TASK FORCE ON THE ADMINISTRATIVE PROCEDURE ACT: FINAL REPORT

FEBRUARY, 1979

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PREFACE

In June 1978 Representative Harry Sieben, Jr., and Senator John Chenoweth, Chairmen of the House and Senate Governmental Operations Committees authorized the establishment of a staff task force to consider and recommend amendments to the Administrative Procedure Act. The APA Task Force was composed of the following people:

- George Beck, Hearing Examiner
  Minnesota Office of Hearing Examiners
- John Breviu, Special Assistant Attorney General
  Office of the Attorney General
- Larry Fredrickson, Senate Counsel
  Minnesota Senate
- Duane Harves, Chief Hearing Examiner
  Minnesota Office of Hearing Examiners
- David G. Kuduk, Attorney
  Kuduk and Walling, Representing the Administrative Law Section of the Minnesota State Bar Association
- Mike Miles, Assistant Attorney General
  Office of the Attorney General
- James Nobles, Deputy Legislative Auditor
  Office of the Legislative Auditor
- Janet Rahm, Assistant Revisor
  Revisor of Statutes
- Mark Shepard, Legislative Analyst
  House of Representatives Research Department
- Douglas Skor, Attorney
  Briggs and Morgan, Representing the Administrative Law Section of the Minnesota State Bar Association
- Thomas Triplett, Vice President and General Counsel,
  The Minnesota Project, Inc.,
  Formerly, Senate Counsel and Legislative Counsel to Governor Rudy Perpich
- Richard Wexler, Assistant Attorney General
  Office of the Attorney General
- Marshall Whitlock, Executive Secretary
  Legislative Commission to Review Administrative Rules

The following people participated in some Task Force meetings:

- William Brooks, Attorney
  Formerly with Revisor of Statutes

- Gregg DeWitt, Administrative Assistant
  Senate Governmental Operations Committee

- William Keppel, Attorney, Dorsey, Windhorst,
  Hannaford, Whitney and Halladay,
  Formerly, Professor, Hamline University School
  of Law

- Steve Ordahl, Manager
  Office of the State Register

- Katherine Sasseville, Commissioner
  Public Service Commission

- Rick Sevra, Researcher
  Senate Research

The Task Force held fifteen two-hour meetings between August and January and discussed both contested case and rule-making aspects of the APA. The Task Force worked with the objective of making relatively minor changes in the existing APA. It did not consider major alternatives to the current approach. As a result of these discussions the Task Force recommends to the Legislature the attached amendments.

It should be noted that the Task Force did not operate under strict parliamentary procedures and usually discussed proposals until a general agreement was reached. However, in some instances individual Task Force members do not support proposed amendments. On the issue of who should review rules for "substantial change" the Task Force decided to recommend two alternatives.

The Task Force believes that Minnesota legislators, and particularly Representative Sieben and Senator Chenoweth, are to be commended for their work to strengthen the APA during the past five years. We hope that our recommendations will help guide the 1979 Legislature in its attempts to further improve the state's Administrative Procedure Act.

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SUMMARY OF PROPOSED AMENDMENTS TO APA RULEMAKING PROVISIONS

A. Definitions, General Powers and Duties

1. The definition of "agency" is amended so that most agencies previously exempt from the entire APA will now be exempt only from contested case procedures (15.0411, subd. 2).
2. Agencies are expressly authorized to grant variances to rules under special circumstances (15.0412, subd. 1a).
3. The guidebook to state agencies need be published only every other year, instead of annually (15.0412, subd. 2).
4. The office of hearing examiners is renamed the office of administrative hearings.

B. Notice of Hearings

1. Each agency will keep its own list of persons who wish to receive notice of rulemaking hearings. The list kept by the secretary of state will be eliminated (15.0412, subd. 4).
2. Agencies need not always publish the full text of a rule in the state register when only a portion is being amended. The agency must print all new language and that portion of the present rule which is necessary to provide adequate notice of its proposed action (15.0412, subd. 4).
3. The free copy of a rule which the agency makes available to the public must be a duplicate of the rule as published in the state register (15.0412, subd. 4b).
4. Within one year after the effective date of a law requiring rules to be promulgated, an agency must give notice of its intention to hold a public hearing on the rules, or report its failure to do so to the legislature and the governor (15.0412, subd. 8).

C. Public Hearings

1. The agency may rely on facts presented by other persons to support the rule finally adopted (15.0412, subd. 4c).
2. The agency may use an expedited hearing process, without a public hearing, for noncontroversial rules (15.0412, subd. 4g).
3. The fee set for reimbursement of temporary hearing examiners is stricken. The chief hearing examiner will set these fees (15.052, subd. 2).

D. Procedures after Public Hearings

1. Within one year after the issuance of the hearing examiner's report, the agency must take final action on the rules. After one year, an agency may not promulgate the rule without holding a new public hearing (15.0412, subd. 9).
2. Rules become effective five working days after final publication in the state register (15.0413, subd. 1).
3. Contents of hearing examiner reports, as set forth in 15.052, subd. 3, apply only to rulemaking hearings, and not to contested cases.
4. Power of chief hearing examiner to review rules for compliance with section 15.0412, subdivision 4 is stricken (15.052, subd. 4).
5. The Task Force recommends that the authority to review proposed rules for substantial changes should be clarified. Either the attorney general or the chief hearing examiner, but not both, should have this power. The Task Force takes no stand as to which office should have this responsibility, but sets forth alternative proposals.

SUGGESTED AMENDMENTS TO RULEMAKING PROCEDURES
OF THE ADMINISTRATIVE PROCEDURE ACT

Amendment No. 1. Minnesota Statutes 1978, Section 15.0411, Subdivision 2, is amended to read:

Subd. 2. "Agency" means any state officer, board, commission, bureau, division, department, or tribunal, other than a court, having a statewide jurisdiction and authorized by law to make rules or to adjudicate contested cases. "Agency" also means the capitol area architectural and planning board. Sections 15.0411 to 15.052 do not apply to (a) agencies directly in the legislative or judicial branches, (b) emergency powers in sections 12.31 to 12.37, ~~(c) corrections board and pardon board, (d) the unemployment insurance program in the department of economic security, (e) the director of mediation services, (f) the workers' compensation division in the department of labor and industry, (g) the workers' compensation court of appeals, (h) board of pardons,~~ or ~~(i)~~ (c) the department of military affairs. Sections 15.0418 to 15.0426 do not apply

to (a) the Minnesota municipal board, (b) corrections board, (c) the unemployment insurance program in the department of economic security, (d) the director of mediation services, (e) the workers compensation division in the department of labor and industry, (f) the workers compensation court of appeals, (g) the board of pardons, or (h) the public employees relations board.

COMMENTS:

The current law excludes a number of executive agencies from both the contested case and rulemaking procedures of the APA. The amended version excludes only the department of military affairs from both sets of procedures. Other agencies will continue to be excluded from contested case procedures, but will be required to follow the APA when promulgating rules.

