

491—2.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

2.9(1) The commission shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

- a.* The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and
- b.* The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and
- c.* The Notice of Intended Action provided fair warning that the outcome of that rulemaking proceeding could be the rule in question.

2.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rulemaking proceeding could be the rule in question, the commission shall consider the following factors:

- a.* The extent to which the person who will be affected by the rule should have understood that the rulemaking proceeding on which it is based could affect their interests;
- b.* The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and
- c.* The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

2.9(3) The commission shall commence a rulemaking proceeding within 60 days of its receipt of a petition for rulemaking seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the commission finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rulemaking proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

2.9(4) Concurrent rulemaking proceedings. Nothing in this rule disturbs the discretion of the commission to initiate, concurrently, several different rulemaking proceedings on the same subject with several different published Notices of Intended Action.

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