



Minnesota Rulemaking Manual

A REFERENCE BOOK FOR THE PRACTITIONER

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27th Edition

<http://www.health.state.mn.us/data/rules/manual>

To obtain this information in a different format, contact health.generalcounsel@state.mn.us

Acknowledgments

The Minnesota Rulemaking Manual represents the collective knowledge and wisdom of the Interagency Rules Committee, Minnesota’s rulemaking community. First published on June 17, 1996, the Manual has been edited frequently. Dave Orren (Department of Health) compiled the first edition and served as editor until 2006. Patricia Winget (Department of Health) served as editor from 2006 to 2020. Josh Skaar (Department of Health) served as editor from 2020 to 2022. A group of rule writers from the Interagency Rules Committee now assume the role.

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Legislative Reference Library

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IRC Teams Site

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Chapter 1 - Rulemaking in General

Introduction

This chapter briefly describes the legal basis for rulemaking and the history of the Minnesota Administrative Procedure Act (APA),¹ lists ongoing rule management responsibilities, and provides information about an informal group of state agency rule staff and a rule help desk.

On the web

The Manual can be found online at [MDH Rulemaking \(https://www.health.state.mn.us/data/rules/index.html\)](https://www.health.state.mn.us/data/rules/index.html). It is available in Adobe Acrobat and Microsoft Word.

Accessibility

Minnesota law requires all state documents to be accessible to all individuals. A document or application is considered accessible if it meets certain technical criteria and can be used by people with disabilities. This includes access by people who are mobility impaired, blind, low vision, deaf, or hard of hearing, or who have cognitive impairments. We believe all documents that make up this Manual meet these state standards. See your agency's accessibility coordinator for further information or if you believe that these documents require further changes to make them accessible.

Note: All documents that you plan to post on OAH's eComments page must be accessible. OAH will not post documents that are not accessible. The only exception is the rule draft received from the Revisor.

Plain language

Executive Order 19-29 requires state agencies to use plain language "to communicate with Minnesotans."² According to the order, "Plain Language is a communication which an audience can understand the first time they read or hear it."³

Whenever agencies communicate with the public, including when they publish rule-related legal documents under the APA, they must adhere to the executive order. There are also important practical reasons to embrace plain language.

¹ Minnesota Statutes, chapter 14. *See also* Minnesota Rules, chapter 1400 (Office of Administrative Hearings' rules implementing the APA).

² [Executive Order 19-29 \(PDF\)](#).

³ The Executive Order is in addition to various agencies' statutes that require the agency to use plain language. Minn. Stat. § 14.07, subd. 3(3), requires the Revisor's Office to use plain language when drafting rules and to avoid technical language."

First, plain language can help you avoid most of the ambiguity and vagueness that plagues legalese. For rules, ambiguity and unconstitutional vagueness can result in rule defects. Second, plain language engenders trust among agency stakeholders and the public. Why? Because plain language clearly communicates what you are trying to say. If people can understand what you are saying the first time that they read your SONAR, rules, etc., the more they will trust you, even if they disagree. Third, if people can understand your rules, the more likely that they can—and will—comply; and it’s also more likely that you will be able to understand what you as an agency need to enforce. And fourth, there is mounting evidence that people prefer and want plain language because it reduces frustration among readers, especially those needing to comply with rule requirements.

There are many resources on plain-language best practices, but a good place to start is the [Center for Plain Language \(https://centerforplainlanguage.org/\)](https://centerforplainlanguage.org/), [Clarity \(https://www.clarity-international.org/\)](https://www.clarity-international.org/), or the Michigan Bar Journal’s [Plain Language column \(https://www.michbar.org/generalinfo/plainenglish/home\)](https://www.michbar.org/generalinfo/plainenglish/home).

You can also read the articles and books of leading plain-language advocates such as Joseph Kimble, David Mellinkoff, Joseph Williams, Michele Asprey, and Richard Wydick.

1.1 What this Manual Covers and What it Does Not Cover

This Manual covers the development and adoption of rules that follow the main process in Minnesota Statutes, chapter 14. This Manual also covers the adoption of exempt rules under sections 14.386 and 14.388, the expedited process for adopting rules in section 14.389, and the shortened process for repealing obsolete rules under section 14.3895. This Manual does not cover how to handle rulemaking petitions or variances to rules.

Rulemaking Processes Comparison Chart

Rule Process Type	Max Duration (unless otherwise specified in law)	Formal Public Hearing	Public Comment Period	ALJ Approval as to Legality	Subject to Veto
Permanent Rules Minn. Stat. §§ 14.05 to 14.28	Until revised or repealed	Possible	Yes	Yes	Yes
Exempt Permanent Rules Minn. Stat. § 14.386	2 years	No	No	Yes	Yes
Good Cause Exempt Permanent Rules Minn. Stat. § 14.388 (1) address a serious and immediate threat to the public health, safety, or welfare (2) comply with a court order or a requirement in federal law...	2 years if adopted under clauses (1) or (2); otherwise, until revised or repealed	No	Yes	Yes	No

Rule Process Type	Max Duration (unless otherwise specified in law)	Formal Public Hearing	Public Comment Period	ALJ Approval as to Legality	Subject to Veto
(3) incorporate specific changes set forth in applicable statutes when no interpretation of law is required (4) make changes that do not alter the sense, meaning, or effect of a rule					
Expedited Permanent Rules Minn. Stat. § 14.389 Possibility of hearing depends on whether the statutory authority to use this procedure references subd. 5 in § 14.389.	Until revised or repealed	Possible (conditional on authority)	Yes	Yes	Yes
Repeal of Permanent Rules Minn. Stat. § 14.3895	N/A	Possible	Yes	Yes	Yes

1.1.1 Additional rulemaking reference materials

The Revisor’s Office also has two rulemaking manuals. The first one, [Rulemaking in Minnesota: A Guide \(PDF\)](https://www.revisor.mn.gov/static/office/pubs/2018_all_rulemaking_guide.491681155472.pdf) (https://www.revisor.mn.gov/static/office/pubs/2018_all_rulemaking_guide.491681155472.pdf), is similar to this Manual in detailing the rulemaking steps and also includes the text of the APA. When in doubt or if there is conflicting information, defer to this IRC Manual, as it is more consistently updated.

The second manual is a rule-drafting manual entitled [Minnesota Rules Drafting Manual with Styles and Forms \(PDF\)](https://www.revisor.mn.gov/static/office/1997_RuleDraftManual.a285c37112da.pdf) (https://www.revisor.mn.gov/static/office/1997_RuleDraftManual.a285c37112da.pdf), which is similar to the bill-drafting manual also published by the Revisor’s Office. Whether you are an experienced or first-time rule writer, read it. It is the most authoritative source on how to draft rules and provides plain-language practices. If you want to avoid rule defects and draft clear rules, you need to read the manual.

Another good reference source is the online book [Minnesota Administrative Procedure](http://mitchellhamline.edu/minnesota-administrative-procedure/) (<http://mitchellhamline.edu/minnesota-administrative-procedure/>), which discusses the APA. The book traces the history of the APA, major changes to the APA, and other important APA elements. Now in its fourth edition, the book discusses both rulemaking and contested-case proceedings, with detailed references to court decisions. It’s an invaluable resource and is frequently cited by the legal community, including administrative law judges.

1.2 Selected Statutory and Rulemaking Provisions

1.2.1 Rule

As defined in the APA, “‘Rule’ means every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure.”⁴

This definition means that rule language must be enforceable and must implement the statute, make the statute specific, or govern the agency’s organization or procedure.⁵ Language that merely repeats statute is not generally considered a rule because it does not implement the law or make the law specific. Further, statutory language is a legislative statement, not an agency statement, and so should not be used in rule.⁶

In addition to taking issue with repeating statutory language, ALJs often call out providing examples in rule as a defect. In particular, ALJs will disapprove language that describes hypothetical scenarios. Using hypothetical scenarios to interpret the law should not be in the rule but rather in agency materials. The lone exception is the Department of Revenue, which has been allowed to use examples in its rules. For example, an ALJ noted the unique nature of tax rules:

Subpart 3 sets out examples of how the tax calculation is performed and who must pay the tax. While examples are not rules, the Department must commonly describe the impact of its rules in the form of "real world" applications. Due to the unique nature of tax rules, examples included in the rules themselves have been approved in rulemaking proceedings. The examples set out in subpart 3 are found to be needed and reasonable.⁷

Although ALJs are not consistent across the board, some ALJs will approve a list of a series of items (X, Y, and Z) when the word “example” is not used and the items are not hypothetical descriptions of potential scenarios. Many rules contain “such as” followed by a list of concrete items. For example, a Board of Animal Health rule defines a “confinement area as a structure used or designated for use to restrict an animal to a limited amount of space, such as a room, pen, cage, kennel, compartment, crate, or hutch.”⁸ But again, ALJs are not consistent, as some disapprove *including but not limited to*, which semantically means the same as such as. Use these terms sparingly, if at all.

Finally, the word “may” is the most commonly cited rule defect for several reasons, but its use as it relates to a “rule” makes the language associated with the word not a rule because something may or may not happen—that is, there is no future effect.

⁴ Minn. Stat. § 14.02, subd. 4.

⁵ Minn. Stat. § 14.03, subd. 3(a)(1).

⁶ See also Minn. Stat. § 14.07, subd. 3(1): the revisor must “minimize duplication of statutory language.”

⁷ OAH Docket Number 7-2700-13138-1. See also RD2951; OAH Docket Number 10-2700-12042-1.

⁸ Minn. R. 1721.0490, subp. 2.

1.2.2 Nonapplicability

The APA carves out exceptions to the definition of a rule and states which entities are not required to comply with the APA's rulemaking requirements.⁹

1.2.3 Required rules

“Each agency shall adopt rules . . . setting forth the nature and requirements of all formal and informal procedures related to the administration of official agency duties to the extent that those procedures directly affect the rights of or procedures available to the public.”¹⁰

Agencies should not rely on this general authority as their only statutory authority for rulemaking. It is better to cite the agency's most specific rulemaking authority.

1.2.4 Interpretation of Statutes and Rules

Minnesota Statutes provide interpretation of statutes and rules with information on canons of construction, words and phrases, counting time, etc.¹¹

1.2.5 Counting time

The APA has many time-related provisions.¹² When counting time, the day that an action occurs—such as mailing a notice—does not count and the last day counts.¹³

Calendar day. A period is counted in calendar days unless it is specifically stated in statute or rule that the period will be counted in “working days.” Calendar days include Saturdays, Sundays, and state holidays. However, if the period ends on a Saturday, Sunday, or state holiday, the period is extended to end on the next day that is not a Saturday, Sunday, or state holiday.¹⁴

Example: For a seven-day period, a period starting on a Monday ends the next Monday. If that Monday were a state holiday,¹⁵ the period would end on Tuesday.

Working day. Working days do not include Saturdays, Sundays, and state holidays.¹⁶

Example: For a seven-day period, a period starting on a Monday would end the next Wednesday. If a state holiday falls within the seven-day period, the period would be extended and end on Thursday.

⁹ See Minn. Stat. § 14.03.

¹⁰ Minn. Stat. § 14.06(a).

¹¹ See Minn. Stat. ch. 645.

¹² See Minn. R. 1400.2030, subp. 1.

¹³ Minn. R. 1400.2030, subp. 1.

¹⁴ Minn. R. 1400.2030, subp. 1.

¹⁵ See Minn. Stat. § 645.44, subd. 5 (listing state holidays).

¹⁶ Minn. R. 1400.2030, subp. 1.

1.3 Delegation of Power

Legislative bodies delegate rulemaking power to administrative agencies by statute, either by authorizing rules on specific topics or by a general provision that the agency may make rules necessary to carry out the purpose of statutorily assigned duties. Historically, a legislature could not delegate its lawmaking authority to administrative bodies. But because society has become increasingly complex, the courts have recognized the difficulty for legislatures to develop comprehensive regulations and, therefore, have allowed legislative bodies considerable flexibility in delegating authority.¹⁷ However, legislative delegation of authority to an administrative agency will be sustained only if the delegation was accompanied by “ascertainable,” “adequate standards,” or “intelligible principles” necessary to guide the agency.

A rule is the product of rulemaking. Rulemaking is the part of the administrative process that resembles a legislature’s enactment of a statute. As such, rulemaking is an executive-branch quasi-legislative practice to formulate policy necessary to administer a legislatively created program and to fill any gap left, implicitly or explicitly, by the legislature. Administrative agencies have knowledge and experience to regulate and supervise programs of a highly specialized or rapidly changing subject matter.

1.4 The Minnesota Administrative Procedure Act

Rulemaking in Minnesota follows procedures outlined in the APA, Minnesota Statutes, chapter 14, and Minnesota Rules, chapter 1400. A codified set of procedures on rulemaking was first enacted in Minnesota in 1945.

For more on the APA’s history, the online book *Minnesota Administrative Procedure* provides additional background.

1.5 Office of Administrative Hearings Rules

The Office of Administrative Hearings (OAH) is charged with many responsibilities under the APA. OAH has, therefore, adopted rules under Minnesota Rules, chapter 1400. For general information about OAH, refer to **OAH-INF** in the appendix.

1.6 Governor’s Office Rule Review Process

The Governor may veto rules.¹⁸ This statutory veto authority occurs at the end of the rulemaking process when 99.9% of the work on the rules is done. To reduce the risk of a veto at that late stage, agencies submit rules to the Governor’s Office for review at three different points during the

¹⁷ This has been changing at the federal level with recent Supreme Court decisions.

¹⁸ Minn. Stat. § 14.05, subd. 6.

rulemaking process. This way, if the Governor opposes the rules, the agency can stop the project early in the process and avoid wasting considerable time and effort by governmental staff and stakeholders. If the Governor wants the rules to take a different direction, the agency can redirect the rules at a point in the process where an advisory committee and the public have a chance to respond to the Governor's decision. For a copy of the administrative rule review policy, see **GOV-PLCY** in the appendix.

The Legislative Coordinator manages the rules review process for the Governor's Office and works with Governor's Office staff to ensure a quick turnaround when rules are submitted for review. You can also communicate directly with your agency's assigned policy advisor.

Note: The Governor's Office encourages agencies to deliver documents via email. You may submit electronic rulemaking forms in PDF format to the Legislative Coordinator.

1.7 eFiling and eComments

Agencies may file rule-related documents electronically with OAH through its eFiling system. OAH also has a system for receiving public comments electronically.

Note: With the advent of eFiling and eComments, OAH's systems continue to evolve. eFiling is the default for business with OAH. But for public comment periods, using the eComments system remains voluntary unless the APA requires the administrative law judge (ALJ) to receive comments. OAH, the Revisor's Office, and Secretary of State's Office now accomplish the final steps electronically.¹⁹

1.7.1 eFiling rule-related documents

All documents submitted for review by an ALJ should be eFiled whenever possible. OAH has posted step-by-step instructions for creating an account and filing your documents on its website at [OAH eFiling \(https://mn.gov/oah/forms-and-filing/efiling/\)](https://mn.gov/oah/forms-and-filing/efiling/). (The page also includes a link to frequently asked questions.) You may also request a hearing date through eFiling, or, if you have difficulty with the eFiling system, you may call OAH via telephone.

1.7.1.1 Obtaining an OAH docket number and ALJ assignment

You must obtain a docket number and ALJ assignment before submitting your documents for OAH review.

1. Complete the Notice of Appearance form available on the OAH website at [OAH Forms \(https://mn.gov/oah/forms-and-filing/forms/\)](https://mn.gov/oah/forms-and-filing/forms/). (Skip the OAH Docket Number field at the top of the form. You will receive your docket number as part of this process.)

¹⁹ See Minn. Stat. § 14.16, subd. 3.

2. Complete the online [Contested Case Docket Request on the OAH website](https://mn.gov/oah/lawyers-and-litigants/administrative-law/docket-request.jsp) (<https://mn.gov/oah/lawyers-and-litigants/administrative-law/docket-request.jsp>); skip any nonapplicable fields in the request form. Identify the responsible agency unit as the Party Name. Attach the Notice of Appearance to your request. (Note that the Contested Case Docket Request form is used, even though rulemaking does not involve a contested case hearing. That is why some of the fields do not apply or field labels are an awkward fit, such as “Party Name.”)
3. OAH staff will create an eFiling folder and notify you of the ALJ assignment and OAH docket number via the Initial Schedule Email from an OAH scheduler.
4. A separate, automated email will be sent to your email address for eFiling access. Check your spam folder if you do not receive an email. Click the link in the email to view your eFile folder (and activate your account if this is your first time eFiling). The email address(es) listed on the Notice of Appearance will be the one(s) that are granted eFiling access.

1.7.1.2 eFiling documents

Always check to ensure that the system has uploaded your documents. Saving a screen shot or printing the window showing a file has uploaded is prudent. In addition, save any correspondence or documents that you receive from OAH for your own records because those items might not remain in your eFile folder.

1.7.2 Public comments using eComments website

Strongly consider using OAH’s eComments website for collecting your public comments. If agencies request to use an eComments site, OAH will collect public comments on its [eComments website](https://mn.gov/oah/forms-and-filing/ecomments/) (<https://mn.gov/oah/forms-and-filing/ecomments/>), as well as through U.S. Mail, eFiling, personal delivery, or fax. Public instructions for making comments can be found at its [eComments website](https://mn.gov/oah/forms-and-filing/ecomments/) (<https://mn.gov/oah/forms-and-filing/ecomments/>).

To set up your public eComments site, contact OAH Administrative Rule and Applications Specialist, William Moore, at William.T.Moore@state.mn.us or 651-361-7893 at least a week before you publish your notice in the *State Register* or eFile your case. Provide the following information:

1. OAH docket number, if already assigned.
2. The dates that the comment period will open and close.
3. A link to the agency’s rulemaking webpage, if applicable. OAH will add a link to the agency’s rulemaking webpage on the eComments site.
4. If applicable, the date that the Notice will appear in the *State Register*.
5. Optional: Finalized, accessible copies of the documents you want to appear on the OAH eComments webpage, if any. These might include the Notice, proposed rules, SONAR, etc. See

the [Office of Accessibility \(https://mn.gov/mnit/about-mnit/accessibility/\)](https://mn.gov/mnit/about-mnit/accessibility/) for more information on making documents accessible.

See **OAH-INF** for more details about what to provide.

Note: Agencies must always use the eComments website after public hearings on proposed rules. Minnesota Rules, part 1400.2230, requires that commenters submit their comments to the ALJ. OAH will set up a public comment web page after the hearing.

Agencies may also use this system for collecting public comments during the 60-day comment period after the Request for Comments is published or the 30-day comment period after rules are proposed.

Note: All documents that you plan to post on OAH’s eComments page must be accessible. OAH will not post documents that are not accessible. The only exception is the rule draft received from the Revisor.

1.8 Ongoing Rule Management and Oversight Responsibilities

An agency has several ongoing responsibilities on the agency’s rules.

1.8.1 Rulemaking mailing list

The agency must maintain a rulemaking mailing list:

(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 proceedings by submitting to the agency:

- (1) their electronic mail address; or
- (2) their name and United States mail address.²⁰

Note: The statute further states that “[t]he 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.”

1.8.2 Public rulemaking docket

The agency must maintain a current, public rulemaking docket. The rulemaking docket must contain a listing of each possible proposed rule under active consideration and each pending rulemaking proceeding. There is an extensive list of details that must be included for each rulemaking project.²¹

²⁰ Minn. Stat. § 14.14, subd. 1a.

²¹ Minn. Stat. § 14.366.

By January 15 each year, agencies must submit their rulemaking docket and the official rulemaking record required under Minnesota Statutes, section 14.365, for any rule adopted during the preceding calendar year to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule.²² You must also copy the Legislative Reference Library, as required by statute.²³

1.8.3 Obsolete rules report

These are the main requirements under Minnesota Statutes, section 14.05, subdivision 5:

- By December 1 each year, the agency must submit a report to the governor, the Legislative Coordinating Commission (LCC), the policy and funding committees and divisions with jurisdiction over the agency, and the Revisor of Statutes.
- The report must list any of the agency's rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules.
- The agency must either provide a timetable for repealing the rules or must develop a bill to repeal the rules.
- The report must be signed by the agency person responsible for identifying and initiating the rule repeal.
- The report must also provide the status of any rules identified in the agency's previous report.

Note: The best practice is to submit the report to each party electronically, which may be done in a single email.

You must also copy the Legislative Reference Library. The library allows you to search past [rule-related reports \(https://www.lrl.mn.gov/mndocs/mandates\)](https://www.lrl.mn.gov/mndocs/mandates).

1.8.4 Maintaining official rulemaking records

Minnesota Statutes, section 14.365, states, "The agency shall maintain the official rulemaking record for every rule adopted under sections 14.05 to 14.389. The record must be available for public inspection. The record required by this section constitutes the official and exclusive agency rulemaking record with respect to agency action on or judicial review of the rule."

Note: In 2013, the legislature added Minnesota Statutes, section 13.356, to the Data Practices Act, protecting certain telephone and email lists. Data maintained in your historic rulemaking files might be affected. Data classifications are based on the law at the time a request is made. In other words, data that was public at the time it was created can be changed retroactively to private data by a change to

²² Minn. Stat. § 14.116(a).

²³ Minn. Stat. § 3.195, subd. 1(a).

the Data Practices Act. Consult your data practices resource or legal counsel if you receive a data request related to rulemaking files.

1.9 Interagency Rules Committee

The IRC is an informal group of agency staff that meets quarterly to discuss common issues related to rulemaking. It was started in February 1995 by a cadre of state agency rules staff. Meeting attendance usually ranges between 15 to 30 people. The committee communicates via a subscription service (see below). The IRC members provide the organization and expertise necessary for developing and updating this *Minnesota Rulemaking Manual*. The IRC also sponsors the annual rulemaking seminar and serves as an interagency forum to discuss proposed legislation governing rulemaking procedures.

1.9.1 IRC Teams site

The IRC has a Teams page called “DHS_DLI_IRC” where members can find resources and collaborate on rulemaking. To be added to the Teams site, send an email to Celeste Marin at celeste.marin@state.mn.us. Members frequently post on the site and ask questions. Important files are also housed on the site, such as relevant legislative bills, IRC meeting minutes, important court or ALJ cases, and other rule-related information.

1.10 Resources and the Rules Help Desk

There are several important resources to obtain help or information during the rulemaking process.

1. Questions about the status of filings that have been made or other OAH-related questions:
 - Contact OAH Administrative Rule and Applications Specialist, William Moore, at William.T.Moore@state.mn.us or 651-361-7893.
 - [Administrative Law Archives \(https://mn.gov/oah/lawyers-and-litigants/administrative-law/opinion-archive.jsp\)](https://mn.gov/oah/lawyers-and-litigants/administrative-law/opinion-archive.jsp) – Location of Judges’ Orders on approvals and disapprovals of rules. These findings are also summarized at IRC meetings in the “Hearing and Non-Hearing Report.”
2. Legal advice:
 - Seek the counsel of your agency’s in-house legal staff or your Assistant Attorney General.
3. Questions about APA - The IRC has established a “help desk” function for assistance with rulemaking. Contact:
 - Andi Barker, Department of Transportation: andrea.barker@state.mn.us or via Teams chat

- Ian Lewenstein, Department of Corrections: ian.lewenstein@state.mn.us or via Teams chat

1.11 Training for Agency Rulemaking Staff

The Interagency Rulemaking Committee provides annual training to state employees involved in rulemaking.²⁴ Continuing legal education credits may be available for some sessions at the seminar. Previous seminar materials are available on the [Minnesota Rulemaking Manual and Seminar webpage \(https://www.health.state.mn.us/data/rules/manual/index.html\)](https://www.health.state.mn.us/data/rules/manual/index.html).

1.12 Information on the Cost of Rulemaking

Refer to **COST-INF** in the appendix for information on approximate costs for rulemaking. The document reflects the collective experience of many agencies' developing and adopting rules, starting with the Department of Human Services. The information has been updated and revised over time with notable contributions from the Pollution Control Agency, the Department of Health, and most recently, OAH. This cost information might not be right on point for agencies whose rules are not as controversial or do not have the same lengthy history as those of the contributing agencies. However, it is the best cost information available and provides a valuable starting point in estimating rulemaking costs.

Note: OAH charges are one category of rulemaking costs. If your agency is unaware that OAH bills agencies directly for all time ALJs and other professionals spend working on your agency's rules, you should inform them. This includes reviews before publishing notices and approving additional notice plans, in addition to ALJ time spent preparing for and conducting a hearing. OAH review is mandatory, so these are necessary costs of rulemaking for agencies.

1.13 Comments and Suggestions for the Manual

Comments or suggestions for improvements to the Manual may be submitted via the IRC Teams Channel Chat or to any of the following editors:

- Andi Barker, DOT, andrea.barker@state.mn.us
- Ian Lewenstein, BMS, ian.lewenstein@state.mn.us

²⁴ See Minn. Stat. § 43A.04, subd. 11.

Checklist for Chapter 2 – Request for Comments

Date Completed	Item
<hr/>	2 – Entire chapter reviewed before proceeding
<hr/>	2.1 – Timing requirements met If newly adopted or amended rule grant, publish w/in 60 days of grant’s effective date.
<hr/>	2.2 – Agency approval to publish the Request for Comments If agency is a multi-member board that customarily gets board approval, BD-NTC form used.
<hr/>	2.3 – Get a Revisor’s ID Number
<hr/>	2.4 – Governor’s Office Review GOV-PRLM used.
<hr/>	2.5 – Request for Comments published in <i>State Register</i> <ul style="list-style-type: none">- 2.5.1 – Requirements met for Request for Comments- 2.5.2 – Request for Comments drafted<ul style="list-style-type: none">- REQUEST form used- 2.5.3 – Publish in the <i>State Register</i><ul style="list-style-type: none">- Deadline for publication met (See <i>State Register</i> website)
<hr/>	2.6 – Additional Notice (Optional) <ul style="list-style-type: none">- 2.6.1 – Reach affected persons<ul style="list-style-type: none">- Keep record of efforts. CRT-GNRC form used.- 2.6.2 – Inform the Legislature
<hr/>	2.7 – Prior approval of Additional Notice Plan (Optional) <ul style="list-style-type: none">- NP-RQUEST letter used.- OAH eFile account created.

Chapter 2 - Request for Comments

Introduction

The Request for Comments is the first formal step in Minnesota’s rulemaking process. This chapter discusses how to complete a Request for Comments. It is a good idea to review this entire chapter before proceeding. Under Minnesota Statutes, section 14.101, subdivision 1, an agency “shall solicit comments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency by causing notice to be published in the *State Register*.” The publication in the *State Register* is “[i]n addition to seeking information by other methods designed to reach persons or classes of persons who might be affected by the proposal.” At the end of this chapter is a checklist so you can easily note when you have completed each of the required steps.

2.1 Timing Requirements

There are two timing requirements¹ related to the Request for Comments:

1. The Request for Comments must be published within 60 days of the effective date of any new or amendatory law requiring rules to be adopted, amended, or repealed.
2. The agency may not officially propose rules by publishing a Notice of Intent to Adopt or a Notice of Hearing until *at least* 60 days after the Request for Comments was published.

For the first timing requirement, OAH has consistently held that missing the requirement does not invalidate the rule.² Because there are no stated consequences for missing this 60-day deadline, the statutory requirement is more aspirational than mandatory. Nevertheless, missing the deadline falls outside the spirit of the APA.

In other words, it is better to meet the deadline than to explain later why you missed it or to even invite a new OAH standard on missing the requirement.

2.2 Get Agency Approval to Publish the Request for Comments

How you get approval within your agency is as individual as your agency. Your agency may use a memo that contains a brief description of the rules and details any controversial issues or policy decisions.

¹ Minn. Stat. § 14.101, subd. 1.

² See, for example, OAH 21-9005-37182: “With one exception, the rules were adopted in compliance with the procedural requirements of Minnesota Statutes, Chapter 14 (2020) and Minnesota Rules, Chapter 1400 (2019). The Department’s failure to publish the Request for Comments within 60 days of the effective date of the new law requiring the rules to be amended was harmless error.”

Some agencies have formal routing processes and sign-off sheets to document approval by all persons in the chain of command. Other agencies are satisfied by verbal briefings.

In some agencies, it is standard practice for the agency’s assistant attorney general (AG) to review and sign off on all rule projects. An agency that is a multimember board must follow board procedures, which usually means passing a formal resolution authorizing the notice and authorizing a person to sign the notice. The board resolution form in the appendix as **BD-NTC** can be adapted for this purpose.

2.3 Get a Revisor’s ID Number

Both the Revisor’s Office and Governor’s Office track rule proceedings using a unique project identifier called the “Revisor’s ID number.” The ID number is in the format “R-04767.” The four digits following the “0” will be used with a two-letter prefix to identify the rule at each stage of the process. The two letters change depending on the type of draft, but the four digits always remain the same. The letters are keyed accordingly:

- RD: “Rule Draft” – the draft to be published in the *State Register*.

11/08/22	REVISOR	KRB/HL	RD4593
Department of Transportation			
Proposed Permanent Rules Relating to Transportation for Elderly, Disabled			

- AR: “Adopted Rule” – the cleaned draft of the RD version with striking and underscoring removed (“stripped”); any modifications are made on this version.

05/11/22	REVISOR	JFK/CH	AR4677
Bureau of Mediation Services			
Adopted Permanent Rules Relating to the Minnesota Labor Relations Act and the Public Employment Labor Relations Act			

- AR/ST: - this is the stripped draft of the AR version.
- SR: “*State Register*” - this is the draft published with the Notice of Adoption; if there are modifications to the published rule, changes would be shown in this draft

06/12/23	REVISOR	BD/RC	SR4764
Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design			
Adopted Permanent Rules Relating to Architect and Landscape Architect Licensure Requirements and Examination Requirements			

- SR/ST: “*State Register Stripped*” - this is the stripped version of the SR version.

At any time, you can request that the Revisor’s Office open a rule file and assign an ID number, even if your request does not also include a request to review or produce a rulemaking document for the

agency. The Revisor’s Office will open the file initially as a placeholder so that the agency can include this number on all future correspondence with the Revisor’s Office, the Governor’s Office, and OAH.

Requesting an ID number should be one of the first tasks you do when starting a rulemaking proceeding. Contact the Revisor assigned to your agency; if you do not know who that is, the Staff Directory page on the Revisor’s website provides this information.

The Governor’s Office will track the project by this Revisor’s ID number (See **GOV-PLCY**). If your project does not go forward, simply notify the Revisor’s Office, and the Revisor’s Office will close the file.

2.4 Governor’s Office Review

When an agency has developed a rule idea, it should complete the Preliminary Proposal Form, **GOV-PRLM**, and submit it to the Governor’s Office.³ The form should clearly set out why you need to adopt, amend, or repeal rules and what specific priorities that you want to accomplish.

In addition to notifying the Governor, this form can serve several other very important purposes for your project. It helps the agency focus on specific, rather than general, goals. Specific goals, written early in the project, serve as a guide for the agency throughout the entire rule project and help to keep the project on track. Additionally, parts of this form may be used to develop the SONAR. The form must summarize the agency’s rulemaking authority, without which the agency cannot proceed. Most importantly, the form sets out the need for the rules, a crucial part of the SONAR. (*See Chapter 4 of this Manual for additional information on the SONAR.*)

It is highly recommended that you make the effort to craft a high-quality Governor’s form. Having the need and the goals for your project clearly in mind is necessary but having them also *clearly on paper* is highly desirable and beneficial as you move forward in your rulemaking project. Make sure to leave sufficient time to let the draft rest so you can reflect on the content and amend as needed before submitting the form.

2.5 Publish the Request for Comments in the *State Register*

An agency must publish a Request for Comments in the *State Register*.⁴

2.5.1 Requirements for the Request for Comments in the *State Register*

The Request for Comments must:

1. include a description of the subject matter of the proposal;

³ GOV-PLCY.

⁴ Minn. Stat. § 14.101, subd. 1.

2. include the types of groups and individuals likely to be affected;
3. indicate where, when, and how persons may comment on the proposal; and
4. indicate whether and how drafts of any proposal or possible rules may be obtained from the agency.⁵

Suggestions:

1. If you will not have a draft for review, it is a very good idea to direct readers to the current rule parts that you plan to revise. If you are writing a new rule, identify the subjects that the rule will address.
2. You might wish to build some leeway into the scope of your subject matter by adding a general phrase such as “other things that arise as time allows” or other agency-specific criteria.
3. You might also wish to solicit comments about applicable regulatory-analysis-related topics and other information that you will need for the SONAR. It may be particularly useful to solicit comments regarding costs for compliance with the proposed rules.
4. eComments: Another possibility to consider is using the eComments system established by OAH for collecting your comments. Whether to do this depends on many agency-specific factors that you must gauge.

If you choose to use the eComments system, you must draft your Request for Comments to reflect this method. For further information on setting up eComments, see section 1.7.2.

2.5.2 Form for Request for Comments in the *State Register*

A form for the Request for Comments is in the appendix as **REQUEST**. This form originated from the recommended form in Minnesota Rules, part 1400.2510, and includes practice tips. The *State Register* will format the request according to its publication style and form.

2.5.3 Publish in the *State Register*

The *State Register* publishes on Mondays. The submission deadline is noon on the Tuesday before publication (except when the deadline is changed by a holiday). **For rules that are long (more than 20 pages) or complex (include tables, charts, pictures, etc.) contact the editor to negotiate a deadline.**

See information on how to publish in the *State Register* and “Production Schedule” for publication dates and deadlines on the [Minnesota State Register website \(https://mn.gov/admin/bookstore/register.jsp\)](https://mn.gov/admin/bookstore/register.jsp).

⁵ Minn. Stat. § 14.101, subd. 1.

2.5.4 Republishing the Request for Comments

The APA does not account for every rulemaking scenario. When in doubt, refer to Minnesota Statutes, section 14.001, the Statement of Purpose.

For example, if it has been two or more years since you first published a Request for Comments, it can't hurt to republish the request. While not required to republish, doing so serves the APA's broader purpose, which is public accountability and transparency. Going above and beyond the requirements in the APA demonstrates your good faith to both the public and OAH.

2.6 Additional Notice

The publication of the Request for Comments in the *State Register* is “[i]n addition to seeking information by other methods designed to reach persons or classes of persons who might be affected by the proposal.”⁶

Note: OAH views publication of the Request for Comments in the *State Register* as sufficient to meet the statutory requirement; *additional notice is optional*. Nevertheless, if your rules are potentially controversial or have a substantial impact, you may want to consider holding listening sessions, setting up an advisory group, or sending the Request for Comments to your rulemaking list or parties that may be affected by your rule.

2.6.1 Reach affected persons or classes of persons that might be affected

There are probably many ways for an agency to reach affected persons. To reach them, you must first identify who they are. One way is to ask agency staff who are working on the rules or who will work with regulated parties after the rules are adopted to make a list of affected persons or groups. You can also ask affected persons or organizations for the names of others who might be affected by the rules. In some cases, it may be a good idea to mail or email your Request for Comments to all persons on the agency's rulemaking mailing list, even though the APA does not specifically require this.

Mailing to the agency's rulemaking mailing list, however, is only a start. You should also be creative in finding other ways to reach affected persons. If it is a small group of persons, perhaps mailing (or emailing) individual letters would be effective. If it is a large group of persons where an individual mailing is too expensive or cumbersome and you don't have email addresses, then mail to persons who have inquired or shown an interest in the subject matter. Also, you can mail trade or professional associations representing affected persons and request to have a notice published in the newsletters of those trade or professional associations. When appropriate, consider sending press releases to general circulation newspapers.

⁶ Minn. Stat. § 14.101, subd. 1.

Agencies are also using online resources in creative ways to spread the word, including special email lists and their public websites. They are also developing issue-specific sites for this purpose. There are undoubtedly other reasonable ways to reach affected persons. In deciding what is reasonable, consider the cost and effort of what you might do and the likelihood that this will reach the intended persons. Finally, if your rules will potentially affect persons who do not traditionally interact with government, make an extra effort to reach these persons.

Keep notes and records of your efforts. You must keep a copy of the Request for Comments as published in the *State Register*, as this will later be submitted to OAH.

Note: You do not need to submit the whole *State Register* edition to OAH; you can submit just the cover plus the pages on which your notice appears.

For any mailed notice, prepare a certificate of mailing. Create a similar certificate for electronic mailings. Attach a copy of the notice to the certificate; see section 2.7.4 about whether to also attach a copy of the mailing list. Get copies of any newsletters or newspapers in which a notice is published. Detail any efforts you made to develop your mailing list or to get a notice published. You can document what you have done by using the generic certificate form that is in the appendix as **CRT-GNRC**.

When you are selecting ways to reach affected persons, you will undoubtedly include friends and supporters of the rules. You might suffer the temptation to ignore likely opponents of the rules—namely, the ones who will make the whole process difficult. **Resist it.** Not wanting to deal with people who might oppose your position is human nature. It is, however, short-sighted to ignore these people during the early stages of rule development, because they will almost certainly raise issues and oppose the rules later. In fact, these are exactly the people you want to notify of the rules as early as possible. They will give you an early insight into their arguments and concerns, which will give you a better chance to address them.

See Chapter 3 for an expanded discussion on getting input from affected persons.

2.6.2 Inform the Legislature

Legislative interest in rulemaking has ebbed and flowed, but do not forget the legislature.⁷ An agency must notify certain legislators at the time of formally proposing rules. The required legislators to notify include chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules and chief House and Senate authors of the rulemaking authority (if it is within two years of the effective date of the law granting the authority).

Even though this requirement applies only when you propose your rules, you may want to notify these legislators and any other interested legislators when publishing your Request for Comments and keep

⁷ See Minn. Stat. § 14.116(b), (c) (listing when legislative notice is required).

them informed throughout the rulemaking process. Even though individual legislators do not have authority to adopt or dictate the content of rules, their comments should be carefully considered and given great weight, especially if they give insight into the background and development of the underlying legislation.

2.7 OAH Prior Approval of Additional Notice Plan (optional)

An agency may ask OAH for prior approval of its Additional Notice Plan at either one of two times: before publishing the Request for Comments or before publishing its Notice of Intent to Adopt Rules.⁸ Why do this now if it is optional? An approved Additional Notice Plan is OAH's final determination that the Additional Notice Plan is adequate, which means that prior approval protects you from a challenge to your Additional Notice Plan at the end of the rulemaking process when it would be difficult to correct a problem without starting all over again.

Further, OAH review of your Additional Notice Plan helps ensure that the agency makes reasonable efforts to give adequate and timely notice of the rules to persons who may be significantly affected by them.

Note: Even if you obtain approval of your Additional Notice Plan at this stage, the plan may not be complete. As you go through the process, you may identify other affected parties that should be added to your plan.

Frequently Asked Question: How does an agency determine whether to seek approval of its Additional Notice Plan?

Answer: The answer is varied. The agency must identify and analyze the relevant factors involved with its rulemaking project. With a simple, straightforward project without many variables, in either public interest or content, the agency might prefer to develop and seek approval of an additional notice plan at the outset. Or there might be a compelling reason or a controversy that suggests getting OAH approval up front would be wise. If rule development, however, is likely to be lengthy and there are many unknowns, engaging OAH's attention at the Request for Comments stage might be a premature, unnecessary expenditure of time and money. If you do not obtain prior approval before publishing the Request for Comments, you can still do so before publishing your Notice of Intent to Adopt Rules.

2.7.1 Requesting approval

To request prior approval of your Additional Notice Plan, you must file with OAH:

1. a description of the agency's proposed Additional Notice Plan;

⁸ Minn. R. 1400.2060, subp. 1.

2. the agency’s proposed Request for Comments on the planned rule; and
3. an explanation of why the agency believes that its Additional Notice Plan complies with Minnesota Statutes, sections 14.101 and 14.14, subdivision 1a—that is, why its Additional Notice Plan constitutes reasonable efforts to notify persons or classes of persons who might be significantly affected by the rules.

OAH has five working days to review and approve or disapprove an Additional Notice Plan. A form for a cover letter to the Chief ALJ requesting prior approval of your Additional Notice Plan and submitting the necessary documents for review is in the appendix as **NP-RQUEST**. This letter is designed to serve as a checklist for meeting the requirements of Minnesota Rules, part 1400.2060, to request prior approval of your Additional Notice Plan.

If you have questions about requesting prior approval of your Additional Notice Plan, you may contact William Moore at William.T.Moore@state.mn.us or (651) 361-7893. For the location of or other information about OAH, refer to **OAH-INF** in the appendix.

2.7.2 eFiling rule-related documents

OAH requests that agencies eFile all rule-related documents wherever possible. OAH has posted step-by-step instructions for creating an account and filing your documents on its website at [OAH Forms & Filing \(https://mn.gov/oah/forms-and-filing/efiling/\)](https://mn.gov/oah/forms-and-filing/efiling/). (The page also includes a link to frequently asked questions.) **See section 1.7 for explicit instructions.** Give yourself plenty of lead time the first time you use eFiling because at least one agency has run into issues with its firewall preventing access to the website eFiling system, which had to be addressed.

Always check to make sure that the system has uploaded your documents. Saving a screen shot or printing the window showing a file has uploaded is prudent. In addition, save any correspondence or documents that you receive from OAH for your own records because those items might not remain in your eFile folder.

2.7.3 Interpretation of “affected” by the rules

The word “affected” is used in two places in Minnesota Statutes, section 14.101, subdivision 1, governing the Request for Comments. The Request for Comments is published “[i]n addition to seeking information by other methods designed to reach [those] who might be *affected* by the proposal.” And you must include in the Request for Comments a description of “[those] likely to be *affected*.”

Everybody is affected by everything to some degree or another, so where do you draw the line in describing those who may be affected? The requirements related to giving Notice of Intent to Adopt give some insight. This notice must be given to persons or classes of persons who might be *significantly*

affected.⁹ You would be safe in applying the Request for Comments requirements to those persons *significantly* affected. Basically, this includes those persons who might care enough about the rulemaking that they might want to comment or get involved. It would also include those persons who might complain about the rules after they are in effect.

2.7.4 Evidence of additional notice

OAH likes to see mailing lists. If you are sending notice to organizations or other individuals, email lists or copies of mailing labels are good evidence. If you are sending notice to all licensed parties, you may describe generally that “the agency will be sending notice to all 2,572 licensees.” Agencies also often maintain subscriber-based email lists of people specifically interested in their programs or rulemaking projects. Because these addresses can number in the thousands, you could describe the list generally, noting the total number of subscribers, as is recommended for licensed parties above. Detail any efforts you made to develop your mailing list.

Note: Traditionally, this Manual has advised you to attach mailing lists to your certificate. This remains good practice **as long as your mailing list contains public information**. If your email lists consist of subscribers to your web-delivery system, you may wish to describe your subscribers more generally. See the note in section 1.8.4 for data practices considerations.

2.8 Setting Up the Files for the Official Record

Now is a good time to set up or at least begin to consider putting the official rulemaking record together. While concluding the rulemaking process now seems very remote, setting up files that will keep your original documents together and in order will save you time and stress at the end, especially in a lengthy rulemaking. See **RECORD**.

2.9 Ending the Rulemaking

Sometimes the agency decides not to move forward with the rulemaking after completing the Request for Comments phase. There are no formal requirements for notification if this occurs. You should send an email to the Revisor, Governor’s Office, and the Office of Administrative Hearings (only if you requested a docket number) letting them know you are not going forward with rulemaking. If the rule topic was of interest to a particular stakeholder group or legislator(s), you might want to consider some additional outreach. Finally, send an email to your rulemaking mailing list letting them know you’ve ended the rulemaking. There is no requirement for an Official Rulemaking Record.

⁹ Minn. Stat. §§ 14.14 subd. 1a, .22, subd. 1.

Checklist for Chapter 2 – Request for Comments

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Chapter 3 - Rule Development

Introduction

General

An agency adopts rules to implement or make specific the law enforced or administered by the agency or to govern its organization or procedure.¹ Rule development is a huge topic, one that could fill an entire manual of its own. Given the focus of this Manual, however, this chapter will hit the high points of rule development. These points include the foundation or basis for the rules, input on rule development, and rule drafting. You should review this chapter before proceeding with your rule.

Consider simultaneously working on sections of the SONAR as rules are being developed. It is especially useful to capture the rationale for new rules or changes to include in the rule-by-rule analysis section of the SONAR. This will save you work later. Remember, though, that if rule language changes, you must update the SONAR.

Expectations management and staff assignments

Before you start developing and writing the rules, you need to define responsibilities in your agency for the rulemaking project. Clearly establishing who is doing what is imperative. Who will write the various parts of the rules and the SONAR, who will edit and proofread, who will be responsible for compliance with the rulemaking process, who will send and sign notices to the Governor's Office, and who will oversee that each of these things are completed?

Also, consider consulting with in-house counsel or the agency's rules coordinator. In a small agency or program, this planning is easy—you just do everything. Where you have a group of people involved in the rulemaking process, this planning will turn the group into a team.

3.1 The Foundation or Basis for the Rules

These are the things that you should verify before you begin work on your rules.

3.1.1 Statutory authority

The basis for every set of rules or rule amendments is statutory authority. Statutory authority can come in the form of a statute or session law that authorizes or directs the adoption of a specific set of rules,

¹ Minn. Stat. § 14.02, subd. 4.

or a statute might give an agency general authority to adopt rules to carry out its assigned duties. Without statutory authority, an agency cannot adopt rules.

3.1.2 Limits of statutory authority

When you start a rule project, carefully review your statutory authority. If you have specific statutory authority for your set of rules, follow the direction established by your grant of rulemaking authority and stay within any stated limitations contained in the grant. If you are relying on a general grant of rulemaking authority to adopt rules to carry out duties assigned to the agency, you will find your direction and limitations in the statutes that set out the duties assigned to the agency. In general:

- A rule must not exceed statutory authority conferred to the agency.
- A rule must not conflict with the governing statute or applicable law.
- A rule must have a reasonable relationship to the statutory purpose.
- A rule must not be unconstitutional, arbitrary, or unreasonable.

Note: Your statutory authority might derive from more than one source and thus could be complicated. You might need to seek legal advice for building your case or properly describing your authority.

3.1.3 Statutory authority expiration

For certain rules, statutory authority expires 18 months after the effective date of the law authorizing the rules.² An agency must publish a Notice of Intent to Adopt Rules or a Notice of Hearing within 18 months of the effective date of the law authorizing or requiring the rules. If the agency does not meet this deadline, the rulemaking authority expires.

This provision applies to first-time rule adoptions under the statutory authority and not to amendments or repeals of the rules if the statutory authority was originally used within the time limit. Be aware, however, that if the Legislature amends your long-standing statutory authority, it might trigger this 18-month requirement.

3.1.4 Time frame for developing and adopting rules

It takes between six months and two years to develop most sets of rules, and then another four to eight months to complete the rules adoption. If a newly authorized set of rules is complex or controversial enough that you will take more than 18 months to develop the rules, you should work with the legislature to obtain an exception from Minnesota Statutes, section 14.125, if the section applies.

² Minn. Stat. § 14.125.

3.1.5 Clearly understand the need for your rules

After you determine that you have statutory authority for rulemaking, the most important thing to do is clearly set out why you are writing rules. This will give direction to the entire rulemaking project. A statutory mandate to adopt rules will, by itself, establish the legal basis for need in your SONAR, but it will not guide you in developing the rules. In this case, you need to find out the underlying issue that compelled the legislature to mandate the adoption of rules and what the legislature wants the rules to accomplish. If your rules are to implement statutory duties or to address a problem under a statutory duty, then these duties or the issue should be your focus throughout the entire rule project.

As noted in section 2.4, it is highly recommended that you put forth the effort to craft a high-quality Governor's Preliminary Proposal Form before publishing the Request for Comments. Committing your thoughts to writing at the beginning will help you throughout the project to clearly understand the need for your rules and to focus on your goals.

3.1.6 Keep your options in mind from the beginning

As you develop your rules, it is a good idea to keep in mind your future procedural choices for adopting the rule.

You have three choices:

1. Notice of Hearing
2. Notice of Intent to Adopt Rules Without a Public Hearing
3. Dual Notice, where you give notice of a hearing date, but you state that you will cancel the hearing and adopt the rules without a hearing if fewer than 25 people request a hearing.

While this step might feel remote, knowing how to put your rule development into the context of proposing them for adoption will help you. You can better gauge how your development is progressing so you can guide or determine your path. See Chapters 5, 6, and 7 for additional information about these three options.

3.2 Input on Rule Development

Getting public input is very important. There are many ways to do this. The following list has many good ideas about getting input on rule development, but it is by no means exhaustive. Rule development is an art, not a science. Be creative in finding ways to get input when developing rules.

3.2.1 Agency leadership

Agency leadership needs to be involved throughout rule development. At the outset of the rule project, the agency leadership should set or approve the direction of the project. To help the agency leadership,

prepare an initial proposal directed to them to ensure that they understand and approve the reason for the rule project and any fiscal implications.

Throughout the process, there needs to be communication between the agency leadership and any advisory committee so that each knows the other's positions and so that there are no surprises at the end of the process. It would be a major problem to develop a set of rules and then have your leadership see the proposed rules for the first time and disapprove an important advisory committee recommendation. Additionally, a major decision by your leadership needs to happen early enough in the rule development process so that the advisory committee has a meaningful chance to respond to the leadership's decision.

Make sure that your leadership knows the rulemaking requirements. Even though they make the final decisions about rules, they must do so within their statutory authority and ensure rules are needed and reasonable.

Note: At each important approval point in the process, make sure to leave enough time for formal approval by the agency leadership.

For multimember boards: When an agency is governed by a multimember board, the opportunities are limited for getting direction and approval on the rules. In most cases, you can discuss the rules with the board or get direction or approvals only at board meetings. It will likely take more time to adopt rules for an agency governed by a multimember board than for an agency headed by a commissioner.

3.2.2 The agency's Assistant AG

The role of the agency's Assistant AG varies from agency to agency and for each set of rules. The role is determined by the agency and depends on such things as the availability and experience of the rule writer and the legal issues involved. For agencies without in-house counsel (generally boards), the agency may ask its AG to review for legal issues such as constitutionality, enforceability, and impermissible discretion. In some cases, the agency will ask its AG to be actively involved in drafting the rules, participating in advisory committee activities, and participating in a hearing, if one is required.

3.2.3 Request for Comments

The starting point for getting input on rule development is the Request for Comments. The agency must publish the Request for Comments in the *State Register*. In addition, the agency should seek information by other methods designed to reach affected persons.³

³ See chapter 2 for detailed information about the Request for Comments.

3.2.4 Interested legislators

Interested legislators include any who have expressed an interest in the rule project or in the legislation that authorizes or requires the rulemaking. Interested legislators could also include those listed in Minnesota Statutes, section 14.116. Put interested legislators on your rule project mailing list to keep them informed of the progress of the rule project.

Even though individual legislators do not have authority to adopt or dictate the content of rules, their comments should be carefully considered and given great weight, especially if they give insight into the background and development of the underlying legislation.

3.2.5 Advisory committee

An agency may decide to appoint an advisory committee to help develop the rules.⁴ For controversial or complex rules or for rules that require in-depth knowledge of an industry, advisory committees are highly recommended.

3.2.5.1 Forming an advisory committee:

- In some cases, advisory committees are mandated by statute and the agency must submit rules to the committee for review and comment before the rules can be proposed for adoption. When you have such an advisory committee, it is usually a good idea to get them involved early.
- Generally, you should keep the advisory committee to a workable size of no more than 15 people. However, your agency may decide that a larger advisory committee is necessary.
- Find out which people or groups are interested in the rulemaking and invite them to be on the advisory committee. Include friends and supporters of the rules and get their advice on record. Include likely opponents of the rules. Put them in the position to hear all sides and keep yourself neutral. Discussion by people with opposing views tends to moderate the views, and all advisory committee members might gain pride of ownership in the rules and become “defenders” of the rules. By including both supporters and opponents, you will ideally be able to resolve the controversial issues, avoid unintended consequences of a proposed rule, and possibly avoid a hearing. At the very least, you will identify controversial issues before the hearing, which allows you to prepare.
- To find out who the interested parties are, ask yourself several questions, including: Who participated in the legislative process when the rulemaking was first authorized? Who will benefit from these rules? Who is going to be upset by these rules? Who would want to know about these rules?

⁴ Minn. Stat. § 14.101, subd. 2.

- If there is a potential policy impact on other state agencies, include them on the advisory committee and, as a courtesy, get a response from the other agency before making proposals related to any important issues.
- Have someone from the agency act as the chair for advisory committee meetings. The chair must ensure that issues are raised and discussed in a timely manner and that reluctant or shy parties are encouraged to participate.
- Open your advisory committee meetings to all. Allow interested parties to attend. If someone who is not on the committee wants to speak, let them.
- Use the advisory committee until your agency adopts the rule.
- Some agencies keep meeting agendas and minutes, post both online, and include them in their SONARs.

Note: Choosing members of your advisory committee is an informal process that does not require an application or formal appointment through the Secretary of State.

3.2.5.2 Role of advisory committee

The advisory committee's role is to advise. The committee has the power to inform and persuade the agency, but ultimately, the commissioner or board makes final decisions. Be sure to inform the advisory committee members of their role so they understand their advisory status and do not presume they have the authority to write, adopt, and administer the rules. It's a good idea to remind them of this, maybe as often as every meeting. Tell the advisory committee members that each of them likely represents an interest group and encourage them to maintain communication with the interest group. The appendix has an information sheet, **ADV-COMM**, that you can customize and give to advisory committee members to summarize the rulemaking process and the advisory committee's role.

3.2.5.3 Working with an advisory committee

- It can be difficult to draft rules by committee. You should give the committee a draft of the rules early in the process so they have something to react to, but you might want to wait for one or two meetings before providing the draft. This allows the committee to discuss and identify issues without the structure and limitations imposed by a draft.
- For new rules, it may be helpful to provide an outline of the topic areas.
- For controversial issues, it may be helpful to develop a policy draft (or one-pager) explaining your rationale for the rule. Route these issues and policy drafts through the agency chain of command and discuss them with the advisory committee early in the process.

- Advisory committee members can help to get the word out about the rulemaking. Emphasize their responsibility to the committee as representatives and ask them to spread the word. Repeat this reminder, maybe as often as every meeting.
- In cases where there are opposing views on the rules within the advisory committee, you may want to use a mediator. Contact the Docket Coordinator at Office of Administrative Hearings to find out the availability of mediators. It is important to achieve consensus within the advisory committee as much as is practical, but it is not required to move forward.
- For especially controversial or complex rules, you might want to augment the advisory committee schedule from time to time with town hall meetings or listening sessions on special topics with the public.
- Do not make promises about the content of rules. There can be problems when you promise to include certain language in the rules before the formal adoption process and before all interested parties have had a chance to comment. It is certainly okay to promise that you will carefully consider all comments and suggestions and that you will be straightforward with the advisory committee.

3.2.5.4 Using advisory committee discussions to help you write your SONAR

Advisory committee discussions are an invaluable source of information for you when writing your SONAR. Tell the advisory committee members that it is important for them to give reasons for their recommendations. Keep notes of advisory committee discussions with the SONAR in mind.

A. Regulatory analysis

A broadly representative advisory committee is probably your best source of information for doing the regulatory analysis. Ask the advisory committee members to give their opinions on the eight factors that the agency must analyze and on ways that the rules can emphasize superior achievement and maximum flexibility. Run these opinions through your own filter to make sure they make sense and are balanced.

B. Cost analysis

A broadly representative advisory committee will also probably be your best source of information for doing the cost analysis under Minnesota Statutes, section 14.127. Ask the advisory committee members to give their opinions on the cost of compliance for small businesses and small cities, along with how they made their estimates. Also ask them to verify if there are no costs so that you can report this later in your SONAR (see chapter 4). Again, run these opinions through your own filter to make sure they make sense and are balanced.

3.2.5.5 Thank the advisory committee.

Be sure to thank the advisory committee members at the end of the committee process for their participation and suggestions and let them know that their work and participation as committee members makes the final rules better and more workable for everyone. Acknowledging their service with certificates of appreciation reinforces your gratitude. Mailing the certificates or having a party to give them out are very gracious ways to bestow them.

3.2.6 Written comments

It is important to keep careful track of all comments received so that the agency can consider and respond to any policy issues raised. Another important reason to keep track of the comments is to keep all commenters informed throughout the remainder of the rulemaking process. Log the name, address, summary of the comment, and agency response for all written comments. Put each person who commented on a mailing list for the Notice of Intent to Adopt Rules. Some agencies will send a standard response letter to all persons who comment, thanking them for the comment and telling them that they will be put on the mailing list for the Notice.

Note: You don't have to respond to comments received before you formally propose the rule in the *State Register*; these comments aren't part of the formal rulemaking record. But depending on the rule and how many comments you receive; you could include them in the rulemaking record to demonstrate the agency's good-faith effort in engaging stakeholders while developing the rules.

3.2.7 Expert opinions

Get expert opinions (for example, economist, mathematician, medical experts, scientists, other subject matter experts, etc.) when it is appropriate to support your rule and the rationale for adopting it.⁵

Note: Even if you don't have an advisory committee, you can get expert opinions.

3.2.8 Review other similar rules and laws

Review other rules and laws on related or similar topics for drafting examples. Look within your own agency and other agencies that do similar types of rules. Also, you might find rules on your subject matter that have already been drafted and adopted by other states.

3.2.9 Review past rulemaking records for policy reasons behind rules

Amending existing rules is often easier than first adopting rules because of the availability of the rulemaking record compiled during the original adoption. The rulemaking record reflects an agency's formulated policy. A rule writer should review all prior rulemaking records to understand the

⁵ Minn. R. 1400.2070, subp. 1(A).

circumstances that created the need for the rules and any amendments and why the rules and amendments were needed and reasonable.

3.2.10 Governor

As previously mentioned, the agency must submit the rules to the Governor's Office three times throughout the rulemaking process, including during the draft stage. (See **GOV_PLCY** in the appendix.)

