

18.3 APPROVAL OF FORM

No agency decision to adopt a rule is effective unless an agency obtains the revisor's approval of the form of the rule. An agency may not submit proposed rules for publication in the *State Register* unless those rules contain the revisor's approval in regard to form.¹ By law, if any agency submits a complete rule draft to the revisor just for approval of form and indicates that it wants no drafting advice, the revisor's attorney will disapprove the rule unless it fully complies with the revisor's style and form requirements. The revisor's attorney must specify the reasons for the refusal and the modifications necessary to permit the rule to be approved.² In practice, however, this statutory procedure is not followed. Agencies rely on the revisor to prepare revised drafts that satisfy the office's style and form requirements. The changes the attorney makes on the agency's draft beyond those required to comply with the style and form requirements depend on the agency's directions. The attorney will also suggest form or style improvements not mandated but recommended by the revisor's style and form standards. The attorney will advise of constitutional or legal problems of which the attorney is aware and offer to redraft to try to alleviate the problems. However, the rule remains the responsibility of the agency, and if the agency rejects the advice and directs the attorney to make the minimal changes necessary for form approval, the attorney will do so.

After drafting or review is complete, the revisor's office produces a final copy of the draft with a certificate of form approval attached to the rules. The office provides the agency with two copies of the proposed rule for submission to the *State Register*, two copies for use during the rule adoption process, and two additional copies for the agency's use.

An agency must also obtain the revisor's form approval of modifications made by an agency to proposed rules when they are submitted to the office of administrative hearings (OAH).³ Just as with original drafting, the revisor's office prepares the modifications to the proposed rules according to its form requirements and indicates changes to the text with strikeouts and underlines.⁴

Finally, the revisor's form approval must be obtained for an adopted rule, whether it is adopted after public hearing,⁵ adopted without public hearing,⁶ or adopted as an exempt or expedited rule⁷, before its filing with the secretary of state.

The agency must submit one copy of the adopted rules to the Office of Administrative Hearings. OAH then requests certified copies of the rules from the Revisor. The Revisor has five working days to certify the form of the rules. If the form of the rules is approved, the revisor issues a certificate of approval.⁸ If the form of the rules is disapproved, the revisor must notify the agency and the OAH of this fact.⁹ The notice will

¹ MINN. STAT. §§ 14.14, subd. 1a, .22, subd. 1(a), .389, subd. 2 (2014); *see also id.* § 14.3895, subd. 5 (repeal of obsolete rules).

² *Id.* § 14.08(c).

³ *Id.* § 14.08(a); MINN. R. 1400.2100(A) (2013).

⁴ MINN. STAT. § 14.07, subd. 3 (2014).

⁵ *Id.* § 14.20.

⁶ *Id.* § 14.28.

⁷ *Id.* §§ 14.386(a)(1), .388, subd. 1.

⁸ *Id.* § 14.08(b).

⁹ *Id.*(a).

revise the rule so that it is in the correct form.¹⁰ Because the form of the proposed rules and the form of modifications have already been approved, there is little possibility of anything occurring that would merit disapproval. If the OAH requires changes in the rule in that office's final review, then the revisor will review the form of those changes.

¹⁰ *Id.*(c).