

Research Department

Patrick J. McCormack, Director

600 State Office Building
St. Paul, Minnesota 55155-1298
651-296-6753 [FAX 651-296-9887]
www.house.mn/hrd/

Minnesota House of Representatives

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TO: Interested Legislators

FROM: Mark Shepard, Legislative Analyst, (651) 296-5051

RE: 2013 laws authorizing special rulemaking processes or granting rulemaking exemptions

This memo reproduces the text of 2013 laws that authorize use of special rulemaking processes or that grant exemptions from rulemaking procedures. The memo is organized into the following sections:

- Laws authorizing use of the “good cause” rulemaking exemption in section 14.388
- Laws authorizing use of the expedited rulemaking process in section 14.389
- Laws granting exemptions from the rulemaking process, but requiring compliance with procedures in section 14.386
- Laws granting exemptions from the rulemaking process, including an exemption from procedures in section 14.386
- Laws providing that agency determinations are not “rules”

Each section of the memo starts by summarizing the general laws in Minnesota Statutes, chapter 14, governing the rulemaking exemption or process in that section of the memo.

In preparing a memo such as this, it is possible I have overlooked some rulemaking exemptions. The primary purpose of the memo is not necessarily to compile a definitive catalogue of rulemaking exemptions, but rather to provide information that may help legislators as they consider how to deal with these issues in the future.

An appendix at the end of the memo reproduces the text of Minnesota Statutes, sections 14.386, 14.388, and 14.389.

Laws Authorizing use of “Good Cause” Exemption

In Minnesota Statutes, section 14.388, the legislature has provided limited circumstances under which an agency may omit rulemaking procedures for “good cause.” This can be done only if rulemaking procedures are unnecessary, impracticable, or contrary to the public interest, and if the rule:

- (1) addresses a serious and immediate threat to public health, safety, or welfare;
- (2) complies with a court order or federal law in a manner that does not allow for compliance with rulemaking procedures;
- (3) incorporates changes in law when no interpretation of law is required; or
- (4) makes changes that do not alter the meaning or effect of a rule.

An agency using the good cause exemption must give notice of its proposed rule, including an explanation of why use of the good cause exemption is justified. The Office of Administrative Hearings reviews the legality of the proposed rules, including the justification for use of the good cause exemption.

Sometimes the legislature specifically authorizes an agency to adopt rules under the good cause exemption. This sometimes happens when the legislature requires an agency to change its rules in a specified manner and the agency has no discretion.

Rules adopted under clauses (1) and (2) are effective only for two years.

Chapter 85, Article 5

Sec. 45. GOOD CAUSE EXEMPTION.

The Board of Cosmetology may amend Minnesota Rules so that they conform with this article. The Board of Cosmetology may use the good cause exemption under Minnesota Statutes, section 14.388, subdivision 1, clause (3), in adopting the amendment, and Minnesota Statutes, section 14.386, does not apply, except as it relates to Minnesota Statutes, section 14.388.

Chapter 114, Article 4

Sec. 103. RULEMAKING; POSSESSION AND TRANSPORTATION OF WILDLIFE.

The commissioner of natural resources may use the good cause exemption under Minnesota Statutes, section 14.388, subdivision 1, clause (3), to adopt rules to conform with the changes to Minnesota Statutes 2012, section 97A.401, subdivision 3, contained in this article, and Minnesota Statutes, section 14.386, does not apply except as provided under Minnesota Statutes, section 14.388.

Sec. 104. RULEMAKING; DISPLAY OF PADDLE BOARD LICENSE NUMBERS.

(a) The commissioner of natural resources shall amend Minnesota Rules, parts 6110.0200, 6110.0300, and 6110.0400, to exempt paddle boards from the requirement to display license certificates and license numbers, in the same manner as other nonmotorized

watercraft such as canoes and kayaks.

(b) The commissioner may use the good cause exemption under Minnesota Statutes, section 14.388, subdivision 1, clause (3), to adopt rules under this section, and Minnesota Statutes, section 14.386, does not apply except as provided under Minnesota Statutes, section 14.388.

Sec. 107. RULEMAKING; FUGITIVE EMISSIONS.

(a) The commissioner of the Pollution Control Agency shall amend Minnesota Rules, part 7005.0100, subpart 35a, to read:

""Potential emissions" or "potential to emit" means the maximum capacity while operating at the maximum hours of operation of an emissions unit, emission facility, or stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restriction on hours of operation or on the type or amount of material combusted, stored, or processed, must be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions must not be counted in determining the potential to emit of an emissions unit, emission facility, or stationary source. Fugitive emissions shall not be counted when determining potential to emit, unless required under Minnesota Rules, part 7007.0200, subpart 2, item B, or applicable federal regulation."

