

Rulemaking: Review of Adopted Rules

All three branches of state government have authority to review administrative rules. The legislature also has established processes under which a person can petition an agency for adoption, amendment, or repeal of a rule, or can petition to stop improper enforcement of a policy that an agency has not adopted as a rule.

Executive review

An agency that adopts a rule may amend or repeal the rule. An amendment or repeal is itself considered a “rule” and can be done only after following the usual rulemaking procedures. The governor may veto a proposed rule, but cannot veto or otherwise change an adopted rule, unless the agency follows the rulemaking process.

Legislative review

Amendment or repeal. The legislature can pass a bill repealing or amending a rule, or changing the permissible scope of the rule. If the legislature removes the statutory authority for rulemaking, rules adopted under that authority are automatically repealed. [Minn. Stat. § 14.05](#), subd. 1.

Investigation and objection. The legislature has authorized the Legislative Coordinating Commission (LCC) to investigate complaints about rules. Upon written request of two or more LCC members, or any five legislators, the LCC must review a rule, either by holding LCC meetings or by establishing another group to review the rules. [Minn. Stat. § 3.305](#), subd. 8.

The LCC or the House or Senate governmental operations committees may also formally object to rules. An objection shifts the burden of proof to the agency to show that the rule is valid if the rule is challenged in court. [Minn. Stat. § 3.842](#), subd. 4a.

Delayed effect. The House and Senate standing committees with jurisdiction over the subject matter of a rule may vote to delay the effect of a proposed rule until the legislature adjourns the annual legislative session that begins after the vote of the committees. [Minn. Stat. § 14.126](#).

Judicial review

An agency rule may be challenged in court. The court must declare a rule invalid if it finds the rule:

- is unconstitutional;
- exceeds the statutory authority; or
- was adopted without complying with statutory requirements.

[Minn. Stat. § 14.45](#).

Local government petitions for amending or repealing a rule

A city, county, or sanitary district may petition an agency to amend or repeal a rule. A petition must show that since the rule was adopted, there is significant new evidence relating to the need for or reasonableness of the rule, or a less costly or intrusive method of achieving the purpose of the rule. If an agency does not take the action requested by a petition, an administrative law judge (ALJ) holds a hearing on the continued need for and reasonableness of the rule. If the agency does not demonstrate the continued need for and reasonableness of the rule, the rule does not have the force of law after 90 days. An agency can amend the rule so this does not happen. [Minn. Stat. § 14.091](#).

Other petitions for changes in rules

Any person may petition an agency for adoption, amendment, or repeal of a rule. An agency receiving such a petition must respond within 60 days, giving reasons for its response. However, unlike a petition from a unit of local government, there is no hearing process or other remedy if the agency decides not to take the requested action. [Minn. Stat. § 14.09](#).

Petitions alleging improper enforcement of a policy

Any person may petition an ALJ, alleging that an agency is improperly enforcing a policy without going through rulemaking. If the ALJ determines that the agency is improperly enforcing a policy as if it were a duly adopted rule, the ALJ must direct the agency to cease this enforcement. However, when an agency enforces a law or rule by applying the law or rule to specific facts on a case-by-case basis, this does not constitute improper rulemaking. [Minn. Stat. § 14.381](#).

Temporary exemptions from rules

If the cost of complying with an agency's rule in the first year after the rule takes effect will exceed \$25,000 for a business with less than 50 full-time employees or for a city with less than ten full-time employees, the business or city may file a statement with the agency claiming an exemption from the rule. Upon filing of a statement, the rule does not apply to that business or city until the rule is approved by a subsequent law. There are some exceptions. For example, a business or city cannot claim an exemption from a rule adopted because of a federal mandate. The law allowing for exemptions applies only to rules adopted after July 1, 2005. [Minn. Stat. § 14.127](#).

For more information: Contact legislative analyst Mark Shepard at 651-296-5051. Also see the publications [Rulemaking: Process for Adopting Rules](#), August 2008, and [Rulemaking: Expedited Process and Exemptions](#), August 2008.

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