

Rulemaking: Expedited Process and Exemptions

The legislature sometimes authorizes state agencies to adopt administrative rules without following the usual rulemaking procedures. This is done by allowing agencies to use an expedited process or by exempting certain rules from rulemaking.

Expedited rulemaking process

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. [Minn. Stat. § 14.389](#).

There is a separate expedited process for repealing obsolete rules. [Minn. Stat. § 14.3895](#). This process may be used to repeal rules that an agency identifies in a required annual report on obsolete rules.

Specific exemptions

The legislature has enacted numerous 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 these laws often require 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

These so-called exempt rules are effective only for two years. [Minn. Stat. § 14.386](#).

Sometimes the legislature provides that the two-year effective period and the minimal procedural requirements specified above do not apply to a set of rules.

“Good cause” exemptions

The legislature has provided limited circumstances under which an agency may omit rulemaking procedures. 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.

Occasionally, 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.

[Minn. Stat. §14.388.](#)

***Agency statements
that are not “rules”***

The legislature has exempted some agency statements from the definition of “rule.” The usual rulemaking process does not apply to these statements. Examples include provisions governing internal management of agencies, certain rules of the commissioner of corrections, and revenue notices and tax information bulletins issued by the commissioner of revenue.