that the use of a court reporter is more appropriate. If the chief administrative law judge determines that the use of a court reporter is more appropriate, the cost of the court reporter shall be paid by the state. If the chief administrative law judge determines that the use of an audio magnetic recording device is more appropriate in a hearing, any party to that hearing may provide a court reporter at the party's expense. Court reporters provided by a party shall be selected from the chief administrative law judge's list of nongovernmental sources.

The fee charged by a court reporter to a party shall not exceed the fee which would be charged to the state pursuant to the court reporter's contract with the state.

Court reporters serving in the court reporter system of the office of administrative hearings shall be in the classified service. Notwithstanding the provisions of section 15.17, subdivision 4, copies of transcriptions of hearings conducted pursuant to sections 14.48 to 14.56 may be obtained only through the office of administrative hearings.

The departmental and classification seniority of an individual who was employed as a court reporter in state service prior to his appointment as a court reporter in the office of administrative hearings pursuant to Laws 1975, chapter 380, section 16, shall carry forward and be credited to his employment with the office of administrative hearings.

History: 1975 c 380 s 16; 1977 c 443 s 9,10; 1980 c 509 s 2; 1980 c 615 s 26-33; 1981 c 346 s 2-6; 1Sp1981 c 4 art 4 s 40; 3Sp1981 c 2 art 1 s 10; 1982 c 424 s 130; 1982 c 568 s 11; 1983 c 210 s 18; 1984 c 640 s 32

14.53 COSTS ASSESSED.

In consultation with the commissioner of administration the chief administrative law judge shall assess agencies the cost of services rendered to them in the conduct of hearings. All agencies shall include in their budgets provisions for such assessments.

History: 1975 c 380 s 16; 1977 c 443 s 9,10; 1980 c 509 s 2; 1980 c 615 s 26-33; 1981 c 346 s 2-6; 1Sp1981 c 4 art 4 s 40; 1982 c 424 s 130; 1984 c 640 s 32

14.54 ADMINISTRATIVE HEARINGS ACCOUNT.

A state office of administrative hearings account is hereby created in the state treasury. All receipts from services rendered by the state office of administrative hearings shall be deposited in the account, and all funds in the account shall be annually appropriated to the state office of administrative hearings for carrying out the duties specified in sections 14.48 to 14.56.

History: 1975 c 380 s 16; 1977 c 443 s 9,10; 1980 c 509 s 2; 1980 c 615 s 26-33; 1981 c 346 s 2-6; 1Sp1981 c 4 art 4 s 40; 1982 c 424 s 130

14.55 CONTRACTS WITH POLITICAL SUBDIVISIONS.

The chief administrative law judge may enter into contracts with political subdivisions of the state and such political subdivisions of the state may contract with the chief administrative law judge for the purpose of providing administrative law judges and reporters for administrative proceedings. The contract may define the scope of the administrative law judge's duties, which may include the prepara-

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tion of findings, conclusions, or a recommendation for action by the political subdivision. For such services there shall be an assessment in the manner provided in section 14.53.

History: 1975 c 380 s 16; 1977 c 443 s 9,10; 1980 c 509 s 2; 1980 c 615 s 26-33; 1981 c 346 s 2-6; 1Sp1981 c 4 art 4 s 40; 1982 c 424 s 130; 1984 c 640 s 32

14.56 EMPLOYEES TRANSFERRED.

In consultation and agreement with the chief administrative law judge, the commissioner of administration shall pursuant to authority vested in him by section 16B.37, transfer from state agencies, such employees as he deems necessary to the state office of administrative hearings. Such action shall include the transfer of any state employee currently employed as an administrative law judge, if the employee qualifies under sections 14.48 to 14.56.

History: 1975 c 380 s 16; 1977 c 443 s 9,10; 1980 c 509 s 2; 1980 c 615 s 26-33; 1981 c 346 s 2-6; 1Sp1981 c 4 art 4 s 40; 1982 c 424 s 130; 1984 c 544 s 89; 1984 c 640 s 32

PROCEDURE FOR CONTESTED CASE

14.57 INITIATION; DECISION.

An agency shall initiate a contested case proceeding when one is required by law. Unless otherwise provided by law, an agency shall decide a contested case only in accordance with the contested case procedures of the administrative procedure act.