3.2.11 The Minnesota Department of Management and Budget (MMB) consultation about local government impact

The APA requires agencies to consult with MMB to help evaluate the fiscal impact and benefits of the proposed rules on local governments. A form for a letter to your Executive Budget Officer (EBO) is in the appendix as **MMB-LTR**. Send this at the same time as you send the Governor's Office the Proposed Rule and SONAR form. Include the same materials that you send the Governor's Office. If you need assistance, contact your EBO to initiate the consultation with MMB.

MMB will confirm the agencies' determinations with its own letter. OAH prefers that agencies include a copy of its letter and any response when it submits its record for OAH review.

You do not need to wait for MMB's response before moving forward with your rulemaking, but you must include it in your submission to OAH.

3.3 Rule Drafting

The following are comments and suggestions about rule drafting.

3.3.1 The Revisor's role in rule drafting

- The Office of Revisor of Statutes plays an essential role in rule drafting. Refer to the [Revisor's website \(http://www.revisor.leg.state.mn.us/rules/\)](http://www.revisor.leg.state.mn.us/rules/) for staff and policy assignment areas.
- Before the proposed rules and Notice of Intent to Adopt Rules may be published, the proposed rules must be in the Revisor's format, and there must be a Revisor's certificate saying the rules are approved as to form.
- When amending rules, get an electronic copy of existing rule text by either calling the Revisor's Office or going to the [Revisor's website \(http://www.revisor.leg.state.mn.us/rules/\)](http://www.revisor.leg.state.mn.us/rules/). Do this early in the project.
- When should you first ask the Revisor for a Revisor's draft? In the early stages of developing your rules, you may want your drafts on your own computer so that you can easily work on them and make changes. You should ask the Revisor for a Revisor's draft when the rules are in

almost final form. The Revisor's draft is a PDF document, which is more difficult to edit than a Word document on your own computer.

- If you have not worked on rules for a while (or ever), you may contact the Revisor's Office early in the process to get advice on drafting rules; however, you might still want to wait until the rules are in almost-final form to get a Revisor's draft.
- It is not necessary to have approval from the Governor's Office before beginning work with the Revisor's Office.
- To get draft rules in the Revisor's format, you must provide the Revisor the draft language and ask the Revisor to produce a Revisor's draft. Emailing an electronic copy is the most expedient and common way to provide draft language. The Revisor will input your rules and, as necessary, assign rule part numbers and titles; edit to make sure the rules are in the correct style and format for *Minnesota Rules*; edit for grammar, spelling, and clarity; and point out potential rule-related legal problems, including impermissible discretion. Make sure to compare the Revisor's draft with the draft you provided so you are aware of any changes the Revisor made and can ensure the Revisor's editorial changes do not make substantive changes.
- As you work through the rule development process, you may request updated Revisor's drafts. There is no limit to how many drafts that the Revisor can produce for you—it could be 5, or it could be 50. When your rules are ready to propose, give the Revisor any last changes and ask for a draft approved for publication—this draft will include a certification page with the Revisor attorney's signature.
- The time it takes to get an initial Revisor's draft may be anywhere from several days to several weeks, depending on how busy the Revisor is with the legislative session or other projects. A Revisor's draft approved for publication can generally be produced quickly if there are few changes from the preliminary draft. It is helpful to communicate your anticipated timeline to the Revisor's Office.
- Use the following Resources from the Revisor when drafting your rules:
 - [Minnesota Rules Drafting Manual with Styles and Forms](https://www.revisor.mn.gov/static/office/1997_RuleDraftManual.a285c37112da.pdf)
(https://www.revisor.mn.gov/static/office/1997_RuleDraftManual.a285c37112da.pdf)
 - [Rulemaking in Minnesota: A Guide](https://www.revisor.mn.gov/static/office/pubs/2018_all_rulemaking_guide.491681155472.pdf)
(https://www.revisor.mn.gov/static/office/pubs/2018_all_rulemaking_guide.491681155472.pdf)

3.3.2 Draft clearly

When writing a requirement, clearly state who the requirement applies to and what must be done.

- Use active voice: “The licensee must keep the purchase agreement on file.” (This statement clearly identifies the actor responsible for carrying out the duty.).
- Try not to use passive voice: “The purchase agreement must be kept on file by the licensee.” Passive voice is fine if you want to emphasize what is being acted upon. But generally, in legal drafting, active voice should be used because it is clearer, more direct, and more concise.
- Do not use truncated passive: “The purchase agreement must be kept on file.” (Who must do this?). An exception is when the reader doesn’t need to know who is acting or the actor is clear from the context or previous sentences.
- It is acceptable to fix errors or clarify existing text outside of the scope of your rules (such as grammatical changes, formatting, etc.).
- Be consistent in using terms and phrasing similar requirements. Use identical language and construction wherever possible in similar requirements. For example, do not use “machine shop,” “machining business,” and “machining company” in successive paragraphs to describe the same entity. Instead, use one of these terms throughout.
- Write rules clearly so that the public knows what is required and what is prohibited. Start with a noun, add a verb, and see what else you need.
- Avoid using vague terms, known as weasel words, that are commonly flagged by OAH as unduly vague. The following are examples of words that have been cited by an ALJ as vague:

○ Acceptabl*	○ Might
○ Adequate*	○ Pertinent
○ Applicable	○ Reasonabl*
○ Appropriate	○ Require*
○ At least	○ Responsibly
○ Complete	○ Satisfact*
○ Determine*	○ Should
○ Discretion	○ Substantial
○ Good faith	○ Sufficient
○ Including but not limited to	○ Such as
○ Material	○ Will
○ Materially	○ Willful
○ May	○ When practical
- Eliminate jargon and legalese and replace with commonly used and understood terms.
- Break up unnecessarily long sentences. Sentences should average 25 words or less. Use items but avoid going below the subitem level.
- Break up long paragraphs. Paragraphs should average 60 words or less.

3.3.3 Draft with enforcement in mind

Write clearly with specific, measurable requirements that your agency can enforce consistently. Obviously, the agency must be able to enforce the rules it adopts. Break requirements into separate subparts or items so that agency staff can easily cite individual infractions for enforcement purposes.

3.3.4 Definitions

Define all words used in the rules that do not have common meanings. Compare the definition in similar rules and statutes from your agency and other agencies so that terms are defined consistently as much as possible. Be consistent in how you use defined words throughout the rules. **And remember**, definitions should not be used to convey policy—that is, don't include substantive requirements in a definition.

Rules are often organized so that definitions are the first section of the rules. You should use a definition, however, only as the need arises; namely, when you are going to use the term in a substantive rule provision. Therefore, write policy first and see what definitions you need to give the policy effect.

3.3.5 Layout

When structuring a new set of rules, try to use the Revisor's format of part, subpart, item, and subitem from the very beginning of the project.

For example:

1400.2400 Title

Subpart 1. **Headnote.** Paragraph

A. Item A

B. Item B

C. Item C

(1) Subitem (1)

a. Unit a

b. Unit b

(2) Subitem (2)

D. Item D

Subp. 2. **Headnote.** Paragraph

The basic structure for the final set of rules is definition, scope, substantive requirements. While drafting the rules, it is often helpful to work backward. First, focus on what must be done (substantive

requirements), then determine by whom (scope), and finally, fill in the details (for example, definitions). For more detailed guidance on structuring new rules, see the [Revisor’s Rule Drafting Manual \(https://www.revisor.mn.gov/static/office/1997_RuleDraftManual.a285c37112da.pdf\)](https://www.revisor.mn.gov/static/office/1997_RuleDraftManual.a285c37112da.pdf).

3.3.6 Incorporation by reference

An agency may incorporate by reference text from other sources into its rules, such as publications, documents, industry standards, and text from the *Federal Register* or *State Register*. However, text from Minnesota Statutes, Minnesota Rules, United States Statutes at Large, United States Code, Laws of Minnesota, Code of Federal Regulations, and other laws should not be incorporated by reference. Instead, cross-reference the language in your rule. For example, use “As provided under Code of Federal Regulations, title X...” not “Code of Federal Regulations, title X, is incorporated by reference.”

To incorporate other sources, the Revisor’s Office must determine that the text is conveniently available to the public, and the rule must contain a statement of incorporation. “Conveniently available to the public” means “available for loan or inspection and copying to a person living anywhere in Minnesota through a statewide interlibrary loan system or in a public library without charge, except for reasonable copying fees and mailing costs.” The statement of incorporation must “include the words ‘incorporated by reference’; must identify by title, author, publisher, and date of publication the standard or material to be incorporated; must state whether the material is subject to frequent change; and must contain a statement of availability.”⁶

The Revisor’s Office considers material to be conveniently available to the public if it is available free online or is available through the Minitex interlibrary loan system. If the material you seek to incorporate is not conveniently available, the Revisor will require that you submit two copies of the material to be catalogued at the State Law Library to make it available through Minitex (one for reference and one for circulation).

While statute requires that you state whether the material is “subject to frequent change,” what constitutes “frequent change” is undefined, and there is no significance attached either way. For practical purposes, material that is updated at least annually should be described as “subject to frequent change.”

Note: To avoid future problems of interpretation, make sure your rules clearly reflect whether the incorporated-by-reference text is incorporated “as amended” or is subject to the agency’s changes. For example, Minnesota Rules, part 4720.0350 states:

4720.0350 RULES AND STANDARDS ADOPTED BY REFERENCE.

⁶ Minn. Stat. § 14.07, subd. 4.

The National Primary Drinking Water Regulations in Code of Federal Regulations, title 40, part 141, and sections 142.40 to 142.64, *are incorporated by reference* in parts 4720.0200 to 4720.3970 *and are subject to the alterations and amendments contained in parts 4720.0200 to 4720.3970.* [emphasis supplied]

Also note that incorporating text by reference is *not* an unconditional right. An agency may always cross-reference state and federal law, including future amendments (except where there is clear legislative intent to the contrary, and perhaps whenever the federal Internal Revenue Code is involved). You will have to make your case, however, to the Revisor's Office for using other sources and incorporating future amendments to them. While further discussion is beyond this Manual's scope, you should know that there are limits to incorporations of future amendments. Seek legal advice if this issue becomes a sticking point.

3.3.7 Miscellaneous

- At the bottom of each page of a rules draft, print a footer with the date of the draft. This is a good idea because somewhere between the 3rd and 13th draft, you will lose track of what you did when. The footer should be in the general form: “[Topic] Rules Draft Dated [MM/DD/YR] - Page #.” When you are ready to submit your draft rules to the Revisor for a Revisor's draft, include in the footer that it is the draft submitted to the Revisor.
- Outcome-based rules or performance standards are favored by the legislature over design or operational standards. Outcome-based rules or performance standards are, however, harder to write and enforce. One way to draft outcome-based rules is to start with operational standards, but to allow a variance if the regulated party can ensure the same or better level of safety or emissions or whatever is the purpose of the operational standards.
- *Shall* versus *must*. Disputes over *shall* have rendered it a very unfavorable word for drafting,⁷ making “must” the favored word of most plain-language experts. Under statute, *shall* and *must* are defined as “mandatory.”⁸
- The use of “*may*” is restricted to circumstances that require its use, such as when the affected party may choose to comply with one provision or another or where there are criteria relating to a choice. Don't use “*may*” when the commissioner or agency actor is enforcing a requirement. For example, “The commissioner may certify an applicant if ...” Here, the

⁷ See the entries in *Black's Law Dictionary* and *Garner's Modern English Usage*; Joseph Kimble, *Seeing through Legalese*; Ian Lewenstein, “The Uses and Misuses of *Shall*,” *Bench and Bar of Minnesota*; and Richard Wydick, *Plain English for Lawyers*.

⁸ Minn. Stat. § 645.44, subds. 15a, 16.

commissioner has unfettered discretion to choose whether to certify an applicant. Use “*must*” instead.

- Do not restate the statute. This doesn’t meet the definition of a *rule* and could result in conflict between statute and rule if the statute gets amended.
- Unbridled discretion by an agency is prohibited. Phrases such as “other information the commissioner may require” or “at the discretion of the commissioner” are vague and, therefore, give unbridled discretion. The Revisor’s Office will likely flag this for you, and the ALJ will very likely disapprove the rule.
- Variances must be limited to case-by-case situations. If alternatives of general applicability and future effect will be considered; these criteria must be in the rules.
- Check similar rules to standardize the language for similar requirements. Examples of common rule provisions are licensing procedures, variance procedures and criteria, and documentation and record-keeping requirements.
- If a document is to be incorporated by reference, it must be readily available in the public domain.⁹
- Use singular rather than plural. For example, “an applicant must...” vs. “applicants must...”
- Avoid gender-specific language. Use they/them.
- Rules are regulatory tools, not educational documents. In the language below, the agency is putting an example into rule; this explanatory information is beneficial but should be placed on the agency’s website or in another document.

Subp. 2. **Exclusion of household members is prohibited.** The commissioner must not exclude a household member and the household member’s income and assets from the applicant’s household for the sole purpose of establishing eligibility for the remaining household members except as provided in subpart 1.

Example: A household consists of a veteran, spouse, a biological child of the veteran and spouse, and a biological child of the spouse (stepchild of the veteran).

⁹ Minn. Stat. § 14.07, subd. 4.

The spouse receives \$500 per month in child support which puts the household over the income limit for income based programs or reduces the amount of assistance the household is eligible for under other programs.

The household cannot exclude the stepchild and the \$500 in child support for the purpose of attaining eligibility or maximizing benefits for the remaining household members.

- Use existing professional accreditation or licensure where possible rather than creating new qualification requirements.
- When drafting, ask:
 - What will it cost?
 - Is the data generated actually used?
 - Is statewide uniformity needed?
 - What is the sanction for not doing this?
 - Can we enforce this?
- Do we need to specify an effective date?
 - Does the statute or other law require it?
 - Does Minnesota Statutes, section 14.128, apply? (See section 4.2.5)

Checklist for Chapter 4 – Statement of Need and Reasonableness (SONAR)

Date Completed	Item
<hr/>	4 – Entire chapter reviewed before proceeding
<hr/>	4.1 – Timing requirements met <ul style="list-style-type: none">- SONAR prepared before publication of Notice of Intent to Adopt Rules in <i>State Register</i>
<hr/>	4.2 – SONAR requirements met <ul style="list-style-type: none">- 4.2.1 – Regulatory analysis<ul style="list-style-type: none">- 4.2.2 – Description of consideration and implementation of performance-based standards- 4.2.3 – Description of efforts to provide additional notice- 4.2.4 – Consultation with MMB on local government impact (see chapters 6, 7, or 8 for details)- 4.2.5 – Determination about whether local governments will have to amend an ordinance or regulation to comply with the proposed rules- 4.2.6 – Cost of complying for any small business or city- 4.2.7 – Other required information- 4.2.8 – Agency-specific requirements- 4.2.9 – List of witnesses for hearing
<hr/>	4.3 – Rule-by-Rule Analysis <ul style="list-style-type: none">- Statement of need and reasonableness for each rule; justify requirement or change for each rule
<hr/>	4.4 – Review suggestions for drafting the SONAR <ul style="list-style-type: none">- SONAR form used
<hr/>	Determine how to proceed (see introductions in chapters 5, 6, and 7 for explanation) <ul style="list-style-type: none">- Publish a Notice of Intent to Adopt Rules without a Hearing (Chapter 5)- Publish a Dual Notice (Chapter 6)- Publish a Notice of Hearing (Chapter 7)

Chapter 4 - Developing the Statement of Need and Reasonableness (SONAR)

Introduction

This chapter discusses requirements and suggestions for drafting the SONAR. It is a good idea to review this entire chapter before proceeding. At the end of this chapter is a checklist so you can easily note when you have completed each of the requirements for developing a SONAR.

The **SONAR** form in an annotated explanation of how to develop your SONAR, complete with advice and tips.

4.1 Timing

Agencies must prepare the SONAR on or before the signature date on the Notice of Intent to Adopt Rules. The agency must send a copy of the SONAR to the Legislative Reference Library when the notice is mailed or emailed.¹

4.2 Required Contents

The SONAR must contain a summary of the evidence and argument that the agency is relying on to justify why the rules are needed and reasonable. The information provided must be sufficiently specific to allow interested persons to prepare testimony or evidence in favor of or in opposition to the proposed rules. An agency should cite to research, studies, or law that the agency anticipates relying on to support the rules. An agency must also include any information required by statute that imposes specific rulemaking requirements on the agency. For a complete list of the required contents of a SONAR, see Minnesota Statutes, sections 14.131 (with a hearing) and 14.23 (without a hearing), and Minnesota Rules, part 1400.2070.

4.2.1 Regulatory analysis

The SONAR must contain a regulatory analysis that includes the following information, to the extent that the agency can get this information through reasonable effort:

1. A description of the classes of persons that will probably be affected by the proposed rules, including those that will bear the costs of the rules and those that will benefit from the rules.

¹ Minn. Stat. §§ 14.131, .23; Minn. R. 1400.2070, subp. 3.

2. An estimate of the probable costs to the agency and other agencies of implementing and enforcing the rules and any anticipated effect of the rules on state revenues.
3. A determination and discussion of whether there are less-costly or less-intrusive methods of achieving the purpose of the rules.
4. A description of any alternative ways to achieve the purpose of the rules that the agency seriously considered and the reasons why they were rejected in favor of the proposed rules.
5. An estimate of the probable costs of complying with the rules, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.
6. An estimate of the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.
7. An assessment of any differences between the rules and existing federal regulations and analysis of the need for and reasonableness of each difference.
8. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

4.2.2 Performance-based rules

The legislature recognizes the important and sensitive role for administrative rules in implementing policies and programs created by the legislature. However, the legislature has found that some regulatory rules and programs have become overly prescriptive and inflexible, thereby increasing costs to the state, local governments, and the regulated community and decreasing the effectiveness of the regulatory program. The SONAR must describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.²

What does this mean? It depends on the agency. For most agencies, having a variance or waiver procedure can demonstrate flexibility toward the regulated party. Flexibility could also be interpreted as allowing multiple methods toward completing or complying with an agency requirement. For example, a regulated party can choose option 1, 2, or 3 to comply. Or an agency can set a standard and give the regulated party the discretion on how to meet or exceed the standard. Many times, the agency can tie flexibility to an agency's ability to become a more efficient regulator.

² Minn. Stat. § 14.002

The upshot to meeting this performance-based standard is for an agency to allow regulated parties to creatively find ways to meet the purpose of a rule while also making it less expensive or less burdensome for the agency and the regulated parties.

4.2.3 Additional notice

The SONAR must describe the agency's efforts to provide additional notification to persons or classes of persons that may be affected by the proposed rules or explain why these efforts were not made. *See sections 2.7 and 5.8, 6.8, or 7.8 (depending on the type of Notice you choose) for detailed information on developing an Additional Notice Plan.*

4.2.4 Consultation with MMB on local government impact

The SONAR must include the agency's consultation with MMB. *See sections 5.4, 6.4, or 7.4 (depending on the type of Notice you choose) for detailed information on this consultation.*

4.2.5 Determination about rules requiring local implementation

The agency must determine whether a local government will have to adopt or amend an ordinance or other regulation to comply with a proposed agency rule and submit this determination for ALJ approval. An agency must make this determination before the close of the hearing record, or if there is no hearing, before the agency submits the record to the ALJ.³

Although the statute does not require that the SONAR contain this determination, current practice is to include it. Furthermore, including it will ensure that your agency completes the analysis. The statute defines *local government* as "a town, county, or home rule charter or statutory city." For more discussion on this topic, see the **SONAR** form in the appendix.

Note: If Minnesota Statutes, section 14.128, applies, you may need to put an effective date in your rules. Read the statute to see how this applies to your rule. You must pay particular attention to this when you adopt the rules to make sure that you have accurately stated the effective date, as circumstances can change during rulemaking, especially if there are delays.

4.2.6 Cost of complying for small business or city

4.2.6.1 Definitions

- *Small business:* a business (either for-profit or nonprofit) with less than 50 full-time employees.
- *Small city:* a city with less than ten full-time employees.

³ Minn. Stat. § 14.128.

4.2.6.2 Requirements

The agency must determine if the cost of complying with proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city.⁴ There is nothing in the statute that requires the agency's determination to be in the SONAR, but current practice is to include it.

The agency must make its determination before the close of the hearing record, or if there is no hearing, before the agency submits the record to the ALJ. Generally, the determination is made before the SONAR is completed and submitted to the Legislative Reference Library. A signed SONAR cannot be changed, so if the agency receives input during the comment period or the hearing that would persuade the agency to change the determination it made in the SONAR, the agency must explain its rationale.

The best practice is for the agency to supplement the hearing record as best it can with a letter submitted to the ALJ or, for extensive changes, a lengthier explanation that serves as an informal addendum to the SONAR. Consult with your ALJ for guidance and remember to include this supplemental piece in the official rulemaking record.

4.2.6.3 Considerations

If the costs of complying exceed \$25,000 for the first year after the rules take effect, then any small business or small city can exempt itself from the rules by simply filing a written statement with the agency claiming a temporary exemption from the rules.

There are several safety valves or exceptions to the provisions of Minnesota Statutes, section 14.127, including:

- legislative approval of the rules;
- legislative funding of the compliance costs;
- federal mandate;
- good cause exemption;
- being the PUC; and
- Governor waiver.

Information about any applicable exceptions should be included in the SONAR; for example, if the agency plans to seek a Governor waiver or legislative approval of the rules.

4.2.7 Other required information

The SONAR must contain an explanation of what effort the agency made to obtain any information that it states could not be ascertained through reasonable effort.

⁴ Minn. Stat. § 14.127.

4.2.8 Agency-specific requirements

An agency may have other statutory directives specific to the agency, such as the requirement to analyze the effect of Pollution Control Agency rules on business, commerce, and municipalities. The SONAR is a logical place to include these analyses. The SONAR is also a good place to inform your audience of any other evaluations or considerations that the agency has made related to the rulemaking, even if not required by statute.

Both the Department of Human Services and the Pollution Control Agency have agency-specific policies. For example, the Department of Human Services has an Equity Review Policy that all program areas must apply to legislative and policy initiatives and changes, including rules. The DHS Equity Review Policy requires that “communities experiencing inequities be consulted when programs are designed, implemented, and evaluated.” The purpose of the policy is to reduce inequities by addressing “broad social, economic, and political factors that result in systemic disadvantages as well as the needs, assets, and challenges of communities experiencing inequities.”⁵

The Minnesota Pollution Control Agency has an Environmental Justice Policy that sets an expectation that the agency will give communities of color, Indigenous communities, and low-income communities an opportunity to be meaningfully involved in the “development, adoption, implementation, and enforcement of environmental laws, regulations, and polices,” including rules.⁶

If your agency has done the work, show it! It will provide your audience, including the ALJ, with a deeper understanding of your agency’s values and how they shaped the rules.

4.2.9 List of witnesses

The SONAR must include a list of any agency and nonagency witnesses the agency anticipates asking to testify if a hearing is scheduled and a summary or description of their testimony.

4.3 Rule-by-Rule Analysis

The rule-by-rule analysis is the hardest yet most important part of the SONAR. There is no one correct way to write the analysis as long as the agency justifies each provision of the rules and provides a narrative explanation of why each part, subpart, item, and subitem is needed and reasonable. There should be sufficient specificity so that interested persons can fully prepare any testimony or evidence in favor of or in opposition to the proposed rules.

⁵ An example of the Equity Policy Review report can be found in the SONAR for the Department of Human Services’ 2022 Child Care Assistance Program rulemaking.

⁶ The Pollution Control Agency’s Environmental Justice Policy is available on its website at [Environmental justice \(https://www.pca.state.mn.us/about-mpca/mpca-and-environmental-justice\)](https://www.pca.state.mn.us/about-mpca/mpca-and-environmental-justice), and an example of including the Environmental Justice Policy report can be found in the SONAR for the Pollution Control Agency’s 2021 Clean Cars rulemaking.

For each requirement in the rules, provide the need, summary, and reasonableness.

1. Statement of Need: why the agency is writing a rule on the topic, what problem needs to be addressed, what thing needs to be done, or why it is important to do something
2. Summary: what the rule requirement does or accomplishes
3. Statement of Reasonableness: why the rule requirement is a reasonable solution to the need or the problem

4.3.1 Statement of need

The statement of need explains why an agency believes that the proposed rules are necessary to address the agency's regulatory concerns. For rules that will regulate a subject for the first time, the statement of need can often entail a long, involved explanation of a problem and the reasons that the problem needs to be addressed through rules. When established rules are being amended, however, the statement of need may simply list a few aspects of the existing rules that have become outdated or have caused problems and explain why an amendment to the rules is needed.

Examples

1. If rules are being proposed to adopt federal standards that are required for Minnesota to retain delegations or authorizations to implement federal programs, the statement of need can be a short statement that demonstrates that the state needs to adopt the federal standards to maintain equivalency with the federal standards.
2. If rules are being proposed in direct response to a statutory mandate to create rules, you can adequately establish the need for the rules by merely quoting the statute. It is not necessary and, in many cases, not advisable to go into the reasons the statute was enacted because you would just reopen the debate on the need for the statute, which is something rulemaking is not meant to address. But you can give a short, informative background for context.
3. The statement of need for a technical amendment to rules designed to remove an ambiguity that has come up in applying and enforcing the rules could simply describe a couple of the situations that created confusion due to the ambiguity in the rules. This discussion would show that a clarification is needed. The statement of reasonableness would then explain why the agency's proposed resolution of the ambiguity is reasonable.

4.3.2 Statement of reasonableness

This part of the SONAR explains why the approach taken in the proposed rules is a good one. When drafting the statement of reasonableness, it is often useful to begin the discussion by briefly paraphrasing the content of the proposed rule section that you are discussing. One of the most common problems, however, in drafting a SONAR is a failure to go beyond paraphrasing or restating the rules to *explaining why* the agency staff chose to draft the rules with the provisions that they contain.

Virtually every section of a set of proposed rules reflects a decision made by staff as they undertook to solve the regulatory problem that is causing the agency to write the rules. The statement of reasonableness must explain why the agency staff chose this requirement to appear in the rules rather than some other requirement. A general statement of statutory implementation is insufficient.

The statement of the reasons for what agency staff are proposing should not be made up solely of conclusory statements. For example, sometimes a draft SONAR will paraphrase the language of the rules and then state: “After considering various options, the agency decided that this approach is the most reasonable one.” This type of sentence is fine as a topic sentence for a paragraph that then goes on to describe exactly *why* the agency staff decided to proceed the way that they did. It is not, however, sufficient to simply state that the agency has concluded that the rules are reasonable.

Important: An independent reader—and the ALJ—needs to see specific reasons and evidence in the SONAR about why staff reached that conclusion.

4.3.3 Justify each requirement in the rules

Make sure to justify each requirement or change in the rules. For requirements so obvious that no one will question them, you can do the justification in a sentence or two. For controversial requirements, you may need a paragraph, a page, or several pages of justification. The amount of justification you put into the SONAR for a specific requirement depends directly on your judgment of the anticipated controversy and the sophistication or complexity of the factors involved in your analysis.

How you write the rule-by-rule analysis is up to you. How your rule is structured and how detailed the rule changes are may dictate the best approach. One common approach to writing the justification is to justify each requirement in the order that it appears in the rule. You would justify each part separately and, usually, each subpart and so on as necessary. Whatever the rule structure, each requirement must be justified.

Another approach is to group justifications for related provisions that are very similar. In this case, you would provide the main part of the justification once and add a sentence or two for each separate provision that ties it to the main justification.

Note: The best way to visualize justifying rule requirements is to read other agency SONARs and save language or examples that you in turn can then refer to or use.

4.3.4 Common issues

Issues that come up in drafting many SONARs concern justifying the rule’s applicability section and definitions, dealing with repetitive changes in various rules that are of a similar nature, and repealers.

1. **Applicability section of rules:** The SONAR often describes the applicability section of a set of rules and then states that it is reasonable to identify to whom the rules apply “in order to inform the public.” An applicability section is the first section of almost all proposed rules and

contains the most fundamental regulatory decision made in the rules—who must comply with the rules and who is not required to comply with the rules. The section of the SONAR demonstrating the agency’s choice of people that the rules apply to is thus one of the central parts of the SONAR and should be thoroughly explained.

2. **Definitions in rules:** When drafting a section explaining the reasonableness of the definitions in the rule, reviewing prior SONARs will provide some good sample language. More explanation will typically be required for key definitions. But for many definitions, defining the term is reasonable simply because the rules make a distinction between a regulated party that fits under that definition and a regulated party that does not.

For example, if rules are going to regulate a type of pollution source and are going to establish emission limitations that differ for different sizes of pollution source, the definitions might break that source into different size classifications. The SONAR for the definitions of each class of the source may just state that it is reasonable to define this term and distinguish this one size of source from another size of source because the rules establish different emission limitations for those two sizes of source. That statement justifies the reasonableness of defining the term separately.

However, when the SONAR later undertakes to describe *why* the size cutoff was made where it is and why the emission limitations were set where they are (in discussing the emission standards portion of the rules), the agency’s reasons for the size distinctions must be fully explained and supported.

3. **Dealing with repetitive changes:** There are multiple ways to handle explaining the need and reasonableness of repetitive changes throughout the rules. You could add a paragraph to the beginning of the rule-by-rule analysis describing the change and stating that the change has been made “throughout the rules.” You could flesh out the arguments in the analysis of the first rule part containing the change, then refer future rule parts with the same changes back to the original analysis, or you could copy and paste the explanation under each applicable rule part.
4. **Repealers:** Repealers are also rules, so you need to justify them. For large rules with a lot of repealers at the end, relying on reasoning elsewhere in the rules might be tempting. The better practice is to include a cross-reference that clearly ties the repealer back to the discussion that prompts the repeal. This way, the ALJ can easily follow the progression.

4.4 Suggestions for Drafting the SONAR

There is no “cookbook” for drafting a SONAR because of the (1) variety of regulatory needs that cause an agency to propose rules, (2) differing scope of various rules, and (3) variety of reasons that can lead an agency to regulate different parties in different ways.

A SONAR is supposed to explain the circumstances that have created the need for the proposed rules and why the rules are an appropriate solution for meeting the need. A SONAR need not be long, but it must articulate good reasons and evidence for proposing the rules in the way that agency staff has drafted the rules. It must tell a neutral nonexpert reader, such as an ALJ or an interested member of the public, why the agency has taken the approach proposed in the rules.

Remember: the SONAR tells your story to the ALJ and the public. Therefore, you want the narrative to flow. Do not make your reader work too hard to understand your points or bog them down with excruciating detail. In other words, use plain language. The following advice reflects well-established best practice for drafting SONARs.

4.4.1 Review other SONARs

When you start drafting your proposed rules, find and review other agency SONARs. If you can, look at SONARs for rules that are similar to the rules that you are proposing. For example, if you are proposing rules establishing a standard of performance for one category of pollution source, review the SONAR drafted to support existing rules for a different category of pollution source.

If you are amending rules, it is helpful to review the SONAR that justified the rules that you are amending. Finding SONARs for rules that bear some similarity to the rules that you are proposing will help you determine what level of detail is required to support your proposed rules and what kind of reasoning and evidence will be required.

For SONAR examples, you can search the Legislative Reference Library's website, which has a vast collection of SONARs available online at <http://www.leg.state.mn.us/lrl/sonar/sonar.aspx>.

4.4.2 Get information from an advisory committee to help with the regulatory analysis and the cost determination

The agency must use reasonable methods to get the information required for the regulatory analysis. A broadly representative advisory committee is, in many cases, your best source of information for doing the regulatory analysis. If you decide to use an advisory committee, ask members to identify costs, benefits, parties affected, and other regulatory analysis factors. Also ask advisory committee members for suggestions on performance-based standards.

Similarly, the advisory committee will likely have valuable information and insight into the regulatory analysis and cost determination the agency needs to make under Minnesota Statutes, section 14.127. If the advisory committee comes up with nothing about costs, having them say so adds to your authority as you write the SONAR. If you simply receive no response, that too is significant. Ask these questions early. Make sure that advisory committee opinions reflect all views and include justifications for any proposals.

See section 3.2.5 for additional information on advisory committees.

4.4.3 Approaches to drafting the SONAR

To accomplish the task of drafting a SONAR, the following suggestions might be helpful.

4.4.3.1 *Make notes when drafting*

First, when you are drafting the proposed rules, make notes of why you drafted the proposed rules the way that you did. Often, the rule draft will be hammered out informally. The hammering out might take place in discussions with staff who have helpful expertise, policy meetings of agency management or its governing board that determines the agency's direction, and meetings of a technical advisory committee. Therefore, at least noting the reasons that the agency is proceeding in various ways as the proposed rules are developing is very important. Otherwise, you might forget some of the reasons that persuaded you to write the rules the way that you did when you start to draft the SONAR a few months later.

In the time taken to think through and draft proposed rules, your reasoning as the rules' author becomes obvious or you become used to expressing your reasons in a shorthand fashion. Then, when you later begin to draft the SONAR, fully explaining all that reasoning again and presenting it step by step can be difficult. One experienced rule writer's suggestion for keeping track of your notes is to maintain two computer copies of your current rules draft, one on which you keep notes related to the need-and-reasonableness requirements. Often, just a few words or phrases are enough to jog the memory when it comes time to complete the SONAR.

4.4.3.2 *Justify the main requirements*

A second approach that might help you draft a SONAR is to start drafting the SONAR by justifying the reasonableness of the sections that form the core requirements of the proposed rules. In other words, you start by justifying the main requirements that you want to impose on the regulated parties. Often, when that more focused work is done, it is easier to draft a short introduction to the SONAR and a short statement of why the rules overall are reasonable. Starting from the core rule requirements and working out from that core to draft a complete SONAR is almost certainly easier than trying to proceed linearly through the SONAR requirements.

4.4.3.3 *Draft a statement of need*

Another experienced rule writer's approach is to draft a relatively complete statement of need at the start of the rulemaking project. This will memorialize the problems and reasons that you need to do rules. This also forces you and management to articulate and defend why you are opening the rules, which creates a real sense of purpose and a focus for drafting the rule requirements that will resolve the problems.

4.4.3.4 Refining the SONAR

The best time to start polishing a SONAR section is when the proposed rule text is in pretty good shape—that is, you’ve received enough feedback from agency leadership, subject matter experts, and the public and you are confident that only minor tweaks are left. Working and reworking a section of the SONAR is not helpful nor a wise use of resources, especially because it’s not uncommon for a midstream policy change to reverse the initial approach.

Conversely, it is important to not finish the proposed rules and then think that you can just sit down and write out the SONAR over the weekend—it takes a lot of time. The SONAR is a lot of painfully dull work, and the act of writing down and explaining the reasons for the chosen approach forces you to think through the rules in a different way than you have thought about them before. This can often lead to changes in the rules’ wording, which ultimately helps improve the rules.

Checklist for Chapter 4 – Statement of Need and Reasonableness (SONAR)

Date Completed	Item
<hr/>	4 – Entire chapter reviewed before proceeding
<hr/>	4.1 – Timing requirements met <ul style="list-style-type: none">- SONAR prepared before publication of Notice of Intent to Adopt Rules in <i>State Register</i>
<hr/>	4.2 – SONAR requirements met <ul style="list-style-type: none">- 4.2.1 – Regulatory analysis<ul style="list-style-type: none">- 4.2.2 – Description of consideration and implementation of performance-based standards- 4.2.3 – Description of efforts to provide additional notice- 4.2.4 – Consultation with MMB on local government impact (see chapters 6, 7, or 8 for details)- 4.2.5 – Determination about whether local governments will have to amend an ordinance or regulation to comply with the proposed rules- 4.2.6 – Cost of complying for any small business or city- 4.2.7 – Other required information- 4.2.8 – Agency-specific requirements- 4.2.9 – List of witnesses for hearing
<hr/>	4.3 – Rule-by-Rule Analysis <ul style="list-style-type: none">- Statement of need and reasonableness for each rule; justify requirement or change for each rule
<hr/>	4.4 – Review suggestions for drafting the SONAR <ul style="list-style-type: none">- SONAR form used
<hr/>	Determine how to proceed (see introductions in chapters 5, 6, and 7 for explanation) <ul style="list-style-type: none">- Publish a Notice of Intent to Adopt Rules without a Hearing (Chapter 5)- Publish a Dual Notice (Chapter 6)- Publish a Notice of Hearing (Chapter 7)

Checklist for Chapter 5 – Notice of Intent to Adopt Rules without a Public Hearing

Date Completed	Item
<hr/>	5 – Entire chapter reviewed before proceeding - Decision made on how to proceed
<hr/>	5.1 – Considerations before proceeding - 5.1.1 – Rules and SONAR done - 5.1.2 – Allow time to complete steps - 5.1.3 – 60 days after Request for Comments published - 5.1.4 – With 18 months of new or revised rulemaking authority (if applicable) - 5.1.5 – Consideration for rules affecting farming operations - 5.1.6 – Counting time
<hr/>	5.2 – Agency approval to give Notice obtained - If agency is a multi-member board, BD-NTC form used
<hr/>	5.3 – Governor’s Office approval obtained - GOV-PRPS used
<hr/>	5.3 – Consult with MMB - MMB-LTR used
<hr/>	5.4 – Revisor’s Draft Approved for Publication obtained (with certificate signed by the Revisor)
<hr/>	5.5 – End of comment period calculated. Factors considered: - 30-day comment period (minimum) - OAH review time (5 working days) - Rules affecting farming operations (30 days additional notice) - State Register deadlines - Give yourself enough time
<hr/>	5.6 – Notice of Intent to Adopt Rules without a Public Hearing drafted - NTC-NH form used - Using OAH’s eComments website to collect comments considered - “Substantially different” rules considered

Date Completed	Item
	5.7 – Additional Notice Plan developed
	5.8 – OAH contacted - 5.8.1 – ALJ assigned - 5.8.2 – Set up eComments (if using) - 5.8.3 – Letter to OAH - NP-RLNTC letter used for cover letter - Request approval of Additional Notice Plan (optional) - 5.8.4 - Request omission of full text of proposed rules from publication (rare) - 5.8.5 – eFile rule-related documents
	5.9 – Notice finalized - Notice signed and dated by: _____
	5.10 – SONAR emailed to Legislative Reference Library - LRL used
	5.11 – Notice published in the <i>State Register</i> - <i>State Register</i> website used
	5.12 – Notice sent - CRT-LIST and CRT-MLNG used
	5.13 – Notice given per Additional Notice Plan - Actions documented and CRT-GNRC used
	5.14 – Notice given to Legislators - LEG used
	5.15 – Other applicable statute or rule requirements met
	5.16 – Comments tracked; lists maintained - comments on the rules, written or oral - hearing requests and hearing request withdrawals - requests for free copy of the rules - requests to be placed on the agency’s rulemaking mailing list - requests for notice of filing with the Secretary of State - requests for notice of submission to ALJ - COMMENT-TRACKER used

Date Completed	Item
<hr/>	<p data-bbox="500 258 1243 289">5.17 – Proceed according to number of hearing requests</p> <ul data-bbox="500 300 1422 642" style="list-style-type: none"><li data-bbox="500 300 1386 373">- 5.17.3 - If 25 or more, start over with Notice of Hearing procedures (Chapter 7)<li data-bbox="500 384 1284 415">- 5.17.4 - If less than 25, proceed to Chapter 8 to adopt rules<li data-bbox="500 426 837 457">- Notify agency leadership<li data-bbox="500 468 1422 541">- If hearing withdrawals reduced number of hearing requests below 25, requestors notified. NTC-HRWD and CRT-HRWD used.<li data-bbox="500 552 1393 642">- If fewer than 25 hearing requests (and agency did nothing to obtain withdrawals), requestors notified. NTC-NH2 used.

Chapter 5 - Giving Notice of Intent to Adopt Rules Without a Public Hearing

Introduction

Once the rules and SONAR have been drafted, you must decide how to proceed with your rulemaking. You have three choices:

1. Publish a Notice of Hearing
2. Publish a Notice of Intent to Adopt Rules Without a Public Hearing
3. Publish a Dual Notice, where you publish a hearing date but state that you will cancel the hearing and adopt the rules without a hearing if fewer than 25 people request a hearing.

When deciding how to proceed, you should consider several factors. If the rules are controversial and 25 or more people are likely to request a hearing, you will most likely give a Notice of Hearing (Chapter 7). If there is near universal agreement with the rules by affected parties, you might consider giving a Notice of Intent to Adopt Rules Without a Public Hearing (this chapter). If you really cannot predict whether there will be more or fewer than 25 people requesting a hearing, you might want to go with a Dual Notice (Chapter 6).

In some cases, the issues surrounding the rules are so controversial or so political that the agency will decide to give Notice of Hearing regardless of whether it thinks that 25 people will request a hearing.

This chapter explains how to start the formal rule-adoption process using the **Notice of Intent to Adopt Rules Without a Public Hearing**. It is a good idea to review this entire chapter before proceeding. At the end of this chapter is a checklist so you can easily note when you have completed each of the required steps for giving notice.

5.1 Considerations

5.1.1 Rules and SONAR must be done

Before you start this chapter, you should be finished developing your rules and writing your SONAR. Chapters 3 and 4 describe rule and SONAR development.

5.1.2 Leave plenty of time to complete steps

Everything will take longer than you think it will. Be sure to prepare the paperwork for each step well ahead of the day that it needs to be signed or approved. Some things take time, such as getting

signatures for various approvals and getting Revisor’s drafts of the rules. People are not always available on a Tuesday morning to sign documents so that you can meet the *State Register’s* deadline.

5.1.3 Cannot propose rules until *at least* 60 days after Request for Comments is published

An agency may not publish a Notice of Intent to Adopt or a Notice of Hearing until at least 60 days after it has published a Request for Comments (see Chapter 2).¹

5.1.4 Rulemaking authority expires 18 months after the effective date of the law authorizing the rules

An agency must publish a Notice of Intent to Adopt Rules or a Notice of Hearing within 18 months of the effective date of the law authorizing the rules or the rulemaking authority expires.² This applies to first-time rule adoptions under the statutory authority and not to subsequent amendments or repeals.

5.1.5 If proposed rules affect farming operations

There are two statutory requirements for an agency when it proposes rules that affect farming operations.

- “Before an agency adopts or repeals rules that affect farming operations, the agency must provide a copy of the proposed rule change to the commissioner of agriculture, no later than 30 days prior to publication of the proposed rule in the *State Register*.”³
- “When a public hearing is conducted on a proposed rule that affects farming operations, at least one public hearing must be conducted in an agricultural area of the state.”⁴

Everybody is affected by everything to some degree, so where do you draw the line in determining whether farming operations will be affected by your rules? Common sense says that the rules would have to *significantly* affect farming operations to trigger the extra notice and hearing requirements. The requirements related to giving Notice of Intent to Adopt Rules Without a Public Hearing are consistent with this position in that the Notice must be given to persons or classes of persons who may be *significantly* affected.

Even this guidance will not solve the problem if you have a close question about your rules significantly affecting farming operations. If you play it safe and proceed as if your rules triggered the statutory requirements, you would, by virtue of this, guarantee an extra 30 days in the adoption process and extra hearing expenses for holding at least one hearing in an agricultural area. If, on the other hand, you determine that your rules have a small, but insignificant, effect on farming operations and

¹ Minn. Stat. § 14.101, subd. 1.

² Minn. Stat. § 14.125.

³ Minn. Stat. § 14.111.

⁴ Minn. Stat. § 14.14, subd. 1b.

therefore do not trigger the statutory requirements, you risk that your rules will be disapproved at the end of the process and that you will have to start over at the beginning of the formal rulemaking process.

In one of the few rulemakings to address this issue since this requirement was enacted, the ALJ determined that the rules did not affect farming operations.⁵ The ALJ based this decision on the fact that the rules were not specifically designed to affect farming operations and that while an impact might occur, it would be no more than the impact to the community in general. A further basis for the decision was that no regulatory controls were directed at or triggered by farming operations as such.

There is no formal OAH procedure to request prior approval of an assertion that rules do not affect farming operations like there is with seeking prior approval of an Additional Notice Plan. Until the legislature acts or until precedent is established for interpreting this statute, use your best judgment in asserting whether your rules affect farming operations.

If Minnesota Statutes, section 14.111, applies to your rules and you notify the Commissioner of Agriculture, send a copy to Doug Spanier, Department Counsel for Agriculture.

5.1.6 Counting time

The APA has many time-related provisions. When counting time, the day that an action occurs—such as mailing a notice—does not count and the last day counts.⁶

Calendar day. A period is counted in calendar days unless it is specifically stated in statute or rule that the period will be counted in “working days.” Calendar days include Saturdays, Sundays, and state holidays. However, if the period ends on a Saturday, Sunday, or state holiday, the period is extended to end on the next day that is not a Saturday, Sunday, or state holiday.

Example: For a seven-day period, a period starting on a Monday ends the next Monday. If that Monday were a state holiday,⁷ the period would end on Tuesday.

Working day. Working days do not include Saturdays, Sundays, and State holidays.

Example: For a seven-day period, a period starting on a Monday would end the next Wednesday. If a state holiday falls within the seven-day period, the period would be extended and end on Thursday.

⁵ Water and Wastewater Operators Certification Rules, Chapter 9400, adopted jointly by the Minnesota Department of Health and the Minnesota Pollution Control Agency in 1996.

⁶ Minn. R. 1400.2030, subp. 1.

⁷ See Minn. Stat. § 645.44, subd. 5.

5.2 Get Agency Approval to Give Notice of Intent to Adopt Rules

How you get approval within your agency is as individual as your agency. It is a good idea to circulate draft documents to those who might edit them well in advance so the only last-minute edits will be typos or spelling errors. Your agency might use a memo that contains a brief description of the rules and details any controversial issues or policy decisions. Some agencies have formal routing processes and sign-off sheets to document approval by all persons in the chain of command. Other agencies are satisfied by verbal briefings followed by the commissioner signing the Notice of Intent to Adopt Rules Without a Public Hearing.

In some agencies, it is standard practice for the agency's Assistant AG to review and sign off on all rule projects. An agency that is a multimember board must follow board procedures, which usually means passing a formal resolution authorizing the Notice and authorizing a person to sign the Notice. A form for such a board resolution is in the appendix as **BD-NTC**.

5.3 Get Governor's Office Approval to Give Notice; Consult with MMB

The Governor's Office administrative rule review policy, **GOV-PLCY**, states:

PROPOSED RULE AND SONAR FORM

After the agency has published its Request for Comment, created the SONAR, and has final or almost final draft rules, it should complete the Proposed Rule and SONAR Form and the Commissioner or Director sign it. The agency must then submit the completed form, SONAR, and draft rules to the Governor's Office.

This stage is crucial to rulemaking and is the critical point of information for the Governor's Office. The Proposed Rule and SONAR Form seeks the information received during the Request for Comment, an Executive Summary of the SONAR, supporters, opponents, possible controversies, and any significant changes from the Preliminary Proposal Form. The form also contains an 'other' box. The Governor's Office understands that every rulemaking experience is slightly different. Therefore, the "other" box seeks information that might not fit into the SONAR or one of the other boxes of information requested. The 'other' box can be viewed as 'any information that may be of importance to this rule.'

The Proposed Rule and SONAR Form again seeks fiscal impact information. However, at this point, only two options (yes or no) exist. The fiscal impact 'yes' box should be checked for positive or negative fiscal impact to the state of Minnesota. If the fiscal impact declaration changed from the Preliminary Proposal Form, the agency should explain why. Within the SONAR Executive Summary box, the agency should include all fiscal information that affects individuals, businesses, units of government, or the agency itself.

NOTICE OF INTENT TO ADOPT PROPOSED RULES

The agency must receive official approval from the Legislative Coordinator of LACA before proceeding with the Notice of Intent to Adopt Proposed Rules. In most cases, the agency will receive the approval to proceed with the Notice of Intent to Adopt Proposed Rules within three weeks of the Governor's Office's receiving the SONAR, draft rules, and Proposed Rules and SONAR Form. If the agency hasn't received a communication by the 21st day after the Governor's Office received this information, the agency should contact the Legislative Coordinator for a status report.

The agency's Policy Advisor will communicate any questions, comments, or concerns about the content of the proposed rule to the agency.

The agency may proceed with the Notice of Intent to Adopt Rules after the Policy Advisor has approved the proposed rule and only after the Legislative Coordinator has communicated approval to the agency.

The Governor's Office has been reliably timely at doing its review within its self-imposed three-week deadline. Nevertheless, this review might take additional time depending on the scope and nature of the rules. If you have any time constraints on your rules, you should inform the Governor's Office to help ensure that your rules will be reviewed within the time that you need them.

This is also the time for the agency to consult with MMB to help evaluate the fiscal impact and benefits of proposed rules on local governments. Send a copy of the Governor's Office form, draft SONAR, and draft rules to the Executive Budget Officer (EBO) for your agency to initiate the consultation with MMB. A form for a letter to your EBO is in the appendix as **MMB-LTR**. You do not need to wait for MMB's response to move forward with giving notice.

5.4 Get Revisor's Draft Approved for Publication

Before the agency may publish the rules and the Notice of Intent to Adopt Rules Without a Public Hearing, the rules must be in the Revisor's format with a Revisor's certificate stating that the rules are approved as to form. *See section 3.3.1 for details on obtaining a preliminary Revisor's draft.*

When your rules are ready to propose, provide the Revisor with any final changes and ask for "a draft approved for publication." Unless the Revisor is busy with the legislative session or other projects, a Revisor's draft approved for publication can usually be produced fairly quickly if there are not too many changes from your preliminary draft. Contact your Revisor in advance to see how long it will take.

5.5 Calculate the Date for the End of the 30-day Comment Period

Consider the following factors when calculating the date for the end of the 30-day comment period:

- **30-day comment period.** The Notice of Intent to Adopt Rules Without a Public Hearing must be published at least 30 days before the end of the comment period.
- **OAH review time.** Before you publish your Notice of Intent to Adopt Rules Without a Public Hearing, you may request OAH to review and approve your Additional Notice Plan. The ALJ has five working days to review and approve or disapprove your Additional Notice Plan.⁸ See section 5.7 for information on developing your Additional Notice Plan and getting it approved by OAH.
- **Rules affecting farming operations.** If your rules affect farming operations, you must provide a copy of the proposed rule change to the commissioner of agriculture at least 30 days before you publish the Notice in the *State Register*.⁹
- **State Register lead time.** The *State Register* publishes on Mondays. The submission deadline is noon on the Tuesday before publication (except when the deadline is changed by a holiday). **For rules that are long (more than 20 pages) or complex (include tables, charts, pictures, etc.) contact the editor to negotiate a deadline.**
- **Give yourself enough time.** If you are done and ready to go with everything (rules approved by Revisor, SONAR done, and all agency and Governor's Office approvals obtained), then only consider the factors listed above in calculating the date for the end of the 30-day comment period. If you don't yet have an approved Revisor's draft, your SONAR is not yet finished, or the rules are still circulating for review and approval within your agency or at the Governor's Office, then leave enough time for these things to be completed. There are usually several people at each agency and at the Governor's Office who must approve going forward with proposed rules. **Be aware that the last steps of finalizing the rules and SONAR can be excruciatingly slow.**

5.6 Draft the Notice of Intent to Adopt Rules Without a Public Hearing

A Notice of Intent to Adopt Rules Without a Public Hearing must contain the information specified in Minnesota Rules, part 1400.2080, subparts 2 and 3. A form for the Notice of Intent to Adopt Rules Without a Public Hearing is in the appendix as **NTC-NH**. **NTC-NH** is designed to be a checklist for meeting the requirements of part 1400.2080.

⁸ Minn. R. 1400.2060, subp. 3.

⁹ Minn. Stat. § 14.111.

5.6.1 Collecting comments

OAH collects public comments on its [eComments website \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/), as well as through U.S. Mail, eFiling, personal delivery, or fax. Public instructions for making comments can be found at [eComments website \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/). For additional details on setting up your public eComments site, see section 1.7.2 and **OAH-INF**.

5.6.2 “Substantially different” rules

The description of the rules in the Notice might affect whether postcomment modifications to the rules will make the adopted rules “substantially different” from the proposed rules.

Minnesota Statutes, section 14.05, subdivision 2, specifies the scope of the matter announced in the Notice, logical outgrowth, and fair warning as factors to be considered when determining whether the adopted rules are substantially different from the proposed rules. For example, suppose you have two substantially different alternative rule provisions or rules that set a numerical value (such as pollution discharge levels, noise levels, minimum number of employees to trigger a requirement, or utility rates). You might be able to draft the description of the rules in the Notice in a way that will allow the agency to adopt either alternative or adopt a value within a range without having to go through additional rule proceedings to adopt substantially different rules. The point is to provide sufficient notice and fair warning to the public about the potential scope of the proposed rules.

To adopt rules that are substantially different from the proposed rules, you must go through additional rule proceedings.¹⁰

5.6.3 Timing the signatures

Before publication, the Notice of Intent to Adopt Rules Without a Public Hearing must be signed and dated. However, it should not be signed until after you have contacted OAH, obtained an ALJ assignment, and received approval of your Additional Notice Plan (if you are requesting preapproval).

5.7 Develop an Additional Notice Plan

5.7.1 Develop an Additional Notice Plan

An agency must “make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication.” Minnesota Statutes, section 14.23, requires that the SONAR contain a description of “the agency’s efforts to provide additional notification . . . or

¹⁰ Minn. R. 1400.2110, .2300, subp. 7; Minn. Stat. §§ 14.05, subd. 2, .24.

must explain why these efforts were not made.” In other words, the agency must develop and implement what is called an Additional Notice Plan to reach significantly affected persons and then include a description of this Additional Notice Plan in its SONAR.

There are many ways for an agency to develop an Additional Notice Plan. One way is to work with agency staff who are working on the rules or who will work with regulated parties after the rules are adopted to (1) identify persons or classes of persons who might be significantly affected by the proposed rules, (2) select ways (in addition to publishing in the *State Register* and mailing to persons on the agency’s rulemaking mailing list) designed to reach these persons or classes of persons, and (3) write down your decisions and the rationale for them.

You should be creative when developing your plan to reach potentially affected persons. If this is a small group of people, perhaps mailing individual letters would be effective. If this is a large group of people where an individual mailing is too expensive or cumbersome, then a reasonable plan could be to mail the Notice and rules to persons who have inquired, shown an interest, or commented on the rules and to send a postcard to the rest directing them to the website where the information may be found. Make sure your plan encompasses persons who would be in favor of your rules and persons who would be opposed to the rules. Also, your plan could include notice to trade or professional associations representing potentially affected persons, with a request to have the notice or a summary published in their newsletters.

In some cases, your plan could include press releases to general circulation newspapers or to broadcast media. Agencies also use online resources, including special email lists and their public websites, and some develop issue-specific sites for a rulemaking.

There are undoubtedly other reasonable ways to reach potentially affected persons. When deciding what is reasonable, consider the cost and effort of what you might do and the likelihood that you will reach the intended people. Finally, if your rules will potentially affect people who do not traditionally interact with government, make an extra effort to reach these people.

Section 5.13 discusses giving notice per your Additional Notice Plan and documenting your efforts.

5.7.2 OAH prior approval of Additional Notice Plan

An agency may ask OAH for prior approval of its Additional Notice Plan.¹¹ It’s best practice and strongly recommended to seek prior approval of your Additional Notice Plan, although this is optional, not mandatory. An approved Additional Notice Plan is OAH’s final determination that the Additional Notice Plan is adequate, which means that prior approval protects you from a challenge to your Additional Notice Plan at the end of the rulemaking process when it would be difficult to correct a problem without starting all over again.

¹¹ Minn. R. 1400.2060.

Further, OAH review of your Additional Notice Plan helps ensure that the agency makes reasonable efforts to give adequate and timely notice of the rules to people who may be significantly affected by them. See section 5.8.3 for instructions on requesting prior approval of your Additional Notice Plan.

5.8 Contact OAH

5.8.1 Obtain an ALJ assignment

Prepare almost finished drafts of the Notice (section 5.6) and cover letter to OAH (section 5.8.3). Then, obtain an OAH Docket Number and ALJ assignment (section 1.7.1), unless you already obtained these before eFiling your Request for Comments for posting on eComments. When the ALJ is assigned, follow OAH's directions.

Note: You may also obtain an OAH Docket Number and ALJ assignment without filing anything for OAH review such as a Request for Comments or Additional Notice Plan. Some agencies find it helpful to get an assigned ALJ and Docket Number so they can put this information on all applicable rule-related documents and forms.

5.8.2 Set up eComments

If you are using OAH eComments to collect comments at this phase, you must set up your public eComments site. Contact OAH Administrative Rule and Applications Specialist, William Moore, at William.T.Moore@state.mn.us or (651) 361-7893 at least a week before you publish your notice in the *State Register* or eFile your notice and provide the following information:

1. OAH docket number, if already assigned.
2. The dates that the comment period will open and close.
3. A link to the agency's rulemaking webpage, if applicable. OAH will add a link to the agency's rulemaking webpage on the eComments site.
4. If applicable, the date that the Notice will appear in the *State Register*.
5. Optional: Finalized, accessible copies of the documents you want to appear on the OAH eComments webpage, if any. These might include the Notice, proposed rules, SONAR, etc. See the [Office of Accessibility \(https://mn.gov/mnit/about-mnit/accessibility/\)](https://mn.gov/mnit/about-mnit/accessibility/) for more information on making documents accessible.

5.8.3 Letter to OAH

Use the cover letter form **NP-RLNTC** to request approval of your Notice of Intent to Adopt Rules without a Hearing and your Additional Notice Plan. If you are not requesting preapproval of your Additional Notice Plan, you **do not** need to request approval of your Notice of Intent to Adopt Rules

without a Hearing. You may skip this step and move on to finalizing the notice and publishing it in the *State Register*.

To request prior approval of your Additional Notice Plan, you must file with OAH:

1. the proposed rules;
2. a draft of the SONAR containing the agency’s proposed Additional Notice Plan;
3. the proposed Notice of Intent to Adopt Rules Without a Public Hearing; and
4. an explanation of why the agency believes that its Additional Notice Plan complies with Minnesota Statutes, sections 14.101 and 14.14, subdivision 1a—that is, why its Additional Notice Plan constitutes reasonable efforts to notify persons or classes of persons who might be significantly affected by the rules.

