

20.2 INITIATION OF RULEMAKING WITH A HEARING

Before any formal rulemaking hearing on proposed rules comes before an ALJ, several prehearing opportunities to participate by the public and affected parties exist. These opportunities include solicitation of outside opinion by publication of the Request for Comments by the agency on a subject matter of possible rulemaking¹ and possible input into preparation of the required SONAR.²

The structure of the APA encourages negotiations with agency staff and decisionmakers over rulemaking issues before a proposed rule is published in the *State Register*. Throughout the formal rulemaking process the agency seeks to obtain proposals and comments on the rules from affected parties. An agency may do this formally by establishing a task force or a stakeholder advisory group, consulting with expert reviewers, holding townhall meetings in relevant geographic locations or informally by directly contacting affected parties or their representatives or the affected parties may directly contact the agency with their feedback.³

Generally, rulemaking with a hearing before an ALJ may occur in one of two ways: 1) A hearing may be initiated by the agency; or 2) a hearing may be required due to the receipt of the necessary number of hearing requests.

20.2.1 Rulemaking with a Hearing Initiated by an Agency

The rulemaking agency must make the strategic decision whether to publish its rule with a notice of hearing, notice of no hearing or a dual notice. This decision is one that is entirely in the discretion of the agency.⁴ Practical agency considerations in convening a hearing would include: the scope and number of possible objections and objectors; the type and scope of possible controversies; the urgency of the need for rules; the likelihood of challenge to or subsequent judicial review of the rules or of the application of the rules; the costs of rulemaking with a hearing; and other relevant reasons..

20.2.2 Triggering Rulemaking Hearing by Request of Twenty-five Persons

Even if the agency decides to publish a notice of intent to adopt without a public hearing, a hearing may be required due to the request of interested persons. A written request by twenty-five or more persons submitted to the agency during the thirty days allowed for comment on a rule proposed for adoption without a hearing requires the agency to publish a notice of hearing employing the procedures set forth for the initiation of rulemaking with a hearing.⁵

To save time and expense, the agency may publish a dual notice of intent to adopt rules. A dual notice provides that a hearing will not be held unless twenty-five or more persons request a hearing.⁶ If twenty-five or more affected parties request a hearing, the

¹ MINN. STAT. § 14.101 (2014); *see* § 17.1.4.

² MINN. STAT. . §§ 14.131,.23 (2014); MINN. R. 1400.2070 (2013); *see* § 17.2.

³ *See* § 17.1.3.

⁴ *See* MINN. STAT. § 14.14, .22 (2014); *see also* MODEL STATE ADMIN. PROCEDURE ACT § 3-104 (1981).

⁵ MINN. STAT. § 14.25, subd. 1 2014.

⁶ *Id.*§ 14.22, subd. 2.

hearing time, date, and place are already published in the dual notice and the agency does not have to publish an additional notice of hearing.⁷ In order for a hearing request to be valid, the written request must include: (1) the name and address of the person or entity requesting a hearing; and (2) the portion or portions of the rule that the person or entity objects to or a statement that the person or entity objects to the rule in its entirety.⁸ Whether or not a hearing request meets these requirements and is valid is up to the rulemaking agency.

⁷ See § 19.3.

⁸ MINN. STAT. § 14.25, subd. 1 (2014).