(b) The commissioner may use the good cause exemption under Minnesota Statutes, section 14.388, subdivision 1, clause (3), to adopt rules under this section, and Minnesota Statutes, section 14.386, does not apply, except as provided under Minnesota Statutes, section 14.388.

Chapter 121

Sec. 54. RULEMAKING; GAME FISH EGGS AS BAIT.

(a) The commissioner of natural resources shall amend Minnesota Rules, part 6262.0100, by adding a subpart to read:

"Spawn bags may be bought or sold only if the bags are made with:

A. fish eggs from a licensed aquaculture facility; or

B. fish eggs that are:

(1) legally taken from a source outside Minnesota that has been certified disease-free; and

(2) preserved and labeled as required under a bait preservation permit. Records must be maintained as required for bait preservation permits."

(b) The commissioner of natural resources shall amend Minnesota Rules, part 6262.0300, subpart 5, to read:

"A. Except as provided in this subpart, the taking of fish for bait purposes from all Minnesota waters of Lake Superior and all waters of the St. Louis River downstream of the Fond du Lac Dam in St. Louis and Carlton Counties, including any and all outflows, estuaries, streams, creeks, or waters adjacent to or flowing into these waters is prohibited.

B. Notwithstanding Minnesota Statutes, sections 84D.03, subdivision 3, and 97C.341, paragraph (b), eggs from legally taken and possessed trout harvested from Lake Superior or its tributaries below the posted boundaries may be used to make spawn bags for bait as provided in this item and as authorized in Minnesota Statutes, section 97C.341, paragraph (a). Spawn bags may be used only in Lake Superior and its tributaries below the posted boundaries and may be transported to and from Lake Superior or its tributaries below the posted boundaries."

(c) The commissioner may use the good cause exemption under Minnesota Statutes, section 14.388, subdivision 1, clause (3), to adopt rules under this section, and Minnesota

Statutes, section 14.386, does not apply except as provided under Minnesota Statutes, section 14.388.

Sec. 55. RULEMAKING; WILDLIFE RESTITUTION VALUE FOR SANDHILL CRANES.

(a) The commissioner of natural resources shall amend Minnesota Rules, part 6133.0030, by adding a new item establishing the wildlife restitution value of \$200 for a sandhill crane.

(b) The commissioner may use the good cause exemption under Minnesota Statutes, section 14.388, subdivision 1, clause (3), to adopt rules under this section, and Minnesota Statutes, section 14.386, does not apply except as provided under Minnesota Statutes, section 14.388.

Sec. 56. RULEMAKING; SPEARING ROUGH FISH.

The commissioner of natural resources shall amend Minnesota Rules, part 6262.0600, to make seasons for spearing rough fish consistent with the date changes in sections 47 to 49. The commissioner may use the good cause exemption under Minnesota Statutes, section 14.388, subdivision 1, clause (3), to adopt rules under this section, and Minnesota Statutes, section 14.386, does not apply except as provided under Minnesota Statutes, section 14.388.

Sec. 57. RULEMAKING; REMOVING SPEARING RESTRICTIONS.

The commissioner of natural resources shall amend Minnesota Rules, part 6264.0400, subparts 8, 27, 74, 75, and 76, to remove restrictions on taking fish by spearing for the following lakes: Big Mantrap, Lobster, Beers, West Battle, Deer, Cross, Sugar, Eagle, Owasso, North Star, Moose, and Spider. The commissioner may use the good cause exemption under Minnesota Statutes, section 14.388, to adopt rules under this section, and Minnesota Statutes, section 14.386, does not apply, except as provided under Minnesota Statutes, section 14.388.

Laws Authorizing Use of Expedited Rulemaking

In Minnesota Statutes, section 14.389, the legislature has created an expedited process for adopting rules. An agency may use this process *only* when specifically authorized by law. Under the expedited process, an agency publishes notice of its proposed rule in the State Register and mails notices to those who have requested notice. The agency must then allow at least 30 days for comment. At the end of the comment period, and after an administrative law judge approves the form and legality, the agency may adopt the rule. Unlike the customary rulemaking process, there is no opportunity for public hearing under the expedited process, unless the legislature specifically provides for this opportunity.

Chapter 9, Section 7

Subd. 8. **Rulemaking.** (a) If the [MnSURE] board's policies, procedures, or other statements are rules, as defined in section 14.02, subdivision 4, the requirements in either paragraph (b) or (c) apply, as applicable.