OAH has five working days to review and approve or disapprove an Additional Notice Plan. A form for the cover letter to the Chief ALJ requesting prior approval of your Additional Notice Plan and submitting the necessary documents for review is in the appendix as **NP-RLNTC**. This letter is designed to serve as a checklist for meeting the requirements to request prior approval of your Additional Notice Plan.

5.8.4 Omitting full text of the proposed rules from publication

The Chief ALJ may authorize an agency to omit the full text of the rules from the published Notice if the publication would be unduly cumbersome, expensive, or otherwise inexpedient.¹²

A best practice is to write a letter to the Chief ALJ explaining how your circumstances meet the three criteria listed in the statute and request permission to omit the full text. You should include this letter when you submit to OAH your Additional Notice Plan for prior approval.

5.8.5 eFiling rule-related documents

OAH requests that agencies eFile all rule-related documents wherever possible. OAH has posted step-by-step instructions for creating an account and filing your documents on its website at [OAH Forms & Filing \(https://mn.gov/oah/forms-and-filing/efiling/\)](https://mn.gov/oah/forms-and-filing/efiling/). (The page also includes a link to frequently asked questions.) **See section 1.7 for explicit instructions.**

Always check to make sure that the system has uploaded your documents. Saving a screenshot or printing the window showing a file has uploaded is prudent. In addition, save any correspondence or documents that you receive from OAH for your own records because those items might not remain in your eFile folder.

¹² Minn. Stat. § 14.22, subd. 1(b).

5.9 Finalize the Notice of Intent to Adopt Rules Without a Public Hearing

After your Additional Notice Plan is completed and approved, you need to finalize the Notice of Intent to Adopt Rules Without a Public Hearing. Make any last changes and then print the Notice if you'll be mailing it.

The Notice must be signed and dated by the person authorized to give the notice, which is usually a commissioner, board chair, or a designee.

Note: An image of the signature does not need to appear in the publication in the *State Register*; the typed name of the authorized person is sufficient.

5.10 Email the SONAR to the Legislative Reference Library

When an agency sends the Notice of Intent to Adopt Rules Without a Public Hearing, the agency must send a copy of the SONAR to the Legislative Reference Library.¹³ The library requests that all agencies email SONARs to sonars@lrl.leg.mn. The SONAR need not be signed, but a signature is a good idea to show that it is official. The agency should send an email, attaching a cover letter to the Legislative Reference Library (form **LRL** in the appendix) and the SONAR (preferably in PDF). You should keep a copy of your cover letter to document compliance with this requirement.

Note: The date on the certificate and cover letter should be the same as or earlier than the date you send the Notice of Intent to Adopt.

Why send a cover letter with your email transmission? According to the library, it retains the cover letters because they provide useful information that could answer future questions about your project. A form for the cover letter is in the appendix as **LRL**. If you have questions for the LRL, you may contact Chris Steller at (651) 296-0586.

5.11 Publish the Notice in the *State Register*

The Notice of Intent to Adopt Rules Without a Public Hearing and the full text of the proposed rules must be published *at least 30 days* before the end of the comment period unless the Chief ALJ has authorized omitting the full text. (See information on how to publish in the *State Register* and “Production Schedule” for publication dates and deadlines on the [Minnesota State Register website \(https://mn.gov/admin/bookstore/register.jsp\)](https://mn.gov/admin/bookstore/register.jsp).)

¹³ Minn. Stat. § 14.23.

When you send your documents to the *State Register*, you must provide the *State Register* Editor with your Revisor’s ID number and a copy of the Revisor’s certified rule PDF. The editor will request the Revisor’s Office to transmit the approved rule text directly to the *State Register* electronically.

You must keep a copy of the Notice as published in the *State Register*, as this will later be submitted to OAH.

Note: You do not need to submit the whole *State Register* edition to OAH; you can submit just the cover plus the pages on which your Notice appears.

5.12 Send the Notice

You must send your Notice through mail or email to everyone on your agency’s rulemaking mailing list **at least 33 days** before the comment period ends.¹⁴ However, there is no good reason to wait until three days before the publication date to begin work on sending the Notice, especially if you are mailing the Notice and not emailing it. There is no penalty for sending the Notice early. Email delivery can be accomplished using a subscription service such as GovDelivery.

Note: If you have a large mailing list or get frequent additions to your mailing list, make sure that you also mail to any persons who have been added to your mailing list after you began work on your mailing and before the date of mailing.

You are not required to send a copy of your rules along with the Notice. If the rules are not included, the Notice must include an easily readable and understandable description of the nature and effect of the proposed rules and an announcement that a free copy of the proposed rules is available on request from the agency.¹⁵

A Certificate of Accuracy of the Mailing List and a Certificate of Mailing must be completed and saved for submission to OAH. The date on the Certificate of Mailing should be the same as the date that the Notice was sent. Forms for the certificates are in the appendix as **CRT-LIST** and **CRT-MLNG**. If one person performs both actions, you can create a single certificate for that person that covers both actions (see **CRT-LIST-MLNG-SAMPLE**).

5.13 Give Notice per your Additional Notice Plan

Give notice according to your Additional Notice Plan and document your efforts. For any mailed notice, whether using U.S. Mail or email, complete a certificate of mailing and attach a copy of the notice and the mailing list. [**Note:** Traditionally, this Manual has advised you to attach mailing lists to your

¹⁴ Minn. R. 1400.2080, subp. 6. The 33-day requirement applies only if you are mailing the requirement; otherwise, it must be 30 days before the comment period ends.

¹⁵ Minn. Stat. § 14.22, subd. 1(a).

certificate. This remains good practice **as long as your mailing list contains public information**. If your email lists consist of subscribers to your web delivery system, you may wish to describe your subscribers more generally. See the note in section 1.8.4 for Data Practices considerations.]

Detail any efforts you made to develop your mailing list. For more-traditional paper-based Notices, obtain copies of newsletters or newspapers in which a Notice is published. Obtain tapes or transcripts of announcements made on radio or television. Detail any efforts you made to get a Notice published or broadcast, especially if you made a Notice available and others did not publish or broadcast it. You can document what you have done by using the generic certificate form that is in the appendix as **CRT-GNRC**.

5.14 Give Notice to Legislators

An agency must notify certain legislators when it mails the Notice.¹⁶ The agency must send a copy of the Notice and SONAR to:

1. the chairs and ranking minority party members of policy and budget committees with jurisdiction over the subject matter of the proposed rules;
2. if it is within two years of the effective date of the law granting the authority, chief House and Senate authors of the rulemaking authority; and
3. the Legislative Coordinating Commission.

We recommend that you send a copy of the rules along with the Notice and SONAR. Forms for the cover letter and a certificate of compliance with this requirement are in the appendix as **LEG**.

Note: The statute says “send,” but does not specify the method. You may email your Notice to lcc@lcc.leg.mn (preferred address) or mail it to the Legislative Coordinating Commission, 72 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul MN 55155.

5.15 Meet Any Other Applicable Statutory or Rule Requirements

Meet any other statutory or rule requirements that are specific to your agency or to the rulemaking. Document what you do to comply with any other statutory or rule requirements.

¹⁶ Minn. Stat. § 14.116(b), (c).

5.16 Keep Track of Comments

After the Notice has been sent, carefully track all written comments on the proposed rules. This is important for various reasons. The most important being that the agency needs to consider and respond to any policy issues raised. Other important reasons to keep track of the comments include:

- Comments must be filed (along with any agency responses) with OAH as part of the rulemaking record reviewed by the ALJ.¹⁷
- All requests for a hearing must meet the requirements of Minnesota Statutes, section 14.25, subdivision 1, to be counted. The hearing request must (1) include the name and address of the hearing requester and the portion or portions of the rules to which the person objects, or (2) a statement that the person opposes the entire set of rules. The request must be received before the end of the comment period. Hearing requests are important for determining whether you must hold a hearing and for several notices that may need to be given to persons who request a hearing.
- If the proposed rules were not attached to the Notice as sent, the agency must give a free copy of the rules to any person who requests one.¹⁸
- The agency must place people on the agency's rulemaking mailing list when requested to do so.¹⁹
- If a hearing is required, after the hearing and at the very end of the rulemaking process, the agency must notify people who have requested that the agency notify them on the date the rules are filed with the Secretary of State.²⁰
- If a hearing is not required, the agency must notify people who have requested that the agency notify them on the date that the proposed rules are submitted to the Chief ALJ.²¹

It is important to keep careful track of comments because policy issues and the various requests might be buried in a comment letter. The agency may wish to develop separate lists or procedures to carefully track the comments for each purpose. A **COMMENT-TRACKER** is in the appendix.

Note: There is no requirement to acknowledge receipt or provide an individual response to each commenter, but depending on the number of comments you receive, you may choose to do so.

¹⁷ Minn. R. 1400.2310(J), (P).

¹⁸ Minn. Stat. § 14.22, subd. 1(a).

¹⁹ Minn. Stat. § 14.14, subd. 1a(a).

²⁰ Minn. Stat. § 14.16.

²¹ Minn. Stat. § 14.26, subd. 1.

5.17 Proceed According to the Number of Hearing Requests

5.17.1 What constitutes a hearing request?

Historically, each signature on a document requesting a hearing is considered one request. Therefore, one letter with 27 signatures is 27 hearing requests. Also, the APA contains nothing that limits valid requests to those that come from individuals within Minnesota. Requests might—and have—come from other states or countries.

5.17.2 Handling hearing requests

There is no single or simple answer for how to handle hearing requests. For example, if well before the deadline you receive 25 or more identical requests for a hearing that don't meet the statutory requirements, ignoring them would probably not be a wise course of action. Notifying them that their requests are defective and why would give them an opportunity to file valid requests. It also supports the goals of public participation and transparency in the rulemaking process. Furthermore, it helps community members learn about the process.

If for another example, however, you receive more than 25 valid requests and various invalid ones, you could disregard the invalid ones without further communication, though you might choose to give the individuals notice that the hearing will be held anyway. You will have to develop a strategy as best you can on a case-by-case basis.

Although Minnesota Statutes, section 14.25, addresses the withdrawal of hearing requests, it is silent about a deadline for these withdrawals. It contains no time restrictions on when an agency may obtain hearing request withdrawals. Further, there is precedent for the withdrawal of hearing requests after the end of the 30-day comment period. In 1993, when the Attorney General's Office adopted rules governing rulemaking, the AG received more than 25 hearing requests. After the end of the 30-day comment period, the AG obtained enough hearing request withdrawals to be able to adopt its rules using the no-hearing process. The only time deadlines or considerations for obtaining hearing request withdrawals are those imposed by other rulemaking requirements or other factors. For example:

- Hearings must be canceled at least three days before the scheduled hearing.
- With a Notice of Intent to Adopt Rules Without a Public Hearing, the agency has 180 days from the end of the comment period to submit the rules to OAH for review.

5.17.3 If there are 25 or more hearing requests, start over with the Notice of Hearing procedures

If 25 or more people request a hearing, the agency must hold a hearing (unless enough requests are withdrawn). The agency must (1) hold a hearing by proceeding under the provisions of Minnesota Statutes, sections 14.14 to 14.20; (2) publish a Notice of Hearing in the *State Register*; and (3) send a

copy of the Notice to persons who requested a hearing.²² In other words, you must start over and give a Notice of Hearing. Use chapter 7 for this.

The only break you get from completing all the Notice of Hearing requirements is that, unless the agency has modified the proposed rules, your published Notice does not need to include the text of the proposed rules but rather only a citation to the *State Register* pages where the text appeared.

5.17.4 If there are fewer than 25 hearing requests, adopt the rules using the no-hearing procedures and submit to OAH for review

If there are fewer than 25 hearing requests, you can proceed to adopt the rules without a hearing. Use chapter 8 for this.

Note: When adopting rules without a hearing, you must meet the deadline imposed by Minnesota Statutes, section 14.26, subdivision 1, which requires that the rules must be submitted to OAH within 180 days of the end of the comment period or the rules are automatically withdrawn. Other things you need to do include:

- Notify agency leadership, those agency staff members involved in the rulemaking process, and your agency's AG (if you are using your agency's AG on the rulemaking) that there were fewer than 25 hearing requests and that the agency can proceed with adopting the rules without a hearing.
- All people who requested a hearing must be notified in writing if enough requests are withdrawn to reduce the number of requests below 25 and if the agency has taken any actions to obtain the withdrawals.²³ A form for this Notice is in the appendix as **NTC-HRWD**. The form is designed to serve as a checklist for meeting the requirements of Minnesota Statutes, section 14.25, subdivision 2. A form for a certificate of mailing this Notice is in the appendix as **CRT-HRWD**.
- If there were hearing requests (but fewer than 25 and the agency has done nothing to obtain withdrawals), notify people who requested a hearing that there will be no hearing and that the agency will proceed with adopting the rules without a hearing. Even though this is not specifically required by Minnesota Statutes, section 14.25, sending Notice of this to these people soon after the end of the comment period is good practice. A form for this Notice is in the appendix as **NTC-NH2**.

²² Minn. Stat. § 14.25, subd. 1.

²³ Minnesota Statutes, section 14.25, subdivision 2, sets out the requirements for this Notice.

Checklist for Chapter 5 – Notice of Intent to Adopt Rules without a Public Hearing

Date Completed	Item
<hr/>	5 – Entire chapter reviewed before proceeding - Decision made on how to proceed
<hr/>	5.1 – Considerations before proceeding - 5.1.1 – Rules and SONAR done - 5.1.2 – Allow time to complete steps - 5.1.3 – 60 days after Request for Comments published - 5.1.4 – With 18 months of new or revised rulemaking authority (if applicable) - 5.1.5 – Consideration for rules affecting farming operations - 5.1.6 – Counting time
<hr/>	5.2 – Agency approval to give Notice obtained - If agency is a multi-member board, BD-NTC form used
<hr/>	5.3 – Governor’s Office approval obtained - GOV-PRPS used
<hr/>	5.3 – Consult with MMB - MMB-LTR used
<hr/>	5.4 – Revisor’s Draft Approved for Publication obtained (with certificate signed by the Revisor)
<hr/>	5.5 – End of comment period calculated. Factors considered: - 30-day comment period (minimum) - OAH review time (5 working days) - Rules affecting farming operations (30 days additional notice) - State Register deadlines - Give yourself enough time
<hr/>	5.6 – Notice of Intent to Adopt Rules without a Public Hearing drafted - NTC-NH form used - Using OAH’s eComments website to collect comments considered - “Substantially different” rules considered
<hr/>	5.7 – Additional Notice Plan developed

Date Completed	Item
	<p>5.8 – OAH contacted</p> <ul style="list-style-type: none"> - 5.8.1 – ALJ assigned - 5.8.2 – Set up eComments (if using) - 5.8.3 – Letter to OAH - NP-RLNTC letter used for cover letter - Request approval of Additional Notice Plan (optional) - 5.8.4 - Request omission of full text of proposed rules from publication (rare) - 5.8.5 – eFile rule-related documents
	<p>5.9 – Notice finalized</p> <ul style="list-style-type: none"> - Notice signed and dated by: _____.
	<p>5.10 – SONAR emailed to Legislative Reference Library</p> <ul style="list-style-type: none"> - LRL used
	<p>5.11 – Notice published in the <i>State Register</i></p> <ul style="list-style-type: none"> - <i>State Register</i> website used
	<p>5.12 – Notice sent</p> <ul style="list-style-type: none"> - CRT-LIST and CRT-MLNG used
	<p>5.13 – Notice given per Additional Notice Plan</p> <ul style="list-style-type: none"> - Actions documented and CRT-GNRC used
	<p>5.14 – Notice given to Legislators</p> <ul style="list-style-type: none"> - LEG used
	<p>5.15 – Other applicable statute or rule requirements met</p>
	<p>5.16 – Comments tracked; lists maintained</p> <ul style="list-style-type: none"> - comments on the rules, written or oral - hearing requests and hearing request withdrawals - requests for free copy of the rules - requests to be placed on the agency’s rulemaking mailing list - requests for notice of filing with the Secretary of State - requests for notice of submission to ALJ - COMMENT-TRACKER used
	<p>5.17 – Proceed according to number of hearing requests</p> <ul style="list-style-type: none"> - 5.17.3 - If 25 or more, start over with Notice of Hearing procedures

Date Completed	Item
	(Chapter 7) - 5.17.4 - If less than 25, proceed to Chapter 8 to adopt rules - Notify agency leadership - If hearing withdrawals reduced number of hearing requests below 25, requestors notified. NTC-HRWD and CRT-HRWD used. - If fewer than 25 hearing requests (and agency did nothing to obtain withdrawals), requestors notified. NTC-NH2 used.

Chapter 6 - Giving Dual Notice

Introduction

Once the rules and SONAR have been drafted, you must decide how to proceed with your rulemaking. You have three choices:

1. Publish a Notice of Hearing
2. Publish a Notice of Intent to Adopt Rules Without a Public Hearing
3. Publish a Dual Notice, where you publish a hearing date but state that you will cancel the hearing and adopt the rules without a hearing if fewer than 25 people request a hearing.

When deciding how to proceed, you should consider several factors. If the rules are controversial and 25 or more people are likely to request a hearing, you will most likely give a Notice of Hearing (Chapter 7). If there is near universal agreement with the rules by affected parties, you might consider giving a Notice of Intent to Adopt Rules Without a Public Hearing (this chapter). If you really cannot predict whether there will be more or fewer than 25 people requesting a hearing, you might want to go with a Dual Notice (Chapter 6).

In some cases, the issues surrounding the rules are so controversial or so political that the agency will decide to give Notice of Hearing regardless of whether it thinks 25 people will request a hearing.

This chapter explains how to start the formal rule-adoption process using a **Dual Notice**. It is a good idea to review this entire chapter before proceeding. At the end of this chapter is a checklist so you can easily note when you have completed each of the required steps for giving a Dual Notice.

6.1 Considerations

6.1.1 Rules and SONAR must be done

Before you start this chapter, you should be finished developing your rules and writing your SONAR. Chapters 3 and 4 describe rule and SONAR development.

6.1.2 Leave plenty of time to complete steps

Everything will take longer than you think it will. Be sure to prepare the paperwork for each step well ahead of the day that it needs to be signed or approved. Some things take time, such as getting signatures for various approvals and getting Revisor's drafts of the rules. People are not always available on a Tuesday morning to sign documents so that you can meet the *State Register's* deadline.

6.1.3 Cannot propose rules until *at least* 60 days after Request for Comments is published

An agency may not publish a Notice of Intent to Adopt or a Notice of Hearing until at least 60 days after it has published a Request for Comments (see Chapter 2).¹

6.1.4 Rulemaking authority expires 18 months after the effective date of the law authorizing the rules

An agency must publish a Notice of Intent to Adopt Rules or a Notice of Hearing within 18 months of the effective date of the law authorizing the rules or the rulemaking authority expires.² This applies to first-time rule adoptions under the statutory authority and not to subsequent amendments or repeals.

6.1.5 If proposed rules affect farming operations

There are two statutory requirements for an agency when it proposes rules that affect farming operations.

- “Before an agency adopts or repeals rules that affect farming operations, the agency must provide a copy of the proposed rule change to the commissioner of agriculture, no later than 30 days prior to publication of the proposed rule in the *State Register*.”³
- “When a public hearing is conducted on a proposed rule that affects farming operations, at least one public hearing must be conducted in an agricultural area of the state.”⁴

Everybody is affected by everything to some degree, so where do you draw the line when determining whether farming operations will be affected by your rules? Common sense says that the rules would have to *significantly* affect farming operations to trigger the extra notice and hearing requirements. The requirements related to giving Dual Notice are consistent with this position in that the Notice must be given to persons or classes of persons who may be *significantly* affected.

Even this guidance will not solve the problem if you have a close question about your rules significantly affecting farming operations. If you play it safe and proceed as if your rules triggered the statutory requirements, you would, by virtue of this, guarantee an extra 30 days in the adoption process and extra hearing expenses for holding at least one hearing in an agricultural area. If, on the other hand, you determine that your rules have a small, but insignificant, effect on farming operations and therefore do not trigger the statutory requirements, you risk that your rules will be disapproved at the end of the process and that you will have to start over at the beginning of the formal rulemaking process.

¹ Minn. Stat. § 14.101.

² Minn. Stat. § 14.125.

³ Minn. Stat. § 14.111.

⁴ Minn. Stat. § 14.14, subd. 1b.

In one of the few rulemakings to address this issue since this requirement was enacted, the ALJ determined that the rules did not affect farming operations. (Water and Wastewater Operators Certification Rules, Chapter 9400, adopted jointly by the Minnesota Department of Health and the Minnesota Pollution Control Agency in 1996.) The ALJ based this decision on the fact that the rules were not specifically designed to affect farming operations and that while an impact might occur, it would be no more than the impact to the community in general. A further basis for the decision was that no regulatory controls were directed at or triggered by farming operations as such.

There is no formal OAH procedure to request prior approval of an assertion that rules do not affect farming operations like there is with seeking prior approval of an Additional Notice Plan. Until the Legislature acts or until precedent is established for interpreting this statute, use your best judgment in asserting whether your rules affect farming operations.

If Minnesota Statutes, section 14.111, applies to your rules and you notify the Commissioner of Agriculture, send a copy to Doug Spanier, Department Counsel for Agriculture.

6.1.6 Counting time

The APA has many time-related provisions. When counting time, the day that an action occurs—such as mailing a notice—does not count and the last day counts.⁵

Calendar day. A period is counted in calendar days unless it is specifically stated in statute or rule that the period will be counted in “working days.” Calendar days include Saturdays, Sundays, and state holidays. However, if the period ends on a Saturday, Sunday, or state holiday, the period is extended to end on the next day that is not a Saturday, Sunday, or state holiday.

Example: For a seven-day period, a period starting on a Monday ends the next Monday. If that Monday were a state holiday,⁶ the period would end on Tuesday.

Working day. Working days do not include Saturdays, Sundays, and State holidays.

Example: For a seven-day period, a period starting on a Monday would end the next Wednesday. If a state holiday falls within the seven-day period, the period would be extended and end on Thursday.

6.2 Get Agency Approval to Give Notice

How you get approval within your agency is as individual as your agency. It is a good idea to circulate draft documents to those who might edit them well in advance so the only last-minute edits will be typos or spelling errors. Your agency might use a memo that contains a brief description of the rules

⁵ Minn. R. 1400.2030, subp. 1.

⁶ See Minn. Stat. § 645.44, subd. 5.

and details any controversial issues or policy decisions. Some agencies have formal routing processes and sign-off sheets to document approval by all persons in the chain of command. Other agencies are satisfied by verbal briefings followed by the commissioner signing the Notice of Intent to Adopt Rules Without a Public Hearing.

In some agencies, it is standard practice for the agency's Assistant Attorney General (AG) to review and sign off on all rule projects. An agency that is a multimember board must follow board procedures, which usually means passing a formal resolution authorizing the Notice and authorizing a person to sign the Notice. A form for such a board resolution is in the appendix as **BD-NTC**.

6.3 Get Governor's Office Approval to Give Notice; Consult with MMB

The Governor's Office administrative rule review policy, **GOV-PLCY**, states:

PROPOSED RULE AND SONAR FORM

After the agency has published its Request for Comment, created the SONAR, and has final or almost final draft rules, it should complete the Proposed Rule and SONAR Form and the Commissioner or Director sign it. The agency must then submit the completed form, SONAR, and draft rules to the Governor's Office.

This stage is crucial to rulemaking and is the critical point of information for the Governor's Office. The Proposed Rule and SONAR Form seeks the information received during the Request for Comment, an Executive Summary of the SONAR, supporters, opponents, possible controversies, and any significant changes from the Preliminary Proposal Form. The form also contains an 'other' box. The Governor's Office understands that every rulemaking experience is slightly different. Therefore, the "other" box seeks information that might not fit into the SONAR or one of the other boxes of information requested. The 'other' box can be viewed as 'any information that may be of importance to this rule.'

The Proposed Rule and SONAR Form again seeks fiscal impact information. However, at this point, only two options (yes or no) exist. The fiscal impact 'yes' box should be checked for positive or negative fiscal impact to the state of Minnesota. If the fiscal impact declaration changed from the Preliminary Proposal Form, the agency should explain why. Within the SONAR Executive Summary box, the agency should include all fiscal information that affects individuals, businesses, units of government, or the agency itself.

NOTICE OF INTENT TO ADOPT PROPOSED RULES

The agency must receive official approval from the Legislative Coordinator of LACA before proceeding with the Notice of Intent to Adopt Proposed Rules. In most cases, the agency will receive the approval to proceed with the Notice of Intent to Adopt Proposed Rules within three

weeks of the Governor's Office's receiving the SONAR, draft rules, and Proposed Rules and SONAR Form. If the agency hasn't received a communication by the 21st day after the Governor's Office received this information, the agency should contact the Legislative Coordinator for a status report.

The agency's Policy Advisor will communicate any questions, comments, or concerns about the content of the proposed rule to the agency.

The agency may proceed with the Notice of Intent to Adopt Rules after the Policy Advisor has approved the proposed rule and only after the Legislative Coordinator has communicated approval to the agency.

The Governor's Office has been reliably timely at doing its review within its self-imposed three-week deadline. Nevertheless, this review might take additional time depending on the scope and nature of the rules. If you have any time constraints on your rules, you should inform the Governor's Office to help ensure that your rules will be reviewed within the time that you need them.

This is also the time for the agency to consult with MMB to help evaluate the fiscal impact and benefits of proposed rules on local governments. Send a copy of the Governor's Office form, draft SONAR, and draft rules to the Executive Budget Officer (EBO) for your agency to initiate the consultation with MMB. A form for a letter to your EBO is in the appendix as **MMB-LTR**. You do not need to wait for MMB's response to move forward with giving notice.

6.4 Get Revisor's Draft Approved for Publication

Before the agency may publish the rules and the Notice of Intent to Adopt Rules Without a Public Hearing, the rules must be in the Revisor's format with a Revisor's certificate stating that the rules are approved as to form. *See section 3.3.1 for details on obtaining a preliminary Revisor's draft.*

When your rules are ready to propose, provide the Revisor with any final changes and ask for "a draft approved for publication." Unless the Revisor is busy with the Legislative Session or other projects, a Revisor's draft approved for publication can usually be produced fairly quickly if there are not too many changes from your preliminary draft. Contact your Revisor to see how long it will take.

6.5 Set a Tentative Hearing Date and Location; Contact OAH

In most cases, it is best to find a hearing date **and time** that is compatible with all necessary agency personnel (including your AG, if applicable) before you contact OAH to request an ALJ. Additionally, you will want to determine how you will hold your hearing (such as, in a specific location, virtually through WebEx or other online platform, or via videoconferencing). If more than one day is needed for the

hearing, schedule accordingly. If you plan to accommodate people outside of regular business hours, you must plan accordingly for this too and disclose that fact when requesting an ALJ.

Note: Each judge has their own preferences for hearings. It is best practice to communicate regularly with OAH Administrative Rule and Applications Specialist, William Moore, at William.T.Moore@state.mn.us or (651) 361-7893 to work out the details for the hearing.

6.5.1 Choose a hearing date

Consider the following factors in choosing a hearing date:

- **30-day comment period.** The Dual Notice must be published at least 30 days before the end of the comment period. Also see section 6.5.2 about possibly building in more time to the prehearing comment period. You might wish to allow for focused comments and their possible resolution or, if your agency is a board, to have a meeting to approve changes.
- **10 additional days after the end of the comment period.** If a hearing is required, there must be at least 10 calendar days between the last day for requesting a hearing and the day of the hearing.⁷
- **OAH review time.** Before you publish your Dual Notice, you must request to schedule a hearing and submit the Notice, the rules, and the SONAR to the ALJ for review. The ALJ has five working days to review and approve or disapprove.⁸ You should also submit your Additional Notice Plan for review and approval at this time.⁹ If you submit your Notice and your Additional Notice Plan at the same time, the ALJ will do the review concurrently.
- **Rules affecting farming operations.** If your rules affect farming operations, you must provide a copy of the proposed rule change to the commissioner of agriculture at least 30 days before you publish the Notice in the *State Register*.¹⁰
- **State Register lead time.** The *State Register* publishes on Mondays. The submission deadline is noon on the Tuesday before publication (except when the deadline is changed by a holiday). **For rules that are long (more than 20 pages) or complex (include tables, charts, pictures, etc.) contact the editor to negotiate a deadline.**
- **Availability of key agency personnel/clear your calendar.** Check with the key agency personnel who should be at the hearing to find out which dates they have available for the hearing. In most cases, key agency personnel include staff who have taken an important role in developing

⁷ Minn. Stat. § 14.22, subd. 2.

⁸ Minn. R. 1400.2080, subp. 5.

⁹ Minn. R. 1400.2060, subp. 3.

¹⁰ Minn. Stat. § 14.111.

the rules, managers and decision-makers who have made and will make policy decisions on the rules, and your agency's AG (if you are using your agency's AG on the rulemaking).

When you check with key agency personnel about their availability for the hearing, you might want to schedule a prehearing "dress rehearsal." You should also schedule a meeting with them for immediately after the hearing to discuss issues raised at the hearing. Ask them to leave enough time open in their schedules for other meetings at important times during the posthearing comment and rebuttal periods. It is a good idea to clear as much of your calendar as possible for the length of the comment and rebuttal periods after the hearing. It takes more time than you can imagine to review comments and prepare the agency's response.

- **Several possible hearing dates.** If you find several dates that would work for the hearing, defer to the ALJ for choosing a date.
- **Give yourself enough time.** If you are done and ready to go with everything (rules approved by Revisor, SONAR done, and all agency and Governor's Office approvals obtained), then only consider the factors listed above in setting your hearing date. If you don't yet have an approved Revisor's rules draft or your SONAR is not yet finished or the rules are still circulating for review and approval within your agency or at the Governor's Office, then leave enough time for these things to be completed. There are usually several people at each agency and at the Governor's Office who must approve going forward with proposed rules. **Be aware that the last steps of finalizing the rules and SONAR can be excruciatingly slow.**

6.5.2 Prehearing comment period

You might want to build more time into the prehearing comment period to obtain focused comments and analyze issues that have emerged so you can prepare to address or resolve them at the hearing. You may come to the hearing with modifications to the rules in response to prehearing comments that will resolve or diffuse controversy.

If your agency is a multimember board, you might need to build in time for a board meeting between the end of the 30-day comment period and the hearing to consider comments and approve any needed changes to rules. An optional worksheet for boards to keep track of the dates involved appears in the Appendix as **BD-WKSHEET**.

6.5.3 Arrange for a location; consider holding the hearing via videoconference or virtually

Just about any location is okay for the hearing if it is large enough for the number of people likely to attend the hearing and if it is accessible to people with disabilities. A board room or meeting room at your agency would be okay if it is large enough. If your rules affect farming operations and if you have a public hearing in a physical location, remember that at least one hearing must be in an agricultural area of the state (see section 6.2.6 of this chapter). Also, be aware of any hearing location requirements that might be specific to your rules or your agency.

If your rules affect persons from around the state, you might consider making your hearing available via videoconference or holding a virtual hearing.

A **videoconference hearing** typically refers to a hearing that is held in multiple physical location. Attendees can see and hear each of the locations and participate as needed.

A **virtual hearing** refers to a hearing held entirely through an online platform, such as WebEx, Teams, or Zoom. There is no physical location for a virtual hearing.

Holding virtual hearings has become the preferred method for OAH (when in doubt, check with your ALJ). WebEx or Teams are the preferred platforms. Please note that WebEx requires a license and someone who is familiar with operating the software.

6.5.4 Contact OAH

Each judge has their own preferences for hearings. It is best practice to communicate regularly with OAH Administrative Rule and Applications Specialist, William Moore, at William.T.Moore@state.mn.us or (651) 361-7893 to work out the details for the hearing, including choosing the date and location.

If you are holding a virtual hearing, you may also want to schedule a hearing “run through” with the ALJ through whatever platform you intend to use during the hearing. That way, you have it scheduled should you hold a hearing.

6.6 Draft the Dual Notice

A Dual Notice must contain the information in Minnesota Rules, part 1400.2080, subparts 2, 3, and 4. A form for the Dual Notice is in the appendix as **NTC-DL**. **NTC-DL** is designed to be a checklist for meeting the requirements of part 1400.2080. If your hearing will be virtual, you must include the meeting details in your Notice. The ALJ may also request that you provide this information on your rulemaking website and include the website in your Notice.

Example of how one agency provided WebEx details for their virtual hearing in the Dual Notice:

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, the Board will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The Board will hold the hearing on Thursday, February 2, 2023, starting at 9:30 a.m. The hearing will continue until all interested persons have been heard. Administrative Law Judge Barbara J. Case is assigned to conduct the hearing. Judge Case’s Legal Assistant William Moore can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7900 and fax 651-539-0310 or william.t.moore@state.mn.us.

For a video and audio connection, join the hearing through an internet connection, such as with a computer or tablet:

Enter <https://minnesota.webex.com>

Meeting number (access code): 2490 892 3819

Password: PELSB

For audio connection only, join the hearing by phone:

Call: 1-415-655-0003 (US Toll)

Access code: 2490 892 3819

6.6.1 Collecting comments

OAH collects public comments on its [eComments website \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/), as well as through U.S. Mail, eFiling, personal delivery, or fax. Public instructions for making comments can be found at [eComments website \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/). For additional details on setting up your public eComments site, see section 1.7.2 and **OAH-INF**.

6.6.2 “Substantially different” rules

The description of the rules in the Notice might affect whether postcomment modifications to the rules will make the adopted rules “substantially different” from the proposed rules.

Minnesota Statutes, section 14.05, subdivision 2, specifies the scope of the matter announced in the Notice, logical outgrowth, and fair warning as factors to be considered when determining whether the adopted rules are substantially different from the proposed rules. For example, suppose you have two substantially different alternative rule provisions or rules that set a numerical value (such as pollution discharge levels, noise levels, minimum number of employees to trigger a requirement, or utility rates). You might be able to draft the description of the rules in the Notice in a way that will allow the agency to adopt either alternative or adopt a value within a range without having to go through additional rule proceedings to adopt substantially different rules. The point is to provide sufficient notice and fair warning to the public about the potential scope of the proposed rules.

To adopt rules that are substantially different from the proposed rules, you must go through additional rule proceedings.¹¹

6.6.3 Timing the signatures

Before publication, the Dual Notice must be signed and dated, but this cannot be done until after the Chief ALJ assigns an ALJ and the ALJ approves the Notice and the hearing date.

¹¹ Minn. R. 1400.2110, .2300, subp. 7; Minn. Stat. §§ 14.05, subd. 2, .24.

6.7 Develop an Additional Notice Plan

6.7.1 Develop an Additional Notice Plan

The agency is required to “make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication.” Minnesota Statutes, section 14.23, requires that the SONAR contain a description of “the agency’s efforts to provide additional notification . . . or must explain why these efforts were not made.” In other words, the agency must develop and implement what is called an Additional Notice Plan to reach significantly affected people and then include a description of this Additional Notice Plan in its SONAR.

There are many ways for an agency to develop an Additional Notice Plan. One way is to work with agency staff who are working on the rules or who will work with regulated parties after the rules are adopted to (1) identify people or classes of people who might be significantly affected by the proposed rules, (2) select ways (in addition to publishing in the *State Register* and mailing to people on the agency’s rulemaking mailing list) designed to reach these people or classes of people, and (3) write down your decisions and the rationale for them.

You should be creative in developing your plan to reach potentially affected people. If this is a small group of people, perhaps mailing individual letters would be effective. If this is a large group of people where an individual mailing is too expensive or cumbersome, then a reasonable plan could be to mail the Notice and rules to people who have inquired, shown an interest, or commented on the rules and to send a postcard to the rest directing them to the website where the information may be found. Make sure your plan encompasses people who would be in favor of your rules and people who would be opposed to the rules. Also, your plan could include notice to trade or professional associations representing potentially affected people, with a request to have the notice or a summary published in their newsletters.

In some cases, your plan could include press releases to general circulation newspapers or to broadcast media. Agencies also use online resources, including special email lists and their public websites, and some develop issue-specific sites for a rulemaking.

There are undoubtedly other reasonable ways to reach potentially affected people. When deciding what is reasonable, consider the cost and effort of what you might do and the likelihood that you will reach the intended people. Finally, if your rules will potentially affect people who do not traditionally interact with government, make an extra effort to reach them.

Section 6.13 discusses giving notice per your Additional Notice Plan and documenting your efforts.

6.7.2 OAH prior approval of Additional Notice Plan

An agency may ask OAH for prior approval of its Additional Notice Plan.¹² It's best practice and strongly recommended to seek prior approval of your Additional Notice Plan, although this is optional, not mandatory. An approved Additional Notice Plan is OAH's final determination that the Additional Notice Plan is adequate, which means that prior approval protects you from a challenge to your Additional Notice Plan at the end of the rulemaking process when it would be difficult to correct a problem without starting over.

Further, OAH review of your Additional Notice Plan helps ensure that the agency makes reasonable efforts to give adequate and timely notice of the rules to people who may be significantly affected by them. See section 6.8.3 for instructions on requesting prior approval of your Additional Notice Plan.

6.8 Contact OAH

6.8.1 Obtain an ALJ assignment

After finding one or more workable dates for the hearing, prepare almost finished drafts of the Dual Notice (section 6.6) and cover letter to OAH (section 6.8.3). Then, obtain an OAH Docket Number and ALJ assignment (section 1.7.1), unless you already obtained these before eFiling your Request for Comments for posting on eComments, and schedule your hearing. When the ALJ is assigned, follow OAH's directions.

Note: You may also obtain an OAH Docket Number and ALJ assignment without filing anything for OAH review such as a Request for Comments or Additional Notice Plan. Some agencies find it helpful to get an assigned ALJ and Docket Number so they can put this information on all the rule-related documents and forms.

6.8.2 Set up eComments

If you are using OAH eComments to collect comments at this phase, you must set up your public eComments site. Contact OAH Administrative Rule and Applications Specialist, William Moore, at William.T.Moore@state.mn.us or (651) 361-7893 at least a week before you publish your notice in the *State Register* or eFile your notice and provide the following information:

1. OAH docket number, if already assigned.
2. The dates that the comment period will open and close.
3. A link to the agency's rulemaking webpage, if applicable. OAH will add a link to the agency's rulemaking webpage on the eComments site.

¹² Minn. R. 1400.2060.

4. If applicable, the date that the Notice will appear in the *State Register*.
5. Optional: Finalized, accessible copies of the documents you want to appear on the OAH eComments webpage, if any. These might include the Notice, proposed rules, SONAR, etc. See the [Office of Accessibility \(https://mn.gov/mnit/about-mnit/accessibility/\)](https://mn.gov/mnit/about-mnit/accessibility/) for more information on making documents accessible.

6.8.3 Letter to OAH

A form for the cover letter to the Chief ALJ requesting a hearing and submitting the necessary documents for review is in the appendix as **HR-RQST**. This letter is designed to serve as a checklist for meeting the requirements of parts 1400.2020 and 1400.2080 to request a hearing. The letter can also be used to request prior approval of your Additional Notice Plan under part 1400.2060.

A request to schedule a rule hearing must be accompanied by:

1. the proposed Dual Notice;
2. a copy of the proposed rules approved as to form by the Revisor;
3. a draft or final copy of the SONAR;¹³ and
4. if requesting prior approval of your Additional Notice Plan, an explanation of why the agency believes that its Additional Notice Plan complies with Minnesota Statutes, sections 14.101 and 14.14, subdivision 1a—that is, why its Additional Notice Plan constitutes reasonable efforts to notify persons or classes of people who might be significantly affected by the rules.

The letter requesting to schedule a hearing along with the required documents must be eFiled (see 6.8.5 below). Submitting these documents also serves as the agency's request for ALJ approval of the Notice before mailing it or publishing it in the *State Register*. In addition to reviewing the Notice, the ALJ must advise the agency as to when and where the hearing should be held to allow for participation by all affected interests. The ALJ has five working days to review and either approve the Notice or advise the agency how the Notice must be revised. Because the ALJ only has five working days to review the documents, best practice includes reaching out to William Moore BEFORE eFiling the documents to coordinate a date to submit the documents that works with the judge's schedule. It does no good to eFile documents when the judge is unavailable.

6.8.4 Omitting full text of the proposed rules from publication

The Chief ALJ may authorize an agency to omit the full text of the rules from the published Notice if the publication would be unduly cumbersome, expensive, or otherwise inexpedient.¹⁴

¹³ Minn. R. 1400.2080, subp. 5.

¹⁴ Minn. Stat. § 14.22, subd. 1(b).

A best practice is to write a letter to the Chief ALJ explaining how your circumstances meet the three criteria listed in the statute and request permission to omit the full text. You should include this letter when you submit to OAH your Additional Notice Plan for prior approval.

6.8.5 eFiling rule-related documents

OAH requests that agencies eFile all rule-related documents wherever possible. OAH has posted step-by-step instructions for creating an account and filing your documents on its website at [OAH Forms & Filing \(https://mn.gov/oah/forms-and-filing/efiling/\)](https://mn.gov/oah/forms-and-filing/efiling/). (The page also includes a link to frequently asked questions.) **See section 1.7 for explicit instructions.**

Always check to make sure that the system has uploaded your documents. Saving a screenshot or printing the window showing a file has uploaded is prudent. In addition, save any correspondence or documents that you receive from OAH for your own records because those items might not remain in your eFile folder.

6.9 Finalize the Dual Notice

After the ALJ approves your hearing date and Dual Notice, you need to finalize the Notice. Enter the name of the ALJ, make any changes required by the ALJ, and then print the Notice if you'll be mailing it.

The Notice must be signed and dated by the person authorized to give the notice, which is usually a commissioner, board chair, or a designee.

Note: An image of the signature does not need to appear in the publication in the *State Register*; the typed name of the authorized person is sufficient.

6.10 Email the SONAR to the Legislative Reference Library

When an agency sends the Dual Notice, the agency must send a copy of the SONAR to the Legislative Reference Library.¹⁵ The library requests that all agencies email SONARs to sonars@lrl.leg.mn. The SONAR need not be signed, but a signature is a good idea to show that it is official. The agency should send an email, attaching a cover letter to the Legislative Reference Library (form **LRL** in the appendix) and the SONAR (preferably in PDF). You should keep a copy of your cover letter to document compliance with this requirement.

Note: The date on the certificate and cover letter should be the same as or earlier than the date you send the Dual Notice.

¹⁵ Minn. Stat. § 14.23.

Why send a cover letter with your email transmission? According to the library, it keeps cover letters because they provide useful information that could answer future questions about your project. A form for the cover letter is in the appendix as **LRL**. If you have questions for the LRL, you may contact Chris Steller at (651) 296-0586.

6.11 Publish the Notice in the *State Register*

The Dual Notice and the full text of the proposed rules must be published *at least 30 days* before the end of the comment period unless the Chief ALJ has authorized omitting the full text. (See information on how to publish in the *State Register* and “Production Schedule” for publication dates and deadlines on the [Minnesota State Register website \(https://mn.gov/admin/bookstore/register.jsp\)](https://mn.gov/admin/bookstore/register.jsp).)

When you send your documents to the *State Register*, you must provide the *State Register* Editor with your Revisor’s ID number and a copy of the Revisor’s certified rule PDF. The editor will request the Revisor’s Office to transmit the approved rule text directly to the *State Register* electronically.

You must keep a copy of the Notice as published in the *State Register*, as this will later be submitted to OAH. **Note:** You do not need to submit the whole *State Register* edition to OAH; you can submit the cover page plus the pages on which your Notice appears.

6.12 Send the Notice

You must send your Notice through mail or email to everyone on your agency’s rulemaking mailing list **at least 33 days** before the comment period ends.¹⁶ However, there is no good reason to wait until three days before the publication date to begin work on sending the Notice, especially if you are mailing the Notice and not emailing it. There is no penalty for sending the Notice early. Email delivery can be accomplished using a subscription service such as GovDelivery.

Note: If you have a large mailing list or get frequent additions to your mailing list, make sure that you also mail to any people who have been added to your mailing list after you began work on your mailing and before the date of mailing.

You are not required to send a copy of your rules along with the Notice. If the rules are not included, the Notice must include an easily readable and understandable description of the nature and effect of the proposed rules and an announcement that a free copy of the proposed rules is available on request from the agency.¹⁷

¹⁶ Minn. R. 1400.2080, subp. 6. The 33-day requirement applies only if you are mailing the requirement; otherwise, it must be 30 days before the comment period ends.

¹⁷ Minn. Stat. § 14.22, subd. 1(a).

A Certificate of Accuracy of the Mailing List and a Certificate of Mailing must be completed and saved for submission to OAH. The date on the Certificate of Mailing should be the same as the date that the Notice was sent. Forms for the certificates are in the appendix as **CRT-LIST** and **CRT-MLNG**. If one person performs both actions, you can create a single certificate for that person that covers both actions (see **CRT-LIST-MLNG-SAMPLE**).

6.13 Give Notice per your Additional Notice Plan

Give notice according to your Additional Notice Plan and document your efforts. For any mailed notice, whether using U.S. mail or email, complete a certificate of mailing and attach a copy of the notice and the mailing list. **[Note:** Traditionally, this Manual has advised you to attach mailing lists to your certificate. This remains good practice **as long as your mailing list contains public information**. If your email lists consist of subscribers to your web delivery system, you may wish to describe your subscribers more generally. See the note in section 1.8.4 for Data Practices considerations.]

Detail any efforts you made to develop your mailing list. For more traditional paper-based Notices, obtain copies of newsletters or newspapers in which a Notice is published. Obtain tapes or transcripts of announcements made on radio or television. Detail any efforts you made to get a Notice published or broadcast, especially if you made a Notice available and others did not publish or broadcast it. You can document what you have done by using the generic certificate form that is in the appendix as **CRT-GNRC**.

6.14 Give Notice to Legislators

An agency must notify certain legislators when it mails the Notice.¹⁸ The agency must send a copy of the Notice and SONAR to:

1. the chairs and ranking minority party members of policy and budget committees with jurisdiction over the subject matter of the proposed rules;
2. if it is within two years of the effective date of the law granting the authority, chief House and Senate authors of the rulemaking authority; and
3. the Legislative Coordinating Commission.

We recommend that you send a copy of the rules along with the Notice and SONAR. Forms for the cover letter and a certificate of compliance with this requirement are in the appendix as **LEG**.

¹⁸ Minn. Stat. § 14.116.

Note: The statute says “send,” but does not specify the method. You may email your Notice to lcc@lcc.leg.mn (preferred address) or mail it to the Legislative Coordinating Commission, 72 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul MN 55155.

6.15 Meet Any Other Applicable Statutory or Rule Requirements

Meet any other statutory or rule requirements that are specific to your agency or to the rulemaking. Document what you do to comply with any other statutory or rule requirements.

6.16 Keep Track of Comments

After the Notice has been sent, carefully track all written comments on the proposed rules. This is important for various reasons. The most important being that the agency needs to consider and respond to any policy issues raised. Other important reasons to keep track of the comments include:

- Comments must be filed (along with any agency responses) with OAH as part of the rulemaking record reviewed by the ALJ.¹⁹
- All requests for a hearing must meet the requirements of Minnesota Statutes, section 14.25, subdivision 1, to be counted. The hearing request must (1) include the name and address of the hearing requester and the portion or portions of the rules to which the person objects, or (2) a statement that the person opposes the entire set of rules. The request must be received before the end of the comment period. Hearing requests are important for determining whether you must hold a hearing and for several notices that may need to be given to persons who request a hearing.
- If the proposed rules were not attached to the Notice as sent, the agency must give a free copy of the rules to any person who requests one.²⁰
- The agency must place people on the agency’s rulemaking mailing list when requested to do so.²¹
- If a hearing is required, after the hearing and at the very end of the rulemaking process, the agency must notify people who have requested that the agency notify them on the date the rules are filed with the Secretary of State.²²

¹⁹ Minn. R. 1400.2310.

²⁰ Minn. Stat. § 14.22, subd. 1(a).

²¹ Minn. Stat. § 14.14, subd. 1a.

²² Minn. Stat. § 14.16, subd. 1.

- If a hearing is not required, the agency must notify people who have requested that the agency notify them on the date the proposed rules are submitted to the Chief ALJ.²³

It is important to keep careful track of comments because policy issues and the various requests might be buried in a comment letter. The agency may wish to develop separate lists or procedures to carefully track the comments for each purpose. A **COMMENT-TRACKER** is in the appendix.

Note: There is no requirement to acknowledge receipt or provide an individual response to each commenter, but depending on the number of comments you receive, you may choose to do so.

6.17 Proceed According to the Number of Hearing Requests

6.17.1 What constitutes a hearing request?

Historically, each signature on a document requesting a hearing is considered one request. Therefore, one letter with 27 signatures is 27 hearing requests. Also, the APA contains nothing that limits valid requests to those that come from individuals within Minnesota. Requests might also come from other states or countries.

6.17.2 Handling hearing requests

There is no single or simple answer for how to handle hearing requests. For example, if well before the deadline, you receive 25 or more identical requests for a hearing that don't meet the statutory requirements, ignoring them would probably not be a wise course of action. Notifying them that their requests are defective and why would give them an opportunity to file valid requests. It also supports the goals of public participation and transparency in the rulemaking process. Furthermore, it helps community members learn about the process.

If for another example, however, you receive more than 25 valid requests and various invalid ones, you could disregard the invalid ones without further communication, though you might choose to give the individuals notice that the hearing will be held anyway. You will have to develop a strategy as best you can on a case-by-case basis.

Although Minnesota Statutes, section 14.25, addresses the withdrawal of hearing requests, it is silent about a deadline for these withdrawals. It contains no time restrictions on when an agency may obtain hearing request withdrawals. Further, there is precedent for the withdrawal of hearing requests after the end of the 30-day comment period. In 1993, when the AG adopted rules governing rulemaking, the AG received more than 25 hearing requests. After the end of the 30-day comment period, the AG obtained enough hearing request withdrawals to be able to adopt its rules using the no-hearing

²³ Minn. Stat. § 14.26, subd. 1.

process. The only time deadlines or considerations for obtaining hearing request withdrawals are those imposed by other rulemaking requirements or other factors. For example:

- Hearings must be canceled at least three days before the scheduled hearing.
- With a Notice of Intent to Adopt Rules Without a Public Hearing, the agency has 180 days from the end of the comment period to submit the rules to OAH for review.

6.17.3 If there are 25 or more hearing requests, prepare for the hearing

If 25 or more people request a hearing, the agency must hold the hearing (unless enough requests are withdrawn). If you must hold a hearing, see chapter 9. Other things you need to do include:

- Notify agency management, agency staff members involved in the rulemaking process, and the agency AG (if you are using your agency's AG on the rulemaking) that the hearing will be held as scheduled.
- Call the ALJ and report that the agency received 25 or more hearing requests and will be proceeding with the hearing as scheduled.
- Confirm the hearing room (if held in physical location).
- Notify the people who requested a hearing. Do this ASAP. Under Minnesota Statutes, section 14.25, subdivision 1, the agency must publish a Notice of Hearing in the *State Register* (the Dual Notice serves this purpose) and must mail a Notice of Hearing to people who requested a hearing. You may use email for the requests that you receive that way. A form for mailing notice to these persons is in the appendix as **NTC-HR25**. A form for a certificate of mailing this notice is in the appendix as **CRT-HR25**.

Note: ASAP means as soon as possible after you know that there will be a hearing. If you are trying to get withdrawals of hearing requests, you won't know whether you will have a hearing until you find out if you can get below 25 (or three days before the hearing, which is the last day that you can cancel the hearing).

6.17.4 If there are fewer than 25 hearing requests, cancel the hearing

If there are fewer than 25 hearing requests, you can proceed to adopt the rules without a hearing. Use chapter 8 for this.

When adopting rules without a hearing, you must meet the deadline imposed by Minnesota Statutes, section 14.26, subdivision 1, which requires that the rules must be submitted to OAH within 180 days of the end of the comment period or the rules are automatically withdrawn. Other things you need to do include:

- Notify agency management, agency staff members involved in the rulemaking process, and your agency's AG (if you are using your agency's AG on the rulemaking) that there were fewer than 25 hearing requests and that the hearing will be canceled.
- Contact OAH and report that the agency has canceled the hearing because there were fewer than 25 hearing requests. Follow this up with a letter to the ALJ. A form for this letter is in the appendix as **ALJ-CNCL**. Also, cancel the hearing "run through" with the ALJ if you had one scheduled. Note: per Minnesota Statutes, section 14.25, subdivision 2, "No public hearing may be canceled by an agency within three working days of the hearing."
- Cancel the hearing room.
- All people who requested a hearing must be notified in writing if enough requests are withdrawn to reduce the number of requests below 25 and if the agency has taken any actions to obtain the withdrawals. Minnesota Statutes, section 14.25, subdivision 2, sets out the requirements for this Notice. A form for this Notice is in the appendix as **NTC-HRWD**. The form is designed to serve as a checklist for meeting the requirements of section 14.25, subdivision 2. A form for a certificate of mailing this Notice is in the appendix as **CRT-HRWD**.
- If there were hearing requests (but fewer than 25 and the agency has done nothing to obtain withdrawals), notify people who requested a hearing that the hearing has been canceled. Even though this is not specifically required by Minnesota Statutes, section 14.25, mailing a Notice of Cancellation to these people as soon as possible after the end of the comment period is good practice. A form for this notice is in the appendix as **NTC-CNCL**. There is no form for a certificate of mailing this Notice in the appendix because it is not required.

Checklist for Chapter 6 – Giving Dual Notice

Date Completed	Item
<hr/>	6 – Entire chapter reviewed before proceeding - Decision made on how to proceed
<hr/>	6.1 – Considerations before proceeding - 6.1.1 – Rules and SONAR done - 6.1.2 – Allow time to complete steps - 6.1.3 – 60 days after Request for Comments published - 6.1.4 – With 18 months of new or revised rulemaking authority (if applicable) - 6.1.5 – Consideration for rules affecting farming operations - 6.1.6 – Counting time
<hr/>	6.2 – Agency approval to give Notice obtained - If agency is a multi-member board, BD-NTC form used
<hr/>	6.3 – Governor’s Office approval obtained - GOV-PRPS used
<hr/>	6.3 – Consult with MMB - MMB-LTR used
<hr/>	6.4 – Revisor’s Draft Approved for Publication obtained (with certificate signed by the Revisor)
<hr/>	6.5 – Tentative hearing date and location set. OAH contacted. - 6.5.1 – Hearing date chosen. Factors considered: - 30-day comment period (minimum) - 10 additional days after end of comment period - OAH review time (5 working days) - Rules affecting farming operations (30 days additional notice and, if a public hearing, at least one in agricultural area – unless hearing is virtual) - State Register deadlines - Availability of key agency personnel - Give yourself enough time - 6.5.2 – Prehearing comment period considered - Optional for boards – BD-WKSHEET used - 6.5.3 – Location arranged; videoconference or virtual considered

Date Completed	Item
	- 6.5.4 – OAH contacted
	6.6 – Dual Notice drafted - NTC-DL form used - 6.6.1 - Using OAH’s eComments website to collect comments considered - 6.6.2 - “Substantially different” rules considered
	6.6 – Dual Notice drafted - NTC-DL form used - 6.6.1 - Using OAH’s eComments website to collect comments considered - 6.6.2 - “Substantially different” rules considered
	6.7 – Additional Notice Plan developed
	6.8 – OAH contacted - 6.8.1 – ALJ assigned - 6.8.2 – Set up eComments (if using) - 6.8.3 – Letter to OAH - HR-RQST letter used for cover letter - Request approval of Additional Notice Plan (optional) - 6.8.4 - Request omission of full text of proposed rules from publication (rare) - 6.8.5 – eFile rule-related documents
	6.9 – Notice finalized - Notice signed and dated by: _____
	6.10 – SONAR emailed to Legislative Reference Library - LRL used
	6.11 – Notice published in the <i>State Register</i> - <i>State Register</i> website used
	6.12 – Notice sent - CRT-LIST and CRT-MLNG used
	6.13 – Notice given per Additional Notice Plan - Actions documented and CRT-GNRC used
	6.14 – Notice given to Legislators - LEG used

Date Completed

Item

6.15 – Other applicable statute or rule requirements met

6.16 – Comments tracked; lists maintained

- comments on the rules, written or oral
 - hearing requests and hearing request withdrawals
 - requests for free copy of the rules
 - requests to be placed on the agency’s rulemaking mailing list
 - requests for notice of filing with the Secretary of State
 - requests for notice of submission to ALJ
 - **COMMENT-TRACKER** used
-

6.17 – Proceed according to number of hearing requests

- **6.17.3** - If 25 or more, hearing preparations made (Chapter 9)
 - Agency leadership, staff members, and agency AG (if using) notified
 - ALJ notified
 - Hearing room confirmed (if physical location used)
 - Hearing requestors notified. **HTC-HR25** and **CRT-HR25** used
 - **6.17.4** - If less than 25, hearing canceled and Chapter 8 used to adopt rules
 - ** Hearing canceled at least 3 working days before hearing
 - Agency leadership, staff members, and agency AG (if using) notified
 - ALJ notified; **ALJ-CNCL** used
 - Hearing room canceled (if applicable)
 - If hearing withdrawals reduced number of hearing requests below 25, requestors notified. **NTC-HRWD** and **CRT-HRWD** used.
 - If fewer than 25 hearing requests (and agency did nothing to obtain withdrawals), requestors notified. **NTC-CNCL** used.
-

Chapter 7 - Giving Notice of Hearing

Introduction

Once the rules and SONAR have been drafted, you must decide how to proceed with your rulemaking. You have three choices:

1. Publish a Notice of Hearing
2. Publish a Notice of Intent to Adopt Rules Without a Public Hearing
3. Publish a Dual Notice, where you publish a hearing date but state that you will cancel the hearing and adopt the rules without a hearing if fewer than 25 people request a hearing.

