

2.3 MINNESOTA RULES

The essential resources of state administrative law are the rules adopted by state agencies. Although many citizens are unaware of these rules, they have the force and effect of law and occupy more space on a bookshelf than Minnesota Statutes.

2.3.1 Adoption and Publication

The text of proposed rules and amendments to rules, notice of comment periods and hearing dates, and final adoption of rules and amendments must be published in the *Minnesota State Register*. The *State Register* began weekly publication in 1976 and ceased publication in print in 2004. It is now available online, although individual copies and certified copies can be purchased from the State bookstore.¹ The *State Register* is the official organ for notifying the public about actions of state government, including rulemaking. It is published by the Minnesota Department of Administration and is available online at the Minnesota Revisor of Statutes website as well.²

Rules, including rules specifically exempted from the Minnesota Administrative Procedure Act (APA),³ must be published in the *State Register* to be effective. The *State Register* is divided into sections. The sections related to rule-making address proposed rules, adopted rules, and a list of Minnesota Rules amendments and additions that is compiled in various issues throughout the year.⁴

The *State Register* also contains the Governor's Executive Orders, Exempt Rules, Revenue Notices, Commissioner's Notices and notices related to state bids, grants and loans.

Publication in the *State Register* is only part of the rulemaking process in Minnesota. Many rules must be heard before the Office of Administrative Hearings as well as being published in the *State Register*. See section 2.5 of this chapter regarding Decisions and Orders of Administrative Law Judges for more information on the role of the Office of Administrative Hearings (OAH) in the Minnesota rulemaking process.

After final adoption by the agency, agency rules are codified into *Minnesota Rules* (referred to as the *Minnesota Agency Rules* on the Revisor of Statutes website to disambiguate them from the Court Rules) published by the Office of the Revisor of Statutes. Agency rules are compiled by issuing agency and arranged according to a uniform decimal numbering scheme. *Minnesota Agency Rules* is available online⁵ and as a multi-volume hardbound set, published biennially in odd numbered years and updated by pocket parts in even-numbered years. Volume 1 contains a Users' guide, and the last volume contains an

¹ *State Register*, MINNESOTA'S BOOKSTORE, <http://www.comm.media.state.mn.us/bookstore/mnbookstore.asp?page=register> (last visited Oct. 1, 2014).

² *State Register*, OFFICE OF THE REVISOR OF STATUTES, https://www.revisor.mn.gov/state_register/ (last visited Oct. 1, 2014).

³ See MINN. STAT. §§ 14.001-.69 (2014).

⁴ To see an example of the cumulative list of rules amended or repealed, see 39 Minn. Reg. 413, 416-17 (Sept. 29, 2014).

⁵ *Minnesota Administrative Rules* OFFICE OF THE REVISOR OF STATUTES, <https://www.revisor.mn.gov/rules/> (last visited Oct. 1, 2014).

index and several useful tables. Certain documents are incorporated by reference into the Rules, for example, the Uniform Building Code. These incorporated documents must be conveniently available and are, at a minimum, available at the Minnesota State Law Library.⁶

To locate a current rule, consult the comprehensive index in the current edition of *Minnesota Rules*, on the Revisor of Statutes website⁷ or in hard copy. To ensure that the rule has not been amended or repealed, refer next to the *State Register*. The most recent cumulative list of Minnesota Rules amendments and additions should be checked to see if there is a listing for the chapter and section in question, and this process should be repeated in subsequent issues as necessary. The issues in which the list is cumulated are listed inside the front cover of each issue.⁸

In the autumn of 2014 the revisor's office began "beta testing" and providing public access to a prototype of what it calls "a public administrative rule status system."⁹ The system permits users to both access historical documents related to completed rulemakings and to follow developments of present-day rulemaking proceedings.

As of late 2014, the rule status system afforded access to historical rule information, documents and notices for rules adopted since 1980. The system also made available full-text word search of every volume of the *State Register*, and review access to more than 1,100 agency SONARs (statements of need and reasonableness) and nearly 1,000 rule-related records from the Office of Administrative Hearings.

The lynchpin of the system is the fact that each of the legislative and executive branch agencies involved in the state rulemaking process is now using the Revisor Number as a unique and common identifier for rulemaking documents. In this way, notwithstanding the fact that many different agencies and stakeholders develop materials as part of a particular rulemaking proceeding, the shared Revisor Number permits those items to be electronically tagged and brought to a single online storage and status system.