(b) Effective upon enactment until January 1, 2015:

(1) the board shall publish notice of proposed rules in the State Register after complying with section 14.07, subdivision 2;

(2) interested parties have 21 days to comment on the proposed rules. The board

must consider comments it receives. After the board has considered all comments and has complied with section 14.07, subdivision 2, the board shall publish notice of the final rule in the State Register;

(3) if the adopted rules are the same as the proposed rules, the notice shall state that the rules have been adopted as proposed and shall cite the prior publication. If the adopted rules differ from the proposed rules, the portions of the adopted rules that differ from the proposed rules shall be included in the notice of adoption, together with a citation to the prior State Register that contained the notice of the proposed rules; and

(4) rules published in the State Register before January 1, 2014, take effect upon publication of the notice. Rules published in the State Register on and after January 1, 2014, take effect 30 days after publication of the notice.

(c) Beginning January 1, 2015, the board may adopt rules to implement any provisions in this chapter using the expedited rulemaking process in section 14.389.

(d) The notice of proposed rules required in paragraph (b) must provide information as to where the public may obtain a copy of the rules. The board shall post the proposed rules on the Minnesota Insurance Marketplace Web site at the same time the notice is published in the State Register.

Chapter 85, Article 3, Section 8

[Job Creation Fund]

Subd. 7. **Rulemaking.** (a) If the [*Employment and Economic Development*] commissioner's policies, procedures, or other statements are rules, as defined in section 14.02, subdivision 4, the requirements in either paragraph (b) or (c) apply, as applicable.

(b) Effective upon enactment until January 1, 2015:

(1) the commissioner shall publish notice of proposed rules in the State Register after complying with section 14.07, subdivision 2;

(2) interested parties have 21 days to comment on the proposed rules. The commissioner must consider comments it receives. After the commissioner has considered all comments and has complied with section 14.07, subdivision 2, the commissioner shall publish notice of the final rule in the State Register;

(3) if the adopted rules are the same as the proposed rules, the notice shall state that the rules have been adopted as proposed and shall cite the prior publication. If the adopted rules differ from the proposed rules, the portions of the adopted rules that differ from the proposed rules shall be included in the notice of adoption, together with a citation to the prior State Register that contained the notice of the proposed rules; and

(4) rules published in the State Register before January 1, 2014, take effect upon publication of the notice. Rules published in the State Register on and after January 1, 2014, take effect 30 days after publication of the notice.

(c) Beginning January 1, 2015, the commissioner may adopt rules to implement any provisions in this section using the expedited rulemaking process in section 14.389.

(d) The notice of proposed rules required in paragraph (b) must provide information as to where the public may obtain a copy of the rules. The commissioner shall post the proposed rules on the department Web site at the same time the notice is published in the State Register.

EFFECTIVE DATE. This section is effective January 1, 2014.

Chapter 116, Article 5

Sec. 29. **RULEMAKING AUTHORITY.**

The commissioner of education shall use the expedited rulemaking process in Minnesota Statutes, section 14.389, to amend Minnesota Rules related to providing special education under Part C of the Individuals with Disabilities Education Act. The commissioner shall amend the rules to conform to new federal regulations in Code of Federal Regulations, title 34, part 303, including definitions of and procedures for evaluation and assessment, including assessment of the child and family, initial evaluation and assessment, the use of native language, the use of informed clinical opinion as an independent basis to establish eligibility, and transition of a toddler from Part C consistent with Code of Federal Regulations, title 34, sections 303.24, 303.25, and 303.321, only to the extent necessary to avoid loss of federal funds. The authority to use the expedited process to amend rules specified in this section expires July 1, 2014. Rule amendments adopted under the expedited process before that date remain in effect unless further amended under the rulemaking procedures in Minnesota Statutes, chapter 14.

Laws Granting Exemptions from Rulemaking Procedures: Section 14.386 applies

The legislature sometimes enacts laws providing that specific agency policies that come within the definition of a “rule” may be adopted without complying with the usual rulemaking procedures. But Minnesota Statutes, section 14.386, requires an agency to follow certain minimal requirements even if the rules are exempt from the usual rulemaking procedures. These requirements are as follows:

- The Revisor of Statutes must approve the form of the rule
- The Office of Administrative Hearings must approve the rule’s legality
- A copy of the rule must be published in the State Register

Under section 14.386, paragraph (b), these so-called exempt rules are effective only for two years.

Chapter 108, Article 5

Sec. 6. Minnesota Statutes 2012, section 256B.04, subdivision 21, is amended to read:...

....(e) As a condition of enrollment in medical assistance, the commissioner shall require that a provider designated "moderate" or "high-risk" by the Centers for Medicare and Medicaid Services or the ~~Minnesota Department of Human Services~~ commissioner permit the Centers for Medicare and Medicaid Services, its agents, or its designated contractors and the state agency, its agents, or its designated contractors to conduct unannounced on-site inspections of any provider location. The commissioner shall publish in the Minnesota Health Care Program Provider Manual a list of provider types designated "limited," "moderate," or "high-risk," based on the criteria and standards used to designate Medicare providers in Code of Federal Regulations, title 42, section 424.518. The list and criteria are not subject to the requirements of chapter 14. The commissioner's designations are not subject to administrative appeal.....