In deciding how to proceed, you should consider several factors. If the rules are controversial and 25 or more people are likely to request a hearing, you will most likely give a Notice of Hearing (Chapter 7). If there is near universal agreement with the rules by affected parties, you might consider giving a Notice of Intent to Adopt Rules Without a Public Hearing (this chapter). If you really cannot predict whether there will be more or fewer than 25 people requesting a hearing, you might want to go with a Dual Notice (Chapter 6).

In some cases, the issues surrounding the rules are so controversial or so political that the agency will decide to give Notice of Hearing regardless of whether it thinks 25 people will request a hearing.

This chapter explains how to start the formal rule-adoption process using a **Notice of Hearing**. It is a good idea to review this entire chapter before proceeding. At the end of this chapter is a checklist so you can easily note when you have completed each of the required steps for giving a Notice of Hearing.

7.1 Considerations

7.1.1 Rules and SONAR must be done

Before you start this chapter, you should be finished developing your rules and writing your SONAR. Chapters 3 and 4 describe rule and SONAR development.

7.1.2 Leave plenty of time for completion of steps

Everything will take longer than you think it will. Be sure to prepare the paperwork for each step well ahead of the day that it needs to be signed or approved. Some things take time, such as getting signatures for various approvals and getting Revisor's drafts of the rules. People are not always available on a Tuesday morning to sign documents so that you can meet the *State Register's* deadline.

7.1.3 Cannot propose rules until *at least* 60 days after Request for Comments is published

Under Minnesota Statutes, section 14.101, an agency may not publish a Notice of Intent to Adopt or a Notice of Hearing until at least 60 days after it has published a Request for Comments (see Chapter 2).

7.1.4 Rulemaking authority expires 18 months after the effective date of the law authorizing the rules

An agency must publish a Notice of Intent to Adopt Rules or a Notice of Hearing within 18 months of the effective date of the law authorizing the rules or the rulemaking authority expires.¹ This applies to first-time rule adoptions under the statutory authority and not to subsequent amendments or repeals.

7.1.5 If proposed rules affect farming operations:

There are two statutory requirements for an agency when it proposes rules that affect farming operations.

- “Before an agency adopts or repeals rules that affect farming operations, the agency must provide a copy of the proposed rule change to the commissioner of agriculture, no later than 30 days prior to publication of the proposed rule in the *State Register*.”²
- “When a public hearing is conducted on a proposed rule that affects farming operations, at least one public hearing must be conducted in an agricultural area of the state.”³

Everybody is affected by everything to some degree, so where do you draw the line in determining whether farming operations will be affected by your rules? Common sense says that the rules would have to *significantly* affect farming operations to trigger the extra notice and hearing requirements. The requirements related to giving Notice of Hearing are consistent with this position in that the Notice must be given to persons or classes of persons who may be *significantly* affected.

Even this guidance will not solve the problem if you have a close question about your rules significantly affecting farming operations. If you play it safe and proceed as if your rules triggered the statutory requirements, you would, by virtue of this, guarantee an extra 30 days in the adoption process and extra hearing expenses for holding at least one hearing in an agricultural area. If, on the other hand, you determine that your rules have a small, but insignificant, effect on farming operations and therefore do not trigger the statutory requirements, you risk that your rules will be disapproved at the end of the process and that you will have to start over at the beginning of the formal rulemaking process.

¹ Minn. Stat. § 14.125.

² Minn. Stat. § 14.111.

³ Minn. Stat. § 14.14, subd. 1b.

In one of the few rulemakings to address this issue since this requirement was enacted, the ALJ determined that the rules did not affect farming operations. (Water and Wastewater Operators Certification Rules, Chapter 9400, adopted jointly by the Minnesota Department of Health and the Minnesota Pollution Control Agency in 1996.) The ALJ based this decision on the fact that the rules were not specifically designed to affect farming operations and that while an impact might occur, it would be no more than the impact to the community in general. A further basis for the decision was that no regulatory controls were directed at or triggered by farming operations as such.

There is no formal OAH procedure to request prior approval of an assertion that rules do not affect farming operations like there is with seeking prior approval of an Additional Notice Plan. Until the Legislature acts or until precedent is established for interpreting this statute, use your best judgment in asserting whether your rules affect farming operations.

If Minnesota Statutes, section 14.111 applies to your rules and you notify the Commissioner of Agriculture, send a copy to Doug Spanier, Department Counsel for Agriculture.

7.1.6 Counting time

The APA has many time-related provisions. When counting time, the day that an action occurs—such as mailing a notice—does not count and the last day counts.⁴

Calendar day. A period is counted in calendar days unless it is specifically stated in statute or rule that the period will be counted in “working days.” Calendar days include Saturdays, Sundays, and state holidays. However, if the period ends on a Saturday, Sunday, or state holiday, the period is extended to end on the next day that is not a Saturday, Sunday, or state holiday.

Example: For a seven-day period, a period starting on a Monday ends the next Monday. If that Monday were a state holiday,⁵ the period would end on Tuesday.

Working day. Working days do not include Saturdays, Sundays, and State holidays.

Example: For a seven-day period, a period starting on a Monday would end the next Wednesday. If a state holiday falls within the seven-day period, the period would be extended and end on Thursday.

7.2 Get Agency Approval to Give Notice

How you get approval within your agency is as individual as your agency. It is a good idea to circulate draft documents to those who might edit them well in advance so the only last-minute edits will be typos or spelling errors. Your agency might use a memo that contains a brief description of the rules

⁴ Minn. R. 1400.2030, subp. 1.

⁵ See Minn. Stat. § 645.44, subd. 5.

and details any controversial issues or policy decisions. Some agencies have formal routing processes and sign-off sheets to document approval by all persons in the chain of command. Other agencies are satisfied by verbal briefings followed by the commissioner signing the Notice of Intent to Adopt Rules Without a Public Hearing.

In some agencies, it is standard practice for the agency's Assistant Attorney General (AG) to review and sign off on all rule projects. An agency that is a multi-member board must follow board procedures, which usually means passing a formal resolution authorizing the Notice and authorizing a person to sign the Notice. A form for such a board resolution is in the appendix as **BD-NTC**.

7.3 Get Governor's Office Approval to Give Notice; Consult with MMB

The Governor's Office administrative rule review policy, **GOV-PLCY**, states:

PROPOSED RULE AND SONAR FORM

After the agency has published its Request for Comment, created the SONAR, and has final or almost final draft rules, it should complete the Proposed Rule and SONAR Form and the Commissioner or Director sign it. The agency must then submit the completed form, SONAR, and draft rules to the Governor's Office.

This stage is crucial to rulemaking and is the critical point of information for the Governor's Office. The Proposed Rule and SONAR Form seeks the information received during the Request for Comment, an Executive Summary of the SONAR, supporters, opponents, possible controversies, and any significant changes from the Preliminary Proposal Form. The form also contains an 'other' box. The Governor's Office understands that every rulemaking experience is slightly different. Therefore, the "other" box seeks information that might not fit into the SONAR or one of the other boxes of information requested. The 'other' box can be viewed as 'any information that may be of importance to this rule.'

The Proposed Rule and SONAR Form again seeks fiscal impact information. However, at this point, only two options (yes or no) exist. The fiscal impact 'yes' box should be checked for positive or negative fiscal impact to the state of Minnesota. If the fiscal impact declaration changed from the Preliminary Proposal Form, the agency should explain why. Within the SONAR Executive Summary box, the agency should include all fiscal information that affects individuals, businesses, units of government, or the agency itself.

NOTICE OF INTENT TO ADOPT PROPOSED RULES

The agency must receive official approval from the Legislative Coordinator of LACA before proceeding with the Notice of Intent to Adopt Proposed Rules. In most cases, the agency will receive the approval to proceed with the Notice of Intent to Adopt Proposed Rules within three weeks of the Governor's Office's receiving the SONAR, draft rules, and Proposed Rules and SONAR Form. If the agency hasn't received a communication by the 21st day after the Governor's Office received this information, the agency should contact the Legislative Coordinator for a status report.

The agency's Policy Advisor will communicate any questions, comments, or concerns about the content of the proposed rule to the agency.

The agency may proceed with the Notice of Intent to Adopt Rules after the Policy Advisor has approved the proposed rule and only after the Legislative Coordinator has communicated approval to the agency.

The Governor's Office has been reliably timely at doing its review within its self-imposed three-week deadline. Nevertheless, this review might take additional time depending on the scope and nature of the rules. If you have any time constraints regarding your rules, you should inform the Governor's Office to help ensure that your rules will be reviewed within the time that you need them.

This is also the time for the agency to consult with MMB to help evaluate the fiscal impact and benefits of proposed rules on local governments. Send a copy of the Governor's Office form, draft SONAR, and draft rules to the Executive Budget Officer (EBO) for your agency to initiate the consultation with MMB. A form for a letter to your EBO is in the appendix as **MMB-LTR**. You do not need to wait for MMB's response to move forward with giving notice.

7.4 Get a Revisor's Draft Approved for Publication

Before the agency may publish the rules and the Notice of Intent to Adopt Rules Without a Public Hearing, the rules must be in the Revisor's format with a Revisor's certificate stating that the rules are approved as to form. *See section 3.3.1 for details on obtaining a preliminary Revisor's draft.*

When your rules are ready to propose, provide the Revisor with any final changes and ask for "a draft approved for publication." Unless the Revisor is busy with the Legislative Session or other projects, a Revisor's draft approved for publication can usually be produced fairly quickly if there are not too many changes from your preliminary draft. Contact your Revisor in advance to see how long it will take.

7.5 Set a Tentative Hearing Date and Location; Contact with OAH

In most cases, it is best to find a hearing date **and time** that is compatible with all necessary agency personnel (including your AG, if applicable) before you contact OAH to request an ALJ. Additionally, you will want to determine how you will hold your hearing (such as, in a specific location, virtually through WebEx or other online platform, or via videoconferencing). If more than one day is needed for the hearing, schedule accordingly. If you plan to accommodate people outside of regular business hours, you must plan accordingly for this too and disclose that fact when requesting an ALJ.

Note: Each judge has their own preferences for hearings. It is best practice to communicate regularly with OAH Administrative Rule and Applications Specialist, William Moore, at William.T.Moore@state.mn.us or (651) 361-7893 to work out the details.

7.5.1 Choose a hearing date

Consider the following factors in choosing a hearing date:

- **30-Day comment period.** The Notice of Hearing must be published at least 30 days before the hearing. Also see section 7.5.2 about possibly building in more time to the prehearing comment period. You might wish to allow for focused comments and their possible resolution or, if your agency is a board, to have a meeting to approve changes.
- **OAH review time.** Before you publish your Notice of Hearing, you must request to schedule a hearing and submit the Notice, the rules, and the SONAR to the ALJ for review. The ALJ has five working days to review and approve or disapprove.⁶ You should also submit your Additional Notice Plan for review and approval at this time.⁷ If you submit your Notice and your Additional Notice Plan at the same time, the ALJ will do the review concurrently.
- **Rules affecting farming operations.** If your rules affect farming operations, you must provide a copy of the proposed rule change to the commissioner of agriculture at least 30 days before you publish the Notice in the *State Register*.⁸
- **State Register lead time.** The *State Register* publishes on Mondays. The submission deadline is noon on the Tuesday before publication (except when the deadline is changed by a holiday). **For rules that are long (more than 20 pages) or complex (include tables, charts, pictures, etc.) contact the editor to negotiate a deadline.**

⁶ Minn. R. 1400.2080, subp. 5.

⁷ Minn. R. 1400.2060, subp. 3.

⁸ Minn. Stat. § 14.111.

- **Availability of key agency personnel/clear your calendar.** Check with the key agency personnel who should be at the hearing to find out which dates they have available for the hearing. In most cases, key agency personnel include staff who have taken an important role in developing the rules, managers and decision-makers who have made and will make policy decisions regarding the rules, and your agency’s AG (if you are using your agency’s AG on the rulemaking).

When you check with key agency personnel about their availability for the hearing, you might want to schedule a prehearing “dress rehearsal.” You should also schedule a meeting with them for immediately after the hearing to discuss issues raised at the hearing. Ask them to leave enough time open in their schedules for other meetings at important times during the post hearing comment and rebuttal periods. It is a good idea to clear as much of your calendar as possible for the length of the comment and rebuttal periods after the hearing. It takes more time than you can imagine to review comments and prepare the agency’s response.

- **Several possible hearing dates.** If you find several dates that would work for the hearing, defer to the ALJ for choosing a date.
- **Give yourself enough time.** If you are done and ready to go with everything (rules approved by Revisor, SONAR done, and all agency and Governor’s Office approvals obtained), then only consider the factors listed above in setting your hearing date. If you don’t yet have an approved Revisor’s rules draft or your SONAR is not yet finished or the rules are still circulating for review and approval within your agency or at the Governor’s Office, then leave enough time for these things to be completed. There are usually several people at each agency and at the Governor’s Office who must approve going forward with proposed rules. **Be aware that the last steps of finalizing the rules and SONAR can be excruciatingly slow.**

7.5.2 Prehearing comment period

You might want to build more time into the prehearing comment period to obtain focused comments and analyze issues that have emerged so you can prepare to address or resolve them at the hearing. You may come to the hearing with modifications to the rules in response to prehearing comments that will resolve or diffuse controversy.

If your agency is a multimember board, you might need to build in time for a board meeting between the end of the 30-day comment period and the hearing to consider comments and approve any needed changes to rules. An optional worksheet for boards to keep track of the dates involved appears in the Appendix as **BD-WKSHEET**.

7.5.3 Arrange for a location; consider holding the hearing via videoconference or virtually

Just about any location is okay for the hearing if it is large enough for the number of people likely to attend the hearing and if it is accessible to people with disabilities. A board room or meeting room at

your agency would be okay if it is large enough. If your rules affect farming operations and if you have a public hearing in a physical location, remember that at least one hearing must be in an agricultural area of the state (see section 6.2.6 of this chapter). Also, be aware of any hearing location requirements that might be specific to your rules or your agency.

If your rules affect persons from around the state, you might consider making your hearing available via videoconference or holding a virtual hearing.

A **videoconference hearing** typically refers to a hearing that is held in multiple physical location. Attendees can see and hear each of the locations and participate as needed.

A **virtual hearing** refers to a hearing held entirely through an online platform, such as WebEx, Teams, or Zoom. There is no physical location for a virtual hearing.

Holding virtual hearings has become the preferred method for OAH (when in doubt, check with your ALJ). WebEx or Teams are the preferred platforms. Please note that WebEx requires a license and someone who is familiar with operating the software.

7.5.4 Contact OAH

Each judge has their own preferences for hearings. It is best practice to communicate regularly with OAH Administrative Rule and Applications Specialist, William Moore, at William.T.Moore@state.mn.us or (651) 361-7893 to work out the details for the hearing, including choosing the date and location.

If you are holding a virtual hearing, you may also want to schedule a hearing “run through” with the ALJ through whatever platform you intend to use during the hearing. That way, you have it scheduled should you hold a hearing.

7.6 Draft the Notice of Hearing

A Notice of Hearing must contain the information in Minnesota Rules, part 1400.2080, subparts 2 and 4. A form for the Notice of Hearing is in the appendix as **NTC-HR**. **NTC-HR** is designed to be a checklist for meeting the requirements of part 1400.2080. If your hearing will be virtual, you must include the meeting details in your Notice. The ALJ may also request that you provide this information on your rulemaking website and include the website in your Notice.

Example of how one agency provided WebEx details for their virtual hearing in the Notice of Hearing:

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, the Board will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The Board will hold the hearing on Thursday, February 2, 2023, starting at 9:30 a.m. The hearing will continue until all interested persons have been heard. Administrative Law Judge Barbara J. Case is

assigned to conduct the hearing. Judge Case’s Legal Assistant William Moore can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7900 and fax 651-539-0310 or william.t.moore@state.mn.us.

For a video and audio connection, join the hearing through an internet connection, such as with a computer or tablet:

Enter *https://minnesota.webex.com*

Meeting number (access code): 2490 892 3819

Password: PELSB

For audio connection only, join the hearing by phone:

Call: 1-415-655-0003 (US Toll)

Access code: 2490 892 3819

7.6.1 Collecting comments

OAH collects public comments on its [eComments website \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/), as well as through U.S. Mail, eFiling, personal delivery, or fax. Public instructions for making comments can be found at [eComments website \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/). For additional details on setting up your public eComments site, see section 7.8.2.

7.6.2 “Substantially different” rules

The description of the rules in the Notice might affect whether post-comment modifications to the rules will make the adopted rules “substantially different” from the proposed rules.

Minnesota Statutes, section 14.05, subdivision 2, specifies the scope of the matter announced in the Notice, logical outgrowth, and fair warning as factors to be considered when determining whether the adopted rules are substantially different from the proposed rules. For example, suppose you have two substantially different alternative rule provisions or rules that set a numerical value (such as pollution discharge levels, noise levels, minimum number of employees to trigger a requirement, or utility rates). You might be able to draft the description of the rules in the Notice in a way that will allow the agency to adopt either alternative or adopt a value within a range without having to go through additional rule proceedings to adopt substantially different rules. The point is to provide sufficient notice and fair warning to the public about the potential scope of the proposed rules.

To adopt rules that are substantially different from the proposed rules, you must go through additional rule proceedings.⁹

7.6.3 Timing the signatures

Before publication, the Dual Notice must be signed and dated, but this cannot be done until after the Chief ALJ assigns an ALJ and the ALJ approves the Notice and the hearing date.

7.7 Develop an Additional Notice Plan

7.7.1 Develop an Additional Notice Plan

The agency is required to “make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication.” Minnesota Statutes, section 14.23, requires that the SONAR contain a description of “the agency’s efforts to provide additional notification . . . or must explain why these efforts were not made.” In other words, the agency must develop and implement what is called an Additional Notice Plan to reach significantly affected persons and then include a description of this Additional Notice Plan in its SONAR.

There are many ways for an agency to develop an Additional Notice Plan. One way is to work with agency staff who are working on the rules or who will work with regulated parties after the rules are adopted to (1) identify persons or classes of persons who might be significantly affected by the proposed rules, (2) select ways (in addition to publishing in the *State Register* and mailing to persons on the agency’s rulemaking mailing list) designed to reach these persons or classes of persons, and (3) write down your decisions and the rationale for them.

You should be creative in developing your plan to reach potentially affected persons. If this is a small group of persons, perhaps mailing individual letters would be effective. If this is a large group of persons where an individual mailing is too expensive or cumbersome, then a reasonable plan could be to mail the Notice and rules to persons who have inquired, shown an interest, or commented on the rules and to send a postcard to the rest directing them to the website where the information may be found. Make sure your plan encompasses persons who would be in favor of your rules and persons who would be opposed to the rules. Also, your plan could include notice to trade or professional associations representing potentially affected persons, with a request to have the notice or a summary published in their newsletters.

⁹ Minn. R. 1400.2110, .2300, subp. 7; Minn. Stat. §§ 14.05, subd. 2, .24.

In some cases, your plan could include press releases to general circulation newspapers or to broadcast media. Agencies also use online resources, including special email lists and their public websites, and some develop issue-specific sites for a rulemaking.

There are undoubtedly other reasonable ways to reach potentially affected persons. In deciding what is reasonable, consider the cost and effort of what you might do and the likelihood that you will reach the intended persons. Finally, if your rules will potentially affect persons who do not traditionally interact with government, make an extra effort to reach these persons.

Section 7.13 discusses giving notice per your Additional Notice Plan and documenting your efforts.

7.7.2 OAH Prior Approval of Additional Notice Plan

An agency may ask OAH for prior approval of its Additional Notice Plan.¹⁰ It's best practice and strongly recommended to seek prior approval of your Additional Notice Plan, although this is optional, not mandatory. An approved Additional Notice Plan is OAH's final determination that the Additional Notice Plan is adequate, which means that prior approval protects you from a challenge to your Additional Notice Plan at the end of the rulemaking process when it would be difficult to correct a problem without starting all over again.

Further, OAH review of your Additional Notice Plan helps ensure that the agency makes reasonable efforts to give adequate and timely notice of the rules to persons who may be significantly affected by them. See section 7.8.3 for instructions on requesting prior approval of your Additional Notice Plan.

7.8 Contact OAH

7.8.1 Obtain an ALJ assignment

After finding one or more workable dates for the hearing, prepare almost finished drafts of the Notice of Hearing (section 7.6) and cover letter to OAH (section 7.8.3). Then, obtain an OAH Docket Number and ALJ assignment (section 1.7.1), unless you already obtained these before eFiling your Request for Comments for posting on eComments, and schedule your hearing. When the ALJ is assigned, follow OAH's directions.

Note: You may also obtain an OAH Docket Number and ALJ assignment without filing anything for OAH review such as a Request for Comments or Additional Notice Plan. Some agencies find it helpful to get an assigned ALJ and Docket Number so they can put this information on all the rule-related documents and forms.

¹⁰ Minn. R. 1400.2060.

7.8.2 Set up eComments

To set up your public eComments site, contact OAH Administrative Rule and Applications Specialist, William Moore, at William.T.Moore@state.mn.us or (651) 361-7893 at least a week before you publish your notice in the *State Register* or eFile your notice and provide the following information:

1. OAH docket number, if already assigned.
2. The dates that the comment period will open and close.
3. A link to the agency's rulemaking webpage, if applicable. OAH will add a link to the agency's rulemaking webpage on the eComments site.
4. If applicable, the date that the Notice will appear in the *State Register*.
5. Optional: Finalized, accessible copies of the documents you want to appear on the OAH eComments webpage, if any. These might include the Notice, proposed rules, SONAR, etc. See the [Office of Accessibility \(https://mn.gov/mnit/about-mnit/accessibility/\)](https://mn.gov/mnit/about-mnit/accessibility/) for more information on making documents accessible.

7.8.3 Letter to OAH

A form for the cover letter to the Chief ALJ requesting a hearing and submitting the necessary documents for review is in the appendix as **HR-RQST**. This letter is designed to serve as a checklist for meeting the requirements of parts 1400.2020 and 1400.2080 to request a hearing. The letter can also be used to request prior approval of your Additional Notice Plan under part 1400.2060.

A request to schedule a rule hearing must be accompanied by:

1. the proposed Notice of Hearing;
2. a copy of the proposed rules approved as to form by the Revisor;
3. a draft or final copy of the SONAR;¹¹ and
4. if requesting prior approval of your Additional Notice Plan, an explanation of why the agency believes that its Additional Notice Plan complies with Minnesota Statutes, sections 14.101 and 14.14, subdivision 1a--that is, why its Additional Notice Plan constitutes reasonable efforts to notify persons or classes of persons who might be significantly affected by the rules.

The letter requesting to schedule a hearing along with the required documents must be eFiled (see 7.8.5 below). Submitting these documents also serves as the agency's request for ALJ approval of the Notice before mailing it or publishing it in the *State Register*. In addition to reviewing the Notice, the ALJ must advise the agency as to when and where the hearing should be held to allow for participation by all affected interests. The ALJ has five working days to review and either approve the Notice or

¹¹ Minn. R. 1400.2080, subp. 5.

advise the agency how the Notice must be revised. Because the ALJ only has five working days to review the documents, best practice includes reaching out to William Moore BEFORE eFiling the documents to coordinate a date to submit the documents that works with the judge's schedule. It does no good to eFile documents when the judge is unavailable.

7.8.4 Omitting full text of the proposed rules from publication

The Chief ALJ may authorize an agency to omit the full text of the rules from the published Notice if the publication would be unduly cumbersome, expensive, or otherwise inexpedient.¹²

A best practice is to write a letter to the Chief ALJ explaining how your circumstances meet the three criteria listed in the statute and request permission to omit the full text. You should include this letter when you submit to OAH your Additional Notice Plan for prior approval.

7.8.5 eFiling rule-related documents

OAH requests that agencies eFile all rule-related documents wherever possible. OAH has posted step-by-step instructions for creating an account and filing your documents on its website at [OAH Forms & Filing \(https://mn.gov/oah/forms-and-filing/efiling/\)](https://mn.gov/oah/forms-and-filing/efiling/). (The page also includes a link to frequently asked questions.) **See section 1.7 for explicit instructions.**

Always check to make sure that the system has uploaded your documents. Saving a screen shot or printing the window showing a file has uploaded is prudent. In addition, save any correspondence or documents that you receive from OAH for your own records because those items might not remain in your eFile folder.

7.9 Finalize the Notice of Hearing

After the ALJ approves your hearing date and Notice of Hearing, you need to finalize the Notice. Enter the name of the ALJ, make any changes required by the ALJ, and then print the Notice if you'll be mailing it.

The Notice must be signed and dated by the person authorized to give the notice, which is usually a commissioner, board chair, or a designee.

Note: An image of the signature does not need to appear in the publication in the *State Register*; the typed name of the authorized person is sufficient.

¹² Minn. Stat. § 14.22, subd. 1(b).

7.10 Email the SONAR to the Legislative Reference Library

When an agency sends the Notice of Hearing, the agency must send a copy of the SONAR to the Legislative Reference Library.¹³ The library requests that all agencies email SONARs to sonars@lrl.leg.mn. The SONAR need not be signed, but a signature is a good idea to show that it is official. The agency should send an email, attaching a cover letter to the Legislative Reference Library (form **LRL** in the appendix) and the SONAR (preferably in PDF). You should keep a copy of your cover letter to document compliance with this requirement.

Note: The date on the certificate and cover letter should be the same as or earlier than the date you send the Notice of Hearing.

Why send a cover letter with your email transmission? According to the library, it retains the cover letters because they provide useful information that could answer future questions about your project. A form for the cover letter is in the appendix as **LRL**. If you have questions for the LRL, you may contact Chris Steller at (651) 296-0586.

7.11 Publish the Notice in the *State Register*

The Notice of Hearing and the full text of the proposed rules must be published *at least 30 days* before the end of the comment period unless the Chief ALJ has authorized omitting the full text. (See information on how to publish in the *State Register* and “Production Schedule” for publication dates and deadlines on the [Minnesota State Register website](https://mn.gov/admin/bookstore/register.jsp) (<https://mn.gov/admin/bookstore/register.jsp>.)

When you send your documents to the *State Register*, you must provide the *State Register* Editor with your Revisor’s ID number and a copy of the Revisor’s certified rule PDF. The editor will request the Revisor’s Office to transmit the approved rule text directly to the *State Register* electronically.

You must keep a copy of the Notice as published in the *State Register*, as this will later be submitted to OAH. **Note:** You do not need to submit the whole *State Register* edition to OAH; you can submit just the cover plus the pages on which your Notice appears.

7.12 Send the Notice

You must send your Notice through mail or email to everyone on your agency’s rulemaking mailing list **at least 33 days** before the comment period ends.¹⁴ However, there is no good reason to wait until

¹³ Minn. Stat. § 14.23.

¹⁴ Minn. R. 1400.2080, subp. 6. The 33-day requirement applies only if you are mailing the requirement; otherwise, it must be 30 days before the comment period ends.

three days before the publication date to begin work on sending the Notice, especially if you are mailing the Notice and not emailing it. There is no penalty for sending the Notice early. Email delivery can be accomplished using a subscription service such as GovDelivery.

Note: If you have a large mailing list or you frequently get additions to your mailing list, make sure that you also mail to any persons who have been added to your mailing list after you began work on your mailing and before the date of mailing.

You are not required to send a copy of your rules along with the Notice. If the rules are not included, the Notice must include an easily readable and understandable description of the nature and effect of the proposed rules and an announcement that a free copy of the proposed rules is available on request from the agency.¹⁵

A Certificate of Accuracy of the Mailing List and a Certificate of Mailing must be completed and saved for submission to OAH. The date on the Certificate of Mailing should be the same as the date that the Notice was sent. Forms for the certificates are in the appendix as **CRT-LIST** and **CRT-MLNG**. If one person performs both actions, you can create a single certificate for that person that covers both actions (see **CRT-LIST-MLNG-SAMPLE**).

7.13 Give Notice per your Additional Notice Plan

Give notice according to your Additional Notice Plan and document your efforts. For any mailed notice, whether using U.S. Mail or email, complete a certificate of mailing and attach a copy of the notice and the mailing list. **[Note:** Traditionally, this Manual has advised you to attach mailing lists to your certificate. This remains good practice **as long as your mailing list contains public information**. If your email lists consist of subscribers to your web delivery system, you may wish to describe your subscribers more generally. See the note in section 1.8.4 for Data Practices considerations.]

Detail any efforts you made to develop your mailing list. For more traditional paper-based Notices, obtain copies of newsletters or newspapers in which a Notice is published. Obtain tapes or transcripts of announcements made on radio or television. Detail any efforts you made to get a Notice published or broadcast, especially if you made a Notice available and others did not publish or broadcast it. You can document what you have done by using the generic certificate form that is in the appendix as **CRT-GNRC**.

¹⁵ Minn. Stat. § 14.22, subd. 1(a).

7.14 Give Notice to Legislators

An agency must notify certain legislators when it mails the Notice.¹⁶ The agency must send a copy of the Notice and SONAR to:

1. the chairs and ranking minority party members of policy and budget committees with jurisdiction over the subject matter of the proposed rules;
2. if it is within two years of the effective date of the law granting the authority, chief House and Senate authors of the rulemaking authority; and
3. the Legislative Coordinating Commission.

We recommend that you send a copy of the rules along with the Notice and SONAR. Forms for the cover letter and a certificate of compliance with this requirement are in the appendix as **LEG**.

Note: The statute says “send,” but does not specify the method. You may email your Notice to lcc@lcc.leg.mn (preferred address) or mail it to the Legislative Coordinating Commission, 72 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul MN 55155.

7.15 Meet Any Other Applicable Statutory or Rule Requirements

Meet any other statutory or rule requirements that are specific to your agency or to the rulemaking. Document what you do to comply with any other statutory or rule requirements.

7.16 Keep Track of Comments

After the Notice has been sent, carefully track all written comments on the proposed rules. This is important for various reasons. The most important being that the agency needs to consider and respond to any policy issues raised. Other important reasons to keep track of the comments include:

- Comments must be filed (along with any agency responses) with OAH as part of the rulemaking record reviewed by the ALJ.¹⁷
- If the proposed rules were not attached to the Notice as sent, the agency must give a free copy of the rules to any person who requests one.¹⁸
- The agency must place persons on the agency’s rulemaking mailing list when requested to do so.¹⁹

¹⁶ Minn. Stat. § 14.116.

¹⁷ Minn. R. 1400.2310.

¹⁸ Minn. Stat. § 14.22, subd. 1(a).

¹⁹ Minn. Stat. § 14.14, subd. 1a.

- After the hearing and at the very end of the rulemaking process, the agency must notify those persons who have requested that the agency notify them on the date the rules are filed with the Secretary of State.²⁰

It is important to keep careful track of comments because policy issues and the various requests might be buried in a comment letter. The agency may wish to develop separate lists or procedures to carefully track the comments for each purpose. A **COMMENT-TRACKER** is in the appendix.

Note: There is no requirement to acknowledge receipt or provide an individual response to each commenter, but depending on the number of comments you receive, you may choose to do so.

7.17 Proceed with the Hearing

Proceed with the hearing using chapter 9.

²⁰ Minn. Stat. § 14.16, subd. 1.

Checklist for Chapter 7 – Giving Notice of Hearing

Date Completed	Item
<hr/>	<p>7 – Entire chapter reviewed before proceeding</p> <ul style="list-style-type: none"> - Decision made on how to proceed
<hr/>	<p>7.1 – Considerations before proceeding</p> <ul style="list-style-type: none"> - 7.1.1 – Rules and SONAR done - 7.1.2 – Allow time to complete steps - 7.1.3 – 60 days after Request for Comments published - 7.1.4 – With 18 months of new or revised rulemaking authority (if applicable) - 7.1.5 – Consideration for rules affecting farming operations - 7.1.6 – Counting time
<hr/>	<p>7.2 – Agency approval to give Notice obtained</p> <ul style="list-style-type: none"> - If agency is a multi-member board, BD-NTC form used
<hr/>	<p>7.3 – Governor’s Office approval obtained</p> <ul style="list-style-type: none"> - GOV-PRPS used
<hr/>	<p>7.3 – Consult with MMB</p> <ul style="list-style-type: none"> - MMB-LTR used
<hr/>	<p>7.4 – Revisor’s Draft Approved for Publication obtained (with certificate signed by the Revisor)</p>
<hr/>	<p>7.5 – Tentative hearing date and location set. OAH contacted.</p> <ul style="list-style-type: none"> - 7.5.1 – Hearing date chosen. Factors considered: <ul style="list-style-type: none"> - 30-day comment period (minimum) - OAH review time (5 working days) - Rules affecting farming operations (30 days additional notice and, if a public hearing, at least one in agricultural area – unless hearing is virtual) <ul style="list-style-type: none"> - State Register deadlines - Availability of key agency personnel - Give yourself enough time - 7.5.2 – Prehearing comment period considered <ul style="list-style-type: none"> - Optional for boards – BD-WKSHEET used - 7.5.3 – Location arranged; videoconference or virtual considered - 7.5.4 – OAH contacted

Date Completed	Item
	<p>7.6 – Notice of Hearing drafted</p> <ul style="list-style-type: none"> - NTC-HR form used - 7.6.1 - Using OAH’s eComments website to collect comments considered - 7.6.2 - “Substantially different” rules considered
	<p>7.7 – Additional Notice Plan developed</p>
	<p>7.8 – OAH contacted</p> <ul style="list-style-type: none"> - 7.8.1 – ALJ assigned - 7.8.2 – Set up eComments (if using) - 7.8.3 – Letter to OAH - HR-RQST letter used for cover letter - Request approval of Additional Notice Plan (optional) - 7.8.4 - Request omission of full text of proposed rules from publication (rare) - 7.8.5 – eFile rule-related documents
	<p>7.9 – Notice finalized</p> <ul style="list-style-type: none"> - Notice signed and dated by: _____.
	<p>7.10 – SONAR emailed to Legislative Reference Library</p> <ul style="list-style-type: none"> - LRL used
	<p>7.11 – Notice published in the <i>State Register</i></p> <ul style="list-style-type: none"> - <i>State Register</i> website used
	<p>7.12 – Notice sent</p> <ul style="list-style-type: none"> - CRT-LIST and CRT-MLNG used
	<p>7.13 – Notice given per Additional Notice Plan</p> <ul style="list-style-type: none"> - Actions documented and CRT-GNRC used
	<p>7.14 – Notice given to Legislators</p> <ul style="list-style-type: none"> - LEG used
	<p>7.15 – Other applicable statute or rule requirements met</p>
	<p>7.16 – Comments tracked; lists maintained</p> <ul style="list-style-type: none"> - comments on the rules, written or oral; COMMENT-TRACKER used - requests for free copy of the rules

Date Completed

Item

- requests to be placed on the agency’s rulemaking mailing list
- requests for notice of filing with the Secretary of State

PROCEED TO CHAPTER 9

Chapter 8 - Adopting Rules without a Hearing

Introduction

This chapter describes what to do after the 30-day comment period has ended and your agency plans to adopt the rules without a public hearing. It is a good idea to review this entire chapter before proceeding. At the end of this chapter is a checklist so you can easily note when you have completed each of the required steps.

Deadline

Be aware of the statutory deadline requiring that the rules be submitted to OAH within 180 days of the end of the comment period or the rules are automatically withdrawn.¹

8.1 Decide on any Changes to the Rules

During the 30-day comment period, the agency may receive comments on the proposed rules that point out errors or request changes. You are not required to make changes suggested by the public, but sometimes the comments are compelling. If the agency considers making a modification to the rules as proposed, assess whether the modification will result in a substantially different rule from those proposed. If a modification does not result in a substantially different rule, make note of the reasons because you must explain this in your Order Adopting Rules. If they do result in substantially different rules, you should seriously consider whether the modification is necessary because you will have to follow the notice procedures under Minnesota rules, part 1400.2110.

If you decide to modify the rules, get agency decision makers to approve not only the changes but also the rationale for the changes. If you choose not to make changes suggested by the public, it is a good idea to brief agency decision makers and request their sign off on decisions not to act.

How you get approval within your agency is as individual as your agency. A cover memo describing the stage of the process and highlighting potentially controversial or newly discovered issues is a good idea. Some agencies have formal routing processes and sign-off sheets to document approval by all persons in the chain of command. Other agencies are satisfied by verbal approvals followed by the commissioner signing the Order Adopting Rules.

An agency that is a multimember board must follow board procedures, which usually means passing a formal resolution adopting the rules and authorizing a person to sign the Order Adopting Rules. A form for such a board resolution is in the appendix as **BD-ADPT**.

¹ Minn. Stat. § 14.26, subd. 1.

Note: There is no APA requirement mandating that agencies respond to public comments, though case law suggests that agencies should respond to comments on substantive issues.² But ignoring comments is unwise; for example, if a commenter brings up a substantive issue with one of your proposed rules that is unaddressed in your SONAR and you ignore it, the ALJ will be left to rule without the benefit of your agency’s rebuttal. An agency must always defend the need and reasonableness of its proposed rules, and not responding to well-reasoned comments greatly undercuts an agency’s defense of its rules. Simply ignoring comments also undercuts the key purposes of the APA of agency accountability and transparency.

8.2 Prepare Agency Responses to Comments Received During 30-Day Comment Period

There are no specific requirements for when and how to respond to comments or what form a response should take, so you have flexibility to craft a solution that works for your project. Ultimately, an agency must explain what evidence it is relying on and how that evidence connects rationally with the agency’s choice of action. You need to address all the topics raised, but you do not have to respond at length to each comment individually if they raise similar issues.

Grouping the comments by subject and responding collectively is a good method for minimizing duplication or volume. It’s also a good idea to identify the rule parts that correspond to the comment, if applicable. Focusing on the controversial or technical issues is efficient. Whatever you can do to help the public and ALJ understand your agency’s rationale will serve your agency well.

You should start drafting your answers as soon as the comments are received. Because you must submit your answers for OAH review, a common practice is to add them to the exhibits that you will submit. [This process appears in section 8.6.] You could either intersperse your response with the comments or create a separate document of responses to file. Minnesota Rules, part 1400.2310, item J³ gives you a good place to collect your responses organized in a way that makes sense to your readers, especially the ALJ who will be officially reviewing the record.

Additionally, the sample letter for responding to comments made at a hearing **HR-RSPNS** is a useful format to consider adapting for this purpose.

² *Minnesota Environmental Science and Economic Review Bd. v. Minnesota Pollution Control Agency*, 870 N.W.2d 97 (Minn. Ct. App. 2015): An agency must respond to questioning “in order to explain the purpose or intended operation of a proposed rule, or a suggested modification, or for other purpose if material to the evaluation or formulation of the proposed rule.”

³ Minn. R. 1400.2310(J).

8.3 Governor's Office Approval

After you decide on the final rules, you must get approval to proceed from the Governor's Office. Per the Governor's Office administrative rule review policy, **GOV-PLCY**:

FINAL RULE FORM

This form [**GOV-FNL**] notifies the Governor's Office of any new information or late changes. This last notification gives the Governor's Office a final opportunity to make changes before only having the option of veto. The Governor's Office is seeking information describing any late controversies that might have arisen since the agency submitted the Proposed Rule and SONAR Form. The Final Rule Form requests information on any changes to the previously submitted draft rules. Also, if a hearing were requested, information as to why it was requested. The timing for submitting the Final Rule Form varies, depending on the type of rulemaking the agency is doing. *If the agency is adopting rules without a hearing, adopting rules after a public hearing, or adopting expedited rules, the agency must wait for the Policy Advisor to approve the final rule before taking the next step, as described below. [emphasis added]*

When the agency is adopting rules without a hearing: the agency must submit the completed Final Rule Form to the Office of the Governor when the agency has decided on the final rules and its SONAR is complete. The agency must wait for the Office's approval before submitting its request to Office of Administrative Hearings (OAH) for rule review and approval. If the ALJ who performs the review makes any substantive recommendations to the rule or finds defects, the agency should resubmit the Final Rule Form, clearly labeling it as a revised form. The agency must explain its response to the ALJ's Report, including any large deletions from the rule. The agency should also submit a copy of the ALJ Report with the revised Final Rule Form. Upon final approval of the rule by the Policy Advisor, the Legislative Coordinator will contact the agency and inform it that it may submit the signed Order Adopting Rules to the OAH.

* * *

. . . If the proposed rule remained substantially unchanged from the SONAR stage, final review of the rule should take less than a week. If the agency hasn't received a communication by the 7th day after the Governor's Office received the above information, the agency should contact the Legislative Coordinator for a status report.

8.4 Get a Copy of Adopted Rules from the Revisor

During the 30-day comment period, the Revisor will send you a “stripped” copy of your proposed rules with all stricken text deleted and all new text incorporated in the rules. The rule title will indicate that the rules are in “adopted” form (the number on the top of your draft will change from “RD” to “AR”).

12/20/21	REVISOR	RSI/EH	AR4726
1	Department of Commerce		
2	Adopted Expedited Rules Relating to Workers' Compensation Ratemaking		

If you are making no changes to the proposed rules, submit this copy to OAH for the official review. If you are making changes to the proposed rules, ask the Revisor to mark the modifications and send you an updated copy of the adopted rules for submission to OAH. In your request, indicate when you would like the adopted rules back, and the Revisor will tell you if that is workable.

8.5 Draft the Order Adopting the Rules

The commissioner (or other person authorized to adopt the rules) must sign the Order Adopting Rules.⁴ A form for the Order is in the appendix as **ORD-ADPT** and is designed to be a checklist to meet the requirements of Minnesota Rules, part 1400.2090. A form with sample findings for making changes to the proposed rules is in the appendix as **SMPLFNDS**.

Carefully watch your timing for signing the Order Adopting Rules because it is complicated. You'll need to submit an unsigned draft for OAH review because for rules adopted without a hearing, agencies must file “the order adopting the rule that complies with the requirements in part 1400.2090.”⁵ [See section 8.6.] However, until the ALJ has issued their report, the rule remains subject to change, which the Governor’s Office must approve. To deal with this timing issue, the Governor’s Office prefers that agencies submit an unsigned proposed Order for the official review.

While this process doesn’t strictly follow the law, it’s been common practice for many years. One advantage is that it eliminates the agency having to get its director’s or commissioner’s signature on the Order more than once. More importantly, it also prevents OAH from receiving the signed Order prematurely and mistakenly putting the final steps in motion without your knowledge, triggering the 14-day veto period before the Governor’s Office has approved the final rule.

⁴ Minn. R. 1400.2090.

⁵ Minn. R. 1400.2310(N).

Thus, it is important to retain control of this proceeding by using an unsigned draft Order at this stage. Remember that the next step is submitting the file for OAH official review, not signing the Order. Do not worry about getting the signed Order until you have received the ALJ Report.

8.6 Submit the File to OAH for Official Review

After you have received the Governor's Office approval, you may submit your file to OAH. Minnesota Rules, part 1400.2310, items A to P, set out the documents that you must file with OAH for official review of your adopted rules. All documents submitted for ALJ review should be eFiled. **(See section 1.7 for explicit instructions.)**

A sample cover letter to OAH is in the appendix as **NH-REVV**. Note that paragraphs A to P of the cover letter are keyed to items A to P of part 1400.2310, so the cover letter can serve as a checklist for meeting the requirements of part 1400.2310. As noted earlier, the rules must be submitted to OAH within 180 days of the end of the comment period or the rules are automatically withdrawn.⁶

Best Practices for Working Within OAH's eFiling System. To accommodate eFiling, it is best to take some extra steps to organize your documents before uploading them into OAH's system. Simply consolidating all your individual documents into one huge file will make navigating it difficult for both the ALJ's review and your own reference. You can make a consolidated file easier to navigate with a little planning. Here are some options (and it might be advisable to confer with your assigned ALJ on more complex cases):

- Organize your documents as described in Minnesota Rules 1400.2310, items A to P. OAH prefers that you consolidate the documents as one PDF document and bookmark them. Best practice: Include the agency response to comments along with those comments.
- If your case has a large volume of pages, consider adding a unique sequential page number through the entire set. This is often called applying a "Bates" stamp. Some photocopiers can do this, and so can Adobe Pro.
- Scan the pages as a single PDF or combine saved PDF files into a single PDF. Prepare an index keyed to the unique numbers. You can adapt the cover-letter text (NH-REVV) into a template for this purpose. In Adobe Pro, for example, it is simple to mark and label a bookmark at the first page of each document.
- If the filing is quite large, you may create more than one PDF. For example, a large volume of comments or a large map file may require a separate document to keep file size manageable.
- Consolidating your exhibits might simply exceed your technology's capabilities, so you might have to solicit additional assistance within your agency or acquire more powerful software, such as Adobe Pro.

⁶ Minn. Stat. § 14.26, subd. 1.

Also, consider your timing when eFiling. After you request OAH to assign an ALJ to your rulemaking, it's a good idea to communicate with the assigned ALJ (through William Moore) to notify the ALJ when you will file your record for review. Or you can wait to request OAH to appoint an ALJ only when the file is ready to submit. Because your submission of the rule record triggers a 14-day deadline by which the ALJ must review the record and approve the rule change, the key is to communicate clearly to OAH and any ALJ regarding the expected timing of your submission, and not to keep the ALJ waiting unnecessarily.

If you have questions about submitting your rules file to OAH, refer to **OAH-INF** in the appendix for the location of or general information about OAH.

Finally, always check to make sure that the system has uploaded your documents. Saving a screenshot or printing the window showing a file has uploaded is prudent. In addition, save any correspondence or documents that you receive from OAH for your own records because those items might not remain in your eFile folder.

8.7 Notice of Submission of Rules to OAH

During the rulemaking process, usually during the 30-day comment period, individuals may request to be informed of when you submit the rules to OAH for the official review. You must provide a Notice of Submission on the same day that the rules are submitted to OAH.⁷ If the proposed rules have been modified, the notice must state that fact and that a free copy of the proposed rules, as modified, is available upon request from the agency. Forms for the Notice and for the certificate showing the agency sent out this Notice are in the appendix as **NTC-SBM** and **CRT-SBM**.

8.8 ALJ Report

The ALJ has 14 days to review the rules for form and legality and issue a report. The ALJ can do one or more of the following:

1. Approve all or portions of the rules.
2. Disapprove all or portions of the rules.
3. Make technical suggestions for the agency to consider.

If the ALJ disapproves all or part of the rules, the Chief ALJ reviews the rules and issues a report in addition to the ALJ Report. The Chief ALJ has five working days to do this.⁸

⁷ Minn. Stat. § 14.26, subd. 1.

⁸ 1400.2300, subp. 6.

8.9 Withdrawal, Disapproval, or New Modifications of the Rules

After you receive the ALJ Report, identify options based on the ALJ's findings and recommendations. Within those options, decide how to proceed and get approval to do so from agency decision makers. Exactly how you proceed depends on the findings in the ALJ Report and on whether you want to make changes other than those approved by the ALJ. The various possibilities are described below.

Note: An agency must wait at least five working days after the ALJ Report is issued before taking any formal action on the rules (such as passing a resolution or submitting the Final Form to the Governor's Office).⁹ An agency that is a multi-member board must follow board procedures, which usually means passing a formal resolution adopting the rules and authorizing a person to sign the Order Adopting Rules. A form for such a board resolution is in the appendix as **BD-ADPT**.

8.9.1 Approval of the rules

If the ALJ has approved your proposed rules and you are either making no changes to the proposed rules or the ALJ has approved all changes in the ALJ Report, you can proceed with adopting your rules.

8.9.2 Disapproval and you choose to make suggested changes

There are three reasons the ALJ may disapprove your rules under part 1400.2300:

- The ALJ finds a defect in the rule text such as unfettered discretion, overly vague, etc. (subpart 6).
- The ALJ determines that you modified the rule so that it's substantially different from the proposed rule (subpart 7).
- The ALJ determines that you didn't adequately justify the need for and reasonableness of your rule (subpart 9).

As mentioned in section 8.8, if the ALJ disapproves the rules, the rules go to the Chief ALJ for further review. If the Chief ALJ disapproves the rules, they must explain why and tell the agency what changes are necessary for approval.¹⁰ The agency then may:

1. make the suggested changes or other changes to address the reasons for disapproval and resubmit the rules to the Chief ALJ;
2. ask the Chief ALJ to reconsider the disapproval; or
3. end the rule proceeding.

⁹ Minn. Stat. § 14.15, subd. 2. This limitation appears to apply only to the first issuance of the report; if your rules are disapproved and you correct the reason for the disapproval, you might be able to act on the rules immediately after getting the Chief ALJ's advice, but you should check with the Chief ALJ to make sure it is okay.

¹⁰ Minn. R. 1400.2240.

8.9.2.1 Making suggested or other changes to address disapproval

If the ALJ disapproves your rules **and** the agency chooses to make the changes suggested by the ALJ and Chief ALJ or other changes to solve the problems identified in the rules, then the agency should follow the steps under Minnesota Rules, part 1400.2300, subpart 8, for resubmission of the rules to the Chief ALJ.

Notes:

- You may resubmit your rule anytime within 180 days after the end of the 30-day comment period. However, if the 180 days expired while your rule was under review by the ALJ, you only have 30 days after receiving the ALJ Report to resubmit your rule.¹¹
- You will need Governor’s Office approval (see 8.9.6) and a Revisor’s copy of the changes to resubmit your rule.

8.9.3 Disapproval based on substantial difference, and you don’t want to make the suggested changes

If the ALJ disapproves your rules under Minnesota Rules, part 1400.2300, subpart 7, because they are substantially different than the proposed rules **and** the agency chooses not to make the changes suggested by the Chief ALJ, the agency has several options:

1. end the rule proceeding;
2. adopt the portions of the rules that are not substantially different (requires withdrawing rules¹²);
3. start a new rule proceeding to adopt the substantially different rules; or
4. proceed under Minnesota Rules, part 1400.2110, to adopt substantially different rules.

8.9.4 Disapproval based on need and reasonableness, and you don’t want to make the suggested changes

If the ALJ disapproves your rules under Minnesota Rules, part 1400.2300, subpart 9, because the agency has not shown the rules to be needed and reasonable **and** the agency chooses not to make the changes suggested by the Chief ALJ, the agency may submit the rules to the Legislative Coordinating Commission and the House and Senate policy committees with primary jurisdiction over state governmental operations for review.¹³ This course requires careful political consideration, and to the editors’ knowledge, has never happened.

¹¹ Minn. Stat. § 14.26, subd. 2.

¹² See section 8.9.1.

¹³ Minn. Stat. § 14.26, subd. 3(c).

8.9.5 Making recommended modifications or modifications other than those recommended

ALJs will sometimes recommend modifications without disapproving the rules. If the agency wants to adopt the rules with recommended modifications or modifications other than those recommended by the ALJ or Chief ALJ, the agency must submit to the Chief ALJ the filings required under Minnesota Rules, part 1400.2300, subparts 8 and 8a, for resubmission. The Chief ALJ has five working days to decide whether the resubmitted rule meets the standards of Minnesota Rules, part 1400.2100, and whether the agency’s modifications make the rule substantially different than the proposed rule.¹⁴

8.9.6 Withdrawal of rules

Sometimes an agency decides it must withdraw its proposed rules or a portion of its proposed rules. If you withdraw your rules from OAH review, refer to Minnesota Rules, part 1400.2300, subpart 4, for how to proceed. Note that statute requires that you publish notice in the *State Register* that you have withdrawn the rules.¹⁵ The form for Notice of Withdrawn Rules is available in the appendix as **NTC-WITHDRAWL**. At a minimum, the notice should:

- identify what rule parts are being withdrawn;
- reference the *State Register* citation at which the rules were initially proposed; and
- briefly summarize the rules and why they are being withdrawn.

For example:

Board of Cosmetology

Notice of Withdrawn Rules for Proposed Amendments to Governing Schools, Instructors and School Managers; Minnesota Rules, Chapter 2110; Proposed Repeal of Minnesota Rules parts 2110.0010, subparts 14 and 15; 2110.0100; 2110.0320, subparts 9, 11, and 12; 2110.0330, subparts 3, 4, and 5; 2110.0390, subpart 3a; 2110.0410, subparts 2 and 5; and 2110.0710; Revisor’s ID Number 4456, OAH Docket Number 65-9013-36457

The Minnesota Board of Cosmetologist Examiners is withdrawing its proposed amendment to rules governing schools, instructors and school managers that were published in the Dual Notice of Intent to Adopt Rules on September 26, 2022, in the *State Register*, volume 47, number 13, pages 285-314. Administrative Law Judge O’Reilly and Chief Judge Starr disapproved the amendments as not meeting the requirements of Minnesota Statutes, section 14.15, subdivisions 3 and 4, and Minnesota Rules part 1400.2240, subpart 4.

The board is withdrawing the following proposed amendments: Minnesota Rules, parts 2110.0010, subparts 14, 15, 17f, 18d, 18e, 18f, and 19a; 2110.0125; 2110.0190; 2110.0310; 2110.0320; 2110.0390, subparts 3, 3a, 3b, 5; 2110.0395; 2110.0410; 2110.0500; 2110.0510; 2110.0520; 2110.0525; 2110.0530; 2110.0545; 2110.0590; 2110.0625; 2110.0640; 2110.0650; 2110.0660; 2110.0670; 2110.0671; 2110.0680; 2110.0690; 2110.0705; 2110.0730; and 2110.0740.

The withdrawal is a modification to the Dual Notice published in the *State Register*, volume 47, number 13, pages 285-314...

¹⁴ Minn. R. 1400.2300, subp. 8a.

¹⁵ Minn. Stat. § 14.05, subd. 3.

What if an agency wants to withdraw portions of its rules? If the agency is proposing new language, the agency can strike the language in its AR draft instead of formally withdrawing the rules by publishing a withdrawal in the *State Register*.¹⁶ For larger withdrawals for which the agency still wants to adopt other parts of its rule, such as in the example above, the agency should follow the normal withdrawal process. A few tweaks are needed, however, because the APA doesn't explicitly outline a process for a hybrid rule withdrawal/rule adoption:

- Receive approval from the governor's office
- Send a letter to OAH stating that the agency plans to withdraw rule parts, citing to Minnesota Statutes section 14.05, subdivision 3, and Minnesota Rules, part 1400.2240, subpart 8 (or 1400.2300, subpart 4).
- Publish a Notice of Withdrawal in the *State Register*
- Fill out the AR draft with the *State Register* cites (volume and page number):

<p>2110.0320 [Withdrawn at ... SR ...]</p> <p>2110.0330 [Withdrawn at ... SR ...]</p> <p>2110.390 PHYSICAL REQUIREMENTS.</p> <p style="padding-left: 40px;">Subpart 1. Space.</p> <p style="padding-left: 80px;">A. The school must have enough classroom and clinic space and workstations on the clinic floor to support the school's scheduled instruction and training programs.</p> <p style="padding-left: 80px;">B. The school classrooms must have chairs and <u>table</u> work space for the maximum number of students scheduled for class at any one time.</p> <p style="text-align: center;"><i>[For text of item C, see Minnesota Rules]</i></p> <p style="padding-left: 80px;">D. The school must comply with the Minnesota State Building Code, the Minnesota State Fire Code <u>meet applicable building codes, fire codes,</u> and zoning codes as determined by local zoning and building officials and the state fire marshal.</p> <p style="text-align: center;"><i>[For text of item E, see Minnesota Rules]</i></p> <p style="text-align: center;"><i>[For text of subparts 2 and 2a to 6, see Minnesota Rules]</i></p> <p style="padding-left: 40px;">Subp. 3. [Withdrawn at ... SR ...]</p> <p style="padding-left: 40px;">Subp. 3a. [Withdrawn at ... SR ...]</p> <p style="padding-left: 40px;">Subp. 3b. [Withdrawn at ... SR ...]</p>

- Last, proceed as you would when submitting modifications or defect corrections to OAH

¹⁶ Withdrawing amendments to existing language is tricky; ask the revisor's office for help.

8.9.6 Getting Governor’s Office approval for resubmission of the rules to OAH

If the ALJ who performs the review makes any substantive recommendations to the rule or finds defects, the agency should resubmit the Final Rule Form, clearly labeling it as a revised form. The agency must explain its response to the ALJ’s Report, including any large deletions from the rule. The agency should also submit a copy of the ALJ Report with the revised Final Rule Form. Upon final approval of the rule by the Policy Advisor, the Legislative Coordinator will contact the agency and inform it that it may resubmit the rule to OAH.¹⁷

8.10 Finalize and File the Order Adopting Rules

After OAH approves your rules, the commissioner (or other authorized person) must sign the Order Adopting Rules.¹⁸ eFile your signed Order with OAH as you would any other documents.

The OAH, Revisor’s Office, and Secretary of State’s Office accomplish the final steps electronically.

1. When the agency eFiles the signed Order Adopting Rules, OAH requests the Final Rules from the Revisor’s Office, which then has five working days to provide them to OAH. The adopted rules (“AR”) contains the Revisor’s certificate approving the rules for filing with the Secretary of State.
2. Once OAH gets the rules, OAH files the Final Rules with the Secretary of State’s Office.
3. The Secretary of State’s Office serves the Final Rules on the Governor’s Office via email using a distribution list that includes the agency. This starts the 14-day veto period. The email contains no explanation and is how you will know your rule was served on the Governor’s Office, so you must watch for it. Typically, the agency rule contact is copied on the service email from the Secretary of State’s Office to the Governor’s Office. After you receive this email or some other confirmation, you should proceed with publishing the updated rule in the *State Register*. The Secretary of State’s Office will also notify the Revisor’s Office that the rule has been filed.
4. It is the Revisor’s standard practice to prepare the Notice of Adoption after notification from Secretary of State and send it to you without any request from you. If time is of the essence, you should notify the Revisor so that they expedite the Notice.

Note: While these steps can take place swiftly, that’s not always the case. Make sure to keep track of where and when the rule was forwarded and how long it has been at a specific office. Follow up with the appropriate office, as needed.

¹⁷ See GOV-PLCY in the appendix.

¹⁸ Minn. R. 1400.2090.

