

## CHAPTER 14

## ADMINISTRATIVE PROCEDURE

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**14.03 NONAPPLICABILITY.**

*[For text of subs 1 and 2, see M.S.2004]*

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

(1) rules concerning only the internal management of the agency or other agencies that do not directly affect the rights of or procedures available to the public;

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

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

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

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

(1) rules of the commissioner of corrections relating to the release, placement, term, and supervision of inmates serving a supervised release or conditional release term, the internal management of institutions under the commissioner's control, and rules adopted under section 609.105 governing the inmates of those institutions;

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

(3) opinions of the attorney general;

(4) the data element dictionary and the annual data acquisition calendar of the Department of Education to the extent provided by section 125B.07;

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

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

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

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

*[For text of subd 3a, see M.S.2004]*

**History:** 2005 c 136 art 4 s 2

**14.127 LEGISLATIVE APPROVAL REQUIRED.**

**Subdivision 1. Cost thresholds.** An agency must determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for:

(1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees. For purposes of this section, "business" means a business entity organized for profit or as a nonprofit, and includes an individual, partnership, corporation, joint venture, association, or cooperative.

Subd. 2. **Agency determination.** An agency must make the determination required by subdivision 1 before the close of the hearing record, or before the agency submits the record to the administrative law judge if there is no hearing. The administrative law judge must review and approve or disapprove the agency determination under this section.

Subd. 3. **Legislative approval required.** If the agency determines that the cost exceeds the threshold in subdivision 1, or if the administrative law judge disapproves the agency's determination that the cost does not exceed the threshold in subdivision 1, any business that has less than 50 full-time employees or any statutory or home rule charter city that has less than ten full-time employees may file a written statement with the agency claiming a temporary exemption from the rules. Upon filing of such a statement with the agency, the rules do not apply to that business or that city until the rules are approved by a law enacted after the agency determination or administrative law judge disapproval.

Subd. 4. **Exceptions.** (a) Subdivision 3 does not apply if the administrative law judge approves an agency's determination that the legislature has appropriated money to sufficiently fund the expected cost of the rule upon the business or city proposed to be regulated by the rule.

(b) Subdivision 3 does not apply if the administrative law judge approves an agency's determination that the rule has been proposed pursuant to a specific federal statutory or regulatory mandate.

(c) This section does not apply if the rule is adopted under section 14.388 or under another law specifying that the rulemaking procedures of this chapter do not apply.

(d) This section does not apply to a rule adopted by the Public Utilities Commission.

(e) Subdivision 3 does not apply if the governor waives application of subdivision 3. The governor may issue a waiver at any time, either before or after the rule would take effect, but for the requirement of legislative approval. As soon as possible after issuing a waiver under this paragraph, the governor must send notice of the waiver to the speaker of the house of representatives and the president of the senate and must publish notice of this determination in the State Register.

Subd. 5. **Severability.** If an administrative law judge determines that part of a proposed rule exceeds the threshold specified in subdivision 1, but that a severable portion of a proposed rule does not exceed the threshold in subdivision 1, the administrative law judge may provide that the severable portion of the rule that does not exceed the threshold may take effect without legislative approval.

**History:** 2005 c 156 art 2 s 9

#### 14.19 DEADLINE TO COMPLETE RULEMAKING.

Within 180 days after issuance of the administrative law judge's report or that of the chief administrative law judge, the agency shall submit its notice of adoption, amendment, or repeal to the State Register for publication. If the agency has not submitted its notice to the State Register within 180 days, the rule is automatically withdrawn. The agency may not adopt the withdrawn rules without again following the procedures of sections 14.05 to 14.28, with the exception of section 14.101, if the noncompliance is approved by the chief administrative law judge. The agency shall report to the Legislative Coordinating Commission, other appropriate committees of the legislature, and the governor its failure to adopt rules and the reasons for that failure. The 180-day time limit of this section does not include:

(1) any days used for review by the chief administrative law judge or the commission if the review is required by law;

(2) days during which the rule cannot be adopted, because of votes by legislative committees under section 14.126; or

(3) days during which the rule cannot be adopted because approval of the legislature is required under section 14.127.

**History:** 2005 c 156 art 2 s 10

#### 14.47 PUBLICATION IN COMPILED FORM.

*[For text of subds 1 to 7, see M.S.2004]*

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

- (a) 25 copies to the Office of the Attorney General;
- (b) two copies to the leader of each caucus in the house of representatives and the senate, two copies to the Legislative Reference Library, and one copy each to the House of Representatives Research Department and the Office of Senate Counsel and Research;
- (c) three copies to the revisor of statutes for transmission to the Library of Congress for copyright and depository purposes;
- (d) 150 copies to the State Law Library;
- (e) ten copies to the law school of the University of Minnesota;
- (f) one copy of any compilation or supplement to each county library maintained pursuant to section 134.12 upon its request, except in counties containing cities of the first class. If a county has not established a county library pursuant to section 134.12, the copy will be provided to any public library in the county upon its request; and
- (g) three copies to the Office of Administrative Hearings.

*[For text of subd 9, see M.S.2004]*

**History:** 2005 c 16 s 1

#### 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 or by a workers' compensation judge assigned by the chief administrative law judge as provided in section 14.48. All hearings required to be conducted under chapter 176 shall be conducted by a compensation judge assigned by the chief administrative law judge or by an administrative law judge assigned by the chief administrative law judge as provided in section 14.48. 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. It shall be the duty of the 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 judge to make a report on each proposed agency action in which the administrative law judge functioned in an official capacity, stating findings of fact and 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 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:** 2005 c 16 s 2

**14.51 PROCEDURAL RULES.**

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

**History:** 2005 c 16 s 3

**14.53 COSTS ASSESSED.**

Except as otherwise specifically provided by statute, the chief administrative law judge, in consultation with the commissioner of finance, shall assess agencies the cost of services rendered to them. All agencies shall include in their budgets provisions for such assessments.

**History:** 2005 c 16 s 4

**14.62 DECISIONS, ORDERS.**

*[For text of subd 1, see M.S.2004]*

Subd. 2a. **Administrative law judge decision final; exception.** Unless otherwise provided by law, the report or order of the administrative law judge constitutes the final decision in the case unless the agency modifies or rejects it under subdivision 1 within 90 days after the record of the proceeding closes under section 14.61. When the agency fails to act within 90 days on a licensing case, the agency must return the record of the proceeding to the administrative law judge for consideration of disciplinary action. In all contested cases where the report or order of the administrative law judge constitutes the final decision in the case, the administrative law judge shall issue findings of fact, conclusions, and an order within 90 days after the hearing record closes under section 14.61. Upon a showing of good cause by a party or the agency, the chief administrative law judge may order a reasonable extension of either of the two 90-day deadlines specified in this subdivision.

*[For text of subs 3 and 4, see M.S.2004]*

**History:** 2005 c 16 s 5