The reasons for excluding agencies from the APA relate primarily to contested cases and not to rulemaking. For example, some agencies have their own adjudicatory procedures, which are similar to contested cases. The Task Force does not see any compelling reasons for continuing exemptions from APA rulemaking. In fairness, the Task Force has not heard from any of the agencies whose rulemaking exclusions would be eliminated. The Task Force realizes that these agencies may want to come forth and justify their exemptions. Absent an affirmative showing of justification, the exemptions should be eliminated.

The department of military affairs should continue to be completely excluded from the APA due to the close relationship it has with the federal government. The department is bound by the code of military justice, and state law could produce conflicts.

Amendment No. 2. Minnesota Statutes 1978, Section 15.0412, is amended by adding a subdivision to read:

Subd. 1a. Unless otherwise provided by law, an agency may grant a variance to a rule. Before an agency grants a variance, it shall have promulgated rules setting forth procedures and standards by which variances shall be granted and denied. An agency receiving a request for a variance shall set forth in writing its reasons for granting or denying the variance. This subdivision shall not constitute authority for an agency to grant variances to statutory standards.

COMMENTS:

The power to grant variances enables an agency to waive the application of a rule when enforcement would have an unusually harsh effect on one party, and when the public interest would not be harmed by granting the variance. However, the authority to grant variances also could lead to the favoring of special interests, and to nullification of the policies of a rule.

In a survey of 49 state agencies, 21 agencies said that they do grant variances from rules, and 27 said they do not. The results from the survey indicate confusion among state agencies on the question of whether or not they have legal authority to grant variances. The purpose of this subdivision is to make clear that all state agencies do have the power to grant variances under special circumstances.

By adding this subdivision, the Task Force does not

wish to encourage agencies to grant a larger number of variances, but merely to clarify variance authority. In order to protect against the arbitrary use of variance power, the subdivision requires each agency granting variances to promulgate standards and procedures by which variances shall be granted and denied. These standards not only limit the use of variance power, but also provide notice to affected persons of how and why variances will be granted. Since a particular agency can be more specific in its standards and procedures than a general code such as the APA, the substance of the standards and procedures is left to each agency. The subdivision reaffirms the existing law, that an agency may not grant a variance to a standard which is established by statute.

Whether or not an agency must utilize contested case procedures when it grants or denies a variance is left to case-by-case determination. In some instances the constitution may require an adjudicatory hearing before a variance decision can be made. In other cases, variance requests may present no unusual circumstances, and may be clearly contrary to a policy which an agency has just enunciated in a rule. In instances such as these, the Task Force does not feel that the agency should always have to hold a hearing.

Some members of the Task Force feel that this entire section is unnecessary. They believe that the power to grant variances is inherent in the authority to promulgate rules. These members expressed the view that there are currently no major problems with variances, and that this amendment could create some. They argued that if any statutory changes are made, they should be made in chapters establishing each agency, and not in a general code such as the APA.

Amendment No. 3. Minnesota Statutes 1978, Section 15.0412, Subdivision 2, is amended to read:

Subd. 2. To assist interested persons dealing with it, each agency shall, in a manner prescribed by the commissioner of administration, prepare a description of its organization, stating the process whereby the public may obtain information or make submissions or requests. The commissioner of administration shall ~~annually~~ publish these descriptions at least in every even-numbered year commencing in 1980 in a guidebook of state agencies. Notice of the publication of the guidebook shall be published in the state register.

COMMENTS:

Publication of the guidebook of state agencies only every other year, instead of annually, would save time and money without significantly affecting the quality of information available to the public. The subdivision would also be amended to reflect the fact that the guidebook is not published in the state register, but as a separate book.

Amendment No. 4. Minnesota Statutes 1978, Section 15.0412, Subdivision 4, is amended to read:

Subd. 4. No rule shall be adopted by any agency unless the agency first holds a public hearing thereon, affording all affected interests an opportunity to participate~~, and gives notice of its intention to hold such~~

~~a hearing at least 30 days prior to the date set for the hearing by United States mail, to representatives of associations or other interested groups or persons who have registered their names with the secretary of state for that purpose and in the state register.~~ Each agency shall maintain a list of all persons who have registered with the agency for the purpose of receiving notice of rule hearings. The agency may inquire as to whether those persons on the list wish to maintain their names thereon and may remove names for which there is a negative reply or no reply within 60 days. The agency shall give notice of its intention to hold a hearing at least 30 days prior to the date set for the hearing by United States mail to all persons on its list, and by publication in the state register. Each agency may, at its own discretion, also contact persons not on its list and may give notice of its intention to hold a hearing in newsletters, newspapers or other publications or through other means of communication. The notice in the state register shall include the full text of the rule proposed for adoption~~;~~ ~~provided that;~~ or deletion and whatever portion of existing rules is necessary to provide adequate notice of the nature of the proposed action.

Subd. 4a. With the approval of the chief hearing examiner, the agency may incorporate by reference provisions of federal law or rule or other materials from sources which the chief hearing examiner determines are conveniently available for viewing, copying and acquisition by interested persons. The chief hearing examiner shall not approve incorporation by reference of federal law or rule or other materials which are less than 3000 words in length or which would require less than five pages of publication in the state register.

Subd. 4b. The agency shall make available at least one free copy of the proposed rule to any person requesting it. The free copy shall contain the exact wording and form of the proposed rule and notice of hearing as published in the state register and shall be available to the public at least 30 days prior to the date set for the hearing.

Subd. 4c. At the public hearing the agency shall make an affirmative presentation of facts establishing the need for and reasonableness of the rule proposed for adoption and fulfilling any relevant substantive or procedural requirements imposed on the agency by law or rule. The agency may, in addition to its affirmative presentation, rely upon facts presented by others on the record during the rule proceeding to support the rule finally adopted.

Subd. 4d. After allowing written material to be submitted and recorded in the hearing record for five working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the hearing examiner, the hearing examiner assigned to the hearing shall proceed to write a report as provided for in section 15.052, subdivision 3, which report shall be completed within 30 days after the close of the hearing record unless the chief hearing examiner, upon written request of the agency ~~and~~ or the hearing examiner, orders an extension. In no case shall an extension be granted if the chief hearing examiner determines that an extension would prohibit a rule from being adopted or becoming effective until after a date for adoption or effectiveness as required by statute. The report shall be available to all affected persons upon request for at least five working days before the agency takes any final action on the rule.

Subd. 4e. If the agency adopts the rule, it shall be submitted with the complete hearing record to the attorney

general, who shall review the rule as to form and legality. If the agency, the chief hearing examiner or the attorney general requests, the hearing examiner shall cause a transcript to be prepared of the hearing. The agency shall give notice to all persons who requested to be informed that the hearing record has been submitted to the attorney general. This notice shall be given on the same day that the record is submitted. The attorney general shall, within 20 days, either approve or disapprove the rule. If he approves the rule, he shall promptly file it in the office of the secretary of state. If he disapproves the rule, he shall state in writing his reasons therefor, and the rule shall not be filed in the office of the secretary, nor published.