8.11 Publish the Notice of Adoption in the *State Register*

See information on how to publish in the *State Register* “Production Schedule” for publication dates and deadlines on the [Minnesota State Register website \(https://mn.gov/admin/bookstore/register.jsp\)](https://mn.gov/admin/bookstore/register.jsp). The agency must give the *State Register* a copy of the Notice of Adoption. The rules become effective five working days after the Notice of Adoption has been published in the *State Register* unless the rules specify a later effective date.¹⁹

8.11.1 Governor veto

After the Governor receives a copy of the adopted rules, the Governor may veto the rules. To veto the rules, the Governor must submit a notice of the veto to the *State Register* within 14 days of receiving the rules from the Secretary of State. A veto is effective when the veto notice is submitted to the *State Register*.²⁰ The Governor’s Office will let you know whether the rule or portions of the rule will be vetoed.

8.11.2 When to publish the Notice of Adoption

Even though the statute is silent on whether the agency must wait for the Governor to act before publishing its Notice of Adoption, you should wait to submit your agency’s Notice of Adoption to the *State Register* for publication until after your agency is certain that the Governor will not veto the rules.

8.11.3 180-day deadline

The agency must submit the Notice of Adoption to the *State Register* for publication within 180 days after the ALJ Report or Chief ALJ Report is issued, or the rules are automatically withdrawn. If you miss the deadline, the rules cannot be adopted unless you begin and successfully complete a new rulemaking proceeding. The 180 days does not include days needed for Chief ALJ or LCC review or because the Legislature delayed adoption of the rules.²¹

It is important to not tempt fate by letting final adoption of rules get close to using up the 180 days allowed. This time can get eaten up quickly when you are grappling with changes to complex and controversial rules.

Note: The statute says that you must submit the Notice of Adoption for publication to meet the 180-day requirement. A wiser course of action is to publish the Notice of Adoption within the 180 days to eliminate all questions. You do not want to rely on your date of submission to meet this important deadline if you can possibly avoid it by publishing sooner.

¹⁹ Minn. Stat. § 14.27.

²⁰ Minn. Stat. § 14.05, subd. 6.

²¹ Minn. Stat. §§ 14.126, .19.

8.11.4 State Register lead time

The *State Register* publishes on Mondays. The submission deadline is noon on the Tuesday before publication (except when the deadline is changed by a holiday). **For rules that are long (more than 20 pages) or complex (include tables, charts, pictures, etc.) contact the editor to negotiate a deadline.**

See information on how to publish in the *State Register* and “Production Schedule” for publication dates and deadlines on the [Minnesota State Register website](https://mn.gov/admin/bookstore/register.jsp) (<https://mn.gov/admin/bookstore/register.jsp>).

8.12 Prepare and Store the Official Rulemaking Record

After publishing the Notice of Adoption, you can complete the last official step, which is preparing and storing the Official Rulemaking Record.²² Note that OAH sends a memo to the agency when OAH approves the rules along with the original rulemaking documents that had been filed with OAH, which are most of the documents that the agency needs for the rulemaking record. A form for the Official Rulemaking Record is in the appendix as **RECORD**. Note that paragraphs (1) to (11) of this form are keyed to clauses (1) to (11) of Minnesota Statutes, section 14.365, so this form can serve as a checklist to meet the requirements of section 14.365. In addition to the required documents, it is good practice to keep documents that show any additional justification for your rules, the date the rules took effect, evidence of official approval by your agency, and any information on how you considered giving affected parties notice.

Note: With eFiling, OAH will return your file as a downloadable link in an email message. Only the person who receives the email with the link can open it. Furthermore, the link will expire. Download the materials as soon as possible and save it securely according to your agency’s record retention schedule and practices. This eFile and any others not included will become your official record, which your agency must preserve as a permanent record. OAH is not responsible for preserving the permanent record and does not keep the electronic file available indefinitely.

Best practice: Your returned file from OAH might be labeled “official record,” but rename it something like “return of OAH submission file.” This will help you distinguish it from the official rule record that you must prepare under statute after your rulemaking concludes.

8.13 Get a Complete Version of the Entire Chapter of the New Rules

Shortly after the Notice of Adoption is published, the Revisor will send you a “stripped” copy of the rules with the stricken text deleted and the underscoring removed. In most cases, the people within your agency who work with the rules would like a complete version of the entire chapter of the rules,

²² Minn. Stat. § 14.365.

including the portions amended and the portions not amended. When appropriate, get a complete copy of your rules (when available) from the [Revisor's website](http://www.revisor.leg.state.mn.us/rules/) (<http://www.revisor.leg.state.mn.us/rules/>). Your rules will be available after the Revisor has finished editing them.

8.14 Notify Agency Decision Makers of the Completion of the Process

Tell people at the agency that the rulemaking project has been completed. In the process, take some credit for your work on the rules. Send a memo to the persons at the agency most interested in the rules. Include the agency decision makers, the staff that you worked most closely with on the development of the rules, and the staff person in charge of updating your agency's rulemaking docket.

Checklist for Chapter 8 – Adopting Rules without a Hearing

Date Completed	Item
<hr/>	8 – Entire chapter reviewed before proceeding - Be aware of statutory deadline requiring the rules to be submitted within 180 days of the end of the comment period
<hr/>	8.1 – Decide on any changes to the rules - If agency is a multi-member board, BD-ADPT form used
<hr/>	8.2 – Agency responses to comments prepared - Adapting HR-RSPNS considered
<hr/>	8.3 – Governor’s Office approval obtained - GOV-FNL used
<hr/>	8.4 – Copy of adopted rules obtained from Revisor
<hr/>	8.5 – Order Adopting Rules drafted - ORD-ADPT and SMPLFNDS used
<hr/>	8.6 – File submitted to OAH for official review (eFile) - NH-RE VW used; OAH-INF referred to - Notify ALJ before filing - Submitted within 180 days of the end of the comment period
<hr/>	8.7 – Notice of Submission of Rules to OAH given - NTC-SBM and CRT-SBM used
<hr/>	8.8 – ALJ Report received - Disapprovals noted
<hr/>	8.9 – Rules withdrawn, disapproved, or new modifications made - 8.9.1 – Withdrawal of rules - NTC-WITHDRAWAL used - 8.9.2 – Suggested changes made - 8.9.3 and 8.9.4 – Suggested changes NOT made - 8.9.5 – Recommended modifications or other modifications made - 8.9.6 – Governor’s Office approval to resubmit rules obtained - GOV-FNL revised and resubmitted

Date Completed	Item
	<p>8.10 – Order Adopting Rules finalized and filed</p> <ul style="list-style-type: none"> - Order Adopting Rules signed by: _____ - Signed order eFiled with OAH - Rules filed with Secretary of State - Notice of Adoption received from Revisor
	<p>8.11 – Notice of Adoption published in the <i>State Register</i></p> <ul style="list-style-type: none"> - Notice submitted after agency is certain Governor will not veto rules - <i>State Register</i> website used
	<p>8.12 – Official Rulemaking Record prepared</p> <ul style="list-style-type: none"> - RECORD used
	<p>8.13 – Complete version of entire chapter of new rules obtained</p>
	<p>8.14 – Agency decision makers notified of completion of process</p>

Chapter 9 - Adopting Rules with a Hearing

Introduction

This chapter describes what to do after the 30-day comment period has ended and your agency plans to adopt the rules with a public hearing. It is a good idea to review this entire chapter before proceeding. At the end of this chapter is a checklist so you can note when you have completed each of the required steps for adopting rules with a hearing.

9.1 Preparing for the Hearing

9.1.1 Schedule meetings for immediately after the hearing; clear your calendar

Time is of the essence after the hearing. It is absolutely essential to meet with agency decision makers after the hearing as soon as possible to get a preliminary decision on the agency's response to comments made at the hearing. (If your agency's standard practice is to have the agency's Assistant AG review and sign off on rules projects, then be sure to consider including the AG at this point as well.) If you wait to do all the work of preparing your response until near the end of the posthearing comment period, there will not be time to complete the response. If you procrastinate, it will be almost impossible to get your response done by the deadline.

As noted in chapters 6 and 7, at the time of scheduling the hearing date, check with agency decision makers not only about their availability to be at the hearing but also their availability immediately after the hearing to discuss issues raised at the hearing. Also, clear as much of your calendar as possible for the length of the comment period after the hearing. It takes more time than you can imagine to prepare your response to comments.

9.1.2 Notify the ALJ

If your hearing follows publishing a Dual Notice, let the ALJ know that the hearing will be held as scheduled (see section 6.17.3).

9.1.3 Make copies of the Rules and SONAR to distribute at the hearing

You must have copies of the proposed rules and the SONAR available at an in-person hearing.¹ For virtual hearings, make sure you have a webpage dedicated to the hearing with links to the rules and SONAR available for the public.

¹ Minn. R. 1400.2220, subp. 2.

9.1.4 Prepare documents to submit into the record

The agency must prepare the exhibits required under Minnesota Rules, part 1400.2220, subpart 1—the exhibits should be labeled according to the items under subpart 1.

In-person hearings

ALJs generally prefer two or three binders with the printed exhibits, but it’s always a good idea to confirm with your ALJ. If the agency is conducting a videoconference public hearing, you must ensure that a copy of the hearing exhibits is also available at each of the locations participating in the hearing.

Virtual hearings

If the agency is conducting a virtual hearing (no physical location), you must post all the exhibits to your agency’s webpage, so the public has access to the exhibits during and after the hearing. Be sure to give yourself time to ensure each document is accessible before being posted.

Example:

The screenshot shows a web page for the Minnesota State Board of Education. The breadcrumb trail is: Home > Board > Rulemaking > Licensing and Academic Standards (R 4615). The page title is "Licensing and Academic Standards (R 4615)". The main content area includes a description of rule changes adopted in April 2023, a link to a "Rulemaking_email_list", and a "Rulemaking Record" section. The "Rulemaking Record" section contains the following information:

- About the changes** | **Status** | Rulemaking Record
- Rulemaking Record**
PELSB held a virtual rules hearing on the proposed rule changes on Wednesday, August 24, 2022. Administrative Law Judge James Mortenson was the presiding judge. You can watch a [recording](#) of the rules hearing or review a [transcript](#).
- OAH Docket Number**
The OAH docket number for this matter is OAH Docket Number 5-9021-36362.
- Hearing Exhibits**
Exhibit A: [The Request for Comments \(as published in the State Register on September 23, 2019\)](#)
Exhibit B: Not included – a petition for rulemaking
Exhibit C1: [A draft of the proposed rule changes \(dated Dec. 16, 2021\)](#)
Exhibit C2: [The Revisor's certificate of approval](#)
Exhibit D: [The Statement of Need and Reasonableness \(SONAR\)](#)
Exhibit E1: [The Notice of Hearing \(as mailed on May 2, 2022\)](#)
Exhibit E2: [The Notice of Hearing \(as published in the State Register on May 2, 2022\)](#)

Ask your ALJ whether they want physical copies of exhibits mailed to them prior to the hearing in addition to those that are eFiled.

eFiling rule-related documents

All documents submitted for ALJ review should be eFiled. OAH has posted step-by-step instructions for creating an account and filing your documents on its website at [OAH Forms & Filing](#)

<https://mn.gov/oah/forms-and-filing/efiling/>. (The page also includes a link to frequently asked questions.) **See section 1.7 for explicit instructions.**

Best Practices for Working Within OAH’s eFiling System. To accommodate eFiling, it is best to take some extra steps to organize your documents before uploading them into OAH’s system. Simply consolidating all your individual documents into one huge file will make navigating it difficult for both the ALJ’s review and your own reference. You can make a consolidated file easier to navigate with a little planning. Here are some options (and it might be advisable to confer with your assigned ALJ on more complex cases):

- Organize your documents as described in Minnesota Rules 1400.2220, items A to K. OAH prefers that you consolidate the documents as one PDF document and bookmark them. Best practice: Include the agency response to comments along with those comments.
- If your case has a large volume of pages, consider adding a unique sequential page number through the entire set. This is often called applying a “Bates” stamp. Some photocopiers can do this, and so can Adobe Pro.
- Scan the pages as a single PDF or combine saved PDF files into a single PDF. Prepare an index keyed to the unique numbers. Prepare an index keyed to the unique numbers. In Adobe Pro, for example, it is simple to mark and label a bookmark at the first page of each document.
- If the filing is quite large, you may create more than one PDF. For example, a large volume of comments or a large map file may require a separate document to keep file size manageable.
- Consolidating your exhibits might simply exceed your technology’s capabilities, so you might have to solicit additional assistance within your agency or acquire more powerful software, such as Adobe Pro.

Strongly consider communicating with your ALJ (through William Moore) when you are ready to file. Even though this communication isn’t required by law, ALJs appreciate a heads-up before an agency will file, especially if you have a long or complex rule.

If you have questions about submitting your rules file to OAH, refer to **OAH-INF** in the appendix for the location of or general information about OAH.

Always check to make sure that the system has uploaded your documents. Saving a screenshot or printing the window showing a file has uploaded is prudent. In addition, save any correspondence or documents that you receive from OAH for your own records because those items might not remain in your eFile folder.

Finally, you should also plan to post electronic versions of these documents on your agency’s website. As explained in section 9.2.3, OAH has been asking agencies to make electronic versions of all exhibits introduced into the public hearing record available on the agencies’ respective websites.

9.1.5 Prepare a summary to read at the hearing

For most rules, a five- to ten-minute presentation is sufficient. The summary is a condensed version of certain sections of the SONAR, including the sections that give general background. The summary should also include a description of the rules and a short discussion of any controversial areas in the rules. For some very technical rules, a longer presentation may be necessary to adequately explain the rules. In this case, it's best to let the ALJ know in advance the length of your presentation.

9.1.6 Prepare agency staff and agency AG for the hearing

Shortly before the hearing, send a memo to and, if possible, meet with agency staff who will be at the hearing. If the agency wants its AG to attend the hearing, include the agency AG in the memo and staff hearing. The memo and meeting should cover the points made in section 9.2—namely, what to say and what not to say at the hearing.

You should take copious notes and arrange to meet with staff immediately after the hearing. Let them know what to expect at the hearing and answer any of their questions. Do a dress rehearsal with agency staff if you feel it would be worthwhile. A form for the memo is in the appendix as **STAFF-HR**.

9.1.7 Respond to prehearing comments

Start drafting your preliminary responses for the prehearing comments received during the 30-day comment period. See **section 9.3** for general advice on how to respond and how to coordinate your preliminary responses with the posthearing responses. Ideally, the agency eFiles and posts preliminary responses on the day of, or within a couple days after the hearing. Whether you can do this depends on many variables, such as how many comments the agency received, how complex the issues are, when the comments were submitted, whether the comments raise a novel issue, etc. Check with the ALJ at the hearing and come up with a plan.

Keep in mind that the comments and responses are to further public participation and assist the ALJ in understanding your rules. So do the best you can to deliver these responses quickly.

9.1.8 Decide on any proposed rule changes you want to announce at the hearing

During the 30-day comment period, the agency may receive comments on the proposed rules that point out errors or request changes. You are not required to make changes suggested by the public, but sometimes the comments are compelling. If you plan to make modifications, you should announce at the rule hearing that you intend to make these changes or that you are strongly considering making these changes and that you invite comments. You should have copies of the intended changes available to introduce into the record and to distribute to people attending the hearing.

Note: You do not need a Revisor's draft when you announce changes at the hearing. It's possible that your decision could change, or that you might make further changes, so you should wait to request a

Revisor’s draft until after the hearing. Shortly after the Notice of Intent Hearing is published, the Revisor will send you a “stripped” version of your proposed rules with all stricken text deleted and all new text incorporated. You can use the stripped version to indicate any changes you intend to make to the proposed rules. You do not have to wait for the Revisor’s Office to send you the stripped version to request one. If you don’t receive one, be sure to ask for one.

When controversial issues come up during the 30-day comment period, you should consider notifying the Governor’s Office. Per the Governor’s Office administrative rule review policy, **GOV-PLCY**:

COMMUNICATION

The Governor’s Office recognizes that agencies cannot predict all controversies at the outset of a rules project. As a result, the agency should use its judgment to send issues to the Governor’s Office for review throughout the process. Additional review might be necessary if a rule suddenly becomes controversial. If the agency believes that an issue or proposed change might be in conflict with the Governor’s beliefs and principles, the agency should notify its Policy Advisor.

9.1.9 Set the room up for an in-person hearing

In most cases, agencies must physically set up the hearing room. You will need places for the ALJ, agency staff, speakers, audience, and court reporter (if you choose to hire one). Estimate your likely number of attendees.

Remember to check for accessibility in case you need to make accommodations for people with disabilities.

Customarily, the ALJ brings a packet of items to the hearing: the sign-in sheet for attendees and a hearing-procedure handout. OAH asks for email addresses on the signup sheet it provides, and each person checks the corresponding places to indicate which notices that they want to receive. Confirm this with the judge’s legal assistant.

9.1.10 Holding virtual hearings

It is highly recommended that the agency and the ALJ do a short dress rehearsal or “run through” before a virtual hearing through the platform that will be used. Also, prior to the hearing, ask the ALJ whether they want to walk through hearing procedure with attendees at the beginning of the hearing. Alternatively, hearing procedures may be posted to the agency’s webpage.

Consider requiring attendees to register for the hearing as this will allow you to gather email addresses and ask whether the attendee wants notices sent to them following the hearing. At the time you set up your virtual hearing, such as through WebEx, you can review the different platform features, such as registration requirements and disabling chat. Registration is a great way to collect email addresses and ask attendees whether they would like to speak at the hearing, need accommodations such as a

translator, and or want certain notices sent following the hearing. Additionally, the agency can completely disable the chat feature, allow attendees to chat with agency staff, or chat with all attendees (not recommended).

9.1.11 Interpreters

OAH arranges interpreter services for parties involved in OAH matters. Interpreters are available for any type of case. Scheduling is subject to location, requested language, and interpreter availability. All requests should be made at least 14 days in advance of the hearing date.

The fee for interpreters is billed to the client agency. To avoid cancellation fees, contact OAH as soon as possible and at least 5 days before your hearing if a scheduled interpreter is no longer needed.

To schedule an interpreter, send an email to oah.courtpersonnel@state.mn.us. Additional information about interpreter services can be found on the OAH website at: [Visiting OAH / Office of Administrative Hearings \(OAH\) \(https://mn.gov/oah/lawyers-and-litigants/visiting-oah.jsp\)](https://mn.gov/oah/lawyers-and-litigants/visiting-oah.jsp).

9.2 At the Hearing and Immediately After

9.2.1 What to say and what not to say at the hearing

At the hearing, agency staff should not answer questions that would set agency policy. You may answer questions that would clarify a person's misunderstanding about the proposed rules but be careful not to agree to policy suggestions that are not already in the proposed rules. A recommended standard response to a policy suggestion is that the agency will take the suggestion under consideration and will issue a decision in the agency's preliminary response to comments before the end of the posthearing comment period.

Also keep in mind that this is the public's opportunity to present its case to the ALJ. The agency has already spoken in the SONAR. Resist any urges to contradict or rebut public comments, as difficult as this may be. Remember that you will have the rebuttal period before the record closes.

9.2.2 Copious notes or court reporter

At least two or three agency staff should take copious notes on all testimony given at the hearing. The notes should identify the speaker's name and affiliation and summarize the testimony and any suggestions made. It is important that several agency people take complete notes so that you do not miss anything when you submit the agency's response.

There might be situations in which you would want a court reporter to attend and transcribe the hearing, including for virtual hearings. Note that the agency would have to pay for the court reporter. Therefore, you need to balance the cost of the court reporter against the benefits of having an immediate and complete written record of the hearing. Make this decision early on, because you must

arrange for a court reporter and order the transcripts yourself – OAH does not arrange for court reporters. Thus, the agency is responsible for all logistical and payment arrangements. Furthermore, if the agency has arranged for a court reporter to be at the hearing, OAH asks that the agency notify it before the hearing.

If you are not using a court reporter, the judge will record the hearing. Typically, OAH includes the recording when it returns the record, so you must contact the judge’s legal assistant if your agency wants the recording right away. If you are using a court reporter, the judge may or may not record the hearing. Your best practice is to make your wishes known and confirm your arrangements with the judge’s legal assistant so you can plan accordingly. In any event, taking good notes will still be important. Having a recording to go back to in the absence of a transcript is essential.

If you are holding a virtual hearing, you can record the hearing and make it available afterward. Many platforms, such as WebEx, can also prepare transcripts, though they are not as precise as a court reporter.

9.2.3 Place hearing exhibits on agency’s website

Exhibits the agency will introduce into the hearing record should be posted on the agency’s website before the hearing. Immediately after the hearing, the agency will also need to post exhibits that interested parties submitted into the hearing record. You should inform your website staff that the agency needs to post these exhibits expeditiously on the agency’s website after the hearing. You may also need to upload these documents in OAH’s eComments system. You should clarify with your assigned ALJ about what they expect your agency to post and where.

Note also, as identified in **section 9.3.9**, that OAH is routinely asking agencies to promptly post the comments submitted during the posthearing comment and rebuttal periods on the agency’s website.

9.2.4 Meet with agency decision makers ASAP after the hearing

At this time, discuss each of the issues raised at the hearing and decide on a tentative response. The purpose in meeting ASAP after the hearing is to maximize the time available for drafting the agency’s response to comments. Therefore, if possible, meet immediately after the hearing.

9.3 The Agency’s Response to Comments in the Hearing Record

9.3.1 The posthearing comment period and the rebuttal period

After the hearing, there is a comment period that lasts for five working days, which can be extended to 20 calendar days, if ordered by the ALJ. The agency and interested parties can submit written comments or responses to comments in the hearing record during this time.

After the posthearing comment period, there is a five-working-day rebuttal period, when the agency and interested persons can respond in writing to comments and information submitted during the posthearing comment period. No new evidence may be submitted during the rebuttal period.²

See **section 9.3.9** related to how to collect the comments that the ALJ received during the posthearing comment period and rebuttal period for timely posting on the agency's website and uploading them to the OAH eComments website. Because OAH's eComments are mandatory after hearings, you must retrieve these according to the ALJ's directions.

Note: While agencies must use the eComments system, the public may also submit comments to OAH by U.S. mail, eComments, personal service or fax, so you must check for and respond to these comments.

9.3.2 OAH eComments

You must use OAH's eComments website for collecting public comments after a hearing. (See **section 1.6.2** and **OAH-INF** for explicit instructions). OAH will set up the webpage after the hearing. If you have questions, contact William Moore, Administrative Rule and Applications Specialist, at william.t.moore@state.mn.us or 651-361-7893.

Note: While agencies must use the eComments system, the public may also submit comments to OAH by U.S. mail, eComments, personal service or fax. So, you must check for and respond to such comments. Public instructions for making comments can be found at [OAH Forms and Filing \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/).

9.3.3 What to include in the posthearing comment period

An agency may submit its response and any intended rule changes during the posthearing comment period. In addition, particularly if the posthearing comment period is extended, the agency may choose to respond to information or comments submitted earlier in the comment period.

Some ALJs prefer a preliminary agency response (including any intended rule changes) by the end of the comment period to allow affected persons to react to the agency's intended rule changes, particularly on controversial issues. After considering responses, the agency would submit a final response before the end of the rebuttal period. In any event, ask the ALJ for their preference on the timing of the agency's response and tell the ALJ your preference. There are probably several ways to accomplish the agency's response. You should seriously consider the ALJ's preference.

² Minn. Stat. § 14.15, subd. 1; Minn. R. 1400.2230, subp. 2.

9.3.4 Complete a draft of the agency's preliminary response ASAP

This preliminary draft should be completed within two or three days of the hearing. **HR-RSPNS** is one possible framework. After your summary of the comments made on each part, put the tentative reaction decided on at the meeting with agency decision makers, including any changes the agency intends to make in the proposed rules. For each intended change, the response letter should justify the change. You must also state that the changes would not make the adopted rules substantially different from the proposed rules. Finally, give a copy ASAP to all agency personnel involved in the rules for their review and to all agency decision makers for their review and approval.

9.3.5 Monitor posthearing comments

At several points during the posthearing comment period, check OAH's eComments system to find out the nature of the written comments submitted. OAH can download the eComments received to the agency, possibly with a request that the agency promptly add the posthearing comments to the agency's website. If there are any major unexpected comments, discuss them immediately with agency decision makers. If you choose, update the agency's preliminary response letter as needed to respond to these comments. Near the end of the comment period, contact the ALJ one last time about comments submitted that are not available on OAH's eComments site.

9.3.6 Meet with agency decision makers near the end of the comment period; finalize agency's preliminary response

After contacting OAH one last time about comments received by the ALJ, it is necessary to again meet with agency decision makers to make final decisions about the agency's preliminary response letter, including any changes that the agency intends to make to the proposed rules. It is absolutely essential that you prepare a complete draft of the preliminary response letter before this meeting so that the letter can be finalized immediately after the meeting. Immediately after the meeting, finalize the letter, have it signed by the appropriate agency person, and eFile the preliminary response. Note: some agencies submit multiple preliminary responses during the posthearing comment period.

9.3.7 Rebuttal period response

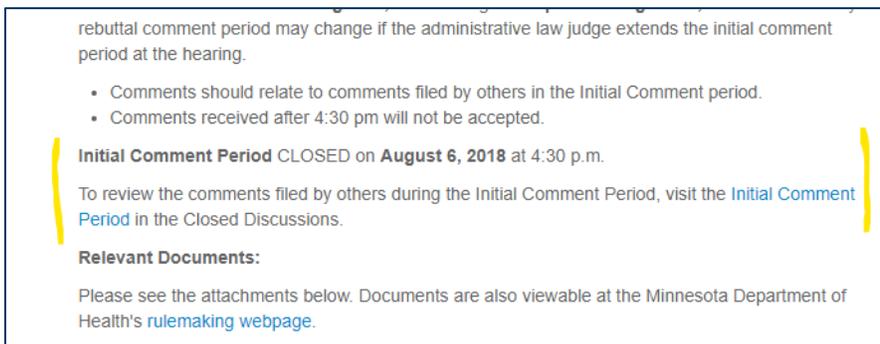
You should continue to monitor the comments received by the ALJ during the rebuttal period. The rebuttal period allows the agency to respond to any new information or comments not previously responded to and to propose final changes to the rules. No new evidence can be submitted during the rebuttal period.

The agency's final response letter should build off the preliminary response letter. In some cases, the letter may contain the simple statement that the agency's preliminary response letter contains the agency's final responses to comments. If you have responses or intend to make changes in addition to those in your preliminary response letter, then you should include the rationale for these intended

changes, a description of the intended changes, and that the intended changes will not make the adopted rules substantially different than the proposed rules.

You may eFile your final response at any point during the five-day rebuttal period; however, most agencies file their response on the last day to ensure they have addressed all comments.

9.3.8 Place comments received by the ALJ during the posthearing comment period and rebuttal period on agency’s website.



More commonly, ALJs prefer a single eComments site for the prehearing and initial posthearing comment periods. After the latter ends, OAH closes the site and creates a second eComments site for the rebuttal period. Although the first eComments site is closed, you and the public can still access it under the closed-discussions tab. Additionally, OAH will link to the closed comment period on the site it creates for the rebuttal period.

By 4:30 pm, on the first working day after the posthearing comment period, OAH will send the agency an electronic version of all comments that the ALJ received during the posthearing comment period, including those from the eComments site and those sent to OAH by mail or fax. Most ALJs want the agency to post the comments on the agency’s website.

It’s important that the agency not delay posting the comments because OAH closes the eComments page immediately after the comment period ends and the public must be able to access the comments

for the rebuttal period. Optimally, you should forewarn your website staff that the documents must be posted expeditiously.

Similarly, after the rebuttal period closes, OAH will provide the agency with an electronic copy of all comments received during the rebuttal period; these comments should be posted on the agency's website as well.

OAH must allow any interested persons to review the posthearing comments submitted to the ALJ.³ Further, there is no law requiring that a state agency place hearing exhibits or comments received during the posthearing comment period and rebuttal period on a website. Nevertheless, ALJs are more frequently requesting that agencies post these documents so that the public can access them more readily.

9.4 The ALJ Report

After the posthearing comment period and rebuttal period close, the ALJ has 30 days to complete the hearing report, unless the Chief ALJ orders an extension.⁴ Rulemakings with few comments are usually completed within 30 days. The ALJ can do one or more of the following:

1. Approve all or portions of the rules.
2. Disapprove all or portions of the rules.
3. Make technical suggestions for the agency to consider.

If the ALJ disapproves all or part of the rules, the Chief ALJ reviews the rules and issues a report in addition to the ALJ Report. The Chief ALJ has ten days to do this.⁵

9.5 Withdrawal, Disapproval, or New Modifications of the Rules

After you receive the ALJ Report, identify options based on the ALJ's findings and recommendations. Within those options, decide how to proceed and get approval to do so from agency decision makers. Exactly how you proceed depends on the findings in the ALJ Report and on whether you want to make changes other than those approved by the ALJ. The various possibilities are described below.

Note: An agency must wait at least five working days after the ALJ Report is issued before taking any formal action on the rules (such as passing a resolution or submitting the Final Form to the Governor's

³ Minn. R. 1400.2230, subp. 2.

⁴ Minn. Stat. § 14.15, subd. 2.

⁵ Minn. R. 1400.2240, subp. 4.

Office).⁶ An agency that is a multi-member board must follow board procedures, which usually means passing a formal resolution adopting the rules and authorizing a person to sign the Order Adopting Rules. A form for such a board resolution is in the appendix as **BD-ADPT**.

9.5.1 Approval of the rules

If the ALJ has approved your proposed rules and you are either making no changes to the proposed rules or the ALJ has approved all changes in the ALJ Report, you can proceed with adopting your rules.

9.5.2 Disapproval of the rules

There are three reasons the ALJ may disapprove your rules under part 1400.2240:

- The ALJ finds a defect in the rule text such as unfettered discretion, overly vague, etc. (subpart 4).
- The ALJ determines that you modified the rule so that it's substantially different from the proposed rule (subpart 7).
- The ALJ determines that you didn't adequately justify the need for and reasonableness of your rule (subpart 6).

As mentioned in section 9.4, if the ALJ disapproves the rules, the rules go to the Chief ALJ for further review. If the Chief ALJ disapproves the rules, they must explain why and tell the agency what changes are necessary for approval.⁷ The agency then may:

1. make the suggested changes or other changes to address the reasons for disapproval and resubmit the rules to the Chief ALJ;
2. ask the Chief ALJ to reconsider the disapproval; or
3. end the rule proceeding.

9.5.2.1 Making suggested or other changes to address disapproval

If you choose to make the suggested changes or other changes to address the reasons for disapproval, first ask the Revisor to prepare a draft with the changes, then submit the changed rules to the Chief ALJ, requesting review of the changes, as necessary for approval. A cover letter for this is in the appendix as **CHNG-DIS**. The Chief ALJ must review and approve or disapprove the changed rules within five working days after receipt.⁸ If the Chief ALJ approves, you can proceed with adopting your rules.

⁶ Minn. Stat. § 14.15, subd. 2. This limitation appears to apply only to the first issuance of the report; if your rules are disapproved and you correct the reason for the disapproval, you might be able to act on the rules immediately after getting the Chief ALJ's advice, but you should check with the Chief ALJ to make sure it is okay.

⁷ Minn. R. 1400.2240.

⁸ Minn. R. 1400.2240, subp. 4.

9.5.2.2 Disapproval based on substantial difference, and you don't want to make the suggested changes

If the Chief ALJ disapproves the rules under Minnesota Rules, part 1400.2240, subpart 7, because they are substantially different than the proposed rules, **and** the agency chooses not to make the changes suggested by the Chief ALJ, the agency has several options:

1. end the rule proceeding;
2. adopt the portions of the rules that are not substantially different (requires withdrawing rules);⁹
3. start a new rule proceeding to adopt the substantially different rules; or
4. proceed under Minnesota Rules, part 1400.2110, to adopt substantially different rules.

9.5.2.3 Disapproval based on need and reasonableness, and you don't want to make the suggested changes

If the Chief ALJ disapproves the rules under Minnesota Rules 1400.2240, subpart 6, because the agency has not shown them to be needed and reasonable, **and** the agency chooses not to make the changes suggested by the Chief ALJ, the agency may submit the rules to the Legislative Coordinating Commission and the and the House and Senate policy committees with primary jurisdiction over state governmental operations for review.¹⁰ This course requires careful political consideration.

9.5.2.4 Requesting reconsideration of the disapproval

You may choose to request that the ALJ reconsider the disapproval. A cover letter for this is in the appendix as **CHNG-DIS**. The Chief ALJ must review and approve a request for reconsideration within five working days after receipt.¹¹ If the Chief ALJ approves, you can proceed with adopting your rules.

9.5.3 Making changes other than those recommended

If the agency wants to make changes to the proposed rules other than those that the ALJ or Chief ALJ approved, the agency should submit the documents listed in Minn. R. 1400.2240, subp. 5, to the Chief ALJ:

1. the rules as initially proposed;
2. the agency's proposed Order Adopting Rules;
3. the rules showing the agency's proposed changes; and

⁹ Minn. R. 1400.2240, subp. 7.

¹⁰ Minn. Stat. § 14.15, subd. 4.

¹¹ Minn. R. 1400.2240, subp. 4.

4. any other part of the hearing record requested by the Chief ALJ.

Request the Revisor to prepare a draft with the changes, then submit the draft to the Chief ALJ with the other documents listed above. A form letter asking the Chief ALJ to review changes other than those approved by the ALJ is in the appendix as **CHNG-OTH**.

Note: Minn. R. 1400.2240, subp. 5, applies to changes other than those recommended by the ALJ or Chief ALJ. There is nothing in chapter 14 or chapter 1400 that speaks directly to changes that are recommended, but not approved, by the ALJ or Chief ALJ. The Editor therefore recommends following Minn. R. 1400.2240, subp. 5 for recommended changes, unless OAH advises otherwise.

When the ALJ Report goes beyond the rule changes proposed by the agency and includes a statement such as: “The agency might consider rewording the language to clarify that . . .,” these statements are considered the ALJ’s recommendations. The agency may choose to follow the ALJ’s recommendations, but it is not required to do so. If you choose not to follow an ALJ recommendation, you do not need to address this in your Order. Having said that, if you are going to reject the ALJ’s recommendation on a significant or controversial issue, it is a good idea to discuss your reasons for rejecting the recommendation.

The Chief ALJ has ten days to make a written decision. If the Chief ALJ approves the changes, you can proceed with adopting your rules.

9.5.4 Withdrawal of rules

Sometimes an agency decides it must withdraw its proposed rules or a portion of its proposed rules. If you withdraw your rules from OAH review, refer to Minnesota Rules, part 1400.2240, subpart 8, for how to proceed. Note that statute requires that you publish notice in the *State Register* that you have withdrawn the rules.¹² The form for Notice of Withdrawn Rules is available in the appendix as **NTC-WITHDRAWL**. At a minimum, the notice should:

- identify what rule parts are being withdrawn;
- reference the *State Register* citation at which the rules were initially proposed; and
- briefly summarize the rules and why they are being withdrawn:

For example:

Board of Cosmetology
Notice of Withdrawn Rules for Proposed Amendments to Governing Schools, Instructors and School Managers; Minnesota Rules, Chapter 2110; Proposed Repeal of Minnesota Rules parts 2110.0010, subparts 14 and 15; 2110.0100; 2110.0320, subparts 9, 11, and 12; 2110.0330, subparts 3, 4, and 5; 2110.0390, subpart 3a; 2110.0410, subparts 2 and 5; and 2110.0710; Revisor’s ID Number 4456, OAH Docket Number 65-9013-36457

¹² Minn. Stat. § 14.05, subd. 3.

The Minnesota Board of Cosmetologist Examiners is withdrawing its proposed amendment to rules governing schools, instructors and school managers that were published in the Dual Notice of Intent to Adopt Rules on September 26, 2022, in the State Register, volume 47, number 13, pages 285-314. Administrative Law Judge O'Reilly and Chief Judge Starr disapproved the amendments as not meeting the requirements of Minnesota Statutes, section 14.15, subdivisions 3 and 4, and Minnesota Rules part 1400.2240, subpart 4.

The board is withdrawing the following proposed amendments: Minnesota Rules, parts 2110.0010, subparts 14, 15, 17f, 18d, 18e, 18f, and 19a; 2110.0125; 2110.0190; 2110.0310; 2110.0320; 2110.0390, subparts 3, 3a, 3b, 5; 2110.0395; 2110.0410; 2110.0500; 2110.0510; 2110.0520; 2110.0525; 2110.0530; 2110.0545; 2110.0590; 2110.0625; 2110.0640; 2110.0650; 2110.0660; 2110.0670; 2110.0671; 2110.0680; 2110.0690; 2110.0705; 2110.0730; and 2110.0740.

The withdrawal is a modification to the Dual Notice published in the State Register, volume 47, number 13, pages 285-314...

What if an agency wants to withdraw portions of its rules? If the agency is proposing new language, the agency can strike the language in its AR draft instead of formally withdrawing the rules by publishing a withdrawal in the *State Register*.¹³ For larger withdrawals for which the agency still wants to adopt other parts of its rule, such as in the example above, the agency should follow the normal withdrawal process. A few tweaks are needed, however, because the APA doesn't explicitly outline a process for a hybrid rule withdrawal/rule adoption:

- Receive approval from the governor's office
- Send a letter to OAH stating that the agency plans to withdraw rule parts, citing to Minnesota Statutes section 14.05, subdivision 3, and Minnesota Rules, part 1400.2240, subpart 8 (or 1400.2300, subpart 4).
- Publish a Notice of Withdrawal in the *State Register*
- Fill out the AR draft with the *State Register* cites (volume and page number):

2110.0320 [Withdrawn at ... SR ...]

2110.0330 [Withdrawn at ... SR ...]

2110.390 **PHYSICAL REQUIREMENTS.**

Subpart 1. **Space.**

A. The school must have enough classroom and clinic space and workstations on the clinic floor to support the school's scheduled instruction and training programs.

B. The school classrooms must have chairs and table work space for the maximum number of students scheduled for class at any one time.

[For text of item C, see Minnesota Rules]

¹³ Withdrawing amendments to existing language is tricky; ask the revisor's office for help.

D. The school must ~~comply with the Minnesota State Building Code, the Minnesota State Fire Code~~ meet applicable building codes, fire codes, and zoning codes as determined by local zoning and building officials and the state fire marshal.

[For text of item E, see Minnesota Rules]

[For text of subparts 2 ~~and 2a~~ to 6, see Minnesota Rules]

Subp. 3. [Withdrawn at ... SR ...]

Subp. 3a. [Withdrawn at ... SR ...]

Subp. 3b. [Withdrawn at ... SR ...]

- Last, proceed as you would when submitting modifications or defect corrections to OAH

9.6 Draft the Order Adopting Rules

A form for the Order is in the appendix as **ORD-ADPT** and is designed to be a checklist to meet the requirements of part 1400.2090. A form with sample findings for making changes to the proposed rules is in the appendix as **SMPLFNDS**.

Note: If you are making changes other than those approved in the initial ALJ Report, you must submit your unsigned proposed Order Adopting Rules to the ALJ or Chief ALJ for approval before having it signed. You should check with OAH if you are uncertain whether OAH must approve the proposed Order.

9.7 Governor's Office Approval

After you decide on the final rules, you must get approval to proceed from the Governor's Office. Per the Governor's Office administrative rule review policy, **GOV-PLCY**:

FINAL RULE FORM

This form [**GOV-FNL**] notifies the Governor's Office of any new information or late changes. This last notification gives the Governor's Office a final opportunity to make changes before only having the option of veto. The Governor's Office is seeking information describing any late controversies that might have arisen since the agency submitted the Proposed Rule and SONAR Form. The Final Rule Form requests information on any changes to the previously submitted draft rules. Also, if a hearing were requested, information as to why it was requested. The timing for submitting the Final Rule Form varies, depending on the type of rulemaking the agency is doing. *If the agency is adopting rules without a hearing, adopting rules after a public hearing, or*

adopting expedited rules, the agency must wait for the Policy Advisor to approve the final rule before taking the next step, as described below. [emphasis added]

When the agency is adopting rules after a hearing: the agency must submit the completed Final Rule Form to the Office of the Governor **and wait for approval** before the agency submits its signed Order Adopting the Rules to OAH. The agency must explain why a hearing was requested and attach a copy of the Administrative Law Judge Report. The agency must also explain any changes made in response to the ALJ Report, including any large deletions from the rule. The Policy Advisor will direct any concerns the Advisor might have directly to the agency. Upon final approval of the rule by the Policy Advisor, the Legislative Coordinator will contact the agency and inform it that the Commissioner or Director may sign the Order Adopting Rules and formally submit it to OAH.

* * *

...If the proposed rule remained substantially unchanged from the SONAR stage, final review of the rule should take less than a week. If the agency hasn't received a communication by the 7th day after the Governor's Office received the above information, the agency should contact the Legislative Coordinator for a status report.

9.8 Get a Copy of Adopted Rules from the Revisor

During the 30-day comment period, the Revisor will send you a "stripped" copy of your proposed rules with all stricken text deleted and all new text incorporated in the rules. The rule title will indicate that the rules are in "adopted" form (the number on the top of your draft will change from "RD" to "AR").

12/20/21	REVISOR	RSI/EH	AR4726
1	Department of Commerce		
2	Adopted Expedited Rules Relating to Workers' Compensation Ratemaking		

If you are making no changes to the proposed rules, you may use the stripped version for the Order Adopting Rules. If you are making changes to the proposed rules, ask the Revisor to mark the modifications and send you an updated copy of the adopted rules. In your request, indicate when you would like the adopted rules back, and the Revisor will tell you if that is workable.

9.9 Finalize and File the Order Adopting Rules

After OAH approves your rules, the commissioner (or other authorized person) must sign the Order Adopting Rules.¹⁴ eFile your signed Order with OAH as you would any other documents.

The OAH, Revisor's Office, and Secretary of State's Office accomplish the final steps electronically.

1. When the agency eFiles the signed Order Adopting Rules, OAH requests the Final Rules from the Revisor's Office, which then has five working days to provide them to OAH. The adopted rules ("AR") contains the Revisor's certificate approving the rules for filing with the Secretary of State.
2. Once OAH gets the rules, OAH files the Final Rules with the Secretary of State's Office.
3. The Secretary of State's Office serves the Final Rules on the Governor's Office via email using a distribution list that includes the agency. This starts the 14-day veto period. The email contains no explanation and is how you will know your rule was served on the Governor's Office, so you must watch for it. Typically, the agency rule contact is copied on the service email from the Secretary of State's Office to the Governor's Office. After you receive this email or some other confirmation, you should proceed with publishing the updated rule in the *State Register*. The Secretary of State's Office will also notify the Revisor's Office that the rule has been filed.
4. It is the Revisor's standard practice to prepare the Notice of Adoption after notification from Secretary of State and send it to you without any request from you. If time is of the essence, you should notify the Revisor so that they expedite the Notice.

Note: While these steps can take place swiftly, that's not always the case. Make sure to keep track of where and when the rule was forwarded and how long it has been at a specific office. Follow up with the appropriate office, as needed.

9.10 Give Notice of Filing

During the rulemaking process, usually during the 30-day comment period or at the hearing, individuals may request to be informed of when you adopt the rules, and the rules are filed with the Secretary of State. You must provide a Notice of Filing Rules with the Secretary of State on the same day that the rules are filed.¹⁵ **Therefore, get this notice ready before you file the signed Order Adopting Rules with OAH.** This Notice must be sent to any persons who have notified the agency during the comment period or at the hearing that they want to get this Notice. OAH will notify the agency on the day it files the rules with the Secretary of State. Forms for the Notice and for the certificate showing the agency sent this Notice are in the appendix as **NTC-SECY** and **CRT-SECY**.

¹⁴ Minn. R. 1400.2090.

¹⁵ Minn. Stat. § 14.16, subd. 1.

9.11 Publish the Notice of Adoption in the *State Register*

See information on how to publish in the *State Register* and “Production Schedule” for publication dates and deadlines on the [Minnesota State Register website \(https://mn.gov/admin/bookstore/register.jsp\)](https://mn.gov/admin/bookstore/register.jsp). The agency must give the *State Register* a copy of the Notice of Adoption. The rules become effective five working days after the Notice of Adoption has been published in the *State Register* unless the rules specify a later effective date.¹⁶

9.11.1 Governor veto

After the Governor receives a copy of the adopted rules, the Governor may veto the rules. To veto the rules, the Governor must submit a notice of the veto to the *State Register* within 14 days of receiving the rules from the Secretary of State. A veto is effective when the veto notice is submitted to the *State Register*.¹⁷ The Governor’s Office will let you know whether the rule or portions of the rule will be vetoed.

9.11.2 When to publish the Notice of Adoption

Even though the statute is silent on whether the agency must wait for the Governor to act before publishing its Notice of Adoption, you should wait to submit your agency’s Notice of Adoption to the *State Register* for publication until after your agency is certain that the Governor will not veto the rules.

9.11.3 180-day deadline

The agency must submit the Notice of Adoption to the *State Register* for publication within 180 days after the ALJ Report or Chief ALJ Report is issued, or the rules are automatically withdrawn. If you miss the deadline, the rules cannot be adopted unless you begin and successfully complete a new rulemaking proceeding. The 180 days does not include days needed for Chief ALJ or LCC review or because the Legislature delayed adoption of the rules.¹⁸

It is important to not tempt fate by letting final adoption of rules get close to using up the 180 days allowed. This time can get eaten up quickly when you are grappling with changes to complex and controversial rules.

Note: The statute says that you must submit the Notice of Adoption for publication to meet the 180-day requirement. A wiser course of action is to publish the Notice of Adoption within the 180 days to eliminate all questions. You do not want to rely on your date of submission to meet this important deadline if you can possibly avoid it by publishing sooner.

¹⁶ Minn. Stat. § 14.27.

¹⁷ Minn. Stat. § 14.05, subd. 6.

¹⁸ Minn. Stat. §§ 14.126, .19.

9.11.4 *State Register* lead time

The *State Register* publishes on Mondays. The submission deadline is noon on the Tuesday before publication (except when the deadline is changed by a holiday). **For rules that are long (more than 20 pages) or complex (include tables, charts, pictures, etc.) contact the editor to negotiate a deadline.**

See information on how to publish in the *State Register* and “Production Schedule” for publication dates and deadlines on the [Minnesota State Register website](https://mn.gov/admin/bookstore/register.jsp) (<https://mn.gov/admin/bookstore/register.jsp>).

9.12 Prepare and Store the Official Rulemaking Record

After publishing the Notice of Adoption, you can complete the last official step, which is preparing and storing the Official Rulemaking Record.¹⁹ Note that OAH sends a memo to the agency when OAH approves the rules along with the original rulemaking documents that had been filed with OAH, which are most of the documents the agency needs for the rulemaking record. A form for the Official Rulemaking Record is in the appendix as **RECORD**. Note that paragraphs (1) to (11) of this form are keyed to clauses (1) to (11) of Minnesota Statutes, section 14.365, so this form can serve as a checklist to meet the requirements of section 14.365. In addition to the required documents, it is good practice to keep documents that show any additional justification for your rules, the date the rules took effect, evidence of official approval by your agency, and any information on how you considered giving affected parties notice.

Note: With eFiling, OAH will return your file as a downloadable link in an email message. Only the person who receives the email with the link can open it. Furthermore, the link will expire. Download the materials as soon as possible and save it securely according to your agency’s record retention schedule and practices. This eFile and any others not included will become your official record, which your agency must preserve as a permanent record. OAH is not responsible for preserving the permanent record and does not keep the electronic file available indefinitely.

Best practice: Your returned file from OAH might be labeled “official record,” but rename it something like “return of OAH submission file.” This will help you distinguish it from the official rule record that you must prepare under statute after your rulemaking concludes.

9.13 Get a Complete Version of the Entire Chapter of the New Rules

Shortly after the Notice of Adoption is published, the Revisor will send you a “stripped” copy of the rules with the stricken text deleted and the underscoring removed. In most cases, the persons within your agency who work with the rules would like a complete version of the entire chapter of the rules,

¹⁹ Minn. Stat. § 14.365.

including the portions amended and the portions not amended. So, at this stage in the process, if it is appropriate, get a complete copy of your rules from the [Revisor's website](http://www.revisor.leg.state.mn.us/rules/) (<http://www.revisor.leg.state.mn.us/rules/>). Your rules will be available after the Revisor has finished editing them.

9.14 Notify Agency Decision Makers of the Completion of the Process

Tell people at the agency that the rulemaking project has been completed. In the process, take some credit for your work on the rules. Send a memo to the persons at the agency most interested in the rules. Include the agency decision makers, the staff persons you worked most closely with on the development of the rules, and the staff person in charge of updating your agency's rulemaking docket.

Checklist for Chapter 9 – Adopting Rules with a Hearing

Date Completed	Item
<hr/>	9 – Entire chapter reviewed before proceeding
<hr/>	9.1 – Hearing preparations complete <ul style="list-style-type: none">- 9.1.1 – Meetings scheduled; calendar cleared- 9.1.2 – ALJ notified- 9.1.3 – Copies of rules and SONAR made (if holding in-person hearings); rules and SONAR posted on agency webpage- 9.1.4- Documents prepared to submit into the record<ul style="list-style-type: none">- Exhibits prepared and labeled according to M.R. 1400.2220, subpart 1.- Exhibits posted on agency webpage- Exhibits eFiled- 9.1.5 – Summary prepared to read at hearing- 9.1.6 – Agency staff and agency AG prepared for hearing<ul style="list-style-type: none">- STAFF-HR used- 9.1.7 – Preliminary responses to prehearing comments prepared- 9.1.8 – Changes to rules decided; ready to announce at hearing<ul style="list-style-type: none">- If needed, Governor’s Office review and comment obtained.- 9.1.9 – Room set up for in-person hearing- 9.1.10 – Virtual hearing considerations<ul style="list-style-type: none">- “Run through” with ALJ scheduled- Consider requiring attendees to register- Decide how chat feature will or will not be used
<hr/>	9.2 – At the hearing <ul style="list-style-type: none">- 9.2.1 – What to say and what not to say- 9.2.2 – Take notes, record meeting, use court reporter- 9.2.3 – Post exhibits on agency website- 9.2.4 – Meet with decision makers ASAP after hearing
<hr/>	9.3 – Agency responses to comments prepared <ul style="list-style-type: none">- 9.3.1 – Posthearing comment period and rebuttal period- 9.3.2 – OAH eComments site- 9.3.3 – What to include in the comment period- 9.3.4 – Agency preliminary response drafted<ul style="list-style-type: none">- HR-RSPNS used- 9.3.5 – Posthearing comments monitored
<hr/>	

Date Completed	Item
	<ul style="list-style-type: none"> - 9.3.6 – Agency’s preliminary response finalized and signed - 9.3.7 – Rebuttal period comments monitored; final response prepared - 9.3.9 – Comments received by ALJ during posthearing comment period and rebuttal period placed on agency’s website
	<p>9.4 – ALJ Report received</p> <ul style="list-style-type: none"> - Disapprovals noted
	<p>9.5 – Decide how to proceed; get agency approval</p> <ul style="list-style-type: none"> - If agency is a multi-member board, BD-ADPT form used - 9.5.1 – Rules approved – proceed with adopting - 9.5.2 – Rules disapproved <ul style="list-style-type: none"> - Changes made to address disapproval; CHNG-DIS letter used - Choosing not to make changes to address disapproval - Requesting reconsideration of disapproval; CHNG-DIS letter used - Withdrawing rules; NTC-WITHDRAWAL form used - Making changes other than those recommended; CHNG-OTH letter used
	<p>9.6 – Order Adopting Rules drafted</p> <ul style="list-style-type: none"> - ORD-ADPT and SMPLFNDS used
	<p>9.7 – Governor’s Office approval obtained</p> <ul style="list-style-type: none"> - GOV-FNL used
	<p>9.8 – Copy of adopted rules obtained from Revisor</p>
	<p>9.9 – Order Adopting Rules finalized and filed</p> <ul style="list-style-type: none"> - Order Adopting Rules signed by: _____ - Signed order eFiled with OAH - Rules filed with Secretary of State - Notice of Adoption received from Revisor
	<p>9.10 – Notice of Filing given</p> <ul style="list-style-type: none"> - Give notice <i>on the same day</i> that OAH files the rules with Secretary of State
	<p>9.11 – Notice of Adoption published in the <i>State Register</i></p> <ul style="list-style-type: none"> - Published within 180 days after the ALJ Report is issued

Date Completed	Item
	<ul style="list-style-type: none"> - Notice submitted after agency is certain Governor will not veto rules - <i>State Register</i> website used
	<p>9.12 – Official Rulemaking Record prepared</p> <ul style="list-style-type: none"> - RECORD used
	<p>9.13 – Complete version of entire chapter of new rules obtained</p>
	<p>9.14 – Agency decision makers notified of completion of process</p>

Chapter 10 - Exempt Rules Under 14.386

Introduction

This chapter describes the process for adopting rules using the exempt rulemaking authority under Minnesota Statutes, section 14.386. An agency may adopt rules using the exempt procedure if an authorizing law specifically directs the agency to use the exempt process.

10.1 Determine Which Procedural Requirements Apply

There are three types of exempt rules:

10.1.1 Exempt under 14.386

The rulemaking authority for some rules exempts the rules from having to go through the usual rulemaking procedures of chapter 14. Most rules that are specifically exempt from the usual rulemaking procedures must still follow some procedures before the rules can take effect.¹ The first part of this chapter describes the process for adopting 14.386 exempt rules.

10.1.2 Completely exempt under 14.386

Some rules are not only exempt from the usual rulemaking procedures of chapter 14 but are also specifically exempt from the procedures of section 14.386 (completely exempt):

A statute enacted after January 1, 1997, authorizing or requiring rules to be adopted but excluded from the rulemaking provisions of chapter 14 or from the definition of a rule does not excuse compliance with this section unless it makes specific reference to this section.²

If this describes your rules, you may adopt your rules with only the requirements set out in your rulemaking authority. The second part of this chapter describes the process for adopting completely exempt rules.

10.1.3 Exempt for good cause under 14.388

Some rules are exempted from the normal rulemaking procedures for one or more “good cause” reasons (good-cause exemptions).³ Chapter 11 describes the process for adopting good-cause-exempt rules.

¹ Minn. Stat. § 14.386.

² Minn. Stat. § 14.386(a).

³ Minn. Stat. § 14.388.

10.2 Draft your Rules

Draft your rules as you would any rules. **[See Chapter 3.]** Your chain of command should review and support your proposed rules before you proceed. Some agencies have their legal counsel review the proposed rule language and double-check statutory authorities. An agency that is a multi-member board must follow board procedures, which usually means passing a formal resolution authorizing the Notice and authorizing a person to sign the Notice. A form for such a board resolution is in the appendix as **BD-NTC**.

Request the Revisor’s Office to prepare a draft of the rules and advise them that your agency is adopting the rules under the exempt procedure in Minnesota Statutes, section 14.386. (**Note:** There is no “preliminary draft” in exempt rulemaking – only the “adopted” rule.) Review the draft carefully, with the help of your agency’s subject matter expert, and request changes as necessary.

Adopting 14.386 Rules

10.3 Preparing your 14.386 Rules for Adoption

10.3.1 Notify Governor’s Office

You must notify the Governor’s Office of your exempt rulemaking per the Governor’s Office administrative rule review policy, **GOV-PLCY**. By this time, you should have had your rules reviewed and approved by your chain of command. Your next step is to submit the Preliminary Proposal Form **GOV-PRLM** signed by your director or commissioner when you are ready to move the exempt rules forward. Except for controversial rules, the agency does not have to wait for Governor’s Office approval to proceed.

If you are uncertain about moving forward without the Governor’s approval, you should discuss it with the Governor’s Policy Advisor.

Note: The Governor’s Office Proposed Rule and SONAR form is not used in the exempt rulemaking procedure.

10.3.2 Get approved draft from the Revisor

Request the Revisor’s Office to prepare rules approved (certified) as to form. The Revisor’s Office will provide you with a certificate stating that the rules are approved for publication. The certified rule is ready for publication.

Note: Because exempt rules are published only once in the *State Register*, the revisor draft is entitled “Adopted Exempt Rules Relating to...”. But the draft is still an RD. See section 2.3 for more information about revisor drafts. Under the APA, exempt rules are effective for only two years. But the authorizing

law may allow for the rules to be permanent. In this case, the title should read “Adopted Exempt Permanent Rules Relating to...”.

05/06/21	REVISOR	BD/NB	RD4702
1.1	Department of Human Services		
1.2	Adopted Exempt Temporary Rules Relating to Child Care Provider Requirements		
1.3	for Payment from the Child Care Fund		

10.3.3 Draft Proposed Order Adopting Rules

After you receive the Revisor’s approved draft, draft your proposed Order Adopting Rules. See **ORD-ADPT(EX)** in the appendix. When drafting your proposed Order, you must include a citation to the rules’ statutory exemption, any argument (if necessary) to support this exemption, and any other information required by law.

Even though there is no SONAR laying out the agency’s case for exempt rules, it is still a best practice to provide background for the ALJ. Here are two ways to do that:

- Insert in the proposed Order a concise outline explaining the rules (like a rule-by-rule analysis). This alternative works well for shorter and less-complex rules.
- Prepare a supplemental memorandum as an additional exhibit. This alternative might be well suited for longer or more-complex rules.

10.4 Submitting your 14.386 Rules to OAH

Minnesota Rules, part 1400.2400, subpart 2, lists the documents that you must file with the OAH for official review of your adopted rules. A form for the cover letter to OAH submitting your adopted exempt rules for approval is in the appendix as **EXEMPT-LTR**.

Note: OAH does not require that the proposed Order be signed at this point. The recommended practice is to submit an unsigned proposed Order Adopting Rules for the ALJ to approve as to legality. Later in the process, you will have the finalized approved draft signed and then will transmit a copy of the signed Order to OAH.

