

## 16.6 ADMINISTRATIVE CHALLENGE TO IMPROPER RULEMAKING

Prior to July 1, 2001, a challenge to an unadopted rule, outside of a contested case proceeding, had to be brought in court. As of that date, however, the APA was amended to provide an administrative process to challenge the enforcement of policies that should be adopted as rules.<sup>1</sup> Any person may file a petition with the office of administrative hearings seeking an order from an administrative law judge determining that an agency is enforcing or attempting to enforce a policy as though it were a duly adopted rule. The agency must respond to the petition within 10 days and oral argument may be ordered by the ALJ. The ALJ is authorized to issue an order directing the agency to cease enforcement of the unadopted rule and that order is published in the *State Register*. The costs of the proceeding are borne by the agency unless the ALJ rules in favor of the agency, in which case costs may be assessed against a petitioner under certain circumstances.

<sup>1</sup> MINN. STAT. § 14.381 (2014).