Subd. 4f. A rule shall become effective after it has been subjected to all requirements described in ~~this subdivision~~ subdivisions 4 through 4f and five working days after publication in the state register, as hereinafter provided, unless a later date is required by statutes or specified in the rule. If the rule as adopted does not differ from the proposed rule as published in the state register, publication may be made by publishing notice in the state register that the rule has been adopted as proposed and by publishing a citation to the prior publication. If the rule as adopted differs from the proposed rule, the adopted rule or subdivisions thereof which differ from the proposed rule shall be published together with a citation to the prior state register publication of the remainder of the proposed rule.

COMMENTS:

This section contains the heart of the APA rulemaking

provisions. The suggested amendments do not affect the basic rulemaking structure which was established in 1975.

A. Notice: Currently the secretary of state maintains a list of persons who wish to receive notice of rules hearings. Under this system, many people who are interested only in one agency are notified of rules hearings for all state agencies. The amendment would require persons to register directly with every agency they are interested in, thus eliminating the wasteful mailing of notice to uninterested persons. The amendment also allows the agency to strike names from its list, after inquiring whether persons wish to continue to receive notices. The burden placed on persons desiring to receive notice is minimal, and once again the agency can avoid the costs of wasteful mailings.

B. State Register: Many agencies have complained that the present requirement that they print the full text of the rule proposed for adoption is often wasteful. Of course, when an entirely new rule is being proposed, the full text of the rule must be published. However, when only a small portion of a rule is being amended, printing of the entire rule does not improve the quality of the notice, and can be quite expensive.

An attempt to specify in statute exactly how much of the text of a current rule must be printed in the state register would be fruitless. The amendment provides that all notices must include the full text of the new language being adopted, and of all language being deleted. The notice must also contain as much of the text of the current rule as is necessary to put the proposed changes into context. The adequacy of the printed notice will be reviewed by the attorney general, as part of his review for form and legality.

C. Free Copy of Rules: Agencies must make available a free copy of a proposed rule to any person requesting one. The Task Force has received complaints that agencies sometimes provide outdated versions of proposed rules. The amendment makes clear that the free copy must be a duplicate of the rule as published in the state register.

D. Affirmative Presentation: At the public hearing the agency must make an affirmative presentation of the facts establishing the need for and reasonableness of the proposed rule. Under present law, a problem has arisen when an agency makes minor changes in its proposed rules in response to comments it receives at the public hearing. The problem is that in these instances the agency has not made the required affirmative presentation.

The proposed amendment does not alter the agency's duty to make an affirmative presentation of facts at the public hearing. The amendment only provides that when an agency modifies its proposed rules, it may rely on facts presented by others on the record to support the modifications. This change makes it easier for the agency to utilize comments made at the hearing.

Some members of the Task Force opposed this amendment. They felt that it would make it possible for an agency to avoid giving advance notice to the public of the evidence to be presented at the hearing.

Under present law, prior to the public hearing, the agency must provide a summary of all evidence it intends to present. This requirement does not apply to members of the public. Thus an agency could avoid giving prior notice of its evidence by using outsiders to present evidence at the hearing.

E. Attorney General: Agencies are required to give notice to any person requesting it that the record has been

submitted to the attorney general. The amendment states that this notice must be given on the same day the record is submitted. Prompt notice is necessary to allow persons an effective opportunity to present arguments to the attorney general.

Amendment No. 5. Minnesota Statutes 1978, Section 15.0412, is amended by adding a subdivision to read:

Subd. 4g. When an agency determines that its proposed adoption, amendment, suspension or repeal of a rule will be noncontroversial in nature, it may utilize the provisions herein in lieu of the provisions of subdivisions 4 through 4f. The agency shall publish a notice of its intent to adopt the rule without public hearing, together with the proposed rule, in the state register, and shall give the same notice by United States mail to persons who have registered their names with the agency pursuant to subdivision 4. The notice shall include a statement advising the public:

(1) that they have 30 days in which to submit comment on the proposed rule;

(2) that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30 day comment period;

(3) of the manner in which persons shall request a hearing on rules proposed pursuant to this subdivision; and

(4) that the rule may be modified if modifications are supported by the data and views submitted.

Before the date of the notice, the agency shall prepare a statement of need and reasonableness which shall be available to the public. For at least 30 days following

the notice, the agency shall afford all interested persons an opportunity to object to the lack of a hearing and to submit data and views on the proposed rule in writing. The proposed rule may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change. If, during the 30 day period allowed for comment, seven or more persons submit to the agency a written request for a hearing of the proposed rule, the agency shall proceed under the provisions of subdivisions 4 through 4f. If an agency, in its notice of intent, proposes to adopt more than one rule without a hearing, any written request for a hearing shall specify each rule for which a hearing is requested. If written requests for a hearing do not refer to a particular rule, the agency may proceed to adopt that rule without a hearing. In the event that a hearing is required, a citation in the state register to the prior publication of the proposed rule may be substituted for republication unless the agency has modified the proposed rule. If no hearing is required, the agency shall submit to the attorney general the proposed rule and notice as published, the rule as proposed for adoption, any written comments received by the agency, and a statement of need and reasonableness for the rule. The agency shall give notice to all persons who requested to be informed that these materials have been submitted to the attorney general. This notice shall be given on the same day that the record is submitted. The attorney general shall approve or disapprove the rule as to form and legality, including the issue of substantial change, within 14 days. If he approves the rule, he shall promptly file it in the office of the secretary of state. If he disapproves the rule, he shall state in writing his reasons therefor, and the rule shall

not be filed in the office of the secretary of state, nor published. The rule shall become effective upon publication in the state register in the same manner as provided for adopted rules in subdivision 4f.

COMMENTS:

This subdivision establishes an expedited hearing process for noncontroversial rules. A major problem with the current rulemaking system has been that agencies must go through the lengthy public hearing process for all proposed rules, even those which no one would object to. Under the new proposal, when there is no demand for a public hearing, agencies will be able to promulgate rules without the delay and cost that hearings entail.

When an agency feels that a rule or amendment will be noncontroversial, it will publish notice of intent to adopt the rule without a public hearing. The agency will also prepare a statement of need and reasonableness. For 30 days the public will have opportunity to comment on the proposed rule, or to request a hearing. If seven or more people request a hearing, the agency must proceed under the usual rulemaking procedures of subdivisions 4 through 4f. If fewer than seven requests for a hearing are made, the agency may submit the rule, along with any written comments received and a statement of need and reasonableness, to the attorney general for review as to form and legality. If the attorney general approves, the rule will become effective after submission to the secretary of state, and publication in the state register.