10.4.1 eFiling rule-related documents

OAH requests that agencies eFile all rule-related documents wherever possible. OAH has posted step-by-step instructions for creating an account and filing your documents on its website at [OAH Forms &](#)

[Filing \(https://mn.gov/oah/forms-and-filing/efiling/\)](https://mn.gov/oah/forms-and-filing/efiling/). (The page also includes a link to frequently asked questions.) **See section 1.7 for explicit instructions.**

10.4.2 Best Practices for Working Within OAH's eFiling System.

To accommodate eFiling, it's best to take some extra steps to organize your documents before uploading them into OAH's system. Simply consolidating all your individual documents into one huge file will make navigating it difficult for both the ALJ's review and your own reference. You can make a consolidated file easier to navigate with a little planning. Here are some options (and it might be advisable to confer with your assigned ALJ on more complex cases):

- Organize your documents as described in Minnesota Rules 1400.2400, subpart 2. OAH prefers that you consolidate the documents as one PDF document and bookmark them.
- If your case has a large volume of pages, consider adding a unique sequential page number through the entire set. This is often called applying a "Bates" stamp. Some photocopiers can do this and so can Adobe Pro.
- Scan the pages as a single PDF or combine saved PDF files into a single PDF. Prepare an index keyed to the unique numbers. In Adobe Pro, for example, it is simple to mark and label a bookmark at the first page of each document.
- If the filing is quite large, you may create more than one PDF. For example, a large volume of comments or a large map file may require a separate document to keep file size manageable.
- Consolidating your exhibits might simply exceed your technology's capabilities, so you might have to solicit additional assistance within your agency or acquire more powerful software, such as Adobe Pro.
- Also, consider your timing when eFiling. After you request OAH to assign an ALJ to your rulemaking, it's a good idea to communicate with the assigned ALJ (through William Moore) to notify the ALJ when you will file your record for review. Or you can wait to request OAH to appoint an ALJ only when the file is ready to submit. Because your submission of the rule record triggers a 14-day deadline by which the ALJ must review the record and approve the rule change, the key is to communicate clearly to OAH and any ALJ regarding the expected timing of your submission, and not to keep the ALJ waiting unnecessarily.
- If you have questions about submitting your rules file to OAH, refer to **OAH-INF** in the appendix for the location of or general information about OAH.
- Finally, always check to make sure that the system has uploaded your documents. Saving a screenshot or printing the window showing a file has uploaded is prudent. In addition, save any correspondence or documents that you receive from OAH for your own records because those items might not remain in your eFile folder.

10.4.4 OAH standards of review

As with any other rules, you must make certain that the proposed rules comply with standards of review before you submit them to OAH for review.⁴ Review the applicable standards of review for exempt rules in Minnesota Rules, part 1400.2100.

10.5 ALJ Review

The ALJ has 14 days to review and approve or disapprove your rules. If the ALJ approves the rules, OAH will send you a copy of the judge's decision and return your filing.

10.6 Procedure for Resubmitting Disapproved Rules

If the ALJ does not approve your rules, you may resubmit the rules with any necessary changes, challenge the disapproval, or do neither. If you decide to do neither, note that your rules cannot take effect unless they are approved.

10.6.1 Resubmitting with corrections

If the ALJ disapproves your rules, the defects noted are correctable, and your agency agrees to the corrections, you can resubmit the corrected rules to OAH for review. You will need an updated Revisor's copy for doing this. The ALJ has five working days to approve or disapprove your resubmission.

You might also want to prepare an exhibit that explains the corrections and that shows the changes in striking and underscoring. Because exempt rules don't have an AR draft, there is no way to show any changes needed to correct defects. So as part of your exhibit, you should show the changes to allow the ALJ to easily track what you are proposing.

Additionally, you will want to update the date of your rules in your unsigned Order Adopting Rules.

Note: This process is different from normal rules, in which corrections and disapproval are both submitted to the Chief ALJ. As with all OAH submissions, it is a best practice to submit a cover letter explaining what you are filing.

10.6.2 Procedure for appealing the ALJ decision

If the ALJ disapproves your rules and the defects noted are ones that cannot be corrected or your agency is unwilling to make the changes, you may ask the Chief ALJ to review the disapproved rules. To take advantage of this avenue for appeal, the agency must make the request within five working days

⁴ Minn. R. 1400.2400, subp. 3.

of receiving the ALJ's disapproval. The Chief ALJ then has 14 days to review the request, using the same standards of review as the ALJ.

10.7 Adopting your Approved Exempt Rules

Once the ALJ or Chief ALJ approves your rules, you can officially adopt the rules.

10.7.1 Finalize the Order Adopting Rules and have it signed

If you made no changes to your proposed rules, finish the proposed Order Adopting Rules and omit the word "Proposed" from the title. This omission should be the only difference between the proposed Order and your final Order Adopting Rules.

If you made changes to your proposed rules (such as the date of the rule draft), update your Order Adopting Rules to reflect the changes. The commissioner or director (or another authorized person) must sign it.

10.7.2 Determine whether to further notify the Governor's Office

If you made changes to the proposed rules or controversies have arisen, you might wish to communicate with the Governor's Office. Per the Governor's Office administrative rule review policy, **GOV-PLCY**:

When the agency is adopting exempt rules or good cause exempt rules: the agency may exercise its judgment about whether to submit a completed Final Rule Form [**GOV-FNL**] to the Office of the Governor. The nature of exempt . . . rules is that there are no policy considerations to make or controversies to address, so waiting for approval is not necessary. If either were to develop, however, the agency should notify the Office. Submitting a completed Final Rule Form is usually a wise precaution against error. When in doubt, the agency may contact the Legislative Coordinator. Agencies should note that exempt rules adopted under Minnesota Statutes, section 14.386 *are* subject to veto. *[emphasis added]*

10.7.3 Filing your approved exempt rules

eFile your signed Order Adopting Rules as you would your other documents.

Note: OAH, the Revisor's Office, and Secretary of State's Office accomplish the final steps electronically.

1. When the agency eFiles the signed Order Adopting Rules, OAH usually requests the Final Rules from the Revisor's Office. With exempt rules, however, the agency has already eFiled the certified adopted rule with OAH and the Revisor's office does not produce any additional documents. So, OAH files the Final Rules with the Secretary of State's Office.

2. The Secretary of State's Office serves the Final Rules on the Governor's Office via email using a distribution list that includes the agency. This starts the 14-day veto period. The email contains no explanation and is how you will know your rule was served on the Governor's Office, so you must watch for it. Typically, the agency rule contact is copied on the service email from the Secretary of State's Office to the Governor's Office. After you receive this email or some other confirmation, you should proceed with publishing the updated rule in the *State Register*. The Secretary of State's Office will also notify the Revisor's Office that the rule has been filed.

Note: While these steps can take place swiftly, that's not always the case. Make sure to keep track of where and when the rule was forwarded and how long it has been at a specific office. Follow up with the appropriate office, as needed.

10.7.4 Publish in the *State Register*

Before your rules can take effect, you must publish them in the *State Register*.⁵ This is the first and only time the rules are published (there is no Notice of Adoption). See information on how to publish in the *State Register* and "Production Schedule" for publication dates and deadlines on the [Minnesota State Register website \(https://mn.gov/admin/bookstore/register.jsp\)](https://mn.gov/admin/bookstore/register.jsp). The rules become effective on the date of publication if a different effective date is not specified in the rule.

10.7.5 *State Register* lead time

The *State Register* publishes on Mondays. The submission deadline is noon on the Tuesday before publication (except when the deadline is changed by a holiday). **For rules that are long (more than 20 pages) or complex (include tables, charts, pictures, etc.) contact the editor to negotiate a deadline.**

See "Production Schedule" on the [Minnesota State Register website \(https://mn.gov/admin/bookstore/register.jsp\)](https://mn.gov/admin/bookstore/register.jsp) for publication dates and deadlines.

10.7.6 Governor veto

After the Governor receives a copy of the adopted rules, the Governor may veto the rules. (**Note:** rules that are exempt under section 14.386 are subject to the Governor's veto, unlike good-cause-exempt rules under section 14.388). To veto the rules, the Governor must submit a notice of the veto to the *State Register* within 14 days of receiving the rules from the Secretary of State. A veto is effective when the veto notice is submitted to the *State Register*.⁶ The Governor's Office will let you know whether the rule or portions of the rule will be vetoed.

⁵ Minn. Stat. § 14.386(a)(4).

⁶ Minn. Stat. § 14.05, subd. 6.

10.8 Notice to Affected Parties

Providing additional notice is not required when exempt rules are proposed or adopted but is considered a best practice. Notice of your new rules might not reach the affected parties if you rely solely on the *State Register* publication. Because rules are always subject to due-process considerations, you should give notice to these parties in some other way to avoid possible litigation. If you do give additional notice, include a certificate of additional notice as an exhibit in the documents that you file with OAH for approval. Remember though, that because additional notice is not required for this rulemaking, you have more flexibility in how you provide this notice (for example, you do not have to have this additional notice plan preapproved by an ALJ). For information on developing and using an additional notice plan, see Chapter 5, 6, or 7.

10.9 Expiration of Exempt Rules

Unless otherwise provided in the authorizing law, exempt rules expire two years from the date that the rules are published in the *State Register*. Once expired, the law authorizing exemption will also expire, so you will be unable to use the exempt process again.

10.10 Official Rulemaking Record

After exempt rules are adopted, you must keep an Official Rulemaking Record. The requirements for the Official Rulemaking Record are contained in Minnesota Statutes, section 14.365, clauses (1) to (11). A form for the Official Rulemaking Record is in the appendix as **RECORD**. Note that paragraphs (1) to (11) of this form are keyed to clauses (1) to (11) of section 14.365, so that this form can serve as a checklist to meet the requirements of section 14.365. In addition to the required documents, it is good practice to keep documents that show any additional justification for your rules, the date the rules took effect, evidence of official approval by your agency, and any information on how you considered giving affected parties notice.

Note: With eFiling, OAH will return your file as a downloadable link in an email message. Only the person who receives the email with the link can open it. Furthermore, the link will expire. Download the materials as soon as possible and save it securely according to your agency's record retention schedule and practices. This eFile and any others not included will become your official record, which your agency must preserve as a permanent record. OAH is not responsible for preserving the permanent record and does not keep the electronic file available indefinitely.

Best practice: Your returned file from OAH might be labeled "official record," but rename it something like "return of OAH submission file." This will help you distinguish it from the official rule record that you must prepare under statute after your rulemaking concludes.

Adopting Completely Exempt Rules under 14.386

10.11 Preparing Completely Exempt Rules (Exempted from Chapter 14 and Specifically Exempted from Section 14.386)

Agencies may adopt completely exempt rules without the procedural requirements for the other two types of exemptions because these types of rules have been exempted from both the regular rulemaking procedures and the exempt procedure in section 14.386. In other words, this complete exemption means that you are not required to have your drafted rules certified as to form, submitted to OAH, or have the rules published. This complete exemption also means that you do not have to submit your exempt rules to the Governor for a possible veto because the rules are not subject to any provision of the APA, and therefore are not subject to section 14.05, subdivision 6.

10.11.1 Practical considerations; Governor's Office

Chapter 14 does not require that you submit completely exempt rules to the Governor's Office. However, those of you in the executive branch who serve the Governor should note that the Governor's Office administrative rule review policy, **GOV-PLCY**, asks agencies to submit a preliminary proposal form for exempt rules. This can be found in the appendix as **GOV-PRLM**. After you notify the Governor's office, you may go forward without waiting for Governor's Office approval.

10.11.2 Specific statutory guidelines

Make certain that you follow any specific guidelines presented in the statutory authority. For instance, the law authorizing complete exemption might also state that the rules, once drafted, must be published in the *State Register* as public notice that the rules exist.

10.11.3 Notice Requirements

Although you have a complete exemption from rulemaking requirements found in the APA, you should still provide some form of notice to affected parties to avoid a due process challenge. This notice should be appropriate to the rules that you seek to enforce and does not require comment.

10.11.4 Legal review

If the law authorizing this exemption does not give you further guidelines, you might want to do a legal review of your rules to ensure that the rules will survive potential legal challenges. Some agencies might choose to do the review in house, while other agencies might choose to consult with their AG.

10.11.5 Order Adopting Rules

Creating a record for this rulemaking is a good idea. An Order Adopting Rules, even though not required, serves as a record of both the effective date and the statutory authorization for these rules. A commissioner's signature also gives proof that these rules were authorized. See **ORD-ADPT** in the appendix.

Note: Because these are completely exempt rules, you will not need to include in your Order any statement of need and reasonableness.

10.11.6 Official Rulemaking Record

While not required for completely exempt rules, your agency should maintain an official record to document how the rules have changed, who worked on the rules, dates for when the rules went into effect, evidence that the rules were adopted by the agency official authorized to adopt rules, and information on how affected parties were notified of the rules. Because you will not have to prepare a Statement of Need and Reasonableness, you might want to include a justification in an Order Adopting Rules, as discussed previously, or provide memos or correspondence to show your reasoning for the rules.

Checklist for Chapter 10 – Exempt Rules under 14.386

Date Completed	Item
_____	10 – Entire chapter reviewed before proceeding
_____	10.1 – Determined which procedural requirements apply <ul style="list-style-type: none">- 10.1.1 – Exempt under 14.386- 10.1.2 – Completely exempt under 14.386- 10.1.3 – Exempt for good cause under 14.388 (See Chapter 11)
_____	10.2 – Rules drafted <ul style="list-style-type: none">- Draft rules as you would any other rules (See Chapter 3)- Request draft from Revisor; tell them the rules are exempt under 14.386- If agency is a multi-member board, BD-NTC used
_____	10.3 – Rules prepared for adoption <ul style="list-style-type: none">- 10.3.1 – Governor’s Office notified<ul style="list-style-type: none">- GOV-PRLM used
_____	- 10.3.2 – Revisor’s Draft approved for publication obtained (with certificate signed by Revisor)
_____	- 10.3.3 – Proposed Order Adopting Rules drafted <ul style="list-style-type: none">- ORD-ADPT(EX) used
_____	10.4 – Rules submitted to OAH <ul style="list-style-type: none">- 10.4.1 – eFile rule-related documents; EXEMPT-LTR used
_____	10.5 – ALJ review completed <ul style="list-style-type: none">- ALJ has 14 days to review
_____	10.6 – Resubmitting disapproved rules <ul style="list-style-type: none">- 10.6.1 – Resubmitting with corrections- 10.6.2 – Appealing ALJ decision
_____	10.7 – Approved Exempt Rules adopted <ul style="list-style-type: none">- 10.7.1 – Order Adopting Rules finalized and signed<ul style="list-style-type: none">- Order signed by: _____
_____	- 10.7.2 – Determine whether to further notify the Governor’s Office <ul style="list-style-type: none">- GOV-FNL used

Checklist for Chapter 10 (Continued)

Date Completed	Item
_____	- 10.7.3 – Signed Order Adopting Rules eFiled <ul style="list-style-type: none">- Signed order eFiled with OAH<ul style="list-style-type: none">- Rules filed with Secretary of State- Notice of Adoption received from Revisor
_____	10.8 – Affected parties notified (Optional)
_____	10.9 – Expiration of Exempt Rules noted
_____	10.10 – Official Rulemaking Record prepared <ul style="list-style-type: none">- RECORD used
_____	10.11 – Preparing Completely Exempt Rules (exempted from Chapter 14 and also specifically exempted from section 14.386) <ul style="list-style-type: none">- 10.11.1 – Practical considerations; Governor’s Office notified<ul style="list-style-type: none">- GOV-PRLM used- 10.11.2 – Specific statutory guidelines followed- 10.11.3 – Notice to affected parties provided- 10.11.4 – Legal review of rules- 10.11.5 – Consider using ORD-ADPT- 10.11.6 – Official Rulemaking Record created

Chapter 11 – Good Cause Exempt Rules Under 14.388

Introduction

This chapter describes the process for rules that are adopted, amended, or repealed under the APA’s good-cause-exemption authority.¹ The agency must meet the conditions of section 14.388 to use the procedures of 14.388; the good-cause exemption is an efficient way to clean up rules that fit these conditions.

11.1 Determine Whether your Rules Fall Under the Good Cause Exemption

An agency may use the good cause exemption if it finds that normal rulemaking requirements of chapter 14 are unnecessary, impracticable, or contrary to the public interest when proposing to adopt, amend, or repeal rules in any of these four situations:

1. The rules address a serious and immediate threat to public health, safety, or welfare.
2. The rules comply with a court order or federal law requirement that does not allow for compliance with sections 14.14 to 14.28.
3. The rules incorporate specific changes stated in applicable statutes where no interpretation of law is required. In other words, changes that must or could be made because of a statutory change made by the legislature fall under this exemption. For example, suppose your rules govern the accident-prevention course for senior drivers over the age of 65. Taking the course enables senior drivers to get a discount on their car insurance, per Minnesota Statutes. If the statute were changed to apply to all drivers that are over the age of 55, you would use the good cause exemption to change all the 65s to 55s in your rules. However, if you decide to make further changes to the course curriculum, they would be substantive changes to the rule, and you must use regular rulemaking procedures.
4. The rules make changes that do not alter the sense, meaning, or effect of a rule. For example, industry now uses the term “widgets” for a certain item, but when you adopted the rule, the term used was “gadgets.” Because “gadget” has become an obsolete term, you need to change the terms used in your rules to “widgets.” You may use the good cause exemption to substitute the term “widget” for “gadget” if this substitution doesn’t change the meaning, sense, or effect of the current rule. A change in effect could occur if the term “widget” is broader than the term “gadget” and therefore your rule applies to more widgets than gadgets. In this instance, the

¹ Minn. Stat. § 14.388.

effect of your rule changed because it covers more widgets than it covered gadgets, and this result could positively or negatively affect the users of widgets.

11.2 Draft your Rules

Draft your rules as you would any rules. **[See Chapter 3.]** Your chain of command should review and support your proposed rules before you proceed. Some agencies have their legal counsel review the proposed rule language and double-check statutory authorities. An agency that is a multi-member board must follow board procedures, which usually means passing a formal resolution authorizing the Notice and authorizing a person to sign the Notice. A form for such a board resolution is in the appendix as **BD-NTC**.

Request the Revisor’s Office to prepare a draft of the rules and advise them that your agency is adopting the rules under the good cause exempt procedure in Minnesota Statutes, section 14.388. (**Note:** There is no “preliminary draft” in exempt rulemaking – only the “adopted” rule.) Review the draft carefully, with the help of your agency’s subject matter expert, and request changes as necessary.

11.3 Preparing your Good Cause Exempt Rules for Adoption

11.3.1 Notify Governor’s Office

You must notify the Governor’s Office of your exempt rulemaking per the Governor’s Office administrative rule review policy, **GOV-PLCY**. By this time, you should have had your rules reviewed and approved by your chain of command. Your next step is to submit the Preliminary Proposal Form **GOV-PRLM** signed by your director or commissioner when you are ready to move the expedited rules forward. The agency does not have to wait for Governor’s Office approval to proceed.

If you are uncertain about moving forward without the Governor’s approval, you should discuss it with the Governor’s Legislative Coordinator, but the Governor’s Office’s current practice is not to issue formal approval.

Note: The Governor’s Office Proposed Rule and SONAR form is not used in the exempt rulemaking procedure.

11.3.2 Get approved draft from the Revisor

Request the Revisor’s Office to prepare rules approved (certified) as to form. The Revisor’s Office will provide you with a certificate stating that the rules are approved for publication. The certified rule is ready for publication.

Note: Because exempt rules are published only once in the *State Register*, the revisor draft is entitled “Adopted Exempt Rules Relating to . . .” But the draft is still an RD.

11.3.3 Draft Proposed Order Adopting Rules

After you receive the Revisor’s approved draft, draft your proposed Order Adopting Rules. See **ORD-ADPT(EX)** in the appendix. Your proposed Order must include an explanation of the legality of the rule, an explanation of why the rule meets the good cause exemption requirements (see the four categories of exempt rules in section 11.1), and any other information required by law or rule. Because the law requires notice, you might want to include in the Order a description of your notice and why it satisfies the notice requirement. You may also attach a copy of the notice to the Order.

Even though there is no SONAR document laying out the agency’s case for exempt rules, it is still a best practice to provide background for the ALJ. Here are two ways to do that:

- Insert in the proposed Order a concise outline of need and reasonableness (like a rule-by-rule analysis) for the proposed rules. This alternative works well for shorter and less-complex rules.
- Prepare a supplemental memorandum as an additional exhibit. This alternative might be well suited for longer or more-complex rules.

11.4 Prepare and Send the Notice of Submission

11.4.1 Prepare the Notice of Submission

See **NTC-SBM(EX)** in the appendix.

Do the following to help you organize:

1. choose the date for submitting your rules package to OAH and sending your Notice of Submission;
2. prepare an agency webpage, if desired; and
3. make sure that documents you will post online are accessible.

The Notice of Submission must include:

1. the proposed rules in certified Revisor form;
2. an explanation of why the rules meet the requirements of the good cause exemption; and
3. a statement that interested parties have five business days after the date of the notice to submit comments to OAH by United States mail or via the Office of Administrative Hearings [Rulemaking eComments \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/).²

² See form NTC-SBM(EX) in the Appendix.

11.4.2 Using OAH's eComments website

Minnesota Statutes, section 14.388, subdivision 2, requires the public have an opportunity to submit comments to OAH. Therefore, agencies must notify the public that they may submit public comments using OAH's [Rulemaking eComments \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/).

The public may also submit comments to OAH by U.S. Mail, eComments, personal service or fax, so you must check for and respond to these comments as well. Public instructions for making comments can be found at [Rulemaking eComments \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/).

To set up your public eComments site, contact OAH Administrative Rule and Applications Specialist, William Moore, at William.T.Moore@state.mn.us or (651) 361-7893 at least a week before you eFile your notice. Provide the following information:

1. OAH docket number assigned to the rulemaking.
2. The dates the comment period will open and close.
3. A link to the agency's rulemaking webpage, if applicable. OAH will add a link to the agency's rulemaking webpage on the eComments site.
4. Optional: Finalized accessible copies of the documents you want to appear on the OAH eComments webpage, if any.

11.4.3 Giving Notice of Submission

On or before the date you submit your rules to OAH for review, you must give notice of your intent to amend your rules.³ Plus, you must send your Notice through mail or email to everyone on your agency's rulemaking mailing list. There is no penalty for sending the Notice early. Email delivery can be accomplished using a subscription service such as GovDelivery.

You must also notify interested persons. Be creative about finding ways to reach them. The effort you make should be proportional to the potential controversy of the rules. For controversial rules, you might need to compile lengthy mailing lists that you should organize in advance to meet the notice requirements. A list-management service such as GovDelivery is a real timesaver. Preserving evidence of your efforts and list is prudent for preparing a certificate of mailing, if the ALJ requests one. If the proposed rules are not controversial, posting the notice on your agency's website might suffice. If you have concerns, send your notice plan to OAH for review.

A Certificate of Accuracy of the Mailing List and a Certificate of Mailing should be completed and saved for submission to OAH. The date on the Certificate of Mailing should be the same as the date that the Notice was sent. Forms for the certificates are in the appendix as **CRT-LIST** and **CRT-MLNG**. If one person performs both actions, you can create a single certificate for that person that covers both

³ Minn. Stat. § 16E.07, subd. 3.

actions (see **CRT-LIST-MLNG-SAMPLE**). You may choose to submit these certificates when you file with OAH, or the ALJ might require them as “any other information required by law or rule.”⁴

11.5 Submitting your Good Cause Exempt Rules to OAH

Minnesota Rules, part 1400.2400, subpart 2, lists the documents you must file with the OAH for official review of your adopted rules. A form for the cover letter to OAH submitting your adopted exempt rules for approval is in the appendix as **EXEMPT-LTR**.

Note: OAH does not require that the proposed Order be signed at this point. The recommended practice is to submit an unsigned proposed Order Adopting Rules for the ALJ to approve as to legality. Later, you will have the approved draft signed and then you will transmit a copy of the signed Order to OAH.

11.5.1 eFiling rule-related documents

OAH requests that agencies eFile all rule-related documents wherever possible. OAH has posted step-by-step instructions for creating an account and filing your documents on its website at [OAH Forms & Filing \(https://mn.gov/oah/forms-and-filing/efiling/\)](https://mn.gov/oah/forms-and-filing/efiling/). (The page also includes a link to frequently asked questions.) **See section 1.7 for explicit instructions.**

11.5.2 Best Practices for working within OAH’s eFiling system

To accommodate eFiling, it’s best to take some extra steps to organize your documents before uploading them into OAH’s system. Simply consolidating all your individual documents into one huge file will make navigating it difficult for both the ALJ’s review and your own reference. You can make a consolidated file easier to navigate with a little planning. Here are some options (and it might be advisable to confer with your assigned ALJ on more complex cases):

- Organize your documents as described in Minnesota Rules 1400.2400, subpart 2. OAH prefers that you consolidate the documents as one PDF document and bookmark them. Best practice: Include the replies that the agency sent to comments along with those comments.
- If your case has a large volume of pages, consider adding a unique sequential page number through the entire set. This is often called applying a “Bates” stamp. Some photocopiers can do this and so can Adobe Pro.
- Scan the pages as a single PDF or combine saved PDF files into a single PDF. Prepare an index keyed to the unique numbers. In Adobe Pro, for example, it is simple to mark and label a bookmark at the first page of each document.

⁴ Minn. R. 1400.2400, subp. 2B(3).

- If the filing is quite large, you may create more than one PDF. For example, a large volume of comments or a large map file may require a separate document to keep file size manageable.
- Consolidating your exhibits might simply exceed your technology’s capabilities, so you might have to solicit additional assistance within your agency or acquire more powerful software, such as Adobe Pro.

Also, consider your timing when eFiling. After you request OAH to assign an ALJ to your rulemaking, it’s a good idea to communicate with the assigned ALJ (through William Moore) to notify the ALJ when you will file your record for review. Or you can wait to request OAH to appoint an ALJ only when the file is ready to submit. Because your submission of the rule record triggers a 14-day deadline by which the ALJ must review the record and approve the rule change, the key is to communicate clearly to OAH and any ALJ regarding the expected timing of your submission, and not to keep the ALJ waiting unnecessarily.

If you have questions about submitting your rules file to OAH, refer to **OAH-INF** in the appendix for the location of or general information about OAH.

Finally, always check to make sure that the system has uploaded your documents. Saving a screenshot or printing the window showing a file has uploaded is prudent. In addition, save any correspondence or documents that you receive from OAH for your own records because those items might not remain in your eFile folder.

11.5.3 OAH standards of review

As with any other rules, you must make certain that the proposed rules comply with standards of legality before you submit them to OAH for review.⁵ Review these standards directly in Minnesota Rules, part 1400.2100.

11.6 ALJ Review

The ALJ has 14 days to review and approve or disapprove your rules. If the ALJ approves the rules, OAH will send you a copy of the judge’s decision and return your filing.

11.7 Procedure for Resubmitting Disapproved Rules

If the ALJ does not approve your rules, you may resubmit the rules with any necessary changes or challenge the disapproval, or neither. If you decide to do neither, note that your rules cannot take effect unless they are approved.

⁵ Minn. R. 1400.2400, subp. 3.

11.7.1 Resubmitting with corrections

If the ALJ disapproves your rules, the defects noted are correctable, and your agency agrees to the corrections, you can resubmit the corrected rules to OAH for review. You will need an updated Revisor’s copy for doing this. The ALJ has five working days to approve or disapprove.

Note: This process is different from normal rules, in which corrections and disapproval are both submitted to the Chief ALJ.

11.7.2 Procedure for appealing the ALJ decision

If the ALJ disapproves your rules and the defects noted are ones that cannot be corrected or your agency is unwilling to make the changes, you may ask the Chief ALJ to review the disapproved rules. To take advantage of this avenue for appeal, the agency must make the request within five working days of receiving the ALJ’s disapproval. The Chief ALJ then has 14 days to review the request, using the same standards of review as the ALJ.

11.8 Adopting your Approved Exempt Rules

Once the ALJ approves your rules, you may officially adopt the rules.

11.8.1 Finalize the Order Adopting Rules and have it signed

If you made no changes to your proposed rules, finish the proposed Order Adopting Rules by removing the word “Proposed” from the title and inserting the number of comments received. These changes should be the only differences between the proposed Order and your final Order Adopting Rules.

If you made changes to your proposed rules, update your Order Adopting Rules to reflect those changes along with removing the word “Proposed” from the title and inserting the number of comments received.

The commissioner or director (or other authorized person) may now sign it.

11.8.2 Determine whether to further notify the Governor’s Office

If you made changes to the proposed rules or controversies have arisen, you might wish to communicate with the Governor’s Office. Per the Governor’s Office administrative rule review policy, **GOV-PLCY:**

When the agency is adopting exempt rules or good cause exempt rules: the agency may exercise its judgment about whether to submit a completed Final Rule Form **[GOV-FNL]** to the Office of the Governor. The nature of exempt . . . rules is that there are no policy considerations to make or controversies to address, so waiting for approval is not necessary. If either were to develop, however, the agency should notify the Office. Submitting a completed Final Rule Form

is usually a wise precaution against error. When in doubt, the agency may contact the Legislative Coordinator. . . . Good cause exempt rules adopted under Minnesota Statutes, section 14.388 *are not* subject to veto. *[emphasis added]*

11.8.3 Filing your approved exempt rules

eFile your signed Order Adopting Rules as you would your other documents.

Note: OAH, the Revisor’s Office, and Secretary of State’s Office accomplish the final steps electronically.

1. When the agency eFiles the signed Order Adopting Rules, OAH usually requests the Final Rules from the Revisor’s Office. With exempt rules, however, the agency has already eFiled the certified adopted rule with OAH and the Revisor’s office does not produce any additional documents. So, OAH files the Final Rules with the Secretary of State’s Office.
2. The Secretary of State’s Office serves the Final Rules on the Governor’s Office via email using a distribution list that includes the agency. **(Note: there is no veto period; see exception noted in 11.8.6 for good cause exempt rules).** The email contains no explanation and is how you will know your rule was served on the Governor’s Office, so you must watch for it. Typically, the agency rule contact is copied on the service email from the Secretary of State’s Office to the Governor’s Office. After you receive this email or some other confirmation, you should proceed with publishing the updated rule in the *State Register*. The Secretary of State’s Office will also notify the Revisor’s Office that the rule has been filed.

Note: While these steps can take place swiftly, that’s not always the case. Make sure to keep track of where and when the rule was forwarded and how long it has been at a specific office. Follow up with the appropriate office, as needed.

11.8.4 Publish in the *State Register*

Before your rules can take effect, you must publish them in the *State Register*.⁶ This is the first and only time the rules are published (there is no Notice of Adoption). See information on how to publish in the *State Register* and “Production Schedule” for publication dates and deadlines on the [Minnesota State Register website \(https://mn.gov/admin/bookstore/register.jsp\)](https://mn.gov/admin/bookstore/register.jsp). The rules become effective on the date of publication if a different effective date is not specified in the rule.

⁶ Minn. Stat. § 14.388, subd. 1, requires the agency to follow the procedures of section 14.386, which includes the publication requirement in paragraph (a), clause (4).

11.8.5 State Register lead time

The *State Register* publishes on Mondays. The submission deadline is noon on the Tuesday before publication (except when the deadline is changed by a holiday). **For rules that are long (more than 20 pages) or complex (include tables, charts, pictures, etc.) contact the editor to negotiate a deadline.**

See “Production Schedule” on the [Minnesota State Register website](https://mn.gov/admin/bookstore/register.jsp) (<https://mn.gov/admin/bookstore/register.jsp>) for publication dates and deadlines.

11.8.6 Governor veto

A governor’s veto does not apply to good cause exempt rules adopted under Minnesota Statutes, section 14.388.⁷

11.9 Notice to Affected Parties

Providing additional notice is not required when exempt rules are proposed or adopted but is considered a best practice. Notice of your new rules might not reach the affected parties if you rely solely on the *State Register* publication. Because rules are always subject to due-process considerations, you should give notice to these parties in some other way to avoid possible litigation. If you do give additional notice, include a certificate of additional notice as an exhibit in the documents that you file with OAH for approval. Remember though, that because additional notice is not required for this rulemaking, you have more flexibility in how you provide this notice (for example, you do not have to have this additional notice plan preapproved by an ALJ). For information on developing and using an additional notice plan, see Chapter 5, 6, or 7.

11.10 Possible Expiration of Good Cause Exempt Rules

Rules adopted under clauses (1) and (2) of section 14.388 are effective for two years from the date of publication of the rule in the *State Register*. Rules adopted under clauses (3) and (4) of section 14.388 are effective upon publication in the *State Register* and don’t expire.

11.11 Official Rulemaking Record

After 14.388 rules are adopted, you must keep an Official Rulemaking Record. The requirements for the Official Rulemaking Record are stated in Minnesota Statutes, section 14.365, clauses (1) to (11). A form for the Official Rulemaking Record is in the appendix as **RECORD**. Note that paragraphs (1) to (11) of this form are keyed to clauses (1) to (11) of section 14.365, so that this form can serve as a checklist to meet the requirements of section 14.365. In addition to the required documents, it is good practice

⁷ See Minn. Stat. § 14.05, subd. 6.

to keep documents that show any additional justification for your rules, the date the rules took effect, evidence of official approval by your agency, and any information on how you considered giving affected parties notice.

Note: With eFiling, OAH will return your file as a downloadable link in an email message. Only the person who receives the email with the link can open it. Furthermore, the link will expire. Download the materials as soon as possible and save it securely according to your agency's record retention schedule and practices. This eFile and any others not included will become your official record, which your agency must preserve as a permanent record. OAH is not responsible for preserving the permanent record and does not keep the electronic file available indefinitely.

Best practice: Your returned file from OAH might be labeled "official record," but rename it something like "return of OAH submission file." This will help you distinguish it from the official rule record that you must prepare under statute after your rulemaking concludes.

Checklist for Chapter 11 – Good Cause Exempt Rules under 14.388

Date Completed	Item
<hr/>	11 – Entire chapter reviewed before proceeding
<hr/>	11.1 – Determined whether rules fall under Good Cause Exemption
<hr/>	11.2 – Rules drafted <ul style="list-style-type: none">- Draft rules as you would any other rules (See Chapter 3)- Request draft from Revisor; tell them the rules are exempt under 14.388- If agency is a multi-member board, BD-NTC used
<hr/>	11.3 – Rules prepared for adoption <ul style="list-style-type: none">- 11.3.1 – Governor’s Office notified- GOV-PRLM used
<hr/>	<ul style="list-style-type: none">- 11.3.2 – Revisor’s Draft approved for publication obtained (with certificate signed by Revisor)
<hr/>	<ul style="list-style-type: none">- 11.3.3 – Proposed Order Adopting Rules drafted<ul style="list-style-type: none">- ORD-ADPT(EX) used
<hr/>	11.4 – Notice of Submission prepared and sent <ul style="list-style-type: none">- 11.4.1 – Notice of Submission prepared- NTC-SBM(EX) used- 11.4.2 –eComments set up- 11.4.3 – Notice of Submission given- CRT-LIST and CRT-MLNG used
<hr/>	11.5 – Rules submitted to OAH <ul style="list-style-type: none">- 11.5.1 – eFile rule-related documents; EXEMPT-LTR used
<hr/>	11.6 – ALJ review completed <ul style="list-style-type: none">- ALJ has 14 days to review
<hr/>	11.7 – Resubmitting disapproved rules <ul style="list-style-type: none">- 11.7.1 – Resubmitting with corrections- 11.7.2 – Appealing ALJ decision
<hr/>	11.8 – Approved Exempt Rules adopted <ul style="list-style-type: none">- 11.8.1 – Order Adopting Rules finalized and signed<ul style="list-style-type: none">- Order signed by: _____

Date Completed	Item
	<ul style="list-style-type: none"> - 11.8.2 – Determine whether to further notify the Governor’s Office - GOV-FNL used
	<ul style="list-style-type: none"> - 11.8.3 – Signed Order Adopting Rules eFiled - Signed order eFiled with OAH - Rules filed with Secretary of State - Notice of Adoption received from Revisor
	<ul style="list-style-type: none"> - 11.8.4 – Rules published in the <i>State Register</i> - Notice submitted after agency is certain Governor will not veto rules - <i>State Register</i> website used
	<p>11.9 – Affected parties notified (Optional)</p>
	<p>11.10 – Possible expiration of Exempt Rules noted</p> <ul style="list-style-type: none"> - Rules adopted under clauses (1) and (2) of section 14.388 are effective for two years from the date of publication in the State Register. - Rules adopted under clauses (3) and (4) of section 14.388 are effective upon publication in the State Register.
	<p>11.11 – Official Rulemaking Record prepared</p> <ul style="list-style-type: none"> - RECORD used

Chapter 12 - Expedited Rules Under 14.389

Introduction

This chapter describes the process for rules adopted under the APA's expedited rulemaking authority.¹ Agencies may adopt rules using these expedited procedures only if a law authorizing rules specifically allows using the procedures found in section 14.389.

The statute is silent about the applicability of the 18-month deadline in section 14.125. If it is a rulemaking under a new or amended authority, the best practice is to do the rulemaking in a timely manner, meet that deadline, and avoid any complaints in public comments that would require a response and an ALJ finding.

12.1 Draft your Rules

Draft your rules as you would any rules. **[See Chapter 3.]** Your chain of command should review and support your proposed rules before you proceed. Some agencies have their legal counsel review the proposed rule language and double-check statutory authorities. An agency that is a multi-member board must follow board procedures, which usually means passing a formal resolution authorizing the Notice and authorizing a person to sign the Notice. A form for such a board resolution is in the appendix as **BD-NTC**.

Request the Revisor's Office to prepare a preliminary draft of the rules and advise them that your agency is adopting the rules under the expedited procedure in Minnesota Statutes, section 14.389. Review the draft carefully, with the help of your agency's subject matter expert, and request changes as necessary. The rule title should say that they are "Proposed Expedited Permanent Rules."

12.2 Preparing your Expedited Rules for Comment

12.2.1 Notify Governor's Office

You must notify the Governor's Office of your expedited rulemaking per the Governor's Office administrative rule review policy, **GOV-PLCY**. By this time, you should have had your rules reviewed and approved by your chain of command. Your next step is to submit the Preliminary Proposal Form **GOV-PRLM** signed by your director or commissioner when you are ready to move the expedited rules forward. The agency does not have to wait for Governor's Office approval to proceed.

¹ Minn. Stat. § 14.389.

If you are uncertain about moving forward without the Governor’s approval, you should discuss it with the Governor’s Legislative Coordinator, but the Governor’s Office’s current practice is not to issue formal approval.

Note: The Governor’s Office Proposed Rule and SONAR form is not used in the expedited rulemaking procedure.

12.2.2 Get approved draft from the Revisor

Request the Revisor’s Office to prepare rules approved (certified) as to form. The Revisor’s Office will provide you with a certificate stating that the rules are approved for publication. The certified rule is ready for publication.

12.2.3 Draft Notice of Intent to Adopt Expedited Rules Without a Hearing

A Notice of Intent to Adopt Expedited Rules must contain the information in Minnesota Rules, part 1400.2085, subparts 2 and 3. A form for the Notice is in the appendix as **NTC-EXPEDITE** and is designed to be a checklist for meeting the requirements of part 1400.2085.

Note: You will only need to mention a possible hearing in your Notice if the law authorizing the rules makes specific reference to section 14.389, subdivision 5, rather than a general reference to section 14.389. Please see the draft Notice in the appendix, **NTC-EXPEDITE**, for specific wording on this topic.

12.2.4 “Substantially different” rules

The description of the rules in the Notice might affect whether postcomment modifications to the rules will make the adopted rules “substantially different” from the proposed rules.

Minnesota Statutes, section 14.05, subdivision 2, specifies the scope of the matter announced in the Notice, logical outgrowth, and fair warning as factors to be considered when determining whether the adopted rules are substantially different from the proposed rules. For example, suppose you have two substantially different alternative rule provisions or rules that set a numerical value (such as pollution discharge levels, noise levels, minimum number of employees to trigger a requirement, or utility rates). You might be able to draft the description of the rules in the Notice in a way that will allow the agency to adopt either alternative or adopt a value within a range without having to go through additional rule proceedings to adopt substantially different rules. The point is to provide sufficient notice and fair warning to the public about the potential scope of the proposed rules.

To adopt rules that are substantially different from the proposed rules, you must go through additional rule proceedings.²

² Minn. R. 1400.2110, .2300, subp. 7; Minn. Stat. §§ 14.05, subd. 2, .24.

12.3 Giving Notice

12.3.1 Agency mailing list

You must send your Notice through mail or email to everyone on your agency's rulemaking mailing list **at least 33 days** before the comment period ends.³ However, there is no good reason to wait until three days before the publication date to begin work on sending the Notice, especially if you are mailing the Notice and not emailing it. There is no penalty for sending the Notice early. Email delivery can be accomplished using a subscription service such as GovDelivery.

Note: If you have a large mailing list or you frequently get additions to your mailing list, make sure that you also mail to any persons who have been added to your mailing list after you began work on your mailing and before the date of mailing.

You are not required to send a copy of your rules along with the Notice. If the rules are not included, the Notice must include an easily readable and understandable description of the nature and effect of the proposed rules and an announcement that a free copy of the proposed rules is available on request from the agency.⁴

A Certificate of Accuracy of the Mailing List and a Certificate of Mailing must be completed and saved for submission to OAH. The date on the Certificate of Mailing should be the same as the date that the Notice was sent. Forms for the certificates are in the appendix as **CRT-LIST** and **CRT-MLNG**. If one person performs both actions, you can create a single certificate for that person that covers both actions (see **CRT-LIST-MLNG-SAMPLE**).

12.3.2 Additional notice—discretionary under part 1400.2410, subpart 2, item D

Providing additional notice is not required in expedited procedure, but it is considered a best practice. Notice of your new rules might not reach the affected parties if you rely solely on the *State Register* publication. Because rules are always subject to due-process considerations, you should give notice to these parties in some other way to avoid possible litigation. If you do give additional notice, include a certificate of additional notice as an exhibit in the documents that you file with OAH for approval. Remember though, that because additional notice is not required for this rulemaking, you have more flexibility in how you provide this notice (for example, you do not have to have this additional notice plan preapproved by an ALJ). For information on developing and using an additional notice plan, see Chapter 5, 6, or 7.

³ Minn. R. 1400.2080, subp. 6. The 33-day requirement applies only if you are mailing the requirement; otherwise, it must be 30 days before the comment period ends.

⁴ Minn. Stat. § 14.22, subd. 1(a).

12.3.3 Publish in *State Register*

You must publish your Notice in the *State Register* at least **30 days** before the end of your comment period.⁵ The published Notice must include the proposed rules, an easily readable and understandable summary of the overall nature and effect of the proposed rule, and a citation to the most specific statutory authority for the rule, including the authority for the rule to be adopted under the expedited process. (See information on how to publish in the *State Register* and “Production Schedule” for publication dates and deadlines on the [Minnesota State Register website \(https://mn.gov/admin/bookstore/register.jsp\)](https://mn.gov/admin/bookstore/register.jsp).)

When you send your documents to the *State Register*, you will also need to provide the *State Register* Editor with your Revisor’s ID number. The editor will request the Revisor’s Office to transmit the approved draft directly to the *State Register* electronically.

12.3.4 30-day comment period

You must allow at least 30 days after publication in the *State Register* for comment on the proposed rules.⁶ That is the minimum requirement. Consider whether a longer comment period might be beneficial (such as 45 or 60 days). Keep copies of all comments and submissions that you receive and the agency’s responses, because these must be included with the rest of the documents that you file with OAH.⁷

12.3.5 Collecting comments

OAH collects public comments on its [Rulemaking eComments \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/), as well as through U.S. Mail, eFiling, personal delivery, or fax. Public instructions for making comments can be found at [Rulemaking eComments \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/).

To set up your public eComments site, contact OAH Administrative Rule and Applications Specialist, William Moore, at William.T.Moore@state.mn.us or (651) 361-7893 at least a week before you publish your notice in the *State Register* or eFile your notice. Provide the following information:

1. OAH docket number, if already assigned.
2. The dates that the comment period will open and close.
3. A link to the agency’s rulemaking webpage, if applicable. OAH will add a link to the agency’s rulemaking webpage on the eComments site.

⁵ Minn. Stat. § 14.389, subd. 2.

⁶ Minn. Stat. § 14.389, subd. 2.

⁷ Minn. R. 1400.2085, subp. 2E.

4. If applicable, the date that the Notice will appear in the *State Register*.
5. Optional: Finalized, accessible copies of the documents you want to appear on the OAH eComments webpage, if any. These might include the Notice, proposed rules, SONAR, etc. See the [Office of Accessibility \(https://mn.gov/mnit/about-mnit/accessibility/\)](https://mn.gov/mnit/about-mnit/accessibility/) for more information on making documents accessible.

12.4 Modifications to your Expedited Rules

During the 30-day comment period, the agency may receive comments on the proposed rules that point out errors or request changes. You are not required to make changes suggested by the public, but sometimes the comments are compelling. If the agency considers making a modification to the rules as proposed, assess whether the modification will result in a substantially different rule from those proposed. If a modification does not result in a substantially different rule, make note of the reasons because you must explain this in your Order Adopting Rules. If they do result in substantially different rules, you should seriously consider whether the modification is necessary because you will have to follow the notice procedures under Minnesota rules, part 1400.2110.

If you decide to modify the rules, get agency decision makers to approve not only the changes but also the rationale for the changes. If you choose not to make changes suggested by the public, it is a good idea to brief agency decision makers and request their sign off on decisions not to act.

12.5 Expedited Rules Subject to Hearing

If the law authorizing your expedited rules makes specific reference to section 14.389, subdivision 5, rather than a general reference to section 14.389, a hearing is required if you have 50 or more requests for a hearing during the 30-day comment period. If you do not have 50 requests, you may proceed with your rulemaking following the procedures for expedited rules.

If you receive at least 50 requests, and the requests are valid under section 14.25, you must hold a hearing and comply with all the normal requirements for adopting rules after a public hearing found in the APA. These include preparing a SONAR, publishing and mailing a Notice of Hearing, and sending the Notice of Hearing to those persons who requested a public hearing. In other words, this removes the rulemaking from the expedited procedure for the remainder of the rulemaking process. Refer to **Chapter 7**, Giving Notice of Hearing, and **Chapter 9**, Adopting Rules with a Hearing, for more information on what these requirements entail.

12.5.1 Withdrawal of hearing requests

If your agency receives 50 or more requests for a hearing but is willing to change the rules to address enough of the requests or can address some requestors' reasons for making a hearing request (such as

clearing up a misunderstanding), your agency may be able to avoid going to hearing, if you meet the following requirements:

1. First, you must get enough hearing requests withdrawn to reduce the number of requests to less than 50.
2. Second, you must notify all persons who requested a hearing, in writing, if enough requests are withdrawn to reduce the number of requests below 50 and if the agency has taken any actions to obtain the withdrawals. A form for this notice is in the appendix as **NTC-HRWD** and serves as a checklist for meeting the requirements of section 14.25, subdivision 2. A form for a certificate of mailing this Notice is in the appendix as **CRT-HRWD**.

12.6 Get Governor’s Office Approval

After you decide on the final rules, you must get approval to proceed from the Governor’s Office. Per the Governor’s Office administrative rule review policy, **GOV-PLCY**:

When the agency is adopting expedited rules: the agency must submit the completed Final Rule Form [**GOV-FNL**] to the Office of the Governor before the agency is submitting its request to Office of Administrative Hearings (OAH) for rule review and approval. The agency must attach a copy of the proposed rules and any justification that the agency has prepared. *The agency must wait for Governor’s Office approval before publishing the notice of adoption.* [emphasis added]

12.7 Get a Copy of Adopted Rules from the Revisor

During the 30-day comment period, the Revisor will send you a “stripped” copy of your proposed rules with all stricken text deleted and all new text incorporated in the rules. The rule title will indicate that the rules are in “adopted” form (the number on the top of your draft will change from “RD” to “AR”).

12/20/21	REVISOR	RSI/EH	AR4726
1	Department of Commerce		
2	Adopted Expedited Rules Relating to Workers' Compensation Ratemaking		

If you are making no changes to the proposed rules, submit this copy to OAH for the official review. If you are making changes to the proposed rules, ask the Revisor to mark the modifications and send you an updated copy of the adopted rules for submission to OAH. In your request, indicate when you would like the adopted rules back, and the Revisor will tell you if that is workable.

12.8 Draft your *Proposed Order Adopting Rules*

A form for the Order is in the appendix as **ORD-ADPT** and is designed to be a checklist to meet the requirements of Minnesota Rules, part 1400.2090.

Even though there is no SONAR document laying out the agency's case for expedited rules, it is still a best practice to provide background for the ALJ. Here are two ways to do that:

- Insert in the proposed Order a concise outline of need and reasonableness (like a rule-by-rule analysis) for the proposed rules. This alternative works well for shorter and less-complex rules.
- Prepare a supplemental memorandum as an additional exhibit. This alternative might be well suited for longer or more-complex rules.

Note: OAH does not require that the proposed Order be signed at this point. The recommended practice is to submit an unsigned proposed Order Adopting Rules for the ALJ to approve as to legality. Later, you will have the finalized approved draft signed and then will transmit a copy of the signed Order to OAH.

12.9 Submit the File to OAH for Official Review

Minnesota Rules, part 1400.2410, subpart 2, items A to K, list the documents you must file with OAH for official review of your adopted rules. A sample cover letter to OAH is in the appendix as **EXPEDITE-LTR**. This letter is designed to serve as a checklist for meeting the requirements under Minnesota Rules, part 1400.2410.

12.9.1 eFiling rule-related documents

OAH requests that agencies eFile all rule-related documents wherever possible. OAH has posted step-by-step instructions for creating an account and filing your documents on its website at [OAH Forms & Filing \(https://mn.gov/oah/forms-and-filing/efiling/\)](https://mn.gov/oah/forms-and-filing/efiling/). (The page also includes a link to frequently asked questions.) **See section 1.7 for explicit instructions.**

12.9.2 Best practices for working within OAH's eFiling system

To accommodate eFiling, it is best to take some extra steps to organize your documents before uploading them into OAH's system. Simply consolidating all your individual documents into one huge file will make navigating it difficult for both the ALJ's review and your own reference. You can make a consolidated file easier to navigate with a little planning. Here are some options (and it might be advisable to confer with your assigned ALJ on more complex cases):

- Organize your documents as described in Minnesota Rules 1400.2410, subpart 2, items A–K. OAH prefers that you consolidate the documents as one PDF document and bookmark them. Best practice: Include the agency response to comments along with those comments.
- If your case has a large volume of pages, consider adding a unique sequential page number through the entire set. One system designed to apply such a unique number automatically is called a “Bates” stamp. Some photocopiers can do this and so can Adobe Pro.
- Scan the pages as a single PDF or combine saved PDF files into a single PDF. Prepare an index keyed to the unique numbers. In Adobe Pro, for example, it is simple to mark and label a bookmark at the first page of each document.
- If the filing is quite large, you may create more than one PDF. For example, a large volume of comments or a large map file may require a separate document to keep file size manageable.
- Consolidating your exhibits might simply exceed your technology’s capabilities, so you might have to solicit additional assistance within your agency or acquire more powerful software, such as Adobe Pro.

Also, consider your timing when eFiling. After you request OAH to assign an ALJ to your rulemaking, it’s a good idea to communicate with the assigned ALJ (through William Moore) to notify the ALJ when you will file your record for review. Or you can wait to request OAH to appoint an ALJ only when the file is ready to submit. Because your submission of the rule record triggers a 14-day deadline by which the ALJ must review the record and approve the rule change, the key is to communicate clearly to OAH and any ALJ regarding the expected timing of your submission, and not to keep the ALJ waiting unnecessarily.

If you have questions about submitting your rules file to OAH, refer to **OAH-INF** in the appendix for the location of or general information about OAH.

Finally, always check to make sure that the system has uploaded your documents. Saving a screenshot or printing the window showing a file has uploaded is prudent. In addition, save any correspondence or documents that you receive from OAH for your own records because those items might not remain in your eFile folder.

12.9.3 OAH standards of review

As with any other rules, you must make certain that the proposed rules comply with standards of legality before you submit them to OAH for review.⁸ Review these standards directly in Minnesota Rules, part 1400.2100.

⁸ Minn. R. 1400.2410, subp. 3.

12.10 Notice of Submission of Rules to OAH

Individuals may request to be informed of when you submit the rules to OAH for official review. You must provide a Notice of Submission on the same day that the rules are submitted to OAH. Although not specifically mentioned in section 14.389 or the in the Notice of Intent to Adopt Expedited Rules, Minnesota Rules, parts 1400.2410 and 1400.2570, both refer to giving notice that a Department has submitted its expedited rules to OAH for review if a person requests this notice. Forms for this Notice and for the certificate showing the agency sent out this Notice are in the appendix as **NTC-SBM** and **CRT-SBM**.

12.11 ALJ Review

The ALJ has 14 days to review and approve or disapprove your rules. If approved, OAH will send you a copy of the ALJ's decision and return your file to you.

12.12 Procedure for Resubmitting Disapproved Rules

If the ALJ does not approve your rules, you may resubmit the rules with any necessary changes or challenge the disapproval, or neither. If you decide to do neither, note that your rules cannot take effect unless are approved.

12.12.1 Resubmitting with corrections

If the ALJ disapproves your rules, the defects noted are correctable, and your agency agrees to the corrections, you can resubmit the corrected rules to OAH for review. You will need an updated Revisor's copy for doing this. The ALJ has five working days to approve or disapprove.

Note: This process is different from normal rules, in which corrections and disapproval are both submitted to the Chief ALJ.

12.12.2 Governor's Office approval for resubmission

Per the Governor's Office administrative rule review policy, **GOV-PLCY**:

If the ALJ makes any substantive recommendations to the rule or if defects are found, the agency should resubmit the Final Rule Form to the Governor's Office, clearly labeling it as a revised form. The agency must explain its response to the ALJ's Report, including any large deletions from the rule. A copy of the ALJ Report should be submitted to the Governor's Office with the revised Final Rule Form. Upon final approval of the rule by the Policy Advisor, the Legislative Coordinator will contact the agency and inform it that it may publish the expedited rules in the State Register.

12.12.3 Procedure for appealing the ALJ decision

If the ALJ disapproves your rules and the defects noted are ones that cannot be corrected or your agency is unwilling to make the changes, you may ask the Chief ALJ to review the disapproved rules. To take advantage of this avenue for appeal, the agency must make the request within five working days of receiving the ALJ's disapproval. The Chief ALJ then has 14 days to review the request, using the same standards of review as the ALJ.

12.13 Withdrawal of Rules

There might be circumstances that require your agency to withdraw the rules or a portion of the rules from review. You can do this, without repercussion, if the remaining rules are not substantially different. To withdraw the rules, you must submit a Notice of Withdrawal, signed by a person authorized to do so. The Notice must contain an explanation of the person's authority to withdraw the rules. Note that Minnesota Statutes, section 14.05, subdivision 3, requires that you publish notice in the *State Register* that you have withdrawn the rules.

The form for Notice of Withdrawn Rules is available in the appendix as **NTC-WITHDRAWL**. At a minimum, the notice should:

- identify what rule parts are being withdrawn;
- reference the *State Register* citation at which the rules were initially proposed; and
- briefly summarize the rules and why they are being withdrawn:

For example:

Board of Cosmetology

Notice of Withdrawn Rules for Proposed Amendments to Governing Schools, Instructors and School Managers; Minnesota Rules, Chapter 2110; Proposed Repeal of Minnesota Rules parts 2110.0010, subparts 14 and 15; 2110.0100; 2110.0320, subparts 9, 11, and 12; 2110.0330, subparts 3, 4, and 5; 2110.0390, subpart 3a; 2110.0410, subparts 2 and 5; and 2110.0710; Revisor's ID Number 4456, OAH Docket Number 65-9013-36457

The Minnesota Board of Cosmetologist Examiners is withdrawing its proposed amendment to rules governing schools, instructors and school managers that were published in the Dual Notice of Intent to Adopt Rules on September 26, 2022, in the *State Register*, volume 47, number 13, pages 285-314. Administrative Law Judge O'Reilly and Chief Judge Starr disapproved the amendments as not meeting the requirements of Minnesota Statutes, section 14.15, subdivisions 3 and 4, and Minnesota Rules part 1400.2240, subpart 4.

The board is withdrawing the following proposed amendments: Minnesota Rules, parts 2110.0010, subparts 14, 15, 17f, 18d, 18e, 18f, and 19a; 2110.0125; 2110.0190; 2110.0310; 2110.0320; 2110.0390, subparts 3, 3a, 3b, 5; 2110.0395; 2110.0410; 2110.0500; 2110.0510; 2110.0520; 2110.0525; 2110.0530; 2110.0545; 2110.0590; 2110.0625; 2110.0640; 2110.0650; 2110.0660; 2110.0670; 2110.0671; 2110.0680; 2110.0690; 2110.0705; 2110.0730; and 2110.0740.

The withdrawal is a modification to the Dual Notice published in the *State Register*, volume 47, number 13, pages 285-314...

