

20.3 PROCEDURES FOR A RULEMAKING HEARING BEFORE AN ADMINISTRATIVE LAW JUDGE

The procedural requirements for rulemaking with a hearing before an ALJ are set forth in sections 14.131 through 14.20 of the Minnesota Statutes and in the rules adopted by the Minnesota OAH.¹ These requirements have not generated much case law, and preenforcement judicial review of agency rules is limited.² An absence of codification or annotation of agency or OAH precedent also makes comparative review of rulemaking proceedings difficult.

20.3.1 Appointment of Administrative Law Judge and Filing of Jurisdictional Documents

Prior to publishing the rules in the *State Register*, the agency must submit its notice of hearing or dual notice and other documents to the OAH for the assignment of an ALJ and to schedule a hearing date.³ The agency is required to file with the chief ALJ, certain documents including: the proposed rules with certification of approval by the revisor of statutes in regard to form; a draft or final copy of the SONAR; and a proposed notice of hearing or dual notice containing the time, date, and place of the hearing.⁴ The notice of hearing or dual notice is reviewed at this time, and the ALJ may suggest changes or additions. The ALJ is also required to advise the agency about the time and location of the hearing.⁵ These documents are available for public inspection at the OAH. They are also available from the agency.

¹ MINN. R. 1400.2000-.2240 (2013).

² *See generally* *Handle With Care, Inc. v. Dep't of Human Servs.*, 406 N.W.2d 518, 520-23 (Minn. 1987) (determining whether statutory preconditions for rulemaking existed); *Manufactured Housing Inst. v. Pettersen*, 347 N.W.2d 238, 240-41, 244-46 (Minn. 1984) (stating that judicial review of a preenforcement challenge to a rule's validity "is on the record made in the rulemaking proceeding" and holding that a portion of the rule challenged was "defective and invalid").

³ *See* MINN. STAT. § 14.14, subd. 2a (2014); MINN. R. 1400.2020, subp. 1, .2080, subp. 5 (2013).

⁴ MINN. R. 1400.2080, subps. 4, 5 (2013)

⁵ MINN. STAT. § 14.50 (2014); MINN. R. 1400.2080, subp. 5 (2013)

20.3.2 Publication and Other Notice

The APA⁶ and OAH rules⁷ govern the notice of hearing. Notice must be published in the *State Register*. Notice of the rulemaking procedure is also required to be sent to persons who have registered to be on the agency's list to receive such notices.⁸ Agencies must also make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication.⁹ The proposed rules will, in most cases, also be required to be published in the *State Register*. The chief administrative law judge may authorize an agency to omit the text of a proposed rule from publication in the *State Register* in certain circumstances if the publication would be unduly cumbersome, expensive, or otherwise inexpedient.¹⁰

The notice of hearing contains either the text of the proposed rule or a description of the nature and effect of the proposed rule and an announcement of the availability of a free copy from the rulemaking agency.¹¹ Many agencies also publish their proposed rules at their website on the internet. The notice invites public comment on the proposed rule for a thirty-day period. The notice also notes the possibility of modification of the proposed rules as a result of the comments received. The public is notified that a SONAR, which contains the agency's justifications for the proposed rules, is available from the agency. The agency may also give notice of the hearing in the dual notice and inform affected parties that they may submit a request for a hearing and how affected persons can submit such a request.¹² The time, date and place of the hearing and procedure on how to participate in the hearing process are also contained in the notice. The OAH has adopted rules for the form and content of the notice of hearing.¹³

⁶ MINN. STAT. § 14.14, subd. 1a (2014).

⁷ MINN. R. 1400.2080 (2013).

⁸ MINN. STAT. § 14.14, subd. 1a, .22 (2014) (each agency maintains its own rulemaking mailing list and includes a list of names and addresses of all persons registered with the agency to receive these notices).

⁹ MINN. STAT. § 14.14, subd. 1a (2014); *see also id.* § 14.116 (providing for notice to legislature); MINN. R. 1400.2060 (2013) (allowing for an agency to receive prior approval of its plan regarding "additional notice" from the Office of Administrative Hearings).

¹⁰ MINN. STAT. § 14.14, subd. 1a(b) (2014).

¹¹ *Id.* § 14.14, subd. 1a.

¹² Minn. R. 1400.2080, .2540 (2013).

¹³ *Id.* 1400.2530 ().