Amendment No. 6. Minnesota Statutes 1978, Section 15.0412, Subdivision 5, is amended to read:

Subd. 5. When an agency is directed ~~or authorized~~ by statute, federal law or court order to adopt, amend, suspend or repeal a rule in a manner that does not allow for compliance with subdivisions 4 through 4g, or if an agency is expressly required or authorized by statute to adopt temporary rules, the agency shall ~~promulgate a~~ adopt temporary ~~rule~~ rules in accordance with this subdivision. The proposed temporary rule shall be published in the state register and for at least 20 days thereafter the agency shall afford all interested persons an opportunity to submit data and views on the proposed temporary rule in writing. The proposed temporary rule may be modified if the modifications are supported by the data and views submitted to the agency. The agency shall submit to the attorney general the proposed temporary rule as published, with any proposed modifications. The attorney general shall review the proposed temporary rule as to form and legality and shall approve or disapprove the proposed temporary rule and any proposed modifications within five working days. The temporary rule shall take effect upon approval of the attorney general. Failure of the attorney general to approve or disapprove within five working days shall be deemed approval. As soon as practicable notice of the attorney general's decision shall be published in the state register and the adopted rule shall be published in the manner as provided for adopted rules in subdivision 4. Temporary rules adopted under this subdivision shall be effective for not longer than 90 days and may be reissued or continued in effect for an additional 90 days, but may not immediately be reissued thereafter without following the procedure of subdivision 4.

COMMENTS:

Under present law, an agency may adopt temporary rules when compliance with normal rulemaking procedures is not possible, and when the agency has been "authorized or directed" by the state legislature, the federal government, or a court to change its rules. The amendment removes temporary rulemaking power when this power is only "authorized" by federal law or by a court. An agency could only adopt temporary rules when "directed" to do so by courts or federal law. Agencies would retain temporary rulemaking authority when the state legislature "expressly required or authorized" this power.

Amendment No. 7. Minnesota Statutes 1978, Section 15.0412, is amended by adding a subdivision to read:

Subd. 8. Each agency shall, within one year after the effective date of a law requiring rules to be promulgated, unless otherwise specified by law, publish notice of hearing or notice of intent to adopt a rule without public hearing in accordance with this section. If an agency has not given this notice, it shall report to the appropriate committees of the legislature and the governor its failure to do so, and the reasons for that failure.

COMMENTS:

The Task Force has received complaints about agencies delaying when ordered to promulgate rules. Under this amendment an agency would have to start the rulemaking

process, by publishing notice in the state register, within one year of the effective date of the law ordering rules. Agencies failing to comply would be required to report to the governor and the legislature.

Amendment No. 8. Minnesota Statutes 1978, Section 15.0412, is amended by adding a subdivision to read:

Subd. 9. The agency shall, within one year after issuance of the hearing examiner's report, either withdraw the proposed rules or publish its adopted final action in the state register. If the agency has not published its adopted final action in the state register within one year, it shall not proceed to adopt the subject rules without rehearing the rules pursuant to all the procedures of this section.

COMMENTS:

This amendment is also designed to discourage agencies from delaying unreasonably in rule promulgation. The amendment would largely eliminate the possibility of an agency waiting to take final action until opposition to a rule weakened. Once the report of the hearing examiner has been issued, the agency must within one year either withdraw the rules, or publish notice of its final action in the state register. An agency which fails to do so must hold a new public hearing before promulgating the rule.

Amendment No. 9. Minnesota Statutes 1978, Section

15.0413, Subdivision 1, is amended to read:

15.0413 [EFFECT OF ADOPTION OF RULES; PUBLICATION; APPROPRIATION.] Subdivision 1. Every rule approved by the attorney general and filed in the office of the secretary of state as provided in section 15.0412 shall have the force and effect of law ~~20~~ five working days after its publication in the state register unless a later date is required by statute or specified in the rule. The secretary of state shall keep a permanent record of rules filed with that office open to public inspection. Should a discrepancy exist between the rules published in the state register and the rules on file with the secretary of state, the rules on file with the secretary of state shall have effect.

Amendment No. 10. Minnesota Statutes 1978, Section 15.0413, Subdivision 2, is amended to read:

Subd. 2. Each rule hereafter amended, suspended, or repealed shall become amended, suspended, or repealed ~~20~~ five working days after the new or amended rule or notice of suspension or repeal is published in the state register unless a later date is required by statute or specified in the rule.

COMMENTS:

The amendment provides that rules shall take effect five working days after publication in the state register. This is a housekeeping change, to bring these subdivisions into conformance with section 15.0412, subdivision 4.

As a result of printing errors, the version of a rule

printed in the state register sometimes differs slightly from the rule as filed with the secretary of state. The amendment provides that in these cases, the rule filed with the secretary of state shall govern.

Amendment No. 11. Minnesota Statutes 1978, Section 15.052, Subdivision 1, is amended to read:

15.052 [OFFICE OF HEARING EXAMINERS.] Subdivision 1. A state office of ~~hearing examiners~~ administratve hearings is created. The office shall be under the direction of a chief hearing examiner, who shall be learned in the law and appointed by the governor, with the advice and consent of the senate, for a term ending on June 30 of the sixth calendar year after appointment. The chief hearing examiner shall appoint additional hearing examiners to serve in his office as necessary to fulfill the duties prescribed in this section. All hearing examiners shall be in the classified service except that the chief hearing examiner shall be in the unclassified service, but may be removed from his position only for cause. Additionally, all hearing examiners shall have demonstrated knowledge of administrative procedures and shall be free of any political or economic association that would impair their ability to function officially in a fair and objective manner.

COMMENTS:

Office of Administrative Hearings: Throughout the statutes, references to the "office of hearing examiners" would be changed to the "office of administrative

hearings." This change is designed to eliminate confusion which the office has experienced with its present title. The task force also recommends that the title of the individual "hearing examiners" should be changed. These individuals should be renamed either "administrative law judges," or "hearing officers."

Amendment No. 12. Minnesota Statutes 1978, Section 15.052, Subdivision 2, is amended to read:

Subd. 2. When regularly appointed hearing examiners are not available, the chief hearing examiner may contract with qualified individuals to serve as hearing examiners ~~for specific assignments~~. Such temporary hearing examiners shall not be employees of the state ~~and shall be remunerated for their service at a rate not to exceed $150 per day~~.

COMMENTS:

The amendment follows the general trend of removing specific rates of compensation from the statutes. The fees paid to temporary hearing examiners would be set by the chief hearing examiner. By eliminating the statutory fee, the chief hearing examiner would be free to set compensation rates based on the level of expertise needed for each assignment.