History: 1957 c 806 s 8; 1976 c 68 s 3; 1980 c 615 s 14; 1982 c 424 s 130

14.58 NOTICE AND HEARING.

In any contested case all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place and issues involved, but if, by reason of the nature of the case, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. Prior to assignment of a case to an administrative law judge as provided by sections 14.48 to 14.56, all papers shall be filed with the agency. Subsequent to assignment of the case, the agency shall certify the official record to the office of administrative hearings, and thereafter, all papers shall be filed with that office. The office of administrative hearings shall maintain the official record which shall include subsequent filings, testimony and exhibits. All filings are deemed effective upon receipt. The record shall contain a written transcript of the hearing only if preparation of a transcript is requested by the agency, a party, or the chief administrative law judge. The agency or party requesting a transcript shall bear the cost of preparation. When the chief administrative law judge requests preparation of the transcript, the agency shall bear the cost of preparation. Upon issuance of the administrative law judge's report, the official record shall be certified to the agency.

History: 1957 c 806 s 8; 1976 c 68 s 3; 1980 c 615 s 14; 1982 c 424 s 130; 1984 c 640 s 32

14.59 INFORMAL DISPOSITION.

Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order or default.

History: 1957 c 806 s 8; 1976 c 68 s 3; 1980 c 615 s 14; 1982 c 424 s 130

14.60 EVIDENCE IN CONTESTED CASE HEARINGS.

Subdivision 1. **Admissibility.** In contested cases agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial and repetitious evidence.

Subd. 2. **Made part of record.** All evidence, including records and documents containing information classified by law as not public, in the possession of the agency of which it desires to avail itself or which is offered into evidence by a party to a contested case proceeding, shall be made a part of the hearing record of the case. No factual information or evidence shall be considered in the determination of the case unless it is part of the record. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. When the hearing record contains information which is not public, the administrative law judge or the agency may conduct a closed hearing to discuss the information, issue necessary protective orders, and seal all or part of the hearing record.

Subd. 3. **Cross-examination of witnesses.** Every party or agency shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

Subd. 4. **Official notice.** Agencies may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified in writing either before or during hearing, or by reference in preliminary reports or otherwise, or by oral statement in the record, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical competence, and specialized knowledge in the evaluation of the evidence in the hearing record.

History: 1957 c 806 s 9; 1980 c 615 s 15-17; 1982 c 424 s 130; 1984 c 640 s 32

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.

History: 1957 c 806 s 10; 1975 c 380 s 7; 1982 c 424 s 130; 1984 c 640 s 32

14.62 DECISIONS, ORDERS.

Subdivision 1. **Writing required.** Every decision and order rendered by an agency in a contested case shall be in writing, shall be based on the record and shall include the agency's findings of fact and conclusions on all material issues. A copy of the decision and order shall be served upon each party or his representative and the administrative law judge by first class mail.

Subd. 2. **Failure to make decision.** Unless otherwise provided by law, if an agency fails to render a decision and order in a contested case within 90 days after the submission of the final administrative law judge report and subsequent exceptions and arguments under section 14.61, if any, any party may petition the court of appeals for an order requiring the agency to render a decision and order on the

contested case within such time as the court determines to be appropriate. The order shall be issued unless the agency shows that further delay is reasonable.

History: 1957 c 806 s 11; 1980 c 615 s 18; 1982 c 424 s 130; 1983 c 247 s 8; 1984 c 640 s 32

JUDICIAL REVIEW OF A CONTESTED CASE DECISION

14.63 APPLICATION.

Any person aggrieved by a final decision in a contested case is entitled to judicial review of the decision under the provisions of sections 14.63 to 14.68, but nothing in sections 14.63 to 14.68 shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo provided by law. A petition for a writ of certiorari by an aggrieved person for judicial review under sections 14.63 to 14.68 must be filed with the court of appeals and served on the agency not more than 30 days after the party receives the final decision and order of the agency.

History: 1963 c 809 s 1; 1965 c 698 s 3; Ex1967 c 1 s 6; 1969 c 567 s 3; 1969 c 1129 art 2 s 1; 1971 c 25 s 67; 1973 c 254 s 3; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1977 c 307 s 29; 1977 c 430 s 25 subd 1; 1978 c 674 s 60; 1980 c 615 s 19-21; 1982 c 424 s 130; 1983 c 247 s 9

14.64 PETITION; SERVICE.

Proceedings for review under sections 14.63 to 14.68 shall be instituted by serving a petition for a writ of certiorari personally or by certified mail upon the agency and by promptly filing the proof of service in the office of the clerk of the appellate courts and the matter shall proceed in the manner provided by the rules of civil appellate procedure.

If a request for reconsideration is made within ten days after the decision and order of the agency, the 30-day period provided in section 14.63 shall not begin to run until service of the order finally disposing of the application for reconsideration. Nothing herein shall be construed as requiring that an application for reconsideration be filed with and disposed of by the agency as a prerequisite to the institution of a review proceeding under sections 14.63 to 14.68.

