

23.1 INTRODUCTION

All rules adopted pursuant to the Administrative Procedure Act (APA) are reviewed by an administrative law judge (ALJ) with the Office of Administrative Hearings (OAH). If the rule is adopted with a hearing, an ALJ is to make findings and conclusions about whether the agency has “fulfilled all relevant procedural requirements of law or rule.”¹ If the rule is adopted without a hearing or through the expedited or exempt rulemaking process, the ALJ is to review the rule “as to its legality and its form to the extent the form relates to legality.”² The OAH rules, found in Minnesota Rules, part 1400.2100 (2013), lists the “standards of review” or the various legal requirements that the ALJ considers in his or her review of rules.

An ALJ’s review of the language of rules is limited. The scope of review is restricted to a review of the rule on its face, not as applied. The standard of review is similar to the court’s review of a pre-enforcement challenge under Minnesota Statutes section 14.45 (2014). As stated by the court of appeals in *Minnesota Association of Homes for the Aging v. Department of Human Services*,³ this standard of review is “necessarily more restricted. Broad and far-reaching scrutiny of a rule or regulation, based upon hypothetical facts, is a premature exercise by the judiciary.”⁴

This chapter will discuss the various legal requirements of rulemaking. Essentially, there are five sources of substantive rulemaking law: The Minnesota APA, located in Minnesota Statutes chapter 14; the applicable statutes or rules of the particular agency adopting the rule; the rules of the OAH; Minnesota appellate case law; and general principles of constitutional law.

Generally, the following issues arise in the review of rules for legality: (1) statutory authority, (2) procedural requirements, (3) unbridled discretion, (4) delegation, (5) retroactivity, (6) reasonableness, and (7) constitutional concerns, which include void for vagueness, overbroad classifications, equal protection concerns, and burdens on interstate commerce.

¹ MINN. STAT. § 14.50 (2014); *see id.* § 14.15, subd. 1.

² *Id.* § 14.26, subd. 3.

³ 385 N.W.2d 65 (Minn. Ct. App. 1986).

⁴ *Id.* at 67 (quoting *Minn.-Dakotas Retail Hardware Ass'n v. State*, 279 N.W.2d 360, 363 (Minn. 1979)); *see also* *Mammenga v. Dep't of Human Servs.*, 442 N.W.2d 786, 789 (Minn. 1989) (“The mere fact . . . that application of a rule may yield a harsh or undesirable result in a particular case does not make the rule invalid.”).