Amendment No. 13. Minnesota Statutes 1978, Section 15.052, Subdivision 3, is amended to read:

Subd. 3. All hearings of state agencies required to be conducted under this chapter shall be conducted by a hearing examiner assigned by the chief hearing examiner. In assigning hearing examiners to conduct such hearings, the chief hearing examiner shall attempt to utilize personnel having expertise in the subject to be dealt with in the hearing. Only hearing examiners learned in the law shall be assigned to contested case hearings. When assigned to rulemaking proceedings it shall be the duty of the hearing examiner to: (1) advise an agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected interests; (2) conduct only hearings for which proper notice has been given; (3) see to it that all hearings are conducted in a fair and impartial manner; and (4) make a report on each ~~proposed agency action~~ rulemaking proceeding in which the hearing examiner functioned in an official capacity, ~~stating his findings of fact and his conclusions and recommendations;~~ taking notice of the degree to which the agency has (i) documented its statutory authority to ~~take~~ promulgate the proposed ~~action~~ rule , (ii) fulfilled all relevant substantive and procedural requirements of law or rule, and (iii) demonstrated the need for and reasonableness of its proposed~~action~~ rule with an affirmative presentation of facts.

COMMENTS:

This subdivision sets forth the duties of the hearing examiner. The suggested amendments would make the duties specified in the subdivision applicable only in rules hearings. The duties of the hearing examiner in contested cases will be set forth in another subdivision.

The reason for the proposed change is that the function of the hearing examiner, especially in writing a report, is slightly different in rulemaking than in contested cases. The three topics which this subdivision requires the hearing examiner to discuss in the report are not strictly applicable to contested cases.

Amendment No. 14. Minnesota Statutes 1978, Section 15.052, Subdivision 4, is amended to read:

Subd. 4. The chief hearing examiner shall promulgate rules to govern the procedural conduct of all hearings, relating to both rule adoption, amendment, suspension or repeal hearings and contested case hearings. Such procedural rules for hearings shall be binding upon all agencies and shall supersede any other agency procedural rules with which they may be in conflict. The procedural rules for hearings shall include in addition to normal procedural matters provisions relating to recessing and reconvening new hearings when the proposed final rule of an agency is substantially different from that which was proposed at the public hearing. The procedural rules shall establish a procedure whereby the proposed final rule of an agency shall be reviewed by the chief hearing examiner to determine whether or not a new hearing is required because of substantial changes ~~or failure of the agency to meet the requirements of section 15.0412, subdivision 4~~ . Upon his own initiative or upon written request of an interested party, the chief hearing examiner may issue a subpoena for the attendance of a witness or the production of such books, papers, records or other documents as are material to the matter being heard. The subpoenas shall be

enforceable through the district court in the district in which the subpoena is issued.

COMMENTS:

At the present time, the chief hearing examiner reviews a rule to determine if there has been a substantial change since the public hearing, and to determine if the agency has met the requirements of section 15.0412, subdivision 4. The Task Force has thoroughly discussed the substantial change review power and has reached no conclusion. Two alternative recommendations on review for substantial change are set forth as an appendix to this report.

The Task Force has agreed that the chief hearing examiner should not review for compliance with section 15.0412, subdivision 4. The attorney general already performs this review function. As the state's chief legal advisor, the attorney general should make these decisions, which are essentially legal in nature. Review by the chief hearing examiner is duplicative.

Amendment No. 15. Minnesota Statutes 1978, Section 15.052, Subdivision 5, is amended to read:

Subd. 5. The office of ~~hearing examiners~~ administative hearings may maintain a court reporter system and in addition to or in lieu thereof may contract with non-governmental sources for court reporter services. The court reporters may additionally be utilized as the chief hearing examiner directs. Unless the chief hearing examiner determines that the use of a court reporter is

more appropriate, an audio magnetic recording device shall be used to keep a record at any hearing which takes place under this chapter.

Court reporters serving in the court reporter system of the office of ~~hearing examiners~~ administrative hearings shall be in the classified service.

Amendment No. 16. Minnesota Statutes 1978, Section 15.052, Subdivision 7, is amended to read:

Subd. 7. A state office of ~~hearing examiner~~ administrative hearings account is hereby created in the state treasury. All receipts from services rendered by the state office of ~~hearing examiner~~administrative hearings shall be deposited in the account, and all funds in the account shall be annually appropriated to the state office of ~~hearing examiner~~ administrative hearings for carrying out the duties specified in this section.

Amendment No. 17. Minnesota Statutes 1978, Section 15.052, Subdivision 8, is amended to read:

Subd. 8. The chief hearing examiner may enter into contracts with political subdivisions of the state and such political subdivisions of the state may contract with the chief hearing examiner for the purpose of providing hearing examiners and reporters for administrative proceedings. The contract may define the scope of the hearing examiner's duties, which may include the preparation of findings, conclusions, or a recommendation for action by the political subdivision. For such services there shall be an

assessment in the manner provided in subdivision 6.

Amendment No. 18. Minnesota Statutes 1978, Section 15.052, Subdivision 9, is amended to read:

Subd. 9. In consultation and agreement with the chief hearing examiner, the commissioner of administration shall, pursuant to authority vested in him by section 16.13, transfer from state agencies, such employees as he deems necessary to the state office of ~~hearing examiners~~ administrative hearings. Such action shall include the transfer of any state employee currently employed as a hearing examiner, if the employee qualifies under this section.

Amendment No. 19. Minnesota Statutes 1978, Section 5.21, is repealed.

Amendment No. 20. The revisor of statutes shall substitute the term "office of administrative hearings" for "office of hearing examiners" in every place where the latter term is used.

Amendment No. 21. [EFFECTIVE DATE.] The provisions of section 2 pertaining to variances shall be effective August 1, 1980. The provisions of section 5 shall be effective on

September 1, 1979. For purposes of implementing the provisions of section 5, the attorney general shall prepare a notice which shall be published by the state register on or before August 1, 1979, and which notice shall be mailed, by the office of hearing examiners, to all persons presently registered with the secretary of state for the purpose of being advised of rulemaking hearings. The notice shall be sufficiently specific to inform all persons of the manner in which they may register their names with the various state agencies in order to be notified of all expedited rulemaking hearings as provided in section 5.

APPENDIX: SUBSTANTIAL CHANGE

Under current practice, the chief hearing examiner and the attorney general review a proposed final rule to determine if it is substantially changed from the rule which the agency presented at the public hearing. If there has been a substantial change, a new public hearing must be held to afford interested persons an opportunity to comment on the portions of the rule which have been changed since the original public hearing.

The present law does not clearly delineate the relationship between the attorney general and the chief hearing examiner on the issue of substantial change. The chief hearing examiner believes that his determination that there has been a substantial change is final, and that upon such a finding the agency must either withdraw the rules or hold a new public hearing. The attorney general's office believes that it has statutory authority to review the issue of substantial change and that the finding of the chief hearing examiner as to substantial change is advisory only.

The Task Force believes that the law is ambiguous and should be clarified. The consensus of the Task Force is that the power to review for substantial change should rest either with the chief hearing examiner or with the attorney general, but not with both. The first alternative presented below would place the power to review for substantial change exclusively with the chief hearing examiner. The second choice would grant the authority exclusively to the attorney general.