Chapter 108, Article 6

Sec. 33. Minnesota Statutes 2012, section 256B.439, is amended by adding a subdivision to read:

Subd. 6. Calculation of home and community-based services quality score.

(a) The commissioner [Human Services] shall determine a quality score for each participating home and community-based services provider using quality measures established in subdivisions 1 and 2a, according to methods determined by the commissioner in consultation with stakeholders and experts. These methods shall be exempt from the rulemaking requirements under chapter 14.

(b) For each quality measure, a score shall be determined with a maximum number of points available and number of points assigned as determined by the commissioner using the methodology established according to this subdivision. The determination of the quality measures to be used and the methods of calculating scores may be revised annually by the commissioner.

Chapter 114, Article 5

Section 4, **Subd. 5. Rulemaking authority.** The chief administrative law judge may adopt rules that are reasonably necessary to carry out the duties and powers imposed upon the chief administrative law judge under this chapter. The chief administrative law judge may initially adopt rules according to section 14.386. Notwithstanding section 16A.1283, the chief administrative law judge may adopt rules establishing fees.

Sec. 12. [442A.10] PETITIONERS TO PAY EXPENSES.

Expenses of the preparation and submission of petitions in the proceedings under sections 442A.04 to 442A.09 shall be paid by the petitioners. Notwithstanding section 16A.1283, the Office of Administrative Hearings may adopt rules according to section 14.386 to establish fees necessary to support the preparation and submission of petitions in proceedings under sections 442A.04 to 442A.09. The fees collected by the Office of Administrative Hearings shall be deposited in the environmental fund.
EFFECTIVE DATE. This section is effective the day following final enactment.

Chapter 117, Article 3

Sec. 10. Minnesota Statutes 2012, section 171.05, subdivision 2, is amended to read:

Subd. 2. Person less than 18 years of age. (a) Notwithstanding any provision in subdivision 1 to the contrary, the department may issue an instruction permit to an applicant who is 15, 16, or 17 years of age and who:

- (1) has completed a course of driver education in another state, has a previously issued valid license from another state, or is enrolled in either:
 - (i) a public, private, or commercial driver education program that is approved by the commissioner of public safety and that includes classroom and behind-the-wheel training; or
 - (ii) an approved behind-the-wheel driver education program when the student is receiving full-time instruction in a home school within the meaning of sections 120A.22 and 120A.24, the student is working toward a homeschool diploma, the student is taking home-classroom driver training with classroom materials approved by the commissioner of public safety, and the student's parent has certified the student's homeschool and home-classroom driver training status on the form approved by the commissioner;
- (2) has completed the classroom phase of instruction in the driver education program or has completed 15 hours of classroom instruction in a program that presents classroom

and behind-the-wheel instruction concurrently;

(3) has passed a test of the applicant's eyesight;

(4) has passed a department-administered test of the applicant's knowledge of traffic laws;

(5) has completed the required application, which must be approved by (i) either parent when both reside in the same household as the minor applicant or, if otherwise, then (ii) the parent or spouse of the parent having custody or, in the event there is no court order for custody, then (iii) the parent or spouse of the parent with whom the minor is living or, if items (i) to (iii) do not apply, then (iv) the guardian having custody of the minor, (v) the foster parent or the director of the transitional living program in which the child resides or, in the event a person under the age of 18 has no living father, mother, or guardian, or is married or otherwise legally emancipated, then (vi) the applicant's adult spouse, adult close family member, or adult employer; provided, that the approval required by this clause contains a verification of the age of the applicant and the identity of the parent, guardian, adult spouse, adult close family member, or adult employer; and (6) has paid ~~the fee~~ all fees required in section 171.06, subdivision 2.

(b) For the purposes of determining compliance with the certification of paragraph (a), clause (1), item (ii), the commissioner may request verification of a student's homeschool status from the superintendent of the school district in which the student resides and the superintendent shall provide that verification.

(c) The instruction permit is valid for two years from the date of application and may be renewed upon payment of a fee equal to the fee for issuance of an instruction permit under section 171.06, subdivision 2.

(d) The commissioner of public safety shall adopt rules to carry out the provisions of this section. The rules adopted under this section are exempt from the rulemaking provisions of chapter 14. The rules are subject to section 14.386, except that section 14.386, paragraph (b), does not apply.

EFFECTIVE DATE. Paragraph (a) is effective June 1, 2014. Paragraph (d) is effective the day following final enactment.

