

16.1 DEFINITION OF A RULE

The Administrative Procedure Act (APA) defines a rule in broad terms as every agency statement of general applicability and future effect adopted to implement or make specific the law enforced or administered by the agency or to govern its organization or procedure.¹ That rules are statements of “general applicability” means that the nature of a rule is that it consists of a standard applicable to all.² Rules have thus been said to be analogous to enactments of the legislature.³ They can be contrasted with contested cases, which, because they generally involve the application of rules or law to specific parties, have been said to be analogous to the adjudication process of a court.⁴

As one Minnesota court put it, “[I]t is obvious that the legislative scheme in so defining [the term ‘rule’] was to include agency activities within the general definition of ‘rule’ and then to exclude such specific activity as it deemed beneficial to the concerns of efficient government and public participation.”⁵

Excepted from this broad definition, and consequently from the requirements of formal rulemaking, are rules governing the internal management of an agency that do not directly affect the rights of or procedures available to the public.⁶ Also excepted are several categories of rules pertaining to specific agencies or to specific programs as to which the legislature has chosen not to require formal rulemaking. Examples include rules of the commissioner of corrections governing inmates, opinions of the attorney general, occupational safety and health standards, and revenue notices and tax information bulletins of the commissioner of revenue.⁷

¹ MINN. STAT. § 14.02, subd. 4 (2014).

² *Minn. Chamber of Commerce v. Minn. Pollution Control Agency*, 469 N.W.2d 100, 105 (Minn. Ct. App. 1991) (“The development of site-specific criteria does not come within the definition of a rule because it is not an agency statement of general applicability and future effect); *see also* *Weber v. Hvass*, 626 N.W. 2d 426, 434 (Minn. Ct. App. 2001) (agreeing that a cost-of-confinement policy set by the Commissioner of Corrections “is clearly a rule, because it has general applicability over all inmates confined in [the Department of Correction’s] facilities,” but also noting the policy in question falls within a class of rules specifically exempted by the legislature from general rulemaking procedures).

³ *See* 1 KENNETH CULP DAVIS & R.J. PIERCE ADMINISTRATIVE LAW TREATISE § 6.1 (5th ed. 2001).

⁴ *See id.* at 4; *see also* 1 F. COOPER, STATE ADMINISTRATIVE LAW 108 (1965).

⁵ *McKee v. Likins*, 261 N.W.2d 566, 577 (Minn. 1977).

⁶ MINN. STAT. § 14.03, subd. 3(a)(1) (2014); *see* *Minn. Med. Ass’n v. State*, 274 N.W.2d 84, 90 (Minn. 1978) (noting that agency procedures and safeguards to ensure accuracy, completeness, and currency of agency data on individuals under the Data Practices Act pertain to internal agency management and “does not affect the public’s right to information contained in the official record”); *Weber v. Hvass*, 626 N.W.2d 426, 433-34 (Minn. Ct. App. 2001) (affirming that a Department of Correction policy imposing a 10% surcharge on gifts to inmates was an internal management rule not subject to the APA).

⁷ MINN. STAT. § 14.03, subd. 3(b)(1), (3), (5), (6) (2014). Other examples include certain highway weight limitation rules, the state education data element dictionary and annual data acquisition calendar, the occupational safety and health standards and uniform conveyancing forms adopted by the commissioner of commerce, standards adopted by the Electronic Real Estate Recording Commission, and interpretative guidelines developed by the commissioner of human services to the extent provided by chapter 245A. MINN. STAT. § 14.03, subd. 3(b)(2), (4), (5), (7)-(9) (2014); *see also* *In re Investigation into Intra-LATA Equal Access & Presubscription v. Minn. Pub. Utils. Comm’n*, 532 N.W. 2d 583, 588-89 (Minn. Ct. App. 1995) (ruling that agency statements deemed not to be rules are exempted from the requirements of the APA’s rulemaking requirements); *Stony Ridge & Carlos View Terrace Ass’n, Inc. v. Alexander*, 353

Suspensions, repeals, and amendments of existing rules are themselves defined to be rules by the APA⁸ and can therefore be accomplished only by compliance with APA rulemaking procedures.

N.W. 2d. 700, 703 (Minn. Ct. App. 1984) (looking first to “to see if the policy falls within the general definition of a rule,” and then “[i]f the policy may be defined as a rule, [determining] whether the policy falls within any listed exemptions to the definition of a rule.”).

Excepted from the APA entirely are agencies in the legislative and judicial branches, the exercise of emergency powers in the department of military affairs, the statutory comprehensive health association, the tax court, and the regents of the University of Minnesota. MINN. STAT. §§ 12.31-.37, 14.03, subd. 1 (2014).

⁸ MINN. STAT. § 14.02, subd. 4 (2014); *see Swenson v. State Dep't of Pub. Welfare*, 329 N.W.2d 320, 324 (Minn. 1983) (noting that amendment of an agency rule mandating individual public welfare services could be undertaken only through the use of formal rulemaking procedures).