ALTERNATIVE 1:

Minnesota Statutes 1978, Section 15.052, Subdivision 4, is amended to read:

Subd. 4. The chief hearing examiner shall promulgate rules to govern the procedural conduct of all hearings, relating to both rule adoption, amendment, suspension or repeal hearings and contested case hearings. Such procedural rules for hearings shall be binding upon all agencies and shall supersede any other agency procedural rules with which they may be in conflict. The procedural rules for hearings shall include in addition to normal procedural matters provisions relating to recessing and reconvening new hearings when the proposed final rule of an agency is substantially different from that which was proposed at the public hearing. The procedural rules shall establish a procedure whereby the proposed final rule of an agency shall be reviewed by the chief hearing examiner to determine whether or not a new hearing is required because of substantial changes ~~or failure of the agency to meet the requirements of section 15.0412, subdivision 4~~ . The determination of the chief hearing examiner on this issue shall be final. Upon his own initiative or upon written request of an interested party, the chief hearing examiner may issue a subpoena for the attendance of a witness or the production of such books, papers, records or other documents as are material to the matter being heard. The subpoenas shall be enforceable through the district court in the district in which the subpoena is issued.

ALTERNATIVE 2:

Minnesota Statutes 1978, Section 15.052, Subdivision 4, is amended to read:

Subd. 4. The chief hearing examiner shall promulgate rules to govern the procedural conduct of all hearings, relating to both rule adoption, amendment, suspension or repeal hearings and contested case hearings. Such procedural rules for hearings shall be binding upon all agencies and shall supersede any other agency procedural rules with which they may be in conflict. The procedural rules for hearings shall include in addition to normal procedural matters provisions relating to recessing and reconvening new hearings when the attorney general determines that the proposed final rule of an agency is substantially different from that which was proposed at the public hearing. ~~The procedural rules shall establish a procedure whereby the proposed final rule of an agency shall be reviewed by the chief hearing examiner to determine whether or not a new hearing is required because of substantial changes or failure of the agency to meet the requirements of section 15.0412, subdivision 4.~~ Upon his own initiative or upon written request of an interested party, the chief hearing examiner may issue a subpoena for the attendance of a witness or the production of such books, papers, records or other documents as are material to the matter being heard. The subpoenas shall be enforceable through the district court in the district in which the subpoena is issued.

SUMMARY OF PROPOSED AMENDMENTS TO APA CONTESTED CASE PROVISIONS

A. Public Hearings and the Hearing Record

1. The record shall contain a written transcript only if the agency, a party, or the chief hearing examiner requests one (15.0418, subd. 2).

2. Documents containing information classified by law as not public will become part of the hearing record of a contested case if offered into evidence by a party, or if the agency desires to avail itself of the information. The hearing examiner or the agency may conduct a closed hearing to discuss the information and may issue protective orders and seal the hearing record (15.0419, subd. 2.).

B. Procedures After the Public Hearing

1. A distinction is drawn between the hearing examiner's report in a contested case, and the report in a rulemaking proceeding. The report in a contested case shall consist of findings of fact, conclusions, and recommendations. The report must be served on each party, not just made available (15.0421).

2. An agency official participating in the final decision of a contested case must read in full the hearing examiner report and any statements filed after the release of the report. The official must review, but need not read in full, the official record (15.0422, subd. 1).

3. A copy of the agency's decision and order must be served on each party and the hearing examiner, and not just delivered to these people (15.0422, subd. 2).

4. If an agency does not reach a decision within ninety days of arguments presented after the release of the hearing examiner's report, a party may petition a district court to review the matter. The court may order the agency to render a decision within a specified time (15.0422, subd. 3).

5. Section 15.0423 is repealed.

C. Judicial Review

1. A distinction is drawn between judicial review of contested cases and judicial review of other agency action (15.0424, subd. 1). The standards for review set forth in section 15.0425 will apply only to review of contested cases.

SUGGESTED AMENDMENTS TO
CONTESTED CASE PROCEDURES OF THE
ADMINISTRATIVE PROCEDURE ACT

Amendment No. 1. Minnesota Statutes 1978, Section 15.0418, is amended to read:

15.0418 [CONTESTED CASE.] Subdivision 1. An agency shall initiate a contested case proceeding when one is required by law. Unless otherwise provided by law, an agency shall decide a contested case only in accordance with the contested case procedures of the administrative procedure act.

Subd. 2. [NOTICE AND HEARING.] In any contested case all parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall state the time, place and issues involved, but if, by reason of the nature of the ~~proceeding~~ case, the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon

as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. Prior to assignment of a case to a hearing examiner as provided by section 15.052, all papers shall be filed with the agency. Subsequent to assignment of the case, the agency shall certify the official record to the office of ~~hearing examiners~~ administrative hearings, and thereafter, all papers shall be filed with that office. The office of ~~hearing examiners~~ administrative hearings shall maintain the official record which shall include subsequent filings, testimony and exhibits. All filings are deemed effective upon receipt. The record shall contain a written transcript of the hearing only if preparation of a transcript is requested by the agency, a party, or the chief hearing examiner. The agency or party requesting a transcript shall bear the cost of preparation. When the chief hearing examiner requests preparation of the transcript, the agency shall bear the cost of preparation. Upon issuance of the hearing examiner's report, the official record shall be certified to the agency.

Subd. 3. [INFORMAL DISPOSITION.] Informal disposition may also be made of any contested case by stipulation, agreed settlement, consent order or default.

COMMENTS:

Subdivision 1 emphasizes that it is an agency's duty to initiate a contested case hearing when a proposed action is determined to be a contested case. The subdivision also presents a clear statement of the requirement that agencies must comply with the APA in deciding contested cases, unless another law sets forth different procedures.

Subdivision 2 contains new language to clarify when a written transcript will be prepared in a contested case. The new language is a statement of the current practice. The Task Force concluded that the amendment is necessary because a recent Minnesota Supreme Court decision created confusion by implying that a written transcript must be prepared in every contested case.

In its decision of the so-called "PEER" case [People for Environmental Enlightenment and Responsibility (PEER), Inc. v. Minnesota Environmental Quality Council, ... Minn. ..., 265 N.W.2d 858 (1978)] the Minnesota Supreme Court said: "Under the APA the agency must review the evidence and findings amassed by a hearing examiner and come to an independent decision. Thus, the Legislature clearly intended agency members to read the material presented to it prior to reaching their decision."

As indicated in the above language, the Court's opinion is not based on a constitutional requirement but on what the Court thought the Legislature intended by the APA. The Task Force does not agree that the Legislature intended that a transcript be prepared in every contested case. It would be very costly, time consuming and unnecessary. Selective preparation of transcripts has been the established practice for many years and there has been no legislative attempt to change the practice.

Finally, the Task Force also concluded that it is reasonable to require the party that requests a transcript to pay for its preparation. Again, this is current practice. When the chief hearing examiner requests a transcript, the agency will bear the cost. The office of hearing examiners operates under a revolving fund, instead of a direct appropriation. Thus the office is financed by billing agencies for services the office provides to them.

