

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT

In the Matter of the Proposed Expedited
Rules Governing the Military Reservist
Economic Injury Loan Program,
Minnesota Rules, Chapter 4305

**ORDER ON REVIEW
OF RULES UNDER
MINN. STAT. § 14.389
AND MINN. R. 1400.2410**

On March 12, 2009, the Minnesota Department of Employment and Economic Development (Department or DEED) filed documents with the Office of Administrative Hearings (OAH) seeking review and approval of the above-entitled rules under Minn. Stat. § 14.389 and Minn. R. 1400.2410.

Based upon a review of the written submissions by the Department, and for the reasons set out in the Memorandum which follows below,

IT IS HEREBY ORDERED THAT:

1. The proposed rules were adopted in compliance with the procedural requirements of Minnesota Statutes, chapter 14, and Minnesota Rules, chapter 1400.
2. According to Minn. Stat. § 116J.996, the Department has the statutory authority to adopt these proposed rules using the expedited rulemaking process.
3. The following rule part is **DISAPPROVED** as not meeting the requirements of Minnesota Rules, part 1400.2100, item D: Minn. R. 4305.0070.
4. All other proposed rule parts are approved.

Dated: March 26, 2009

s/Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge

NOTICE

Minn. Rule 1400.2410, subp. 8, provides that an agency may ask the Chief Administrative Law Judge to review a rule that has been disapproved by a Judge. The request must be made within five working days of receiving the Judge's decision. The Chief Administrative Judge must then review the agency's filing, and approve or disapprove the rule within 14 days of receiving it.

MEMORANDUM

The Department requests approval of proposed expedited rules governing the Military Reservist Economic Injury Loan Program. The Department published a *Notice of Intent to Adopt Expedited Rules* in the *State Register* on January 12, 2009, and submitted the proposed rules to the OAH for review as to their legality on March 12, 2009.

In expedited rulemaking, the legal review of the proposed rules is conducted according to the standards of Minn. R. 1400.2100, items A and C to H.¹ These standards state:

A rule must be disapproved by the judge or chief judge if the rule:

- A. was not adopted in compliance with procedural requirements of this chapter, Minnesota Statutes, chapter 14, or other law or rule, unless the judge decides that the error must be disregarded under Minnesota Statutes, section 14.15, subdivision 5, or 14.26, subdivision 3, paragraph (d);
- ...
- C. is substantially different than the proposed rule, and the agency did not follow the procedures of part 1400.2110;
- D. exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by its enabling statute or other applicable law;
- E. is unconstitutional or illegal;
- F. improperly delegates the agency's powers to another agency, person or group;

¹ See, Minn. R. 1400.2410, subp. 3 (2007).

- G. is not a “rule” as defined in Minnesota Statutes, section 14.02, subdivision 4, or by its own terms cannot have the force and effect of law; or
- H. is subject to Minnesota Statutes, section 14.25, subdivision 2, and the notice that hearing requests have been withdrawn and written responses to it show that the withdrawal is not consistent with Minnesota Statutes, section 14.001, clauses (2), (4), and (5).

The Department has proposed the following language regarding loan default at Minn. R. 4305.0070: “The loan agreement must identify what constitutes default of the loan. The agency may, at its discretion, pursue any course of action to remedy default, including but not limited to modifying the repayment terms, referring the debt for collection, or writing off the debt as uncollectible.”

As written, this rule part is vague and grants the agency undue discretion in whether or not it will pursue action to remedy the default as well as the means by which it will remedy default. While the proposed language attempts to limit the means of remedying the default to “modifying the repayment terms, referring the debt for collection, or writing the debt off as uncollectible,” the language of “including but not limited to” and “any course of action” render this proposed language unduly discretionary and thereby defective under Minn. R. 1400.2100, item D. To correct the defect, the Administrative Law Judge recommends that the agency choose one of the two following corrective examples, or some substantially similar language:

The loan agreement must identify what constitutes default of the loan. The agency may, ~~at its discretion,~~ pursue any course of action authorized by statute, rule, or the loan agreement to remedy default, ~~including but not limited to modifying the repayment terms, referring the debt for collection, or writing off the debt as uncollectible.~~

or

The loan agreement must identify what constitutes default of the loan and the course of action the agency will follow in the event of default. ~~The agency may, at its discretion, pursue any course of action to remedy default, including but not limited to modifying the repayment terms, referring the debt for collection, or writing off the debt as uncollectible.~~

If the Department prefers to make the pursuit of the remedy of the default optional, it may wish to consider inserting language that identifies criteria for when the Department will pursue a default remedy and when it will not. Changing the proposed language in accordance with the recommendation of the Administrative Law Judge is needed and reasonable, and will not make rule part 4305.0070 substantially different than originally proposed.

B. J. H.