What if an agency wants to withdraw portions of its rules? If the agency is proposing new language, the agency can strike the language in its AR draft instead of formally withdrawing the rules by publishing a withdrawal in the *State Register*.⁹ For larger withdrawals for which the agency still wants to adopt other parts of its rule, such as in the example above, the agency should follow the normal withdrawal process. A few tweaks are needed, however, because the APA doesn't explicitly outline a process for a hybrid rule withdrawal/rule adoption:

- Receive approval from the governor's office
- Send a letter to OAH stating that the agency plans to withdraw rule parts, citing to Minnesota Statutes section 14.05, subdivision 3, and Minnesota Rules, part 1400.2240, subpart 8 (or 1400.2300, subpart 4).
- Publish a Notice of Withdrawal in the *State Register*
- Fill out the AR draft with the *State Register* cites (volume and page number):

2110.0320	[Withdrawn at ... SR ...]
2110.0330	[Withdrawn at ... SR ...]
2110.390	PHYSICAL REQUIREMENTS.
	Subpart 1. Space.
	A. The school must have enough classroom and clinic space and workstations on the clinic floor to support the school's scheduled instruction and training programs.
	B. The school classrooms must have chairs and <u>table</u> work space for the maximum number of students scheduled for class at any one time.
	<i>[For text of item C, see Minnesota Rules]</i>
	D. The school must comply with the Minnesota State Building Code, the Minnesota State Fire Code <u>meet applicable building codes, fire codes,</u> and zoning codes as determined by local zoning and building officials and the state fire marshal.
	<i>[For text of item E, see Minnesota Rules]</i>
	<i>[For text of subparts 2 and 2a to 6, see Minnesota Rules]</i>
	Subp. 3. [Withdrawn at ... SR ...]
	Subp. 3a. [Withdrawn at ... SR ...]
	Subp. 3b. [Withdrawn at ... SR ...]

- Last, proceed as you would when submitting modifications or defect corrections to OAH

⁹ Withdrawing amendments to existing language is tricky; ask the revisor's office for help.

12.14 Finalize and File the Order Adopting Rules

After OAH approves your rules, the commissioner (or other authorized person) must sign the Order Adopting Rules. eFile your signed Order with OAH as you would any other documents.

The OAH, Revisor's Office, and Secretary of State's Office accomplish the final steps electronically.

1. When the agency eFiles the signed Order Adopting Rules, OAH requests the Final Rules from the Revisor's Office, which then has five working days to provide them to OAH. The adopted rules ("AR") contains the Revisor's certificate approving the rules for filing with the Secretary of State.
2. Once OAH gets the rules, OAH files the Final Rules with the Secretary of State's Office.
3. The Secretary of State's Office serves the Final Rules on the Governor's Office via email using a distribution list that includes the agency. This starts the 14-day veto period. The email contains no explanation and is how you will know your rule was served on the Governor's Office, so you must watch for it. Typically, the agency rule contact is copied on the service email from the Secretary of State's Office to the Governor's Office. After you receive this email or some other confirmation, you should proceed with publishing the updated rule in the *State Register*. The Secretary of State's Office will also notify the Revisor's Office that the rule has been filed.
4. It is the Revisor's standard practice to prepare the Notice of Adoption after notification from Secretary of State and send it to you without any request from you. If time is of the essence, you should notify the Revisor so that they expedite the Notice.

Note: While these steps can take place swiftly, that's not always the case. Make sure to keep track of where and when the rule was forwarded and how long it has been at a specific office. Follow up with the appropriate office, as needed.

12.15 Publish the Notice of Adoption in the *State Register*

Before your rules can take effect, you must publish the Notice of Adoption in the *State Register*. See information on how to publish in the *State Register* and "Production Schedule" for publication dates and deadlines on the [Minnesota State Register website \(https://mn.gov/admin/bookstore/register.jsp\)](https://mn.gov/admin/bookstore/register.jsp). The rules become effective on the day that they are published in the *State Register* if a different effective date is not specified in the rule.

12.15.1 Governor veto

The Governor may veto rules adopted under the expedited procedures of section 14.389.¹⁰ To veto the rules, the Governor must submit a notice of the veto to the *State Register* within 14 days of receiving

¹⁰ Minn. Stat. § 14.05, subd. 6.

the rules from the Secretary of State. A veto is effective when the veto notice is submitted to the *State Register*.¹¹ The Governor’s Office will let you know whether the rule or portions of the rule will be vetoed.

12.15.2 When to publish the Notice of Adoption

Even though the statute is silent on whether the agency must wait for the Governor to act before publishing its Notice of Adoption, you should wait to submit your agency’s Notice of Adoption to the *State Register* for publication until after your agency is certain that the Governor will not veto the rules. If your agency feels it is urgent that the rules become effective ASAP, contact the Governor’s Office to relay your concerns and discuss whether you can move forward with the rules before the end of the 14 days.

12.15.3 180-day deadline

The 180-day deadline in Minnesota Statutes, section 14.19, applies to an expedited rulemaking. This deadline requires you to submit a notice of adoption to the *State Register* within 180 days after the issuance of the ALJ decision. Failure to do this will result in your rules being automatically withdrawn, and you must start the process over.

12.15.4 State Register lead time

The *State Register* publishes on Mondays. The submission deadline is noon on the Tuesday before publication (except when the deadline is changed by a holiday). **For rules that are long (more than 20 pages) or complex (include tables, charts, pictures, etc.) contact the editor to negotiate a deadline.**

See information on how to publish in the *State Register* and “Production Schedule” for publication dates and deadlines on the [Minnesota State Register website](https://mn.gov/admin/bookstore/register.jsp) (<https://mn.gov/admin/bookstore/register.jsp>).

12.16 Official Rulemaking Record

After expedited rules are adopted, you must keep an Official Rulemaking Record. The requirements for the Official Rulemaking Record are stated in Minnesota Statutes, section 14.365, clauses (1) to (11). A form for the Official Rulemaking Record is in the appendix as **RECORD**. Note that paragraphs (1) to (11) of this form are keyed to clauses (1) to (11) of section 14.365, so that this form can serve as a checklist to meet the requirements of section 14.365. In addition to the required documents, it is good practice to keep documents that show any additional justification for your rules, the date the rules took effect, evidence of official approval by your agency, and any information on how you considered giving affected parties notice.

¹¹ Minn. Stat. § 14.05, subd. 6.

Note: With eFiling, OAH will return your file as a downloadable link in an email message. Only the person who receives the email with the link can open it. Furthermore, the link will expire. Download the materials as soon as possible and save it securely according to your agency’s record retention schedule and practices. This eFile and any others not included will become your official record, which your agency must preserve as a permanent record. OAH is not responsible for preserving the permanent record and does not keep the electronic file available indefinitely.

Best practice: Your returned file from OAH might be labeled “official record,” but rename it something like “return of OAH submission file.” This will help you distinguish it from the official rule record that you must prepare under statute after your rulemaking concludes.

Checklist for Chapter 12 – Expedited Rules under 14.389

Date Completed	Item
<hr/>	12 – Entire chapter reviewed before proceeding
<hr/>	12.1 – Rules drafted <ul style="list-style-type: none">- Draft rules as you would any other rules (See Chapter 3)- Request preliminary draft from Revisor; tell them the rules are expedited under 14.389- If agency is a multi-member board, BD-NTC used
<hr/>	12.2 – Rules prepared for comment <ul style="list-style-type: none">- 12.2.1 – Governor’s Office notified<ul style="list-style-type: none">- GOV-PRLM used- 12.2.2 – Revisor’s Draft approved for publication obtained (with certificate signed by Revisor)- 12.2.3 – Notice of Intent to Adopt Expedited Rules w/o a Hearing drafted<ul style="list-style-type: none">- NTC-EXPEDITE used
<hr/>	12.3 – Notice given <ul style="list-style-type: none">- 12.3.1 – Notice sent to agency mailing list<ul style="list-style-type: none">- CRT-LIST and CRT-MLNG used- 12.3.2 – Additional notice given (optional)- 12.3.3 – Notice published in <i>State Register</i><ul style="list-style-type: none">- <i>State Register</i> website used- 12.3.4 – Allow at least 30-days for comment- 12.3.5 – Consider using OAH’s eComments
<hr/>	12.4 – Modifications to your Expedited Rules <ul style="list-style-type: none">- Review comments and decide on modifications- Get approval from chain of command
<hr/>	12.5 – Expedited Rules subject to Hearing (if § 14.389, subd. 5 applies) <ul style="list-style-type: none">- If you receive 50 or more requests for a hearing, you must hold a hearing and comply with all normal requirements for adopting rules after a public hearing (See Chapters 7 and 9)- 12.5.1 – Withdrawal of hearing requests<ul style="list-style-type: none">- NTC-HRWD and CRT-HRWD used

Date Completed	Item
	12.6 – Governor’s Office approval received - GOV-FNL used
	12.7 – Copy of adopted rules obtained from Revisor
	12.8 – Proposed Order Adopting Rules drafted - ORD-ADPT
	12.9 – File submitted to OAH for official review (eFile) - EXPEDITE-LTR used - Notify ALJ before filing
	12.10 – Notice of Submission of Rules to OAH given - NTC-SBM and CRT-SBM used
	12.11 – ALJ review completed - ALJ has 14 days to review
	12.12 – Resubmitting disapproved rules - 12.12.1 – Resubmitting with corrections - 12.12.2 – Governor’s Office approval for resubmission - 12.12.3 – Appealing ALJ decision
	12.13 – Withdrawal of rules (optional)
	12.14 – Order Adopting Rules finalized and filed - Order Adopting Rules signed by: _____ - Signed order eFiled with OAH - Rules filed with Secretary of State - Notice of Adoption received from Revisor
	12.15 – Notice of Adoption published in the <i>State Register</i> - Notice submitted after agency is certain Governor will not veto rules - <i>State Register</i> website used - Rules published within 180 days of ALJ review
	12.16 – Official Rulemaking Record prepared - RECORD used

Chapter 13 - Repeal of Obsolete Rules Under 14.3895

Introduction

This chapter describes the process for repealing obsolete rules.¹ An agency may repeal obsolete rules using this process if the agency has identified the specific rules in question as obsolete, unnecessary, or duplicative in the agency’s annual obsolete rules report.² This authority does not apply if another law specifically requires another process or if 25 or more people submit a written request for a hearing. If either occurs, you must meet the requirements of Minnesota Statutes, sections 14.131 to 14.20, for rules adopted after a hearing or the requirements of sections 14.22 to 14.28 for rules adopted without a hearing.

13.1 Eligibility

Before you may do anything else, you must make sure that your agency has identified the specific rules in question as obsolete, unnecessary, or duplicative in the agency’s annual obsolete rules report.³ If not, and you wish to go forward before your next report, you may issue an amended report. You must, however, comply with all the requirements of Minnesota Statutes, section 14.05, subdivision 5.

Next, notify the Governor’s Office of your plans. The Governor’s Office administrative rule review policy, **GOV-PLCY**, states:

RULE REPEALS

Agencies do not need to submit rule repeals to the Governor’s Office for approval. However, an agency should send an informational memo identifying the obsolete, unnecessary, or duplicative rule(s) to be repealed, describing the rationale for repeal, and indicating any potential controversies. This memo will serve to notify the Governor’s Office that the agency is seeking to repeal a rule. No approval is necessary, at any stage, in the rule repeal process. Agencies should note, however, that obsolete rules repealed under Minnesota Statutes, section 14.3895 are subject to veto.

Note: The policy asks only for an “informational memo,” and does not mention using the usual form **GOV-PRLM**. But you should use the **GOV-PRLM** form anyway. The form alerts Governor’s Office staff that your submission is rule related and to handle your document accordingly, which lessens the

¹ Minn. Stat. § 14.3895.

² See Minn. Stat. 14.05, subd. 5.

³ Minn. Stat. § 14.05, subd. 5.

chances that it will be set aside to review later or otherwise go astray. You do not need to wait for approval to go forward.

13.2 Draft your Rules and Obtain Approval

Draft your rules as you would any rules. **[See Chapter 3.]** Even though you are repealing obsolete rules, you will need a Revisor’s draft to do this.

Give your draft 14.3895 rules to the Revisor for approval as to form. The Revisor will enter your rules into the Revisor’s system and edit them to produce an official version for you to adopt. The Revisor will also likely identify cross-references to the rules that you intend to repeal and ask that you provide updated cross-references. Advise the Revisor that these rules are obsolete rule repeals under section 14.3895. This will ensure that the title to the rules receives the obsolete rules repeal designation (see **section 13.16**). You will need draft rules *with a Revisor’s signed certificate* for your OAH submission.

Your chain of command should review and approve your rules before you proceed. An agency that is a multi-member board must follow board procedures, which usually means passing a formal resolution authorizing the Notice and authorizing a person to sign the Notice. A form for such a board resolution is in the appendix as **BD-NTC**.

13.3 Draft your Notice of Intent to Repeal Obsolete Rules

A Notice of Intent to Repeal Obsolete Rules must contain the information in Minnesota Rules, part 1400.2085, subparts 2 and 3, items B to E. (Although the rule part does not explicitly govern the obsolete process under Minnesota Statutes, section 14.3895, OAH uses the criteria found in the rule part to evaluate the Notice of Intent to Repeal Obsolete Rule.) A form for the Notice is in the appendix as **NTC-OBS** and is designed to be a checklist for meeting the requirements of Minnesota Rules, part 1400.2085.

When drafting the Notice, include an explanation of why the specific rules are obsolete, unnecessary, or duplicative. Also make certain that you describe in an easily readable and understandable summary the overall nature and effect that the proposed repeal will have. This summary is required in the Notice that is published in the *State Register*.

13.4 Prepare your Notice Plan

You must draft a Notice Plan, obtain approval from the Chief ALJ, and follow the Notice Plan.⁴ In the Notice Plan, you must make reasonable efforts to notify persons or classes of persons who might be

⁴ See Minn. Stat. § 14.3895, subd. 2.

significantly affected by the rule repeal by giving notice of your intention to repeal obsolete rules by such means as newsletters, newspapers, other publications, or through other means of communication.

13.5 Get your Notice Plan Approved by Chief ALJ

You must obtain the Chief ALJ's approval of the Notice Plan before publishing the notice in the *State Register* and implementing the Notice Plan. Submit to the Chief ALJ the following:

1. the proposed obsolete rule to be repealed with Revisor's certification;
2. your proposed notice of intent to repeal obsolete rules; and
3. an explanation as to why your agency believes the Notice Plan complies with Minnesota Statutes section 14.3895, subdivision 2.

A form letter for requesting approval is in the appendix as **NP(O)-RQST**.

13.5.1 eFiling rule-related documents

OAH requests that agencies eFile all rule-related documents wherever possible. OAH has posted step-by-step instructions for creating an account and filing your documents on its website at [OAH Forms & Filing \(https://mn.gov/oah/forms-and-filing/efiling/\)](https://mn.gov/oah/forms-and-filing/efiling/). (The page also includes a link to frequently asked questions.) **See section 1.7 for explicit instructions.**

Always check to make sure that the system has uploaded your documents. Saving a screenshot or printing the window showing a file has uploaded is a prudent practice. In addition, save any correspondence or documents you receive from OAH for your own records because those items might not remain in your eFile folder.

13.6 Giving Notice

13.6.1 Agency mailing list

You must send your Notice through mail or email to everyone on your agency's rulemaking mailing list and to chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule repeal.⁵ In addition, you must give notice according to the Notice Plan approved by the Chief ALJ as described in **section 13.4**.⁶

This mailing must be done at least **63 days** before the end of the comment period (60 days if done electronically). Email delivery can be accomplished using a subscription service such as GovDelivery.

⁵ Minn. Stat. § 14.3895, subd. 3.

⁶ Minn. Stat. § 14.3895, subd. 3.

You are not required to send a copy of your rules along with the Notice. If the rules are not included, the Notice must include an easily readable and understandable description of the nature and effect of the proposed rules and an announcement that a free copy of the proposed rules is available on request from the agency.⁷

The notice must contain a statement that if 25 or more people submit a written request, the agency will have to meet the requirements of sections 14.131 to 14.20 for rules adopted with a hearing, or 14.22 to 14.28 for rules adopted without a hearing, including the preparation of a statement of need and reasonableness and the opportunity for a hearing.

A suggested letter for mailing the notice to legislators is in the appendix as **LEG(O)**.

When you mail your Notice, prepare a Certificate of Mailing Notice to Persons on Mailing List, a Certificate of Accuracy of the Mailing List, and a Certificate of Giving Notice Pursuant to the Notice Plan. Forms for these certificates can be found in the appendix as **CRT-MLNG**, **CRT-LIST**, and **CRT-GNRC**. (See also **CRT-LIST-MLNG-SAMPLE**)

13.6.2 Notice Plan

Give notice according to your Notice Plan and document your efforts. For any mailed notice, whether using U.S. mail or email, complete a certificate of mailing and attach a copy of the notice and the mailing list. [**Note:** Traditionally, this Manual has advised you to attach mailing lists to your certificate. This remains good practice **as long as your mailing list contains public information**. If your email lists consist of subscribers to your web delivery system, you may wish to describe your subscribers more generally. See the note in section 1.8.4 for Data Practices considerations.]

Detail any efforts you made to develop your mailing list. For more traditional paper-based Notices, obtain copies of newsletters or newspapers in which a Notice is published. Obtain tapes or transcripts of announcements made on radio or television. Detail any efforts you made to get a Notice published or broadcast, especially if you made a Notice available and others did not publish or broadcast it. You can document what you have done by using the generic certificate form that is in the appendix as **CRT-GNRC**.

13.6.3 Publication in the *State Register*

You must publish your Notice and proposed rules in the *State Register* at least **60 days** before the end of your comment period.⁸ See information on how to publish in the *State Register* and “Production Schedule” for publication dates and deadlines on the [Minnesota State Register website \(https://mn.gov/admin/bookstore/register.jsp\)](https://mn.gov/admin/bookstore/register.jsp).

⁷ Minn. Stat. § 14.3895, subd. 3.

⁸ Minn. Stat. § 14.3895, subd. 3.

13.6.4 State Register lead time

The *State Register* publishes on Mondays. The submission deadline is noon on the Tuesday before publication (except when the deadline is changed by a holiday). **For rules that are long (more than 20 pages) or complex (include tables, charts, pictures, etc.) contact the editor to negotiate a deadline.**

See “Production Schedule” on the [Minnesota State Register website \(https://mn.gov/admin/bookstore/register.jsp\)](https://mn.gov/admin/bookstore/register.jsp) for publication dates and deadlines.

13.6.5 60-day comment period (after publication)

You must allow at least 60 days after publication in the *State Register* for comment on the proposed rules. Keep copies of all comments and submissions you receive and the agency’s responses, because these must be included with the rest of the documents that you file with the OAH.⁹

13.6.6 Collecting comments

OAH collects public comments on its [Rulemaking eComments \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/), as well as through U.S. Mail, eFiling, personal delivery, or fax. Public instructions for making comments can be found at [Rulemaking eComments \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/).

To set up your public eComments site, contact OAH Administrative Rule and Applications Specialist, William Moore, at William.T.Moore@state.mn.us or (651) 361-7893 at least a week before you publish your notice in the *State Register* or eFile your notice. Provide the following information:

1. OAH docket number, if already assigned.
2. The dates that the comment period will open and close.
3. A link to the agency’s rulemaking webpage, if applicable. OAH will add a link to the agency’s rulemaking webpage on the eComments site.

13.7 Modifications to your Repeal of Rules

During the 60-day comment period, the agency may receive comments on the proposed rules that point out errors or request changes. You are not required to make changes suggested by the public, but sometimes the comments are compelling. If the agency considers making a modification to the rules as proposed, assess whether the modification will result in a substantially different rule from those proposed. If a modification does not result in a substantially different rule, make note of the reasons because you must explain this in your Order Adopting Rules. If they do result in substantially

⁹ Minn. R. 1400.2085, subp. 2E.

different rules, you should seriously consider whether the modification is necessary because you will have to follow the notice procedures under Minnesota rules, part 1400.2110.

If you decide to modify the rules, get agency decision makers to approve not only the changes but also the rationale for the changes. If you choose not to make changes suggested by the public, it is a good idea to brief agency decision makers and request their sign off on decisions not to act. Finally, remember to obtain a certified copy of the modified rules from the Revisor, which will be a markup on the stripped (clean) copy of the rules as originally proposed.

13.8 Get a Copy of Adopted Rules from the Revisor

During the 60-day comment period, the Revisor will send you a “stripped” copy of your proposed rules with all stricken text deleted and all new text incorporated in the rules. The rule title will indicate that the rules are in “adopted” form (the number on the top of your draft will change from “RD” to “AR”).

12/20/21	REVISOR	RSI/EH	AR4726
1	Department of Commerce		
2	Adopted Expedited Rules Relating to Workers' Compensation Ratemaking		

If you are making no changes to the proposed rules, you may use the stripped version for the Order Adopting Rules. If you are making changes to the proposed rules, ask the Revisor to mark the modifications and send you an updated copy of the adopted rules. In your request, indicate when you would like the adopted rules back, and the Revisor will tell you if that is workable.

13.9 Repeal of Obsolete Rules Subject to Hearing

If 25 or more people submit a written request during the 60-day comment period, the agency must meet the requirements of Minnesota Statutes, sections 14.131 to 14.20, for rules adopted after a hearing or the requirements of sections 14.22 to 14.28 for rules adopted without a hearing. If you do not receive 25 requests, you may proceed with your rulemaking following the procedures for repeal of obsolete rules.

13.9.1 Withdrawal of hearing requests

If your agency receives 25 or more requests for a hearing but is willing to change the rules to address enough of the requests, your agency may be able to avoid going to hearing if you meet the following requirements:

1. First, you must get enough hearing requests withdrawn to reduce the number of requests to less than 25; and

2. You must notify all persons who requested a hearing, in writing, if enough requests are withdrawn to reduce the number of requests below 25 and if the agency has taken any actions to obtain the withdrawals. A form for this notice is in the appendix as **NTC-HRWD** and serves as a checklist for meeting the requirements of section 14.25, subdivision 2. A form for a certificate of mailing this Notice is in the appendix as **CRT-HRWD**.

13.10 Draft your *Proposed Order Adopting Rules*

In this case, your Order Adopting Rules will repeal the rules. A form for the Order is in the appendix as **ORD-ADPT** and is designed to be a checklist to meet the requirements of part 1400.2090.

Even though there is no SONAR document laying out the agency's case for repealing obsolete rules, it is still a best practice to provide background for the ALJ. Here are two ways to do that:

- Insert in the proposed Order a concise outline of need and reasonableness (like a rule-by-rule analysis) for the proposed rules. This alternative works well for shorter and less-complex rules.
- Prepare a supplemental memorandum as an additional exhibit. This alternative might be well suited for longer or more-complex rules.

Note: OAH does not require that the proposed Order be signed at this point. The recommended practice is to submit an unsigned proposed Order Adopting Rules for the ALJ to approve as to legality. Later in the process, you will have the finalized approved draft signed and transmit a copy of the signed Order to OAH.

13.11 Submit the File to OAH for Official Review

Minnesota Rules, part 1400.2410, subpart 2, items A to K, list the documents you must file with OAH for official review. A sample cover letter to OAH is in the appendix as **REVW(O)-LTR**. This letter is designed to serve as a checklist for meeting the requirements set out in Minnesota Rules, part 1400.2410.

To save everyone time, OAH requests agencies to also submit a copy of the obsolete rules report that lists the rules to be repealed.

13.11.1 eFiling rule-related documents

OAH requests that agencies eFile all rule-related documents wherever possible. OAH has posted step-by-step instructions for creating an account and filing your documents on its website at [OAH Forms & Filing \(https://mn.gov/oah/forms-and-filing/efiling/\)](https://mn.gov/oah/forms-and-filing/efiling/). (The page also includes a link to frequently asked questions.) **See section 1.7 for explicit instructions.**

13.11.2 Best practices for working within OAH's eFiling system

To accommodate eFiling, it is best to take some extra steps to organize your documents before uploading them into OAH's system. Simply consolidating all your individual documents into one huge file will make navigating it difficult for **both the ALJ's review and your own reference**. **You can make a consolidated file easier to navigate with a little planning. Here are some options (and it might be advisable to confer with your assigned ALJ on more complex cases):**

- Organize your documents as described in Minnesota Rules 1400.2410, subpart 2, items A–K. You can adapt the cover-letter text (RE VW(O)-LTR) into a template for this purpose. OAH prefers that you consolidate the documents as one PDF document and bookmark them. Best practice: Include the agency response to comments along with those comments.
- If your case has a large volume of pages, consider adding a unique sequential page number through the entire set. One system designed to apply such a unique number automatically is called a "Bates" stamp. Some photocopiers can do this and so can Adobe Pro.
- Scan the pages as a single PDF or combine saved PDF files into a single PDF. Prepare an index keyed to the unique numbers. In Adobe Pro, for example, it is simple to mark and label a bookmark at the first page of each document.
- If the filing is quite large, you may create more than one PDF. For example, a large volume of comments or a large map file may require a separate document to keep file size manageable.
- Consolidating your exhibits might simply exceed your technology's capabilities, so you might have to solicit additional assistance within your agency or acquire more powerful software, such as Adobe Pro.

Also, consider your timing when eFiling. After you request OAH to assign an ALJ to your rulemaking, it's a good idea to communicate with the assigned ALJ (through William Moore) to notify the ALJ when you will file your record for review. Or you can wait to request OAH to appoint an ALJ only when the file is ready to submit. Because your submission of the rule record triggers a 14-day deadline by which the ALJ must review the record and approve the rule change, the key is to communicate clearly to OAH and any ALJ regarding the expected timing of your submission, and not to keep the ALJ waiting unnecessarily.

If you have questions about submitting your rules file to OAH, refer to **OAH-INF** in the appendix for the location of or general information about OAH.

Finally, always check to make sure that the system has uploaded your documents. Saving a screenshot or printing the window showing a file has uploaded is prudent. In addition, save any correspondence or documents that you receive from OAH for your own records because those items might not remain in your eFile folder.

13.11.3 OAH standards of review

As with any other rules, you must make certain that the proposed rules comply with standards of legality before you submit them to OAH for review.¹⁰ Review these standards directly in Minnesota Rules, part 1400.2100.

In summary, these standards require that:

1. the agency complies with procedural requirements for repealing obsolete rules;
2. the rules are not substantially different from the proposed rules;
3. the rules do not exceed or conflict with the authority in the enabling law;
4. the rules are not unconstitutional or illegal;
5. the rules do not improperly delegate the agency's powers to another; and
6. the rules fit the definition of a "rule" as defined in statute.

13.12 Notice of Submission of Rules to OAH

Individuals may request to be informed of when you submit the rules to OAH for official review. You must provide a Notice of Submission on the same day that the rules are submitted to OAH. Although not specifically mentioned in section 14.3895, Minnesota Rules, parts 1400.2410 and 1400.2570, both refer to giving notice that a department has submitted expedited rules to OAH for review if a person requests this notice. Because, as noted in section 13.3, OAH uses the notice requirements pertaining to expedited rules when reviewing the contents of a notice of rule repeal, it is prudent to conclude that the requirement about a request to be informed of OAH submittal of expedited rules also pertains to obsolete rules. Forms for this Notice and for the certificate showing the agency sent out this Notice are in the appendix as **NTC-SBM** and **CRT-SBM**.

13.13 ALJ Review

The ALJ has 14 days to review and approve or disapprove your rules. If approved, the OAH will send you a copy of the ALJ's decision and return your file to you.

13.14 Procedure for Resubmitting Disapproved Rules

If the ALJ does not approve your rules, you may resubmit the rules with any necessary changes. The rules cannot be published or take effect until the rules have been approved.

¹⁰ See, e.g., Minn. R. 1400.2400, subp. 3 (explicitly stating that certain standards in part 1400.2100 must be met for exempt rules).

13.14.1 Resubmitting with corrections

If the ALJ disapproves your rules, the defects noted are correctable, and your agency agrees to the corrections, you can resubmit the corrected rules to OAH for review. You will need an updated Revisor’s copy for doing this. The ALJ has five working days to approve or disapprove.

Note: This process is different from normal rules, in which corrections and disapproval are both submitted to the Chief ALJ.

13.14.2 Determine whether to further notify the Governor’s Office

If controversies have arisen, you should communicate with the Governor’s Office. To do this, submit a completed Final Rule Form [**GOV-FNL**] to the Office of the Governor.

13.15 Withdrawal of Rules

There might be circumstances that require your agency to withdraw the rules or a portion of the rules from review. You can do this, without repercussion, if the remaining rules are not substantially different. To withdraw the rules, you must submit a Notice of Withdrawal, signed by a person authorized to do so. The Notice must contain an explanation of the person’s authority to withdraw the rules. Note that Minnesota Statutes, section 14.05, subdivision 3, requires that you publish notice in the *State Register* that you have withdrawn the rules.

The form for Notice of Withdrawn Rules is available in the appendix as **NTC-WITHDRAWL**. At a minimum, the notice should:

- identify what rule parts are being withdrawn;
- reference the *State Register* citation at which the rules were initially proposed; and
- briefly summarize the rules and why they are being withdrawn:

For example:

Board of Cosmetology

Notice of Withdrawn Rules for Proposed Amendments to Governing Schools, Instructors and School Managers; Minnesota Rules, Chapter 2110; Proposed Repeal of Minnesota Rules parts 2110.0010, subparts 14 and 15; 2110.0100; 2110.0320, subparts 9, 11, and 12; 2110.0330, subparts 3, 4, and 5; 2110.0390, subpart 3a; 2110.0410, subparts 2 and 5; and 2110.0710; Revisor’s ID Number 4456, OAH Docket Number 65-9013-36457

The Minnesota Board of Cosmetologist Examiners is withdrawing its proposed amendment to rules governing schools, instructors and school managers that were published in the Dual Notice of Intent to Adopt Rules on September 26, 2022, in the *State Register*, volume 47, number 13, pages 285-314. Administrative Law Judge O’Reilly and Chief Judge Starr disapproved the amendments as not meeting the requirements of Minnesota Statutes, section 14.15, subdivisions 3 and 4, and Minnesota Rules part 1400.2240, subpart 4.

The board is withdrawing the following proposed amendments: Minnesota Rules, parts 2110.0010, subparts 14, 15, 17f, 18d, 18e, 18f, and 19a; 2110.0125; 2110.0190; 2110.0310; 2110.0320; 2110.0390, subparts 3, 3a, 3b, 5; 2110.0395; 2110.0410; 2110.0500; 2110.0510; 2110.0520; 2110.0525; 2110.0530; 2110.0545; 2110.0590; 2110.0625; 2110.0640; 2110.0650; 2110.0660; 2110.0670; 2110.0671; 2110.0680; 2110.0690; 2110.0705; 2110.0730; and 2110.0740.

The withdrawal is a modification to the Dual Notice published in the State Register, volume 47, number 13, pages 285-314...

What if an agency wants to withdraw portions of its rules? If the agency is proposing new language, the agency can strike the language in its AR draft instead of formally withdrawing the rules by publishing a withdrawal in the *State Register*.¹¹ For larger withdrawals for which the agency still wants to adopt other parts of its rule, such as in the example above, the agency should follow the normal withdrawal process. A few tweaks are needed, however, because the APA doesn't explicitly outline a process for a hybrid rule withdrawal/rule adoption:

- Receive approval from the governor's office
- Send a letter to OAH stating that the agency plans to withdraw rule parts, citing to Minnesota Statutes section 14.05, subdivision 3, and Minnesota Rules, part 1400.2240, subpart 8 (or 1400.2300, subpart 4).
- Publish a Notice of Withdrawal in the *State Register*
- Fill out the AR draft with the *State Register* cites (volume and page number):

2110.0320 [Withdrawn at ... SR ...]

2110.0330 [Withdrawn at ... SR ...]

2110.390 PHYSICAL REQUIREMENTS.

Subpart 1. **Space.**

A. The school must have enough classroom and clinic space and workstations on the clinic floor to support the school's scheduled instruction and training programs.

B. The school classrooms must have chairs and table work space for the maximum number of students scheduled for class at any one time.

[For text of item C, see Minnesota Rules]

D. The school must ~~comply with the Minnesota State Building Code, the Minnesota State Fire Code~~ meet applicable building codes, fire codes, and zoning codes as determined by local zoning and building officials and the state fire marshal.

[For text of item E, see Minnesota Rules]

[For text of subparts 2 ~~and 2a~~ to 6, see Minnesota Rules]

¹¹ Withdrawing amendments to existing language is tricky; ask the revisor's office for help.

Subp. 3. [Withdrawn at ... SR ...]

Subp. 3a. [Withdrawn at ... SR ...]

Subp. 3b. [Withdrawn at ... SR ...]

- Last, proceed as you would when submitting modifications or defect corrections to OAH

13.16 File your Approved Obsolete Rules Repeal

After OAH approves your rules, the commissioner (or other authorized person) must sign the Order Adopting Rules. Go forward with submitting the signed Order to OAH. eFile your signed copy as you would your other documents.

Note: OAH, the Revisor’s Office, and Secretary of State’s Office accomplish the final steps electronically.

1. When the agency eFiles the signed Order Adopting Rules, OAH requests the Final Rules from the Revisor’s Office, which then has five working days to provide them to OAH. The adopted rules (“AR”) contains the Revisor’s certificate approving the rules for filing with the Secretary of State.
2. Once OAH gets the rules, OAH files the Final Rules with the Secretary of State’s Office.
3. The Secretary of State’s Office serves the Final Rules on the Governor’s Office via email using a distribution list that includes the agency. This starts the 14-day veto period. The email contains no explanation and is how you will know your rule was served on the Governor’s Office, so you must watch for it. Typically, the agency rule contact is copied on the service email from the Secretary of State’s Office to the Governor’s Office. After you receive this email or some other confirmation, you should proceed with publishing the updated rule in the *State Register*. The Secretary of State’s Office will also notify the Revisor’s Office that the rule has been filed.
4. It is the Revisor’s standard practice to prepare the Notice of Adoption after notification from Secretary of State and send it to you without any request from you. If time is of the essence, you should notify the Revisor so that they expedite the Notice.

Note: While these steps can take place swiftly, that’s not always the case. Make sure to keep track of where and when the rule was forwarded and how long it has been at a specific office. Follow up with the appropriate office, as needed.

13.17 Publish the Repeal of Obsolete Rules

Before the repeal of your rules can take effect, you must publish the rule in the *State Register*. See information on how to publish in the *State Register* and “Production Schedule” for publication dates and deadlines on the [Minnesota State Register website \(https://mn.gov/admin/bookstore/register.jsp\)](https://mn.gov/admin/bookstore/register.jsp).

Your repeal of obsolete rules takes effect when all the requirements in Minnesota Statutes, section 14.3895, have been met and five working days after the notice of repeal is published in the *State Register* unless a later date is required by law or specified in the rule repeal proposal.

If the final repeal is identical to the action originally published in the *State Register*, publication will simply be in the form of a repealer – this will only be the case if the rule is a strict repealer.

12/01/21	REVISOR	BD/CH	AR4719
1	Department of Agriculture		
2	Adopted Repeal of Obsolete Rules: Grain, Seed, and Wholesale Rules		
3	REPEALER. Minnesota Rules, parts 1500.0201, subpart 2; 1500.0601; 1500.0801;		
4	1500.1900; 1510.0050; 1510.0060; 1510.0070; 1510.0080; 1510.0090; 1510.0100;		
5	1510.0231; 1510.0261; 1510.0271; 1510.0320; and 1562.1100, subparts 1, 2, and 3, are		
6	repealed.		

Otherwise, the agency must publish a copy of the changes in the *State Register* as well. Request the AR draft from the Office of the Revisor of Statutes, who will send the notice directly to the *State Register*.

For rules that aren't a strict repealer and have striking and underscoring, the title will say "exempt permanent" because technically the obsolete process is exempt from most normal rulemaking requirements. The following is an example of an obsolete rule being published the second time in the *State Register* (after being approved by the Chief ALJ):

09/26/22	REVISOR	AGW/EH	AR4769
1.1	Emergency Medical Services Regulatory Board		
1.2	Adopted Exempt Permanent Rules Repealing Ambulance Standards and Radio		
1.3	Frequency Assignments		

13.17.1 Governor Veto

The Governor may veto the repeal of obsolete rules adopted under the procedures of section 14.3895.¹² To veto the rules, the Governor must submit a notice of the veto to the *State Register* within 14 days of receiving the rules from the Secretary of State. A veto is effective when the veto notice is submitted to the *State Register*. The Governor's Office will let you know whether the rule or portions of the rule will be vetoed.

13.17.2 When to publish the Notice of Adoption

Even though the statute is silent on whether the agency must wait for the Governor to act before publishing its Notice of Adoption, you should wait to submit your agency's Notice of Adoption to the *State Register* for publication until after your agency is certain that the Governor will not veto the rules. If your agency requires or would significantly benefit from the rule being adopted early in the 14-day veto period, you should contact the Legislative Coordinator at LACA about an expedited approval.

13.17.3 180-day deadline

There are two 180-day deadlines that apply to the repeal of obsolete rules.

1. Under Minnesota Statutes, section 14.26, subdivision 1, you must submit the obsolete rules and administrative record to the Administrative Law Judge for review within 180 days of the day the comment period closes.
2. Also, the 180-day deadline in Minnesota Statutes, section 14.19, applies to the repeal of obsolete rules. This deadline requires you to submit a notice of adoption to the *State Register* within 180 days after the ALJ issues the decision.

Failure to meet either of these deadlines will result in your rules being automatically withdrawn, and you must then start the process over.

13.18 Official Rulemaking Record

After obsolete rules are repealed, you must keep an Official Rulemaking Record. The requirements for the Official Rulemaking Record are stated in Minnesota Statutes, section 14.365, clauses (1) to (11). A form for the Official Rulemaking Record is in the appendix as **RECORD**. Note that paragraphs (1) to (11) of this form are keyed to clauses (1) to (11) of section 14.365, so that this form can serve as a checklist to meet the requirements of section 14.365. In addition to the required documents, it is good practice to keep documents that show any additional justification for your rules, the date the rules took effect, evidence of official approval by your agency, and any information on how you considered giving affected parties notice.

¹² Minn. Stat. § 14.05, subd. 6.

Note: With eFiling, OAH will return your file as a downloadable link in an email message. Only the person who receives the email with the link can open it. Furthermore, the link will expire. Download the materials as soon as possible and save it securely according to your agency’s record retention schedule and practices. This eFile and any others not included will become your official record, which your agency must preserve as a permanent record. OAH is not responsible for preserving the permanent record and does not keep the electronic file available indefinitely.

Best practice: Your returned file from OAH might be labeled “official record,” but rename it something like “return of OAH submission file.” This will help you distinguish it from the official rule record that you must prepare under statute after your rulemaking concludes.

Checklist for Chapter 13 – Repeal of Obsolete Rules under 14.3895

Date Completed	Item
<hr/>	13 – Entire chapter reviewed before proceeding
<hr/>	13.1 – Eligibility determined <ul style="list-style-type: none">- Ensure agency has identified the rules in the obsolete rules report- Governor’s Office notified<ul style="list-style-type: none">- GOV-PRLM used
<hr/>	13.2 – Rules drafted; agency approval obtained <ul style="list-style-type: none">- Draft rules as you would any other rules (See Chapter 3)- Request preliminary draft from Revisor; tell them the rules are obsolete rule repeals under 14.3895- If agency is a multi-member board, BD-NTC used
<hr/>	13.3 – Notice of Intent to Repeal Obsolete Rules drafted <ul style="list-style-type: none">- NTC-OBS used
<hr/>	13.4 – Notice plan prepared
<hr/>	13.5 – Notice plan approved by Chief ALJ <ul style="list-style-type: none">- NP(O)-RQST used- Set up eFile account
<hr/>	13.6 – Notice given <ul style="list-style-type: none">- 13.6.1 – Notice sent to agency mailing list<ul style="list-style-type: none">- CRT-LIST and CRT-MLNG used- Legislators notified; LEG(O) used- 13.6.2 – Additional notice given<ul style="list-style-type: none">- Efforts documented; CRT-GNRC used- 13.6.3 – Notice published in <i>State Register</i><ul style="list-style-type: none">- <i>State Register</i> website used- 13.6.5 – Allow at least 60-days for comment- 12.3.6 – Consider using OAH’s eComments
<hr/>	13.7 – Modifications to your Expedited Rules <ul style="list-style-type: none">- Review comments and decide on modifications- Get approval from chain of command- Obtain certified copy of modified rules from Revisor

Date Completed	Item
	<p>13.8 – Obsolete Rules subject to Hearing</p> <ul style="list-style-type: none"> - If you receive 25 or more requests for a hearing, you must meet the requirements of §§ 14.131 to 14.20, for rules adopted after a hearing or the requirements of §§ 14.22 to 14.28 for rules adopted without a hearing. - 12.5.1 – Withdrawal of hearing requests <ul style="list-style-type: none"> - NTC-HRWD and CRT-HRWD used
	<p>13.9 – Proposed Order Adopting Rules drafted</p> <ul style="list-style-type: none"> - ORD-ADPT
	<p>13.10 – File submitted to OAH for official review (eFile)</p> <ul style="list-style-type: none"> - RE VW(O)-LTR used - Notify ALJ before filing
	<p>13.11 – Notice of Submission of Rules to OAH given</p> <ul style="list-style-type: none"> - NTC-SBM and CRT-SBM used
	<p>13.12 – ALJ review completed</p> <ul style="list-style-type: none"> - ALJ has 14 days to review
	<p>13.13 – Resubmitting disapproved rules</p> <ul style="list-style-type: none"> - 13.13.1 – Resubmitting with corrections - 13.13.2 – Determine whether to further notify the Governor’s Office <ul style="list-style-type: none"> - GOV-FNL used
	<p>13.14 – Withdrawal of rules (optional)</p>
	<p>13.15 – Order Adopting Rules finalized and filed</p> <ul style="list-style-type: none"> - Order Adopting Rules signed by: _____ - Signed order eFiled with OAH - Rules filed with Secretary of State - Notice of Adoption received from Revisor
	<p>13.16 – Repeal of Obsolete Rules published in the <i>State Register</i></p> <ul style="list-style-type: none"> - Notice submitted after agency is certain Governor will not veto rules - <i>State Register</i> website used - Rules published within 180 days of ALJ review
	<p>13.17 – Official Rulemaking Record prepared</p> <ul style="list-style-type: none"> - RECORD used

Accessibility, Accommodation, and Alternative-Format Information

1. Accessibility.

Minnesota law requires all products produced by the state to be accessible to all individuals. A document or application is considered accessible if it meets certain technical criteria and can be used by people with disabilities, such as people who are mobility impaired, blind, low vision, deaf, or hard of hearing or who have cognitive impairments. All documents in this manual meet these state standards.

See your agency's accessibility coordinator or ADA coordinator for further information or if you believe that these documents require further modification for your use.

2. Accommodation.

The Notice of Hearing and Dual Notice should contain the following—or a similar—statement:

Accommodation. If you need an accommodation to make this hearing accessible, please contact the agency contact person.

Under the Americans with Disabilities Act, agencies must make reasonable modifications in policies, practices, and procedures to enable access for individuals with disabilities. It is up to the individual to tell the agency the modification that the individual needs.

Any cost incurred for the modification is the responsibility of the agency providing the service. If the modification would “fundamentally alter” the goods, services, or operation or would result in an undue burden (significantly difficult or expensive), it would not be required. If this were to happen, your agency should still pursue whether there is another modification that could work.

You should review and deal with each situation on a case-by-case basis, and most of the situations that you will deal with will be easy to accommodate.

Accommodations that may be requested for a hearing may include sign-language interpreters or real-time court-reporting services.

3. Alternative Format.

The Request for Comments, Statement of Need and Reasonableness, Notice of Intent to Adopt Rules Without a Public Hearing, Dual Notice, and Notice of Hearing should all include the following—or a similar—statement:

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio.

Requests are rare, but they do occur. If you get one, here are some options:

- **Make photocopied enlargements.** The simplest option might be to enlarge the document on a photocopier. You will probably have to do some creative paste-up to keep the document whole.
- **Use a larger typeface.** If you have the computer file of the document, you may reformat it using a larger typeface.
- **Record the information in audio.** You can record the material yourself or obtain recording services from the State Services for the Blind. They charge **\$12.50** per recorded hour. The service reads straight text and captions. If requested, they will describe charts, graphs, tables, diagrams, etc. that would be understandable to a listener. Contact Audio Services at (651) 539-1422 or gsb.audioservices@state.mn.us to make arrangements directly for the desired format.
- **Convert to braille.** State Services for the Blind also provides braille services, as follows: braille costs **\$2.25** per braille page; it takes about three braille pages to equal each 8.5 x 11 sheet of conventional text. Since this can get quite bulky, braille is recommended for reference information—for example, lists of phone numbers. You should send a memo, a hard copy of the material to be transcribed, and an electronic file (MS Word, .docx, .doc, or PDF) if possible. Allow 5-10 business days for completion. Call Yvette Hennies, Sharon Obrestad, or Christine Smeed at (651) 539-2315 or email gsb.braille@state.mn.us.

Each agency is responsible for the costs of making information available in alternative formats.

4. Additional resources.

You can find the digital accessibility requirements under Minnesota Statutes, section 16E.03, or through MNIT's Office of Accessibility. The office oversees accessibility standards for the executive branch and provides resources that ensure applications, websites, and documents are accessible for everyone.

Also noteworthy is the Office of Enterprise Translations, which is dedicated to providing agencies with support for translating written materials.

Other resources include the Minnesota Olmstead Implementation Office, Disability Minnesota, and ADA Minnesota.

5. Web links.

Office of Accessibility: <https://mn.gov/mnit/about-mnit/accessibility/>

Office of Enterprise Translations: <https://mn.gov/admin/government/translations/>

Minnesota Olmstead Implementation Office: <https://mn.gov/olmstead/>

Disability Minnesota: <https://mn.gov/disability-mn/>

ADA Minnesota: <https://mcil-mn.org/services/ada-minnesota/>

Summary of Rulemaking Process and Advisory Committee Role

[Agency Name]

The Rulemaking Process, Documents, and Timeline. The rulemaking process is governed by Minnesota Statutes, chapter 14, and Minnesota Rules, chapter 1400. This short summary describes the main parts of the process, important documents, and timeline for developing and adopting rules. If you have questions about the process, ask [Name] at [phone] or [email].

- **Request for Comments.** The Request for Comments begins the formal rulemaking process. For this project, we published the Request in the [date] *State Register* and mailed it to our [project name] mailing list.
- **Proposed Rules.** We are now writing [amendments to] the [project name] Rules. The Revisor of Statutes will review the rules draft and edit, as necessary, for form and style.
- **Statement of Need and Reasonableness.** [The agency] must justify that each rule requirement is needed and reasonable. “Needed” means that there are problems or a legislative directive that requires us to adopt or amend rules. “Reasonable” means that a proposed requirement is a reasonable solution to a problem. We will spell out this justification in a document called the “Statement of Need and Reasonableness (SONAR).” The SONAR states our statutory authority for the rules, contains a modified cost-benefit analysis, and includes our analysis of each proposed rule.
- **Notice of Intent to Adopt Rules.** When we have finished writing the proposed rules, we will publish a Notice of Intent to Adopt Rules in the *State Register*. We will also publish the proposed rules. In addition, we will mail both the Notice and proposed rules to interested persons and to certain legislative committees.
- **30-Day Comment Period.** After the Notice of Intent to Adopt Rules is published, there is a 30-day comment period, during which persons can submit written comments on the proposed rules. Persons can also request a hearing on the rules during the 30-day comment period.
- **Rules Hearing.** If there are 25 hearing requests, [the agency] must hold a hearing on the rules in front of an Administrative Law Judge (ALJ).
- **Review by Administrative Law Judge.** Whether there is a hearing or not, an ALJ reviews the proposed rules and all the documents from the rulemaking. The ALJ will approve the

rules if [the agency] has statutory authority for the rules, has shown the rules to be needed and reasonable, has given proper notice of the proposed rules, and has complied with all other rulemaking requirements.

- **Governor Veto.** After the rules are adopted by [the agency] and approved by the ALJ, the Governor has 14 days to review them. The Governor may veto the rule amendments or let them become effective.
- **Notice of Adoption.** After the Governor's review period, [the agency] will publish a Notice of Adoption in the *State Register*.
- **Effective Date.** The [amendments to the] rules become effective five working days after the Notice of Adoption is published, unless the [amendments to the] rules provide a later effective date.
- **Timeline.** This process of drafting [amendments to] the rules can be open-ended, although we plan to complete the rules draft around [date]. The formal part of the rulemaking process, from publishing the Notice of Intent to Adopt Rules until the date the rules become effective, takes about three months if there is no hearing and about five months if there is a hearing.

The Role of the Advisory Committee.

- **Advice, not voting.** The role of the Advisory Committee is to advise [the agency] on the development of these rules. [The agency] looks to the Advisory Committee for its expertise in these regulations.] The Advisory Committee does not have voting authority on what will go in the rules; the [Commissioner] makes any final decisions. The Advisory Committee does, however, have the power of persuasion and the power that comes from having the information needed to make these rules workable.
- **Represent your interest group.** Each of you likely represents an interest group in one way or another, be it [for example: small hospitals or large hospitals, urban hospitals or rural hospitals, large health care organizations or small health care organizations, consumers, hospital administrators, hospital accounting departments, hospital professional organizations], and so on. We encourage you to maintain communication with others who share your interests.
- **Consensus.** Our goal is to achieve consensus on as many issues as possible. Even where there is disagreement on some issues, we hope to make the rules as workable as possible for those who have to comply with them.

- **Reasonable comments and suggestions.** We will carefully consider all comments and suggestions about the rules. You will have the most success persuading [the agency] with your comments and suggestions if you give reasons along the same lines as how [the agency] has to justify the need for and reasonableness of everything in the rules.

Regulatory Analysis. Minnesota Statutes, section 14.131, lists eight factors that an agency must analyze when it adopts or amends rules. We will look to you for advice and information as we analyze these factors.

From Minnesota Statutes, section 14.131. The SONAR “must include the following to the extent the agency, through reasonable effort, can ascertain this information:

- 1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- 2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
- 3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;
- 4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;
- 5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals;
- 6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals;
- 7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference; and
- 8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

Cost to Small Businesses and Small Cities. Minnesota Statutes, section 14.127, requires the agency to determine whether, in order to comply with proposed rules during the first year after they become effective, any small business or small city would have to spend over \$25,000. A small business is defined as a business (either for profit or nonprofit) with less than 50 full-time employees. A small city is defined as a city with less than ten full-time employees. We will look to you for information about the cost of compliance for small businesses and cities.

Performance-Based Rules.

- Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.
- [The agency] will look to you for advice and information on how we can make the rules work better for you, while still meeting our goals for these rules.
- Are there any special situations that we should consider in developing the rules?
- Are there any ways to reduce the burdens of the rules?
- Do you have any other insights on how to improve the rules?

Additional Notice.

- When [the agency] publishes the proposed rules and the Notice of Intent to Adopt Rules, we also have to "provide additional notification to persons or classes of persons who might be affected by the proposed rule or must explain why these efforts were not made."
- [The agency] will look to you to help us identify all interested persons and to come up with ways to let them know about the rules. This includes both likely supporters and opponents of the rules.

Local Government Impact.

- [The agency] has to evaluate the fiscal impact and benefits of proposed rules on local governments. As part of this, [the agency] has to consult with the Department of Minnesota Management and Budget (MMB).

- In addition to consulting with MMB, [the agency] will look to you to help us identify the fiscal impact and benefits of the proposed rules on local governments.]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

[Agency Logo]

VIA EFILING

[Date]

The Honorable Judge [Name]
Administrative Law Judge
Office of Administrative Hearings

**In the Matter of the Proposed [Permanent] Rules Relating to [Topic]; Cancellation of Hearing;
Revisor's ID Number [number]; OAH Docket No. [Number]**

Dear Judge [Name]:

The Minnesota [agency name] is canceling the public hearing for its proposed rules scheduled for [hearing date].

The deadline to request a public hearing was [day], [date]. The [Department/Agency/Board] received [#] requests for a public hearing [## of whom subsequently withdrew their requests]. The [Department/Agency/Board] is canceling the hearing because there are fewer than 25 [outstanding] hearing requests.

The [Department/Agency/Board] will submit the necessary documents for review to allow it to adopt the rules without a hearing according to Minnesota Rules, parts 1400.2300 and 1400.2310. [The [Department/Agency/Board] tentatively plans to submit for review by [date] but will try and notify you a week before eFiling.]

If you have any questions or concerns, please contact me at [email/phone number].

Sincerely,

[Name]

[Title]

[Note: Dates, names, and other information should be changed to reflect your Board's submission.]

Resolution Adopting Rules

Minnesota Board of [Name]

**Adopted [Amendment to] [Repeal of] Rules Relating to [Topic], Minnesota Rules, [citation];
Revisor's ID Number [number]**

I, [Name], certify that I am a member and the Chair of the Board of [Name], a board authorized under the laws of the state of Minnesota; that the following is a true, complete, and correct copy of a resolution that the Board of [Name] adopted at a properly convened meeting on [date]; that a quorum was present; and that a majority of those present voted for the resolution, which has not been rescinded or modified:

“RESOLVED, that the Board of [Name] approved and adopted rules about [topic] in the Revisor of Statutes draft, file number AR[#####], dated [month, day, year], identified as Minnesota Rules, parts [#####.#####] to [#####.#####], under the Board's authority under Minnesota Statutes, section [###.###]. [Name], the Executive Director of the Board of [Name], is authorized to sign the Order Adopting Rules, to modify the rules as needed to obtain the Revisor of Statutes or the Administrative Law Judge's approval of the rules, and to perform other necessary acts to give the rules the force and effect of law.”

[Date]

[Name], Chair
Board of [Name]

[Note: Dates, names, and other information should be changed to reflect your Board's submission. This form can be adapted for authorizing a Request for Comments.]

Resolution to Propose Rules

Minnesota Board of [Name]

**Proposed [Amendment to] [Repeal of] Rules Relating to [Topic]; Minnesota Rules, [citation]
Revisor's ID Number [number]; [OAH Docket No. [number]]**

I, [Name], certify that I am a member and the Chair of the Board of [Name], a board authorized under the laws of the state of Minnesota; that the following is a true, complete, and correct copy of a resolution that the Board of [Name] adopted at a properly convened meeting on [date]; that a quorum was present; and that a majority of those present voted for the resolution, which has not been rescinded or modified. The Board resolved the following:

1. [Name], the [title, such as Executive Director] of the Board of [Name], is authorized and directed to sign and to give the Board's Notice of Intent to Adopt Rules [Without a Public Hearing][using alternate notices of whether a hearing will be held][after holding a public hearing] in the Revisor of Statutes draft, file number [RD number], dated [date], identified as Minnesota Rules, parts [xxxx.xxxx to xxx.xxxx], with any modifications approved by the Board. The [title] must give this notice to all persons who have registered their names with the Board to receive notice of Board rulemaking proceedings. The [title] must also publish the notice in the *State Register*. Furthermore, the [title] is authorized and directed to do anything else needed to complete this notice.
2. If there are fewer than 25 outstanding hearing requests, the [title] of the Board of [Name] is authorized and directed to sign the Order Adopting Rules and to do anything else needed to adopt these rules without a hearing.
3. If there are 25 or more outstanding hearing requests, the [title] of the Board of [Name] is authorized and directed to act as the Board's representative at the hearing and do anything else needed to adopt these rules with a hearing. This includes authority to sign the Order Adopting Rules if there are no modifications to the rules other than modifications approved by the Board.

[Date]

[Name], Chair
Board of [Name]

Board Worksheet for Choosing a Hearing Date

Prerequisites

- Rules Draft Complete: _____
- SONAR Complete (except for ALJ assignment): _____
- Board Authorization to publish Notice (bd-ntc): _____
- Governor's Office Approval (gov-prps): _____
- Revisor's Draft Approved for Publication: _____

Additional Notice Plan

Submit rules, SONAR, Draft Notice to ALJ for review: _____
(no later than [date])

OAH Review Deadline (5 working days after submittal): _____

State Register Deadline (12 days before publication): _____

State Register Publication Date: _____

30-Day Comment Period Ends: _____
(30 days is minimum)

Earliest-possible hearing date: _____
(10 days after end of comment period)

Board Meeting (Between end of comment period and hearing): _____
(Discuss comments received and approve changes to rules, if needed)

Obtain withdrawals of hearing requests, if appropriate and needed

Last Day to Cancel Hearing (3 working days before hearing) _____

Hearing Date: _____

Board Meeting (After hearing and before responses due): _____
(Discuss comments received at hearing and, if needed, approve changes to rules)

Posthearing Response Due (20 days posthearing): _____

Rebuttal Due (5 days after posthearing comments due) _____

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

[Agency Logo]

VIA EFILING

[date]

The Honorable Chief Judge [Name]

Administrative Law Judge

Office of Administrative Hearings

In the Matter of the Proposed [Permanent] Rules Relating to [Topic]; Submission to the Chief Administrative Law Judge for Review of Changes Necessary for Approval; Revisor's ID No. [number]; OAH Docket No. [number]

Dear Chief Judge [Name]:

On [date], Judge [Name] issued an Order on Review of Rules; in [his/her] order, [he/she] found [number] defects, disapproving [number] proposed rule changes. On [date], you affirmed Judge [Name]'s findings.

The [agency name] respectfully submits proposed modifications to correct the cited defects. The [Department/Agency/Board] finds that the modifications do not make the rule substantially different and are needed and reasonable. Attached to this letter, we submit the following documents in accordance with Minnesota Rules, **part 1400.2300, subparts 8 and 8a** **[update citations according to rule procedure]**:

1. The rule as initially proposed.
2. The rule with our proposed changes; [possibly: the changes are other than those recommended by Judge [Name]].
3. The amended Order Adopting Rules, including an explanation of the changes, why they correct the defects, and why they do not result in a substantially different rule.

[Or possibly: The [Department/Agency/Board] requests that you reconsider the disapproval for the following reasons: (give reasons).]

If you have any questions or concerns, please contact me at [email address/phone].

Sincerely,

[Name]

[Title]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

[Agency Logo]

VIA EFILING

[date]

The Honorable Chief Judge [Name]

Administrative Law Judge

Office of Administrative Hearings

In the Matter of the Proposed [Permanent] Rules Relating to [Topic]; Submission to the Chief Administrative Law Judge for Changes Other Than Those Approved by the Administrative Law Judge; Revisor's ID No. [number]; OAH Docket No. [number]

Dear Chief Judge [Name]:

On [date], Judge [Name] issued an Order on Review of Rules approving the [agency name]'s rules.