Requiring agencies to pay for transcripts which the chief hearing examiner requests is consistent with this revolving fund system.

The Task Force discussed at length, but did not adopt, a formal procedure allowing any person to petition an agency to conduct a contested case. The problem that the Task Force sought to resolve is exemplified by a situation in which an occupational licensing board conducts a lengthy investigation of a licensee, but does not take action to revoke or suspend the license. The person under investigation often wants the agency either to take formal action or to drop the investigation.

Presently a person may informally request that the agency commence a contested case proceeding. However, the agency need not even respond to this request. The proposed amendment would have specified the content for a petition, and would have required that an agency grant or deny the petition by a written response. The Task Force rejected the proposal for several reasons. First, a petition probably would not be any more successful than an informal request in persuading an agency to conduct a contested case. Second, frivolous petitions could place an unnecessary burden on agencies. Finally the Task Force did not wish to create a right to judicially challenge the agency's response to the petition. Unless an agency action falls within the definition of contested case, the decision to use contested case procedures should remain in the discretion of the agency.

Amendment No. 2. Minnesota Statutes 1978, Section 15.0419, Subdivision 1, is amended to read:

15.0419 [EVIDENCE IN CONTESTED ~~CASES~~ CASE HEARINGS.] Subdivision 1. In contested cases agencies may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent ~~men~~ persons in the conduct of their affairs. They shall give effect to the rules of privilege recognized by law. They may exclude incompetent, irrelevant, immaterial and repetitious evidence.

Amendment No. 3. Minnesota Statutes 1978, Section 15.0419, Subdivision 2, is amended to read:

Subd. 2. All evidence, including records and documents ~~(except tax returns and tax reports)~~ containing information classified by law as not public, in the possession of the agency of which it desires to avail itself or which is offered into evidence by a party to a contested case proceeding , shall be ~~offered and~~ made a part of the hearing record ~~in~~ of the case, and no other factual information or evidence ~~(except tax returns and tax reports)~~ shall be considered in the determination of the case. Documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. When the hearing record contains information which is not public, the hearing examiner or the agency may conduct a closed hearing to discuss the information, issue necessary protective orders, and seal all or part of the hearing record.

COMMENTS:

The amendment recognizes that there are documents and

records in addition to tax returns and reports that are classified by law as not public. When these documents are introduced into evidence, or used by the agency in reaching a decision, they should become part of the record. The amendment provides that when the hearing record contains non-public information the hearing examiner or the agency may take several steps to limit intrusions on privacy. These steps are 1) excluding the public from hearings where non-public information is disuccsed 2) issuing protective orders which forbid parties from discussing the non-public matters and 3) sealing the hearing record.

The Task Force recognizes that this amendment touches on some very complex and sensitive issues. In a contested case, where constitutional rights are often involved, it may be difficult to reconcile the demands of due process and privacy, as well as the need to have government proceedings as open as possible. After considering several alternatives the Task Force concluded that the above amendment is the most workable and fair approach.

Amendment No. 4. Minnesota Statutes 1978, Section 15.0419, Subdivision 4, is amended to read:

Subd. 4. Agencies may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within their specialized knowledge. Parties shall be notified in writing either before or during hearing, or by reference in preliminary reports or otherwise, or by oral statement in the record, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. Agencies may utilize their experience, technical

competence, and specialized knowledge in the evaluation of the evidence ~~presented to them~~ in the hearing record .

COMMENTS:

The change is considered only technical; it simply clarifies what evidence the agency may use its expertise to evaluate.

Amendment No. 5. Minnesota Statutes 1978, Section 15.0421, is amended to read:

15.0421 [REPORT OF THE HEARING EXAMINER.] In all contested cases the decision of the officials of the agency who are to render the final decision shall not be made until at least 14 days after the report of the hearing examiner ~~as required by section 15.052~~, which shall consist of findings of fact, conclusions and recommendations and shall be part of the hearing record, has been ~~made available to~~ served upon the parties to the proceeding ~~for at least ten days~~ and an opportunity has been afforded to each party ~~adversely affected~~ to file exceptions and present argument to a majority of the officials who are to render the decision.

COMMENTS:

In the Task Force's suggested rule-making amendments the current APA section on hearing examiners' reports is made applicable only to rule-making hearings. Thus, the above language provides for a hearing examiner's report in contested case hearings. The Task Force also thought that

the current requirement to make the report "available" needed clarification; thus, the new language that the report must be "served" on each party. Also, it is made clear that all parties must be given an opportunity to file exceptions and present arguments, rather than just adversely affected parties.

Amendment No. 6. Minnesota Statutes 1978, Section 15.0422, is amended to read:

15.0422 [DECISIONS, ORDERS.] Subdivision 1. An agency official who is to make or vote on the final decision in the contested case shall review the record and shall read in full the hearing examiner's report and any statements filed pursuant to section 15.0421.

Subd. 2. Every decision and order ~~adverse to a party of the proceeding,~~ rendered by an agency in a contested case , shall be in writing ~~or stated in the record and shall be accompanied by a statement of the reasons therefor. The statement of reasons shall consist of a concise statement of the conclusions upon each contested issue of fact necessary to the decision. Parties to the proceeding shall be notified of the decision and order in person or by mail~~ , shall be based on the record and shall include the agency's findings of fact and conclusions on all material issues . A copy of the decision and order ~~and accompanying statement of reasons together with a certificate of service~~ shall be ~~delivered or mailed upon request to~~ served upon each party or ~~to his attorney of record~~ his representative and the hearing examiner by first class mail .

Subd. 3. Unless otherwise provided by law, if an

agency fails to render a decision and order in a contested case within 90 days after the submission of the final hearing examiner report and subsequent exceptions and arguments under section 15.0421 if any, any party may petition the district court for an order requiring the agency to render a decision and order on the contested case within such time as the court determines to be appropriate. The order shall be issued unless the agency shows that further delay is reasonable.

COMMENTS:

Subdivision 1, like a previous amendment, attempts to resolve confusion that has resulted from the "PEER" decision, in which the Minnesota Supreme Court said that public officials are obligated under the APA to read the record of a contested case before making a decision. The above amendment recognizes that a public official may be able to effectively review a record (which can involve hundreds of pages) without reading it, such as through summaries and staff briefings. However, the Task Force did conclude that it is appropriate and reasonable to require public officials to read the hearing examiner's report and associated documents in a contested case before making a decision because they normally are concise and contain the most relevant information the official needs to consider.

In requiring agency officials to read in full reports of hearing examiners, the Task Force does not intend to suggest that reviewing courts should attach any greater importance to hearing examiner reports than is presently the case. Some members of the Task Force felt that this amendment would lead courts to place greater weight on the reports of the hearing examiners. These Task Force members

oppposed the amendment requiring a full reading of the hearing examiners' reports.

Subdivision 2 is essentially a redraft of existing language. It does clarify that the written decision must contain the agency's findings of fact and conclusions and that the decision must be served by first class mail on each party (or the party's representative) and the hearing examiner.