Laws Granting Exemptions from Rulemaking Procedures: Section 14.386 Does not Apply

Chapter 9

Subd. 2. Application of other law.....

.... (d) The Minnesota Insurance Marketplace and provisions specified under this chapter are exempt from:

(1) chapter 14, including section 14.386, except as specified in section 62V.05; and....

Chapter 114, Article 4

Sec. 2. Minnesota Statutes 2012, section 84.027, is amended by adding a subdivision to read:

Subd. 19. Federal law compliance. Notwithstanding any law to the contrary, the commissioner [DNR] may establish, by written order, policies for the use and operation of other power-driven mobility devices, as defined under Code of Federal Regulations, title 28, section 35.104, on lands and in facilities administered by the commissioner for the purposes of

implementing the Americans with Disabilities Act, United States Code, title 42, section 12101 et seq. These policies are exempt from the rulemaking provisions of chapter 14 and section 14.386 does not apply.

Sec. 32. Minnesota Statutes 2012, section 90.041, is amended by adding a subdivision to read:

Subd. 10. Fees. (a) The commissioner [DNR] may establish a fee schedule that covers the commissioner's cost of issuing, administering, and processing various permits, permit modifications, transfers, assignments, amendments, and other transactions necessary to the administration of activities under this chapter.

(b) A fee established under this subdivision is not subject to the rulemaking provisions of chapter 14 and section 14.386 does not apply. The commissioner may establish fees under this subdivision notwithstanding section 16A.1283.

Sec. 38. Subd. 2. **Purchaser preregistration registration.** To facilitate the sale of permits issued under section 90.151, the commissioner [DNR] may establish a purchaser preregistration registration system to verify the qualifications of a person as a responsible bidder to purchase a timber permit. Any system implemented by the commissioner shall be limited in scope to only that information that is required for the efficient administration of the purchaser qualification provisions requirements of this chapter and shall conform with the requirements of chapter 13. The registration system established under this subdivision is not subject to the rulemaking provisions of chapter 14 and section 14.386 does not apply.

Chapter 121, Article 4

Sec. 2. Minnesota Statutes 2012, section 84.027, is amended by adding a subdivision to read:

Subd. 19. Federal law compliance. Notwithstanding any law to the contrary, the commissioner may establish, by written order, policies for the use and operation of other power-driven mobility devices, as defined under Code of Federal Regulations, title 28, section 35.104, on lands and in facilities administered by the commissioner for the purposes of implementing the Americans with Disabilities Act, United States Code, title 42, section 12101 et seq. These policies are exempt from the rulemaking provisions of chapter 14 and section 14.386 does not apply.

Sec. 32. Minnesota Statutes 2012, section 97A.445, subdivision 1, is amended to read:

Subdivision 1. **Angling; Take a Kid Fishing Weekends.** (a) A resident age 16 years or older may take fish by angling without an angling or license and may take fish by spearing from a dark house without a spearing license and without a fish house or dark house license during one three-day consecutive period of the open water angling season and one three-day consecutive period of the ice angling season designated by rule of the commissioner if the resident is accompanied by a child who is under age 16. The commissioner may, by written order published in the State Register, establish the three-day consecutive periods. The written order is not subject to the rulemaking provisions of chapter 14 and section 14.386 does not apply.

(b) The commissioner shall may designate and publicize the three-day periods as "Take a Kid Fishing Weekend" for the open water angling season and "Take a Kid Ice Fishing Weekend" for the ice angling season. The commissioner shall announce the date of each three-day weekend at least 30 days in advance of the date it occurs.

Sec. 38. Minnesota Statutes 2012, section 90.145, is amended to read:

90.145 PURCHASER QUALIFICATIONS AND, REGISTRATION, AND REQUIREMENTS.

Subdivision 1. **Purchaser qualifications requirements.** (a) In addition to any other requirements imposed by this chapter, the purchaser of a state timber permit issued under section 90.151 must meet the requirements in paragraphs (b) to ~~(d)~~ (e).

(b) The purchaser ~~and~~ or the purchaser's agents, employees, subcontractors, and assigns conducting logging operations on the timber permit must comply with general industry safety standards for logging adopted by the commissioner of labor and industry under chapter 182. The commissioner of natural resources ~~shall~~ may require a purchaser to provide proof of compliance with the general industry safety standards.

(c) The purchaser ~~and~~ or the purchaser's agents, subcontractors, and assigns conducting logging operations on the timber permit must comply with the mandatory insurance requirements of chapter 176. The commissioner ~~shall~~ may require a purchaser to provide a copy of the proof of insurance required by section 176.130 before the start of harvesting operations on any permit.