Copies of the writ shall be served, personally or by certified mail, upon all parties to the proceeding before the agency in the proceeding in which the order sought to be reviewed was made. For the purpose of service, the agency upon request shall certify to the petitioner the names and addresses of all parties as disclosed by its records. The agency's certification shall be conclusive. The agency and all parties to the proceeding before it shall have the right to participate in the proceedings for review. A copy of the petition shall be provided to the attorney general at the time of service of the parties.

History: 1963 c 809 s 1; 1965 c 698 s 3; Ex1967 c 1 s 6; 1969 c 567 s 3; 1969 c 1129 art 2 s 1; 1971 c 25 s 67; 1973 c 254 s 3; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1977 c 307 s 29; 1977 c 430 s 25 subd 1; 1978 c 674 s 60; 1980 c 615 s 19-21; 1982 c 424 s 130; 1983 c 247 s 10

14.65 STAY OF DECISION; STAY OF OTHER APPEALS.

The filing of the writ of certiorari shall not stay the enforcement of the agency decision; but the agency may do so, or the court of appeals may order a stay upon such terms as it deems proper. When review of or an appeal from a final decision is commenced under sections 14.63 to 14.68 in the court of appeals, any other later

appeal under sections 14.63 to 14.68 from the final decision involving the same subject matter shall be stayed until final decision of the first appeal.

History: 1963 c 809 s 1; 1965 c 698 s 3; Ex1967 c 1 s 6; 1969 c 567 s 3; 1969 c 1129 art 2 s 1; 1971 c 25 s 67; 1973 c 254 s 3; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1977 c 307 s 29; 1977 c 430 s 25 subd 1; 1978 c 674 s 60; 1980 c 615 s 19-21; 1982 c 424 s 130; 1983 c 247 s 11

14.66 TRANSMITTAL OF RECORD.

Within 30 days after service of the writ of certiorari, or within any further time as the court allows, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceeding, the record may be shortened. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

History: 1963 c 809 s 1; 1965 c 698 s 3; Ex1967 c 1 s 6; 1969 c 567 s 3; 1969 c 1129 art 2 s 1; 1971 c 25 s 67; 1973 c 254 s 3; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1977 c 307 s 29; 1977 c 430 s 25 subd 1; 1978 c 674 s 60; 1980 c 615 s 19-21; 1982 c 424 s 130; 1983 c 247 s 12

14.67 NEW EVIDENCE, HEARING BY AGENCY.

If, before the date set for hearing, application is made to the court of appeals for leave to present additional evidence on the issues in the case, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon such conditions as the court deems proper. The agency may modify its findings and decision by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modifications or new findings or decision.

History: 1963 c 809 s 1; 1965 c 698 s 3; Ex1967 c 1 s 6; 1969 c 567 s 3; 1969 c 1129 art 2 s 1; 1971 c 25 s 67; 1973 c 254 s 3; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1977 c 307 s 29; 1977 c 430 s 25 subd 1; 1978 c 674 s 60; 1980 c 615 s 19-21; 1982 c 424 s 130; 1983 c 247 s 13

14.68 PROCEDURE ON REVIEW.

The review shall be confined to the record, except that in cases of alleged irregularities in procedure, not shown in the record, the court of appeals may transfer the case to the district court for the county in which the agency has its principal office or the county in which the contested case hearing was held. The district court shall have jurisdiction to take testimony and to hear and determine the alleged irregularities in procedure. Appeal from the district court determination may be taken to the court of appeals as in other civil cases.

History: 1963 c 809 s 1; 1965 c 698 s 3; Ex1967 c 1 s 6; 1969 c 567 s 3; 1969 c 1129 art 2 s 1; 1971 c 25 s 67; 1973 c 254 s 3; 1975 c 271 s 6; 1975 c 359 s 23; 1976 c 134 s 78; 1977 c 307 s 29; 1977 c 430 s 25 subd 1; 1978 c 674 s 60; 1980 c 615 s 19-21; 1982 c 424 s 130; 1983 c 247 s 14

14.69 SCOPE OF JUDICIAL REVIEW.

In a judicial review under sections 14.63 to 14.68, the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse

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or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the agency; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Unsupported by substantial evidence in view of the entire record as submitted; or
- (f) Arbitrary or capricious.

History: 1963 c 809 s 2; 1980 c 615 s 22; 1982 c 424 s 130

14.70 [Repealed, 1983 c 247 s 219]

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