Subdivision 3 represents a new concept in the APA's contested case procedure--it gives judicial recourse to a party affected by agency delay. The Task Force considered placing an absolute time requirement within which agencies would have to decide a contested case but determined that such an approach would not accommodate the legitimate variations that exist among cases. Rather, the Task Force decided that after 90 days from the end of the formal proceedings a party should be able to obtain a judicial review of the circumstances involved to determine if the agency should have additional time to decide the case.

Amendment No. 7. Minnesota Statutes 1978, Section 15.0423, is repealed:

COMMENTS:

This section deals with review of licensing or registration proceedings. The Task Force felt that the APA already has adequate procedures for these matters, and that this section is confusing and unnecessary.

Amendment No. 8. Minnesota Statutes 1978, Section 15.0424, Subdivision 1, is amended to read:

15.0424 [JUDICIAL REVIEW OF A CONTESTED CASE DECISION.] Subdivision 1. [APPLICATION.] Any ~~person~~ party aggrieved by a final decision in a contested case ~~of any agency as defined in section 15.0411, subdivision 2 (including those agencies excluded from the definition of "agency" in section 15.0411, subdivision 2, but excepting the tax court, the workers' compensation court of appeals sitting on workers' compensation cases, the department of economic security, the director of mediation services, and the department of public service), whether such decision is affirmative or negative in form,~~ is entitled to judicial review ~~thereof,~~ of the decision under the provisions of this section, but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo provided by law now or hereafter enacted. ~~The term "final decision" as herein used shall not embrace a proposed or tentative decision until it has become the decision of the agency either by express approval or by the failure of an aggrieved person to file exceptions thereto within a prescribed time under the agency's rules.~~ A petition for judicial review under this section must be filed with the district court and served on the agency not more than 30 days after the party receives the final decision and order of the agency.

COMMENTS:

The above amendment would simply make the judicial review provided for under Section 15.0424 applicable only to contested cases. Judicial review of rulemaking is

already provided for by sections 15.0416 and 15.0417.

Amendment No. 9. Minnesota Statutes 1978, Section 15.0424, Subdivision 2, is amended to read:

Subd. 2. [PETITION, SERVICE.] ~~(a)~~ Proceedings for review under this section shall be instituted by serving a petition ~~thereof~~ personally or by certified mail upon the agency ~~or one of its members or upon its secretary or clerk~~ and by filing ~~such~~ the petition in the office of the clerk of district court for the county ~~wherein~~ where the agency has its principal office or the county of residence of the petitioners ~~, all within 30 days after the agency shall have served such decision and any order made pursuant thereto by mail on the parties of record therein; subject, however, to the following:~~

~~(1) In the case of a tentative or proposed decision which has become the decision of the agency either by express approval or by a failure by an aggrieved person to file exceptions within a prescribed time under the agency's rules, such 30 day period shall not begin to run until the latest of the following events shall have occurred: (a) such decision shall have become the decision of the agency as aforesaid; (b) such decision, either before or after it has become the decision of the agency, shall have been served by mail by such agency on the parties of record in such proceeding.~~

~~(2)~~ In case a request for rehearing or reconsideration shall have been made within ~~the time permitted and in conformity with the agency's rules~~ ten days after the decision and order of the agency, ~~such~~ the 30-day period provided in subdivision 1 shall not begin to run until

service of the order finally disposing of the application for rehearing or reconsideration, but nothing herein shall be construed as requiring that an application for rehearing or reconsideration be filed with and disposed of by the agency as a prerequisite to the institution of a review proceeding under this section.

~~(b)~~ The petition shall state the nature of the petitioner's interest, the facts showing the petitioner is aggrieved and is affected by the decision, and the ground or grounds upon which the petitioner contends that the decision should be reversed or modified. The petition may be amended by leave of court although the time for serving the ~~same~~ petition has expired. The petition shall be entitled in the name of the person serving the ~~same~~ petition as petitioner and the name of the agency whose decision is sought to be reviewed as respondent. Copies of the petition shall be served, personally or by certified mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made; and for the purpose of such service the agency upon request shall certify to the petitioner the names and addresses of all such parties as disclosed by its records, which certification shall be conclusive. The agency and all parties to the proceeding before it shall have the right to participate in the proceedings for review. The court in its discretion may permit other interested parties to intervene.

~~(c)~~ Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance

stating his position with reference to the affirmance, vacation, reversal or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general and shall be filed, together with proof of service thereof, with the clerk of the reviewing court within ten days after such service. Service of all subsequent papers or notices in such proceedings need be made only upon the petitioner, the named respondent, the attorney general, and such other persons as have served and filed the notice as herein provided, or have been permitted to intervene in said proceedings as parties thereto by order of the reviewing court.

COMMENTS:

The above changes are considered only technical. The Task Force found much of the language in this subdivision to be confusing and unnecessary.

Amendment No. 10. Minnesota Statutes 1978, Section 15.0424, Subdivision 6, is amended to read:

Subd. 6. [PROCEDURE ON REVIEW.] The review shall be conducted by the court without a jury and shall be confined to the record, except that in cases of alleged irregularities in procedure ~~before the agency~~ , not shown in the record, testimony thereon may be taken in the court. The court shall, upon request, hear oral argument and receive written briefs. Except as otherwise provided all proceedings shall be conducted according to the rules of civil procedure.

COMMENTS:

The words "before the agency" are removed because the procedures also take place before the hearing examiner.

Amendment No. 11. Minnesota Statutes 1978, Section 15.0425, is amended to read:

15.0425 [SCOPE OF JUDICIAL REVIEW.] In ~~any proceedings for~~ a judicial review ~~by any court of decisions of any agency as defined in section 15.0411, subdivision 2 (including those agencies excluded from the definition of agency in section 15.0411, subdivision 2)~~ under section 15.0424 the court may affirm the decision of the agency or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the petitioners may have been prejudiced because the administrative finding, inferences, conclusion, or decisions are:

(a) In violation of constitutional provisions; or

(b) In excess of the statutory authority or jurisdiction of the agency; or

(c) Made upon unlawful procedure; or

(d) Affected by other error of law; or

(e) Unsupported by substantial evidence in view of the entire record as submitted; or

(f) Arbitrary or capricious.

COMMENTS:

The amendment would make the section applicable only to a decision made under the contested case provisions of the APA. Standards for judicial review of rulemaking are contained in section 15.0417.

Amendment No. 12. Minnesota Statutes 1978, Section 15.0426, is amended to read:

15.0426 [APPEALS TO SUPREME COURT.] An aggrieved party, including an agency which issued a decision ~~or~~ and order in the case, may secure a review of any final order or judgment of the district court under sections 15.0424 ~~or 15.0425~~ by appeal to the supreme court. Such appeal shall be taken in the manner provided by law for appeals from orders or judgments of the district court in other civil cases.

COMMENTS:

The above are only technical changes.