(d) Before the start of harvesting operations on any permit, the purchaser must certify that a foreperson or other designated employee who has a current certificate of completion, which includes instruction in site-level forest management guidelines or best management practices, from the Minnesota Logger Education Program (MLEP), the Wisconsin Forest Industry Safety and Training Alliance (FISTA), or any similar continuous education program acceptable to the commissioner, is supervising active logging operations.

(e) The purchaser and the purchaser's agents, employees, subcontractors, and assigns who will be involved with logging or scaling state timber must be in compliance with this chapter.

Subd. 2. **Purchaser preregistration registration.** To facilitate the sale of permits issued under section 90.151, the commissioner may establish a purchaser preregistration registration system to verify the qualifications of a person as a responsible bidder to purchase a timber permit. Any system implemented by the commissioner shall be limited in scope to only that information that is required for the efficient administration of the purchaser qualification ~~provisions~~ requirements of this chapter ~~and shall conform with the requirements of chapter 13.~~ The registration system established under this subdivision is not subject to the rulemaking provisions of chapter 14 and section 14.386 does not apply.

Chapter 137, Article 3 , Section 8

Subd. 7. **Recommendations.** (a) In recommending grants under this section, the commission shall make recommendations consistent with master plans.

(b) The commission shall determine recommended grant amounts through an adopted merit-based evaluation process that includes the level of local financial support. The evaluation process is not subject to the rulemaking provisions of chapter 14 and section 14.386 does not apply.

(c) When recommending grants, the commission shall consider balance of the grant benefits across greater Minnesota.

(d) Grants may be recommended only for parks and trails included in a plan approved by the commission under subdivision 5.

Laws Providing that Agency Determinations are not “Rules”

The following two provisions from the Tax bill state that certain determinations of the Commissioner of Revenue are not a “rule.” Agency statements that are not rules need not follow the rulemaking requirements of chapter 14, and section 14.386 likely would not apply.

Chapter 143, Article 5

Sec. 11. Minnesota Statutes 2012, section 297F.05, is amended by adding a subdivision to read:

Subd. 1a. **Annual indexing.** (a) Each year the commissioner [Revenue] shall adjust the tax rates under subdivision 1, including any adjustment made in prior years under this subdivision, by multiplying the mill rates for the current calendar year by an adjustment factor and rounding the result to the nearest mill. The adjustment factor equals the in-lieu sales tax rate that applies to the following calendar year divided by the in-lieu sales tax rate for the current calendar year. For purposes of this subdivision, "in-lieu sales tax rate" means the tax rate established under section 297F.25, subdivision 1. For purposes of the calculations under this subdivision to be made in any year in which an increase in the federal or state excise tax on cigarettes is implemented, the commissioner shall exclude from the calculated average price for the current year an amount equal to any increase in the state or federal excise tax rate.

(b) The commissioner shall publish the resulting rate by November 1 and the rate applies to sales made on or after January 1 of the following year.

(c) The determination of the commissioner under this subdivision is not a rule and is not subject to the Administrative Procedure Act in chapter 14.

EFFECTIVE DATE. This section is effective July 1, 2014.

Chapter 143, Article 6

Sec. 25. Minnesota Statutes 2012, section 290.0922, subdivision 1, is amended to read:

Subdivision 1. **Imposition.** (a) In addition to the tax imposed by this chapter without regard to this section, the franchise tax imposed on a corporation required to file under section 289A.08, subdivision 3, other than a corporation treated as an "S" corporation under section 290.9725 for the taxable year includes a tax equal to the following amounts:

If the sum of the corporation's Minnesota property, payrolls, and sales or receipts is: the tax equals:

less than	\$	500,000	\$	0
\$ 500,000 to	\$	999,999	\$	100
\$ 1,000,000 to	\$	4,999,999	\$	300

\$ 5,000,000 to	\$ 9,999,999	\$ 1,000
\$ 10,000,000 to	\$ 19,999,999	\$ 2,000
\$ 20,000,000 or more		\$ 5,000
<u>less than</u>	\$ <u>930,000</u>	\$ <u>0</u>
\$ <u>930,000</u> to	\$ <u>1,869,999</u>	\$ <u>190</u>
\$ <u>1,870,000</u> to	\$ <u>9,339,999</u>	\$ <u>560</u>
\$ <u>9,340,000</u> to	\$ <u>18,679,999</u>	\$ <u>1,870</u>
\$ <u>18,680,000</u> to	\$ <u>37,359,999</u>	\$ <u>3,740</u>
\$ <u>37,360,000</u> or more		\$ <u>9,340</u>

