

PLAIN LANGUAGE

Better rule drafting

BREAK IT DOWN; USE MORE HEADINGS; PRUNE CLUTTER

BY IAN LEWENSTEIN

Adopting a rule in Minnesota requires state agencies to follow Minnesota's rulemaking law, the Administrative Procedure Act.¹ To combat legislative distrust of agency rulemaking, the act emphasizes public participation and agency transparency by requiring compliance with several notice requirements when holding a public rule hearing. The notice requirements help ensure that the agency properly notifies affected public members about the rule. Yet the importance of notice requirements is not reflected in the statute, which neglects the clarity of plain language and substitutes confusion and shoddy drafting, making the notice requirements not easily discernible to even the most veteran of rulemaking agencies, let alone public members unfamiliar with rulemaking.

The current statute that lists the notice requirements² is problematic for three reasons. First, it begins with a short vertical list — a homage of sorts to plain language — and then proceeds to a block-left monstrosity. Second, this uninviting text block consists of long clauses that bury important information that affected parties need to understand and comply with the statute. Third, cross-references to the statute are useless because affected parties must exert themselves to find the relevant information while working through redundant and poorly worded language.

As has been discussed in this column many times, neglecting plain language results in confusion, frustration, and increased costs for affected parties. And in this statute, turgid drafting decreases the likelihood of public participation that keeps agencies accountable under the act.

ORIGINAL STATUTE

Subd. 1a. Notice of rule hearing.

(a) Each agency shall maintain a list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings. Persons may register to receive notice of rule proceed-

ings by submitting to the agency:

- (1) their electronic mail address; or
- (2) their name and United States mail address.

The agency may inquire as to whether those persons on the list wish to remain on it and may remove persons for whom there is a negative reply or no reply within 60 days. The agency shall, at least 30 days before the date set for the hearing, give notice of its intention to adopt rules by United States mail or electronic mail to all persons on its list, and by publication in the State Register. The mailed notice must include either a copy of the proposed rule or an easily readable and understandable description of its nature and effect and an announcement that a free copy of the proposed rule is available on request from the agency. In addition, each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication. The notice in the State Register must include the proposed rule or an amended rule in the form required by the revisor under section 14.07, together with an easily readable and understandable summary of the overall nature and effect of the proposed rule, a citation to the most specific statutory authority for the proposed rule, a statement of the place, date, and time of the public hearing, a statement that persons may register with the agency for the purpose of receiving notice of rule proceedings and notice that the agency intends to adopt a rule and other information required by law or rule. When an entire rule is proposed to be repealed, the agency need only publish that fact, along with an easily readable and understandable summary of the overall nature of the rules proposed for repeal, and a citation to the rule to be repealed.

(b) The chief administrative law judge may authorize an agency to omit from the notice of rule hearing the text of any proposed rule,

the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient if:

- (1) knowledge of the rule is likely to be important to only a small class of persons;
- (2) the notice of rule hearing states that a free copy of the entire rule is available upon request to the agency; and
- (3) the notice of rule hearing states in detail the specific subject matter of the omitted rule, cites the statutory authority for the proposed rule, and details the proposed rule's purpose and motivation.³

A REVISION

My main goal when redrafting this statute was to break up distinct requirements — from the text block — into separate subdivisions and arrange them logically,⁴ making sure to generously use vertical lists with hanging indents to present easily digestible information. I also changed a few *shalls* and removed clutter. My redraft makes the section more easily citable, easier to follow, and easier to read and understand, encouraging more public participation in agency rulemaking.

Subd. 2. Agency rulemaking list.

(a) Getting placed on list. An agency must keep a rulemaking list of all persons who have registered with the agency to receive notice of agency rule actions. To be placed on an agency's list, you must submit your email address or name and US mail address.

(b) Being removed from list. You may be removed from the list if you:

- (1) ask to be removed; or
- (2) do not respond to the agency within 60 days after the agency asks if you want to remain on the list.

Subd. 3. Notice of proposed rule.

(a) Giving notice. At least 30 days before the hearing date, an agency must give notice of its intent to adopt a rule by publishing a notice in the State Register and by notifying persons on the rulemaking list through US mail or email.

(b) Notice to rulemaking list. The notice to persons on the rulemaking list must:

- (1) either include a copy of the proposed rule or summarize the rule in plain language; and
- (2) state that a free copy of the rule is available upon request.

(c) Notice in State Register. The notice in the State Register must

include the rule in the required form under section 14.07 and:

- (1) summarize the rule and its effect in plain language;
- (2) cite the most specific statutory authority for the rule;
- (3) state the hearing's place, date, and time; and
- (4) state that a person may register for the agency's rulemaking list to receive notice of all agency rule actions.

(d) Notice repealing rules. When an agency proposes only to repeal one or more rule parts, the agency need only publish a notice that:

- (1) cites each rule part to be repealed; and
- (2) summarizes, in plain language, each rule part's subject matter.

Subd. 4. Omitting rule text from State Register.

The chief administrative law judge may authorize an agency to omit the rule text from the notice under subdivision 3, paragraph (c), if publishing the text would be unduly expensive and:

- (1) the rule is likely important to only a small class of persons;
- (2) the notice states that a free copy of the rule is available upon request; and
- (3) the notice:
 - (i) specifies the rule's subject matter;
 - (ii) cites the statutory authority for the rule; and
 - (iii) briefly summarizes why the rule is needed.

Subd. 5. Additional notice.

In addition to the notices under subdivision 3, an agency must make reasonable efforts to notify persons or classes of persons whom the rule may significantly affect by giving notice:

- (1) in newsletters, newspapers, or other publications; or
- (2) through other means of communication.

A SIMPLE QUESTION

Let me ask: Which statute would you rather read?

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ENDNOTES:

1 Minn Stat 14.001-.69.

2 Minn Stat 14.14(1a).

3 Id.

4 I renumbered as if I were drafting this section from scratch (subdivision 1 is not shown).