2.3.2 Historical Research

Between 1970 and 1983, there were several compilations of Minnesota's rules that can be used with varying degrees of success to trace the history of any given rule. Before 1970, compilations did not exist or were published separately by the individual agency. Because the completeness of the compilations is both questionable and variable, tracing the changes

⁶ MINNESOTA STATE LAW LIBRARY, <http://mn.gov/lawlib/> (last visited Oct. 1, 2014).

⁷ *Minnesota Administrative Rules*, *supra* note 5.

⁸ See 39 Minn. Reg. 413, 416-17 (Sept. 29, 2014).

⁹ *Minnesota Rules Status – Basic Search*, OFFICE OF THE REVISOR OF STATUTES, https://www.revisor.mn.gov/rules/rule_search.php (last visited Oct. 1, 2014)

("[The] beta version of a public administrative rule status system will allow you to follow many of the actions taken by state departments and agencies when they adopt administrative rules. It also provides access to historical rule information, documents and notices for rules adopted since 1980. This system will give you access to the entire State Register in searchable electronic form, over 1,150 agency SONARs (statement of need and reasonableness), and over 920 documents from the Office of Administrative Hearings...").

in a rule requires a check of previous editions of rules held by the agency in question, and the files of the secretary of state with whom most (but not all) rules were required to be filed.

From 1970 to 1978, the commissioner of administration issued the *Minnesota State Regulations*, a set of eleven loose-leaf volumes. This set collected rules previously published by individual agencies and contained no general index. In 1978, the title changed to *Manual of State Agency Rules*, but no other changes were made.

From 1978 to 1982, the commissioner of administration published the Minnesota Code of Agency Rules (MCAR). This set of fifteen green loose-leaf binders still provided no general index but did have a table of contents by agency. MCAR attempted the first uniform numbering scheme, but agencies retained control over the printing of their rules, and many rules were never renumbered. In addition, agencies controlled the sending of updates of compiled rules to subscribers to MCAR, and chaos resulted, with many inconsistencies between sets in different locations.

The legislature mandated sweeping changes in the publication of rules in chapter 615 of the 1980 Minnesota Laws. The authority of the commissioner of administration to publish MCAR was terminated as of July 1, 1982. Responsibility for publishing the new compilation, *Minnesota Rules*, was transferred to the Revisor of Statutes with the goal of making rules as accessible as statutes. The revisor was empowered to require that rules be submitted for publication in a standardized format prescribed by the revisor. As of January 1985, agencies otherwise exempt from the APA were also required to submit their rules to the revisor for publication in *Minnesota Rules*.

In 1982, the revisor issued the MCAR reprint in seventy paperbound pamphlets arranged by agency to fill the gap until the completion of *Minnesota Rules*. The MCAR reprint contains all rules in effect on September 15, 1982. The revisor's office kept the old numbering scheme but attempted to correct filing errors; hence, the reprint contains rules not previously compiled.

The first edition of *Minnesota Rules* was published in 1983 in seven hardbound volumes. All rules are renumbered according to the new decimal scheme, and tables provide cross-references between old and new numbers. A new comprehensive index provides access to the entire set.

2.3.3 Rulemaking Aids

There are a number of publications that are of assistance to a person interested in participating in the rulemaking process. The Office of the Revisor of Statutes publishes *Rulemaking in Minnesota: A Guide*, written by Paul M. Marinac.¹⁰ This publication sets out the steps in the rulemaking process for rules with a hearing, rules without a hearing, and exempt rules. Included are the relevant statutory and rule cites. The revisor also publishes the *Minnesota Rules Drafting Manual with Styles and Forms*.¹¹ The Manual contains guidelines on clear drafting, how to draft amendments, forms of citation and a style guide. It is helpful to a rulemaking participant who wishes to submit a proposed amendment or

¹⁰ Paul M. Marinac, *Rulemaking in Minnesota: A Guide* (2014), available at https://www.revisor.mn.gov/revisor/pubs/2014_all_rulemaking_guide.pdf.

¹¹ OFFICE OF THE REVISOR OF STATUTES, MINNESOTA RULES DRAFTING MANUAL WITH STYLES AND FORMS (1997), available at https://www.revisor.leg.state.mn.us/revisor/pubs/arule_drafting_manual/Cover1.htm.

replacement to the agency. A detailed explanation of how to adopt rules is provided in the *Minnesota Rulemaking Manual*, authored by David Orren and Patricia Winget.¹² This helpful publication provides step-by-step instructions for agency rulewriters including help with such topics as rule development, developing the statement of need and reasonableness, and giving notice of the rulemaking. It includes checklists and forms.

¹² MINNESOTA RULEMAKING MANUAL (Patricia Winget ed., 2014) *available at* <http://www.health.state.mn.us/rules/manual/2014manual.pdf>