(b) A tax is imposed for each taxable year on a corporation required to file a return under section 289A.12, subdivision 3, that is treated as an "S" corporation under section 290.9725 and on a partnership required to file a return under section 289A.12, subdivision 3, other than a partnership that derives over 80 percent of its income from farming. The tax imposed under this paragraph is due on or before the due date of the return for the taxpayer due under section 289A.18, subdivision 1. The commissioner shall prescribe the return to be used for payment of this tax. The tax under this paragraph is equal to the following amounts:

If the sum of the S corporation's or partnership's Minnesota property, payrolls, and sales or receipts is: the tax equals:

<u>less than</u>	\$ <u>500,000</u>	\$ <u>0</u>
\$ <u>500,000</u> to	\$ <u>999,999</u>	\$ <u>100</u>

\$	1,000,000	to	\$ 4,999,999	\$	300
\$	5,000,000	to	\$ 9,999,999	\$	1,000
\$	10,000,000	to	\$ 19,999,999	\$	2,000
\$	20,000,000	or more		\$	5,000
	<u>less than</u>		\$ 930,000	\$	<u>0</u>
\$	<u>930,000</u>	to	\$ <u>1,869,999</u>	\$	<u>190</u>
\$	<u>1,870,000</u>	to	\$ <u>9,339,999</u>	\$	<u>560</u>
\$	<u>9,340,000</u>	to	\$ <u>18,679,999</u>	\$	<u>1,870</u>
\$	<u>18,680,000</u>	to	\$ <u>37,359,999</u>	\$	<u>3,740</u>
\$	<u>37,360,000</u>	or more		\$	<u>9,340</u>

(c) The commissioner [Revenue] shall adjust the dollar amounts of both the tax and the property, payrolls, and sales or receipts thresholds in paragraphs (a) and (b) by the percentage determined pursuant to the provisions of section 1(f) of the Internal Revenue Code, except that in section 1(f)(3)(B) the word "2012" must be substituted for the word "1992." For 2014, the commissioner shall determine the percentage change from the 12 months ending on August 31, 2012, to the 12 months ending on August 31, 2013, and in each subsequent year, from the 12 months ending on August 31, 2012, to the 12 months ending on August 31 of the year preceding the taxable year. The determination of the commissioner pursuant to this subdivision is not a "rule" subject to the Administrative Procedure Act contained in chapter 14. The tax amounts as adjusted must be rounded to the nearest \$10 amount and the threshold amounts must be adjusted to the nearest \$10,000 amount. For tax amounts that end in \$5, the amount is rounded up to the nearest \$10 amount and for the threshold amounts that end in \$5,000, the amount is rounded up to the nearest \$10,000.

EFFECTIVE DATE. This section is effective for taxable years beginning after December 31, 2012.

Appendix: Relevant Statutes

14.386 PROCEDURE FOR ADOPTING EXEMPT RULES; DURATION.

(a) A rule adopted, amended, or repealed by an agency, under a statute enacted after January 1, 1997, authorizing or requiring rules to be adopted but excluded from the rulemaking provisions of chapter 14 or from the definition of a rule, has the force and effect of law only if:

(1) the revisor of statutes approves the form of the rule by certificate;

(2) the person authorized to adopt the rule on behalf of the agency signs an order adopting the rule;

(3) the Office of Administrative Hearings approves the rule as to its legality within 14 days after the agency submits it for approval and files four copies of the rule with the revisor's certificate in the Office of the Secretary of State; and

(4) a copy is published by the agency in the State Register.

The secretary of state shall forward one copy of the rule to the governor.

A statute enacted after January 1, 1997, authorizing or requiring rules to be adopted but excluded from the rulemaking provisions of chapter 14 or from the definition of a rule does not excuse compliance with this section unless it makes specific reference to this section.

(b) A rule adopted under this section is effective for a period of two years from the date of publication of the rule in the State Register. The authority for the rule expires at the end of this two-year period.

(c) The chief administrative law judge shall adopt rules relating to the rule approval duties imposed by this section and section [14.388](#), including rules establishing standards for review.

(d) This section does not apply to:

(1) any group or rule listed in section [14.03](#), subdivisions 1 and 3, except as otherwise provided by law;

(2) game and fish rules of the commissioner of natural resources adopted under section [84.027, subdivision 13](#), or sections [97A.0451](#) to [97A.0459](#);

(3) experimental and special management waters designated by the commissioner of natural resources under sections [97C.001](#) and [97C.005](#);

(4) game refuges designated by the commissioner of natural resources under section [97A.085](#); or

(5) transaction fees established by the commissioner of natural resources for electronic or telephone sales of licenses, stamps, permits, registrations, or transfers under section [84.027, subdivision 15](#), paragraph (a), clause (3).

(e) If a statute provides that a rule is exempt from chapter 14, and section [14.386](#) does not apply to the rule, the rule has the force of law unless the context of the statute delegating the rulemaking authority makes clear that the rule does not have force of law.

14.388 GOOD CAUSE EXEMPTION.

Subdivision 1. Requirements.

If an agency for good cause finds that the rulemaking provisions of this chapter are unnecessary, impracticable, or contrary to the public interest when adopting, amending, or repealing a rule to:

- (1) address a serious and immediate threat to the public health, safety, or welfare;
- (2) comply with a court order or a requirement in federal law in a manner that does not allow for compliance with sections [14.14](#) to [14.28](#);
- (3) incorporate specific changes set forth in applicable statutes when no interpretation of law is required; or
- (4) make changes that do not alter the sense, meaning, or effect of a rule,

the agency may adopt, amend, or repeal the rule after satisfying the requirements of subdivision 2 and section [14.386, paragraph \(a\)](#), clauses (1) to (4). The agency shall incorporate its findings and a brief statement of its supporting reasons in its order adopting, amending, or repealing the rule.

After considering the agency's statement and any comments received, the Office of Administrative Hearings shall determine whether the agency has provided adequate justification for its use of this section.

Rules adopted, amended, or repealed under clauses (1) and (2) are effective for a period of two years from the date of publication of the rule in the State Register.

Rules adopted, amended, or repealed under clause (3) or (4) are effective upon publication in the State Register.

Subd. 2. Notice.

An agency proposing to adopt, amend, or repeal a rule under this section must give electronic notice of its intent in accordance with section [16E.07, subdivision 3](#), and notice by United States mail or electronic mail to persons who have registered their names with the agency under section [14.14, subdivision 1a](#). The notice must be given no later than the date the agency submits the proposed rule to the Office of Administrative Hearings for review of its legality and must include:

- (1) the proposed rule, amendment, or repeal;
- (2) an explanation of why the rule meets the requirements of the good cause exemption under subdivision 1; and

(3) a statement that interested parties have five business days after the date of the notice to submit comments to the Office of Administrative Hearings.

Subd. 3. Review by chief judge.

If a rule has been disapproved by an administrative law judge, the agency may ask the chief administrative law judge to review the rule. The agency must give notice of its request for review in accordance with subdivision 2. The notice must be given no later than the date the agency requests review by the chief judge and must include a summary of any information or arguments the agency intends to submit to the chief judge that were not submitted to the judge who disapproved the rule.

Subd. 4. Costs.

The costs of any proceeding conducted by the Office of Administrative Hearings in accordance with this section must be paid by the agency seeking to adopt, amend, or repeal a rule under this section.

14.389 EXPEDITED PROCESS.

Subdivision 1. Application.

This section applies when a law requiring or authorizing rules to be adopted states that this section must or may be used to adopt the rules. When a law refers to this section, the process in this section is the only process an agency must follow for its rules to have the force and effect of law. Sections [14.19](#) and [14.366](#) apply to rules adopted under this section.

Subd. 2. Notice and comment.

The agency must publish notice of the proposed rule in the State Register and must mail the notice by United States mail or electronic mail to persons who have registered with the agency to receive mailed notices. The mailed notice must include either a copy of the proposed rule or a description of the nature and effect of the proposed rule and a statement that a free copy is available from the agency upon request. The notice in the State Register must include the proposed rule or the amended rule in the form required by the revisor under section [14.07](#), an easily readable and understandable summary of the overall nature and effect of the proposed rule, and a citation to the most specific statutory authority for the rule, including authority for the rule to be adopted under the process in this section. The agency must allow 30 days after publication in the State Register for comment on the rule.

Subd. 3. Adoption.

The agency may modify a proposed rule if the modifications do not result in a substantially different rule, as defined in section [14.05, subdivision 2](#), paragraphs (b) and (c). If the final rule is identical to the rule originally published in the State Register, the agency must publish a notice of adoption in the State Register. If the final rule is different from the rule originally published in the State Register, the agency must publish a copy of the changes in the State Register. The agency must also file a copy of the rule with the governor. The rule is effective upon publication in the State Register.

Subd. 4. Legal review.

Before publication of the final rule in the State Register, the agency must submit the rule to an administrative law judge in the Office of Administrative Hearings. The administrative law judge shall within 14 days approve or disapprove the rule as to its legality and its form to the extent the form relates to legality.

Subd. 5. Option.

A law authorizing or requiring rules to be adopted under this section may refer specifically to this subdivision. If the law contains a specific reference to this subdivision, as opposed to a general reference to this section:

(1) the notice required in subdivision 2 must include a statement that a public hearing will be held if 100 or more people request a hearing. The request must be in the manner specified in section [14.25](#); and

(2) if 100 or more people submit a written request for a public hearing, the agency may adopt the rule only after complying with all of the requirements of chapter 14 for rules adopted after a public hearing.

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