The [Department/Agency/Board] wants to make changes in the rules other than those approved by Judge [Name], and the [Department/Agency/Board] requests that you determine whether these changes are substantial changes under Minnesota Statutes, section 14.05, subdivision 2. Attached to this letter, are the following documents in accordance with Minnesota Rules, **part 1400.2300, subparts 8 and 8a [update according to rule procedure]**:

1. The rule as initially proposed.
2. The rule with our proposed changes.
3. The amended Order Adopting Rules.

[Use this paragraph if only some of the proposed changes were not approved by the ALJ:]
Judge [Name] approved some of the [Department/Agency/Board]'s changes as shown in the attached rules as proposed for final adoption. The changes that Judge [Name] did not approve are described in the attached amended Order Adopting Rules.

If you have any questions or concerns, please contact me at [email address/phone].

Sincerely,

[Name]

[Title]

Estimated Rulemaking Costs

The rough estimates provided serve as a framework for beginning your agency’s cost analysis. The estimates **don’t** reflect actual costs, but the material in this appendix is designed to give you some basic rules to help you predict the costs unique to your agency and project.

The rulemaking landscape includes many facets that defy straightforward categories, but for simplicity, the following terms are used: “major rule,” “medium rule,” “small rule,” and “minor rule.”

	Major Rule	Medium Rule	Small Rule	Minor Rule
Staffing Costs				
Program staff (\$40 w/fringe)	124,800	62,420	24,000	3,600
Rules staff (\$40 w/fringe)	124,800	41,600	12,000	2,400
Clerical support (\$26 w/fringe)	8,320	5,200	3,900	1,560
Office of Attorney General¹				
Legal fees (\$133/hour)	11,438	7,182	1,330	798
Office of Administrative Hearings²				
Admin. Law Judge (\$245/hour)	29,025	10,750	2,150	860
State Register (\$135/page)³				
Request for Comments	270	270	135	135
Notice of Intent to Adopt Rules (with rule text published)	7,560	3,375	1,350	810
Notice of Adoption (without rule text published)	60	60	20	20

1 The Office of the Attorney General’s billing rates are **\$133 per hour** for attorney time.

2 OAH’s billing rates are **\$245 per hour** for ALJ time and **\$145 per hour** for attorney time. ALJ hours are estimated as follows: 135 for a major rule, 50 for a medium rule, 10 for a small rule, and 4 for a minor rule.

3 The *State Register*’s estimated rate is **\$135 per page**.

Miscellaneous

Mailings	925	694	370	333
Duplicating	1,500	825	500	250
Transcripts	1,000	750	500	
Committee costs, outstate meetings	500	200		
Total	\$310,248	\$133,376	\$46,305	\$10,816

This nonexhaustive list suggests other factors to consider:

- the type of rule: normal, expedited, exempt, etc.
- the complexity of the record
- the number of exhibits that support the rule
- the volume of the exhibits
- the number of controversies that must be resolved
- the level of controversy
- the technical nature of the subject matter
- the technical complexity of the rules
- the number of speakers at the hearing
- the diversity and uniqueness of the subjects presented in the comments

Major rule

A major rule is an extensive revision or start-from-scratch development of a *long* (more than 50 pages of rule text) and *controversial* (will almost certainly go to public hearing) rule. A major rule typically requires many meetings with a public advisory committee.

The estimated costs relating to OAH presume that there will be at least one hearing, ALJ preparation time, ALJ videoconferences for discussion on the hearing and other consultations, and ALJ review time. To establish estimated costs for each rulemaking, the agency might find it helpful to review the costs of its previous rulemaking projects and its current fixed costs, such as the hourly rates for AG legal fees and the ALJ.

Medium rule

A medium rule is an extensive revision or start-from-scratch development of a rule under 50 pages of rule text that could go to hearing. A medium rule could involve an advisory committee.

The estimated costs relating to OAH presume that there will be a hearing, ALJ preparation time, and ALJ videoconference discussions. In establishing estimated costs for each rulemaking, the agency might find it helpful to review the costs of its previous rulemaking projects and its current fixed costs.

Small rule

A small rule amends a noncontroversial rule under 50 pages of rule text that doesn't require an advisory committee. There will not be a hearing, and a small rule includes an expedited, obsolete, or exempt rule.

The estimated costs relating to OAH presume that there will not be a hearing. In establishing estimated costs for each rulemaking, the agency might find it helpful to review the costs of its previous rulemaking projects and its current fixed costs.

Minor rule

A minor rule includes technical and noncontroversial changes to a rule and is generally only 1-2 pages of text. It includes a good-cause-exempt rule or an exempt rule.

The estimated costs relating to OAH presume that there will not be a hearing. In establishing estimated costs for each rulemaking, the agency might find it helpful to review the costs of its previous rulemaking projects and its current fixed costs.

Estimate of hours spent on rule

	Major rule (controversial or with hearing)	Medium rule (possible hearing or longer rule)	Small (no hearing)	Minor rule (short, noncontroversial)
Program Staff	3,120	1,560	600	90
Rule-maker	3,120	1,040	300	60
Clerical	320	200	150	60
Legal Review	86	54	10	6
OAH Services	135	50	10	4

[Customize this certificate to meet your needs. If you are sending these documents electronically only, you will want to adapt this certificate accordingly.]

Certificate of [What You Did]

[Examples:]

- Mailing the Request for Comments
- Mailing the Notice of Intent to Repeal Obsolete Rules
- Giving [Additional] Notice [Under the Additional Notice Plan]
- Consulting with the Commissioner of Management and Budget in Compliance with Minnesota Statutes, section 14.131
- Compliance with [XX]

Minnesota [Agency Name]

Division of [Name, or Unit, Bureau, etc.] [Optional]

Proposed Rules Relating to [Topic], Minnesota Rules, [citation]

I certify that on [Month] [Date], [Year], at [City], [County] County, Minnesota, I [state what you did.]

[Examples:

- mailed the [Request for Comments] [Notice of Intent to Repeal Obsolete Rules] to persons on the Department's rulemaking mailing list established by Minnesota Statutes, section 14.14, subdivision 1a.
- gave notice according to the [Additional] Notice Plan approved by the Office of Administrative Hearings on [date]. Specifically, I [give details of what you did to meet the components of the [Additional] Notice Plan]. [Put this in bullet points or 1,2,3 format so that it will work as a checklist for you and OAH.]
- consulted with the Commissioner of Minnesota Management and Budget in compliance with Minnesota Statutes, section 14.131, by mailing a letter with these enclosures:
 - The Governor's Office Proposed Rule and SONAR Form.
 - The [date] Revisor's draft of the proposed rule.
 - The [date] draft of the SONAR.

- complied with [XX].]

I accomplished this by [state what you did].

- depositing a copy in the [State of Minnesota's central mail system for] [United States mail with postage prepaid to all persons and associations on the list.] [sending an electronic copy via email] to all persons and associations on the list. [Copies of both the [document] and the mailing list[s] are attached to this Certificate.]
- submitting a Notice to the [trade or professional association newsletter] [general circulation newspaper]. Copies of the submission and of the Notice as published are attached to this Certificate.]

[Name]

[Title]

[Dates, names, and other information should be changed to reflect your agency's submission.]

Certificate of [Mailing/Emailing] a Notice of Hearing to Those Who Requested a Hearing

Minnesota [Agency Name]

Proposed [Permanent] Rules Relating to [Topic], Minnesota Rules, [citation]; Revisor's ID No. [number]; [OAH Docket No. [number]]

I certify that on [date], I [mailed/mailed] a Notice of Hearing by [depositing the Notice in the United States mail with postage prepaid] [sending an electronic copy via email] to all persons who requested a hearing. The Notice is given under Minnesota Statutes, section 14.25, subdivision 1. [Optional: Copies of the Notice and the mailing list are attached to this certificate.]

[Name]

[Title]

[Dates, names, and other information should be changed to reflect your agency's submission.]

Certificate of [Mailing/Emailing] a Notice of Withdrawal of Hearing Requests

Minnesota [Agency Name]

Proposed [Permanent] Rules Relating to [Topic], Minnesota Rules, [citation]; Revisor's ID No. [number]; [OAH Docket No. [number]]

I certify that on [date], I [mailed/mailed] a Notice of Withdrawal of Hearing Requests by [depositing the Notice in the United States mail with postage prepaid] [sending an electronic copy via email] to all persons who requested a hearing. The Notice is given under Minnesota Statutes, section 14.25, subdivision 2. [Copies of both the Notice and of the mailing list are attached to this certificate.]

[Name]

[Title]

[Dates, names, and other information should be changed to reflect your agency's submission.]

Certificate of Sending Notice to Legislators

Minnesota [Agency Name]

Proposed Repeal of Obsolete Rules Relating to [Topic], Minnesota Rules, [citation]; Revisor's ID No. [number]; [OAH Docket No. [number]]

I certify that on [date], at least 63 days before the end of the comment period, I sent a copy of the Notice of Proposed Repeal of Obsolete Rules to the chairs and ranking minority members with jurisdiction over the subject matter of the proposed rule repeal by sending an electronic copy via email. I emailed this notice to comply with Minnesota Statutes, section 14.3895, subdivision 3. [A copy of the cover letter is attached to this Certificate.] [Your cover letter should list the Legislators contacted, but if it does not, attach a list of the Legislators to the copy.]

[Name]

[Title]

[Dates, names, and other information should be changed to reflect your agency's submission.]

Certificate of Accuracy of the Mailing List

Minnesota [Agency Name]

Proposed [Permanent] Rules Relating to [Topic], Minnesota Rules, [citation]; Revisor's ID No. [number]; [OAH Docket No. [number]]

I certify that the list of persons that have requested that their names be placed on the [Agency Name]'s rulemaking list under Minnesota Statutes, section 14.14, subdivision 1a, is accurate, complete, and current as of [date] [date should be close to when rule notice is sent]. [Optional: A copy of the mailing list is attached to this Certificate.]

[Name]

[Title]

Minnesota Department of Natural Resources

Fish and Wildlife Division

CERTIFICATE OF MAILING THE NOTICE OF INTENT TO ADOPT EXPEDITED RULES WITHOUT A PUBLIC HEARING TO THE RULEMAKING MAILING LIST; CERTIFICATE OF ACCURACY OF THE MAILING LIST

Proposed Amendment to Game and Fish Rules Relating to Border Waters; Fishing Contests, Designated Waters, and Aquatic Management Areas, *Minnesota Rules*, chapters 6212, 6264, and 6270; Revisor's ID Number R-04598

I certify the following:

1. On Monday, 1/29/2024, at least 33 days before the end of the comment period, at Saint Paul, Ramsey County, Minnesota, I delivered the Notice of Intent To Adopt Expedited Rules Without a Public Hearing to all persons and associations on the department rulemaking mailing list established by Minnesota Statutes, section 14.14, subdivision 1a, by sending electronic notification using the GovDelivery system or depositing the notice in the State of Minnesota's central mail system for United States mail with postage prepaid, according to subscriber preferences.
2. The list of persons and associations who have requested under Minnesota Statutes, section 14.14, subdivision 1a, that their names be placed on the Department of Natural Resources rulemaking mailing list is accurate, complete, and current. Copies of the mailing list for U.S. mail subscribers and email subscribers list via the GovDelivery system are attached to this certificate.

Date: 1/29/2024

/s/ Elizabeth P. Carlson
Administrative Rules Coordinator
Minnesota Department of Natural Resources

[Dates, names, and other information should be changed to reflect your agency's submission.]

*Substitute "Dual Notice" as appropriate: Notice of Intent to Adopt Rules, Notice of Hearing, or Notice of Intent to Repeal Obsolete Rules.

Certificate of Emailing the Dual Notice to the Rulemaking Mailing List

Minnesota [Agency Name]

Proposed [Permanent] Rules Relating to [Topic], Minnesota Rules, [citation]; Revisor's ID No. [number]; [OAH Docket No. [number]]

I certify that on [date], at least 33 [Note: 63 if repealing obsolete rules] days before the end of the comment period, in [City], [County] County, Minnesota, I emailed the Dual Notice, SONAR, and proposed rules by sending an electronic copy to all persons on the rulemaking list under Minnesota Statutes, section 14.14, subdivision 1a. [Optional: Copies of the Notice and the email list are attached to this Certificate.]

[Name]

[Title]

Note: if you are mailing rather than emailing the Notice, use the following:

Certificate of Mailing the Dual Notice to the Rulemaking Mailing List

Minnesota [Agency Name]

Proposed [Permanent] Rules Relating to [Topic], Minnesota Rules, [citation]; Revisor's ID No. [number]; [OAH Docket No. [number]]

I certify that on [date], at least 33 [Note: 63 if repealing obsolete rules] days before the end of the comment period, in [City], [County] County, Minnesota, I mailed the [state what was mailed, for example: Dual Notice, SONAR, and proposed rules] by depositing a copy in the

United States mail with postage prepaid to all persons on the rulemaking list under Minnesota Statutes, section 14.14, subdivision 1a. [Optional: Copies of the Notice and the email list are attached to this Certificate.]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

Certificate of [Mailing/Emailing] the Notice of Submission of Rules Adopted Without a Public Hearing to the Office of Administrative Hearings

Minnesota [Agency Name]

Adopted Rules Relating to [Topic], Minnesota Rules, [citation]; Revisor's ID No. [number]; [OAH Docket No. [number]]

I certify that on [date], when the [Department/Agency/Board] submitted the adopted rules to the Office of Administrative Hearings, I [mailed/emailed] the Notice of Submission of Rules Adopted Without a Public Hearing to the Office of Administrative Hearings by [depositing the Notice in the United States mail with postage prepaid] [emailing all persons who requested the Notice]. I gave this notice according to Minnesota Statutes, section 14.26, subdivision 1. [Optional: Copies of the Notice and the mailing list are attached to this Certificate.]

[Name]

[Title]

[Dates, names, and other information should be changed to reflect your agency's submission.]

Certificate of [Mailing/Emailing] the Notice of Filing Rules with the Office of the Secretary of State

Minnesota [Agency Name]

**Adopted Rules Relating to [Topic], Minnesota Rules, [citation]; Revisor's ID No. [number];
[OAH Docket No. [number]]**

I certify that on [date], when the adopted rules were filed with the Office of the Secretary of State, I [mailed/mailed] a copy of the Notice of Filing Rules with the Office of the Secretary of State to all persons who requested the Notice. The Notice is given under Minnesota Statutes, section 14.16, subdivision 1. [Optional: Copies of the Notice and the mailing list are attached to this certificate.]

[Name]

[Title]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

[Agency Logo]

VIA EFILING

[Date]

The Honorable Judge [Name]
Administrative Law Judge
Office of Administrative Hearings

In the Matter of the Proposed Exempt Rules Relating to [Topic]; Request for Review and Approval of [Exempt Rules Under Minnesota Statutes, Section 14.386] [OR] [Good Cause Exempt Rules Under Minnesota Statutes, Section 14.388]; Revisor's ID No. [number]; OAH Docket No. [number]

Dear Judge [Name]:

The Minnesota [agency name] proposes to adopt exempt rules relating to [topic]. The [Department/Agency/Board] requests that the Office of Administrative Hearings review and approve the rules under Minnesota Statutes, section 14.386 [or 14.388].

Enclosed for your review are the documents required by Minnesota Rules, part 1400.2400, subpart 2:

1. The rules with the revisor's approval.
2. A proposed Order Adopting Rules.
3. [For 14.388] A copy of the Notice required under Minnesota Statutes, section 14.388, subdivision 2; a Certificate of Mailing; and a Certificate of Accuracy of the Mailing List.

If you have any questions or concerns, please contact me at [email/phone number].

Sincerely,

[Name]

[Title]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

[Agency Logo]

VIA EFILING

[Date]

The Honorable Judge [Name]
Administrative Law Judge
Office of Administrative Hearings

In the Matter of the Proposed Expedited Rules Relating to [Topic]; Request for Review and Approval; Revisor's ID Number [number]; OAH Docket No. [Number]

Dear Judge [Name]:

The Minnesota [agency name] proposes to adopt expedited rules relating to [topic]. The [Department/Agency/Board] has the authority for the expedited rules under [cite to statute or session law]. This letter requests that the Office of Administrative Hearings review and approve these rules under Minnesota Statutes, section 14.389.

Enclosed are the documents required under Minnesota Rules, part 1400.2410, subpart 2, items A to K. Paragraphs A to K of this letter are keyed to items A to K of part 1400.2410. Unless otherwise stated, the document is enclosed.

- A. Enclosed: the proposed rules, including the Revisor's approval.
- B. Enclosed: the Notice of Intent to Adopt Expedited Rules as mailed and published in the *State Register* on [date].
- C. Enclosed: the Certificate of Mailing the Notice of Intent to Adopt Expedited Rules and the Certificate of Accuracy of the Mailing List.
- D. Enclosed: the Certificate of Additional Notice [or a copy of the transmittal letter].

[Or possibly] Not enclosed: the Certificate of Additional Notice because no additional notice was given.

- E. Enclosed: all written comments and submissions on the proposed rules. [State how many comments or submissions you received. However, if you received no requests,

submissions, or comments state so] Not enclosed: written comments and submissions on the proposed rules because we received no written comments or submissions.

- F. Not enclosed: the Notice of Withdrawal of Hearing Requests and related documents because no hearing requests were received [or withdrawn].

[Or] Enclosed: the Notice of Withdrawal of Hearing Requests, evidence we sent notice of withdrawal to all persons who requested a hearing, and any responsive comments received.

- G. Enclosed: a copy of the adopted rules dated [date], with modifications [or without modifications].

- H. Not enclosed: a Notice of Adopting Substantially Different Rules because the [Department/Agency/Board] did not adopt substantially different rules.

[Or] Enclosed: a copy of the Notice of Adopting Substantially Different Rules that we sent to persons who commented during the comment period and evidence that we sent the notice to these persons.

- I. Enclosed: the unsigned Order Adopting Rules that complies with Minnesota Rules, part 1400.2090.

- J. Not enclosed: a Notice of Submission of Rules to the Office of Administrative Hearings and related documents because no one requested to be notified of the submission.

[Or rarely] Enclosed: the Notice of Submission of Rules to the Office of Administrative Hearings and a copy of the transmittal letter or Certificate of Mailing the Notice of Submission of Rules to the Office of Administrative Hearings.

- K. Enclosed: any other document or evidence to show compliance with any other law or rule that the [Department/Agency/Board] must follow in adopting the rules [if submitted, replace this item with K1, K2, etc. and list document].

[Or] Not enclosed: any other document or evidence because the [Department/Agency/Board] isn't required to submit any other document or evidence.

If you have any questions or concerns, please contact me at [email/phone number].

Sincerely,

[Name]

[Title]

Administrative Rule Final Rule Form

Revisor's ID Number: R-####

NOTE: This form is written to supplement the *Preliminary Proposal Form* and *Proposed Rule and SONAR Form* (if applicable) for this case.

Submitting agency:

formal agency name

Rule contacts:

list names, title/unit, phone, email

Rule title:

rule title or brief description

Chapter number(s):

text

Comments received since publication of notice of intent to adopt:

text

List changes from draft rules proposal, if any:

text

If a hearing was held, explain reason for holding the hearing and attach the ALJ report:

text

Commissioner's Signature

Date

*** THIS SECTION TO BE COMPLETED BY THE GOVERNOR'S OFFICE***

I have reviewed the above information and have approved this administrative rule. The Agency may formally submit this rule to the Office of Administrative Hearings for approval and filing with the Office of Secretary of State.

Governor's Policy Advisor

Date

Office of the Governor

ADMINISTRATIVE RULE REVIEW PROCESS

INTRODUCTION

This document provides guidance on the Administrative Rule Review Process and is designed to create clear direction from the Office of the Governor about how the Office will administer the rulemaking process.

The Administrative Rule Review includes three forms (Preliminary Proposal Form, Proposed Rule and SONAR Form, and Final Rule Form) that all agencies will use to communicate with the Governor's Office. These forms create uniform communication among agencies and efficiency within the Office's Administrative Rule Review.

The following information provides direction and information about how the Administrative Rule Review will proceed. The following document might not answer all of the questions that might occur during rulemaking. Therefore, Rule Coordinators are encouraged to contact Madeline Hormann, Legislative Coordinator of Legislative and Cabinet Affairs (LACA) with any questions you might have. Madeline can be reached via email at Madeline.Hormann@state.mn.us or by calling (651) 201-3427.

The main goal of interaction with the Governor's Office throughout the Administrative Rule Review, is for the Governor's Office to give the agency input on important issues during the process.

PRELIMINARY PROPOSAL FORM

When an agency has developed a rule idea, it should complete the Preliminary Proposal Form and submit it to the Governor's Office. The form must be signed by the Commissioner or Director of the agency and will serve as the official notification to the Governor's Office that an agency is seeking a rule. Regardless of the type of rule the agency is proposing (Exempt, Expedited, Permanent or Good-Cause Exemption), this form should be completed in its entirety and submitted to the Legislative Coordinator of LACA. The information contained in the Preliminary Proposal Form likely will be broad and general because of the proposal being at the very beginning stages of rulemaking. Although, this information is important to the Governor's Office, the Policy Advisors cannot perform a substantive review of the proposed rule until they receive the Statement of Need and Reasonableness (SONAR). Therefore, the agency does not need to wait for a response from the Governor's Office before publishing the Request for Comments. Should the information contained in the Preliminary Proposal Form be of concern to the Policy Advisor, he or she will contact the agency.

The information sought in the Preliminary Proposal Form includes a short descriptive title, chapter number, supporters, opponents, possible controversies, need for the rule, background information, and rulemaking authority. The form also seeks fiscal impact

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information. Because this form is submitted early in the rulemaking process three fiscal impact choices are listed: Yes, No, and Undetermined. The Governor's Office recognizes that at this point in the process the agency might not be able to determine if the proposed rule will have a fiscal impact.

GOVERNOR'S OFFICE USES REVISOR'S ID NUMBER FOR TRACKING RULES

The Governor's Office tracks the project by its Revisor's ID number. Therefore the agency should include its Revisor's ID number, the title given to the proposed rule, and the chapter number on all correspondence.

PROPOSED RULE AND SONAR FORM

After the agency has published its Request for Comment, created the SONAR, and has final or almost final draft rules, it should complete the Proposed Rule and SONAR Form and the Commissioner or Director sign it. The agency must then submit the completed form, SONAR, and draft rules to the Governor's Office.

This stage is crucial to rulemaking and is the critical point of information for the Governor's Office. The Proposed Rule and SONAR Form seeks the information received during the Request for Comment, an Executive Summary of the SONAR, supporters, opponents, possible controversies, and any significant changes from the Preliminary Proposal Form. The form also contains an "other" box. The Governor's Office understands that every rulemaking experience is slightly different. Therefore, the "other" box seeks information that might not fit into the SONAR or one of the other boxes of information requested. The "other" box can be viewed as "any information that may be of importance to this rule."

The Proposed Rule and SONAR Form again seeks fiscal impact information. However, at this point, only two options (yes or no) exist. The fiscal impact "yes" box should be checked for positive or negative fiscal impact to the State of Minnesota. If the fiscal impact declaration changed from the Preliminary Proposal Form, the agency should explain why. Within the SONAR Executive Summary box, the agency should include all fiscal information that affects individuals, businesses, units of government, or the agency itself.

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NOTICE OF INTENT TO ADOPT PROPOSED RULES

The agency must receive official approval from the Legislative Coordinator of LACA before proceeding with the Notice of Intent to Adopt Proposed Rules. In most cases, the agency will receive the approval to proceed with the Notice of Intent to Adopt Proposed Rules within three weeks of the Governor's Office's receiving the SONAR, draft rules, and Proposed Rules and SONAR Form. If the agency hasn't received a communication by the 21st day after the Governor's Office received this information, the agency should contact the Legislative Coordinator for a status report.

The agency's Policy Advisor will communicate any questions, comments or concerns about the content of the proposed rule to the agency.

The agency may proceed with the Notice of Intent to Adopt Rules after the Policy Advisor has approved the proposed rule and only after the Legislative Coordinator has communicated approval to the agency.

FINAL RULE FORM

This form notifies the Governor's Office of any new information or late changes. This last notification gives the Governor's Office a final opportunity to make changes before only having the option of veto. The Governor's Office is seeking information describing any late controversies that might have arisen since the agency submitted the Proposed Rule and SONAR Form. The Final Rule Form requests information on any changes to the previously submitted draft rules. Also, if a hearing were requested, information as to why it was requested. The timing for submitting the Final Rule Form varies, depending on the type of rulemaking the agency is doing. If the agency is adopting rules without a hearing, adopting rules after a public hearing, or adopting expedited rules, the agency must wait for the Policy Advisor to approve the final rule before taking the next step, as described below. **[Rulemaking Manual Editor's Note:** in all three cases, the agency should submit its Order Adopting Rules in unsigned draft form for the ALJ review. See the corresponding chapter for more discussion.]

When the agency is adopting rules without a hearing: the agency must submit the completed Final Rule Form to the Office of the Governor when the agency has decided on the final rules and its SONAR is complete. The agency must wait for the Office's approval before submitting its request to Office of Administrative Hearings (OAH) for rule review and approval. If the ALJ who performs the review makes any substantive recommendations to the rule or finds defects, the agency should resubmit the Final Rule Form, clearly labeling it as a revised form. The agency must explain its response to the ALJ's Report, including any large deletions from the rule. The agency should also submit a copy of the ALJ Report with the revised Final Rule Form. Upon final approval of the rule by the Policy Advisor, the Legislative Coordinator will contact the agency and inform it that it may submit the signed Order Adopting Rules to the OAH.

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When the agency is adopting rules after a hearing: the agency must submit the completed Final Rule Form to the Office of the Governor **and wait for approval** before the agency submits its signed Order Adopting the Rules to OAH. The agency must explain why a hearing was requested and attach a copy of the Administrative Law Judge Report. The agency must also explain any changes made in response to the ALJ Report, including any large deletions from the rule. The Policy Advisor will direct any concerns the Advisor might have directly to the agency. Upon final approval of the rule by the Policy Advisor, the Legislative Coordinator will contact the agency and inform it that the Commissioner or Director may sign the Order Adopting Rules and formally submit it to OAH.

When the agency is adopting expedited rules: the agency must submit the completed Final Rule Form to the Office of the Governor when the agency is submitting its request to Office of Administrative Hearings (OAH) for rule review and approval. The agency must attach a copy of the proposed rules and any justification that the agency has prepared. The agency must wait for Governor's Office approval before publishing the notice of adoption.

If the ALJ makes any substantive recommendations to the rule or if defects are found, the agency should resubmit the Final Rule Form to the Governor's Office, clearly labeling it as a revised form. The agency must explain its response to the ALJ's Report, including any large deletions from the rule. A copy of the ALJ Report should be submitted to the Governor's Office with the revised Final Rule Form. Upon final approval of the rule by the Policy Advisor, the Legislative Coordinator will contact the agency and inform it that it may publish the expedited rules in the State Register.

When the agency is adopting exempt rules or good cause exempt rules: the agency may exercise its judgment about whether to submit a completed Final Rule Form to the Office of the Governor. The nature of exempt or obsolete rules is that there are no policy considerations to make or controversies to address, so waiting for approval is not necessary. If either were to develop, however, the agency should notify the Office. Submitting a completed Final Rule Form is usually a wise precaution against error. When in doubt, the agency may contact the Legislative Coordinator. Agencies should note that exempt rules adopted under Minnesota Statutes, section 14.386 are subject to veto. Good cause exempt rules adopted under Minnesota Statutes, section 14.388 are not subject to veto.

In all cases: If the proposed rule remained substantially unchanged from the SONAR stage, final review of the rule should take less than a week. If the agency hasn't received a communication by the 7th day after the Governor's Office received the above information, the agency should contact the Legislative Coordinator for a status report.

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THE OFFICE OF ADMINISTRATIVE HEARINGS

When OAH approves receives confirmation that the Order has been signed, it will request the adopted rules from the Revisor's Office, stamp and date the rules as approved, and file the final rules with the Office of the Secretary of State. The Secretary of State will stamp and date the copies, retaining one, and forward two to the agency, and one to the Governor's Office.

GOVERNOR'S DECISION

When the rule, time-and-date stamped by the Office of the Secretary of State, arrives in the Governor's Office, the veto clock starts running. Excluding the day it is received, the Governor has 14 days to veto the rule. If the rule is not vetoed within the 14-day period, it goes into effect after notice of adoption is published in the State Register.

If the rule is approved, the Legislative Coordinator will contact the agency and inform it that it may proceed with publishing the Notice of Adoption. If the Governor vetoes the rule, the Legislative Coordinator will contact the agency with the Governor's explanation and rationale. If the agency requires or would significantly benefit from the rule being adopted early in the 14-day veto period, the agency should contact the Legislative Coordinator about an expedited approval.

COMMUNICATION

The Governor's Office recognizes that agencies cannot predict all controversies at the outset of a rules project. As a result, the agency should use its judgment to send issues to the Governor's Office for review throughout the process. Additional review might be necessary if a rule suddenly becomes controversial. If the agency believes that an issue or proposed change might be in conflict with the Governor's beliefs and principles, the agency should notify its Policy Advisor.

RULE REPEALS

Agencies do not need to submit rule repeals to the Governor's Office for approval. However, an agency should send an informational memo identifying the obsolete, unnecessary, or duplicative rule(s) to be repealed, describing the rationale for repeal, and indicating any potential controversies. This memo will serve to notify the Governor's Office that the agency is seeking to repeal a rule. No approval is necessary, at any stage, in the rule repeal process. Agencies should note, however, that obsolete rules repealed under Minnesota Statutes, section 14.3895 are subject to veto.

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FORM AVAILABILITY

This Administrative Rule Review Policy, all of the above mentioned forms (in both PDF and Word formats) and the Administrative Rule Review Process Flow Chart are available online. They are published in the *Minnesota Rulemaking Manual*, which can be obtained at [Minnesota Rulemaking Manual and Seminar](https://www.health.state.mn.us/data/rules/manual/index.html) (<https://www.health.state.mn.us/data/rules/manual/index.html>).

Office of the Governor
Tim Walz, Governor
August 15, 2020

Administrative Rule Preliminary Proposal Form

Revisor's ID Number: R-####

Submitting agency:

formal agency name

Rule contacts:

list names, title/unit, phone, email

Type of Rulemaking Authority: (mark one)

Chapter 14: Permanent (full process) Exempt Permanent Expedited Permanent

Game & fish laws: Exempt Permanent Fisheries Expedited Emergency Game and Fish

Rule title:

rule title or brief description

Chapter number(s):

text

Describe the need for the rule and provide background information:

text

Describe supporters, opponents and possible controversies, and how you know this:

text

Agency impact:

text

If Exempt or Expedited rulemaking process is being used, please explain why:

text

Rulemaking authority and other relevant statutes:

Authority to adopt the rules: list

Authority to adopt the rules using expedited or exempt process: list or not applicable

Fiscal impact for agency:

Yes No Undetermined

Commissioner's Signature

Date

*** THIS SECTION TO BE COMPLETED BY THE GOVERNOR'S OFFICE***

I have reviewed the above information and approved the concept of this administrative rule.

Governor's Policy Advisor

Date

Administrative Rule Proposed Rule and SONAR Form

Revisor's ID Number: R-####

NOTE: This form is written to supplement the *Preliminary Proposal Form* for this case.

Submitting agency:

formal agency name

Rule contacts:

list names, title/unit, phone, email

Rule title:

rule title or brief description

Chapter number(s):

text

Comments received during Request for Comments:

text or Not Applicable for this rule type

Statement of Need and Reasonableness (SONAR) Executive Summary:

text

Supporters, opponents, and possible controversies:

text [and state how you know these conclusions]

List significant changes from the preliminary proposal, if any:

text

Other information for the governor's office, if any:

text or Not Applicable

Fiscal impact for agency:

Yes No Undetermined (If the fiscal impact determination has changed, do explain above.)

AGENCY: Attach draft rules and SONAR.

Commissioner's Signature

Date

*** THIS SECTION TO BE COMPLETED BY THE GOVERNOR'S OFFICE***

I have reviewed the above information and have approved this administrative rule. The respective Agency may formally publish a notice of intent to adopt these proposed rules.

Governor's Policy Advisor

Date

RULEMAKING CHECKLIST - RULES ADOPTED AFTER A HEARING

NOTES:

1. If rules are pursuant to a newly adopted or amended rulemaking mandate, you must publish the Request for Comments (step 5) within 60 days of the law's effective date. MS 14.101, s1.
2. The agency must publish a notice of intent to adopt rules (step 13) within 18 months of the effective date of the law authorizing or requiring rules to be adopted, amended, or repealed. Otherwise, the agency will lose the authority to do the rules. MS 14.125. This applies only to first-time rule adoptions under the statutory authority and not to subsequent amendments or repeals unless the Legislature subsequently alters the authority. Failure to adopt rules within 180 days of issuance of the ALJ's post-hearing report must be explained to the Legislature. MS 14.19.
3. The steps are listed in the recommended order, but the steps do not have to be done in the sequence indicated. However, steps 1–12 *must* be completed before step 13.
4. The Rulemaking Manual Editor *strongly* recommends that you write the SONAR (or at least make notes about what will go into it) concurrently with rule development.
5. For the precise deadlines for submissions to the State Register, see [Minnesota Bookstore \(https://mn.gov/admin/bookstore/\)](https://mn.gov/admin/bookstore/).
6. If the proposed rules are highly controversial, it might be advisable to meet with associations and other interested parties even before step 1.

Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
1.	Authorization from Commissioner or Board to begin project. At least 1 week before step 5	BD-NTC		
2.	Obtain Revisor’s ID Number and send Preliminary Proposal Form to the Governor’s Office via email to Emmet Hedin, Emmet.Hedin@state.mn.us, (651) 201-3408. * Governor’s Office 9/19/19 rules review policy GOV-PLCY: “When an agency has developed a rule idea, it should complete the Preliminary Proposal Form [GOV-PRLM] and submit it to the Governor’s Office. The form must be signed by the Commissioner or Director of the agency and will serve as the official notification to the Governor’s Office that an agency is seeking a rule. Regardless of the type of rule the agency is proposing (Exempt, Expedited, Permanent or Good-Cause Exemption), this form should be completed in its entirety and submitted to the Legislative Coordinator of LACA. The information contained in the Preliminary Proposal Form likely will be broad and general because of the proposal being at the very beginning stages of rulemaking. Although, this information is important to the Governor’s Office, the Policy Advisors cannot perform a substantive review of the proposed rule until they receive the Statement of Need and Reasonableness (SONAR). Therefore, the agency does not need to wait for a response from the	GOV-PRLM		

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Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	<p>Governor's Office before publishing the Request for Comments. Should the information contained in the Preliminary Proposal Form be of concern to the Policy Advisor he or she will contact the agency. . .</p> <p>* Huge Hint: The Preliminary Proposal Form to the Governor's Office is an excellent opportunity <i>at the beginning of your rules project</i> to clearly set out your goals for the project and to write a first complete draft of the statement of need and the statutory authority for the rules. Having worked on many rules projects with the need and the goals <i>clearly in mind</i>, it became quickly apparent after doing one Governor's form that it was preferable and beneficial to have the need and the goals <i>clearly on paper</i>. The project goals and statutory authority will fit nicely into the SONAR.</p> <p>* Note on Repealing Rules_ Per Governor's Office 9/19/19 rules review policy: "Agencies do not need to submit rule repeals to the Governor's Office for approval. However, an agency should send an informational memo identifying the obsolete, unnecessary, or duplicative rule(s) to be repealed, describing the rationale for repeal, and indicating any potential controversies. This memo will serve to notify the Governor's Office that the agency is seeking to repeal a rule. No approval is necessary, at any stage, in the rule repeal process."</p>			
3.	<p>Begin saving documents for official rulemaking record.</p> <p>* If needed, establish a rules advisory committee. Consult with affected parties, such as trade associations and agency advisory councils.</p>	RECORD		
4.	<p>Develop an Additional Notice Plan, which must be included in SONAR (step 8b). MR 1400.2060.</p>			
5.	<p>Request for Comments - submit to State Register via electronic copy in Word Format and State Register Printing Order Form using the Revisor's Office ID no.</p> <p>Publish on the Monday 6 days after submission to the State Register.</p>	REQUEST		
6.	<p>Request for Comments - mail to people on mailing list; (optional) prepare Certificate of Mailing.</p> <p>At least 3 days before publication</p> <p>* Notify additional people, if this is part of the Additional Notice Plan for the Request for Comments</p>	CRT-GNRC		

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Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
7.	Request for Comments – publish in State Register At least 60 days before Notice of Intent to Adopt * NOTE: At any time there is a significant change from the initial proposal, send a memo to Emmet Hedin. From the 9/19/19 Governor's rule review policy GOV-PLCY: "The Governor's Office recognizes that agencies cannot predict all controversies at the outset of a rules project. As a result, the agency should use its judgment to send issues to the Governor's Office for review throughout the process. Additional review might be necessary if a rule suddenly becomes controversial. If the agency believes that an issue or proposed change might be in conflict with the Governor's beliefs and principles, the agency should notify its Policy Advisor." * Only if you are using a rules advisory committee: Meet with the committee to discuss the rulemaking timeline and possible rule language	ADV-COMM		
8.	Steps 8a, 8b, and 8c can be done in any order; they are often done concurrently.			
8a.	Ask Revisor for preliminary draft of proposed rules.	REVISOR		
8b.	Draft SONAR, including Additional Notice Plan Concurrent w/ rule development * Decide whether to use a Notice of Hearing or Dual Notice. Use a Dual Notice if you're not sure whether or not the proposed rules will be controversial.	SONAR		
8c.	Get rules & SONAR, including Additional Notice Plan, approved by commissioner or executive director. When rules & SONAR completed			
9.	Send rules & SONAR electronically to Governor's Office Almost final rules & SONAR * From the Governor's Office 9/19/19 administrative rule review policy, GOV PLCY: "After the agency has published its Request for Comment, created the SONAR, and has final or almost final draft rules, it should complete the Proposed Rule and SONAR Form [GOV PRPS] and the Commissioner or Director sign it. The agency must then submit the completed form, SONAR, and draft rules to the Governor's Office.	GOV-PRPS		

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Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	<p>“This stage is crucial to rulemaking and is the critical point of information for the Governor’s Office. The Proposed Rule and SONAR Form seeks the information received during the Request for Comment, an Executive Summary of the SONAR, supporters, opponents, possible controversies, and any significant changes from the Preliminary Proposal Form. The form also contains an ‘other’ box. The Governor’s Office understands that every rulemaking experience is slightly different. Therefore, the ‘other’ box seeks information that might not fit into the SONAR or one of the other boxes of information requested. The ‘other’ box can be viewed as ‘any information that may be of importance to this rule.’</p> <p>“The Proposed Rule and SONAR Form again seeks fiscal impact information. However, at this point, only two options (yes or no) exist. The fiscal impact ‘yes’ box should be checked for positive or negative fiscal impact to the State of Minnesota. If the fiscal impact declaration changed from the Preliminary Proposal Form, the agency should explain why. Within the SONAR Executive Summary box, the agency should include all fiscal information that affects individuals, businesses, units of government, or the agency itself. . . .</p> <p>“The agency must receive official approval from the Legislative Coordinator of LACA before proceeding with the Notice of Intent to Adopt Proposed Rules. In most cases, the agency will receive the approval to proceed with the Notice of Intent to Adopt Proposed Rules within three weeks of the Governor’s Office’s receiving the SONAR, draft rules, and Proposed Rules and SONAR Form. If the agency hasn’t received a communication by the 21st day after the Governor’s Office received this information, the agency should contact the Legislative Coordinator for a status report.”</p>			
10.	<p>Draft Notice of Intent to Adopt Rules. Have commissioner or executive director sign Notice & SONAR.</p> <p>After Gov’s Office approval and when rules & SONAR are final</p> <p>* If you plan to go directly to a hearing or if you feel there is a strong likelihood of receiving 25+ hearing requests, your Notice of Intent to Adopt can be either a Notice of Hearing or a Dual Notice. Refer to paragraph 6.1 in the Rulemaking Manual for the pros and cons of how to proceed.</p> <p>* Allow 30-day comment period; add day if last day is holiday.</p>	NTC-HR or NTC-DL		

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Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	* If you are using a Dual Notice, you need to have at least 10 days between the close of the comment period and the hearing date.			
11.	Ask Revisor for approved draft of the rules.			
12.	Send letter to OAH requesting hearing date and judge After SONAR is signed * Send Additional Notice Plan to OAH for approval (optional, yet encouraged).	HR-RQUEST		
13.	Notice of Intent to Adopt – submit to State Register via email using the Revisor’s document number for the rules & Printing Order form 12 or 6 days before publication (check State Register website for exact due date)	ST-REG		
14.	Notice of Intent to Adopt - give notice to persons on rulemaking mailing list and per your Additional Notice Plan. Prepare Certificate of Mailing, Certificate of Accuracy of Mailing List, and Certificate of Giving Additional Notice. After submit Notice of Intent to Adopt State Register, no later than 33 days before end of comment period	CRT-MLNG CRT-LIST CRT-GNRC		
15.	Send SONAR to Legislative Reference Library via email; Prepare Certificate of Mailing to library OR make copy of cover letter. When SONAR becomes available to the public.	LRL CRT-LRL		
16.	Send notice to legislators - chairs and ranking minority party members of House & Senate policy & budget committees; PLUS chief legislative authors of rulemaking authority if it is within two years of the effective date of the authority; prepare Certificate of Mailing to legislators OR make copy of cover letter. When Notice is mailed * Send to other legislative committees if required in special circumstances. For example, MS62J.07 requires reports to the Legislative Commission on Health Care Access. * Provide other notices if required in special circumstances. See, for example, MS14.111 re notice to Department of Agriculture on rules that affect farming operations; MS3.9223,s4, re notice to Council on Affairs of Chicano/Latino People on rules that have their primary effect on Chicano/Latino people.	LEG CRT-LEG		
17.	Notice of Intent to Adopt published in State Register. Make copy for RECORD.			

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Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	Published on the Monday 12 days after submission to State Register (long rules)			
18.	Comments: maintain folder with comments and any responses you make. Comments must be received within 30 calendar days of publication in State Register			
19.	Proceed according to number of hearing requests. After end of comment period * If you published NTC-HR, proceed with this checklist. * If you published NTC-DL and you got fewer than 25 hearing requests, you will likely want to cancel the hearing (which you must do at least four working days before the hearing). Switch to step 17 of NH-CKLST, the checklist for adopting rules without a hearing. * If you published NTC-DL and you got 25+ hearing requests, notify ALJ and notify persons who requested a hearing. NTC-HR25 & CRT-HR25. Proceed with this checklist.			
20.	Compile documents for rule hearing: see MR1400.2220. Prepare presentation on rule and consider possible questions that may arise. Prepare staff and board members	STAFF-HR		
21.	E-file documents cited in MR1400.2220. Bring courtesy copies for ALJ use at rule hearing. Introduce into record.			
22.	During post-hearing comment period, submit response to testimony and questions: see MR1400.2230 Post-hearing comment period is 5 working days; can be extended by ALJ to 20 calendar days * Submit any changes the agency wants to make to the rules. If ALJ prefers a preliminary response during the post-hearing comment period, label these as intended changes, then put in any final changes by the end of the post-hearing rebuttal period.			
23.	During post-hearing rebuttal period, submit response to comments and information received by ALJ during the post-hearing comment period. Post-hearing rebuttal period is 5 working days			
24.	Hearing record closes.			

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Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	At end of post-hearing rebuttal period			
25.	ALJ completes report. 30 days after close of hearing record * ALJ returns entire hearing record to agency.			
26.	Decide how to proceed; get approval from agency decision makers (commissioner, executive director, and appropriate board members) about changes recommended by ALJ. Do language changes if needed If a Board, prior to Board meeting at which rules will be adopted			
27.	Get Governor's Office approval. Before sending Order Adopting Rules to OAH * Per the Governor's Office 9/19/19 rules review policy, GOV-PLCY: "When the agency is adopting rules after a hearing: the agency must submit the completed Final Rule Form [GOV-FNL] to the Office of the Governor before the agency submits its signed Order Adopting the Rules to OAH. The agency must explain why a hearing was requested and attach a copy of the Administrative Law Judge Report. The agency must also explain any changes made in response to the ALJ Report, including any large deletions from the rule. The Policy Advisor will direct any concerns the Advisor might have directly to the agency. Upon final approval of the rule by the Policy Advisor, the Legislative Coordinator will contact the agency and inform them it may formally submit the signed Order Adopting Rules to the OAH. . . If the proposed rule remained substantially unchanged from the SONAR stage, final review of the rule should take less than a week. If the agency hasn't received a communication by the 7th day after the Governor's Office received the above information, the agency should contact the Legislative Coordinator for a status report.	GOV-FNL		
28.	Draft Order Adopting Rules and, for Boards, a Board Resolution Adopting Rules. If a Board, prior to Board meeting when rules will be adopted *If your rules were approved and you are making no changes other than those already approved, then skip to step 30.	ORD-ADPT SMPLFND BD-ADPT		

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Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
29.	<p>If you are making changes to the rules other than those approved by the ALJ OR to correct a disapproval by the ALJ, submit the rules to the Chief ALJ for review. It is recommended that you ask the Revisor for a rules draft, approved as to form. See MS 14.16 and MR 1400.2240,s4&5.</p> <p>Chief ALJ must approve or disapprove within 5 working days, if you are correcting a defect, or 10 days, if making changes other than those already approved</p>	CHNG-OTH CHNG-DIS		
30.	<p>Order Adopting Rules signed by commissioner or by person authorized in Board Resolution.</p> <p>Commissioner's signature or Board action must be at least 5 working days after ALJ report</p> <p>* OAH will get a rules draft from the Revisor, approved for filing with the Secretary of State. OAH will file the rules with the Secretary of State and notify the agency in advance of when it will do this.</p> <p>* Secretary of State forwards rules to the Governor, who may veto within 14 days. MS 14.05,s6.</p>			
31.	<p>Mail Notice of Filing to all persons requesting this. (See sign-up sheet in hearing record for names.)</p> <p>Notice of Filing must be sent when the rules are filed with the Secy of State</p>	NTC-SECY CRT-SECY		
32.	Revisor drafts Notice of Adoption and sends to agency.			
33.	<p>After you are sure Governor will not veto: Submit Notice of Adoption to State Register by submitting the Revisor's document number & Printing Order form.</p> <p>To ST-REG Tuesday or Wednesday at noon, 6 or 12 days before publication, depending on length; (Holidays may change deadlines).</p>			
34.	<p>State Register publishes Notice of Adoption.</p> <p>The Monday, 6 or 12 days after submission to State Register.</p>			
35.	<p>Rules take effect.</p> <p>Five working days after publication in State Register</p>			
36.	<p>Notify staff of rule change</p> <p>ASAP</p>	CLOSURE		

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Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
37.	Inform regulated persons. Publish information about rules in newsletter and/or web page. ASAP			
38.	Finalize Official Rulemaking Record and archive rule documents. MS14.365	RECORD		

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[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

[Agency Logo]

VIA EFILING

[Date]

The Honorable Judge [Name]
Administrative Law Judge
Office of Administrative Hearings

In the Matter of the Proposed [Permanent] Rules Relating to [Topic]; Request to Schedule a Rules Hearing [and Request to Review Additional Notice Plan]; Revisor's ID Number [number]; OAH Docket No. [Number]

Dear Judge [Name]:

The Minnesota [agency name] requests that you please schedule a hearing under Minnesota Statutes, sections 14.131 to 14.20. The hearing is for the [Department/Agency/Board]'s proposed rules on [topic]. The [Department/Agency/Board] requests that you conduct the hearing on [day], [month] [date], [year], beginning at [time], via [videoconferencing platform].

Enclosed for your review are the documents required under Minnesota Rules, part 1400.2080, subpart 5:

1. The Notice of Hearing [or Dual Notice] proposed to be issued. [If Dual Notice, add: If the [Department/Agency/Board] receives fewer than 25 requests for a hearing in response to the Dual Notice, the hearing will be canceled. The [Department/Agency/Board] will notify you if the hearing is canceled.]
2. A copy of the proposed rules, with a certificate of approval as to form by the Revisor.
3. A draft of the Statement of Need and Reasonableness.

The [Department/Agency/Board] also requests that you approve the Additional Notice Plan. The documents required for your review under Minnesota Rules, part 1400.2060, include the Notice of Hearing, proposed rules, and draft of the Statement of Need and Reasonableness.

The [Department/Agency/Board]'s Additional Notice Plan is described on page [#] of the Statement of Need and Reasonableness. The Additional Notice Plan complies with Minnesota Statutes, section 14.14, subdivision 1a, because [give reasons].

If you have any questions or concerns, please contact me at [email/phone number].

Sincerely,

[Name]

[Title]

[This sample letter addressed to the ALJ is for you to use when responding to comments about proposed rules made at or after a hearing. You might choose this format or prefer to design your own. There are no rigid guidelines for the response letter format. Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

[Agency Logo]

VIA EFILING

[Date]

The Honorable Judge [Name]
Administrative Law Judge
Office of Administrative Hearings

In the Matter of the Proposed [Permanent] Rules Relating to [Topic]; Revisor's ID Number [number]; OAH Docket No. [Number]

Dear Judge [Name]:

This letter contains the [agency name]'s responses to comments it has received.

1. The [Department/Agency/Board] has met its burden to show that the proposed rule is needed and reasonable.

Minnesota Statutes, section 14.14, subdivision 2, requires the Department [Note: change "Department" to "Agency" or "Board" throughout document, as needed] to "make an affirmative presentation of facts establishing the need for and reasonableness of the proposed rules" [In making its affirmative presentation, the Department must show that its action has a rational basis. See Beck, G., and M. Konar-Steenberg, section 22.1, [Minnesota Administrative Procedure, Third Edition https://mitchellhamline.edu/minnesota-administrative-procedure/](https://mitchellhamline.edu/minnesota-administrative-procedure/). (2014)]

The Department has stated its affirmative presentation in its Statement of Need and Reasonableness, which the Department relies on to establish the need for and reasonableness of the proposed rules. The Department's evidence clearly meets the rational basis standard and compels one to conclude that the proposed rules are needed and reasonable.

2. The Department has responded to the comments made and issues raised during the hearing and comment period.

[For example: The proposed rules generated a great deal of interest as shown by the attendance at the public hearing and the written submissions made since the hearing. Many comments were made and many issues were raised during this time. We have summarized these comments and issues in the order of the subpart or item that they relate to. The department's response follows each comment or issue.]

The following examples are excerpts from the 3/5/90 letter sent to Administrative Law Judge Steve Mihalchick in response to comments made during and after the Department of Public Safety's hearing on Driver Training Rules. The original letter was almost 25 pages long. (Note: the names of the persons and organizations who commented at the rule hearing have been replaced with AB, CD, EF, etc.)

Part 7411.0100, subpart 17. Instruction time.

[Comment] AB asked if "instruction" included both classroom and laboratory. He preferred that classroom instruction would have some reasonable break-time provision.

[Our Response] Break time is not counted as instruction time under the proposed rules. Note that the proposed requirement merely changes the wording and not the meaning of the former requirement. The former requirement said: "A one-hour lesson shall mean one hour of actual instruction." The Department will not change this subpart.

Part 7411.0610, subpart 8. 40 hours of required training for car, bus, and truck instructors.

[First Comment] CD proposed that the number of hours of training required to become an instructor be increased from 40 hours to 80 hours. He also proposed that the instructor training correspond to that required by the Board of Teaching, with the exception of the practicum and organization and administration requirements. He attested to the increasing complexity of the driving task as the reason for recommending this increase in instructor training. EF made a similar recommendation. He urged that the Department increase the required instructor training to include the following three courses required by the board of teaching: driver education classroom; driver education laboratory; and driver education practicum.

[Second Comment] The XYZ Driving Schools Association recommended that we adopt the requirements for training instructors put forward by national professional associations such as North American Driver Education Association and Driving Schools of America. These requirements would involve 20 hours of classroom and 30 to 60 hours of laboratory training for a person to qualify as an instructor. XYZ pointed out that this training was greatly different than the training required by the board of teaching.

[Third Comment] GH, IJ, KL, MN, AB, and others recommended that the training requirement of 40 hours remain unchanged. GH stated he was a licensed teacher and a licensed driver training instructor and that the training his program gives to all of its instructors is better than the training he received as a teacher. IJ asked whether proof could be provided that one kind of instructor training was any better than any other and stated that there was no evidence that training beyond the 40 hours was necessary for an instructor to be qualified. MN said that 40 hours of training is often not enough for her instructors, but that she felt the decision to give more training should be left up to the owner of the program.

[Our Response] There is no consensus of opinion and no proof that any one kind of training for instructors is better than any other. The Department is willing to listen to evidence and is open to recommendations based on this evidence regarding training requirements for instructors. However, at this time, the Department will not change the proposed rules regarding training requirements for instructors because there is no proof that instructors produced under the present system are inadequate. Further, it should be noted that the present 40 hour requirement is a minimum standard. Programs are free to give more training as necessary to satisfy the program that an instructor is properly prepared to begin teaching.

Part 7411.0700, items A and B. “Satisfactory” completion of instruction.

[First Comment] The XYZ Driving Schools Association recommended that references to “satisfactorily” or “successfully” completing instruction should be deleted because they are ambiguous. XYZ recommended that the certificates and verifications of course completion should be issued when the student has completed the required hours of instruction.

[Second Comment] CD recommended that the Department establish criteria for successfully completing or passing the driver training course.

[Our Response] As stated earlier in this letter at part 7411.0510, subpart 7, it has been Department policy to interpret “satisfactory” or “successful” completion of instruction to mean that the student has completed the required topics and hours of instruction. This interpretation is based on the Department’s position that driver training programs provide instruction, but the state has the responsibility to test a student to determine whether the student is qualified to obtain a driver’s license. The recommendation of XYZ is clearly consistent with Department policy. The Department proposes to change part 7411.0700, subpart 8, as follows:

Our Proposed Change to the Rules

A. The authorized official shall furnish the student:

(1) a certificate of course completion within 15 calendar days after a student ~~satisfactorily~~ completes instruction, including both the required course of classroom instruction and the required course of laboratory instruction; or

(2) a verification statement of completion of classroom instruction within 15 calendar days after the student ~~satisfactorily~~ completes the required course of classroom instruction and notifies the program that the student intends to complete laboratory instruction with another program.

B. The authorized official shall notify the department's driver and vehicle services division within a reasonable period of time of when a student who is 15 years of age fails to continue or ~~successfully~~ complete the required automobile driver training course, including laboratory instruction.

Rationale why the change is not substantial

This change clarifies ambiguous requirements and accurately reflects the department's long-standing interpretation of the meaning of "satisfactory" or "successful" completion of instruction. The change does not make the rules substantially different. The scope of the proposed rules included the issue of satisfactory or successful completion of instruction. Clarification of the rules consistent with long-standing interpretation is a logical outgrowth of the notice and the comments made in response. Interested parties received fair warning that this could be an issue as is shown by the submission of testimony on both sides of this issue. Finally, the effects of the rule will not be greatly different from the effects of the rule as proposed.

The Department has addressed the many concerns raised during the hearing and comment period. The Department has shown that the rules are needed and reasonable. We respectfully submit that the Administrative Law Judge should recommend adoption of these rules.

Respectfully submitted,

[Name]

[Title]

[Note: There is no statutory requirement that the Commissioner or Director sign this response, but it is a good idea to have management review and sign off to get their buy-in.]

[Notes on Substantial Difference. The limitations on changing proposed rules are stated in Minnesota Statutes, section 14.05, subdivision 2, which prohibits an agency from modifying proposed rules so that they are substantially different from the proposed rules.]

[Dates, names, and other information should be changed to reflect your agency's submission.]

[Agency Logo]

[Date]

Senator [Name], Chair
Senator [Name], Ranking [Minority Party]
Senate [Committee] Committee

Senator [Name], Chair
Senator [Name], Ranking [Minority Party Member]
Senate [Committee] Budget Committee

Representative [Name], Chair
Representative [Name], Ranking [Minority Party]
House [Committee] Committee

Representative [Name], Chair
Representative [Name], Ranking [Minority Party Member]
House [Committee] Budget Committee

Legislative Coordinating Commission
lcc@lcc.leg.mn

[If rulemaking authority effective within last two years, include also:]

Senator [Name]
Representative [Name]
Chief Authors of Minnesota Statutes, section XXX

In the Matter of the Proposed [Permanent] Rules Relating to [Topic]; Revisor's ID Number [number]; [OAH Docket No. [Number]]

Dear Legislators:

The [agency name] intends to adopt [rules] [rule amendments] relating to [topic]. [Note: You might want to give a two- or three-paragraph executive summary of your rules and the main problems or issues that the rules address.]

We plan to publish a Notice of Intent to Adopt Rules in the [date], *State Register* and are now sending the Notice under section 14.14 [or relevant section].

As required under section 14.116, we are sending you a copy of the Notice and the Statement of Need and Reasonableness. We are also enclosing a copy of the proposed rules.

If you have any questions or concerns, please contact me at [email/phone number].

Sincerely,

[Name]

[Title]

Enclosures:

- Notice of Intent to Adopt Rules
- Statement of Need and Reasonableness
- Proposed Rules

cc: Legislative Coordinating Commission

[Dates, names, and other information should be changed to reflect your agency's submission.]

[Agency Logo]

[Date]

Senator [Name], Chair
Senator [Name], Ranking [Minority Party]
Senate [Committee] Committee

Senator [Name], Chair
Senator [Name], Ranking [Minority Party Member]
Senate [Committee] Budget Committee

Representative [Name], Chair
Representative [Name], Ranking [Minority Party]
House [Committee] Committee

Representative [Name], Chair
Representative [Name], Ranking [Minority Party Member]
House [Committee] Budget Committee

[If rulemaking authority effective within last two years, include also:]

Senator [Name]
Representative [Name]
Chief Authors of Minnesota Statutes, section XXX

In the Matter of the Proposed Repeal of Obsolete Rules Relating to [Topic]; Revisor's ID Number [number]

Dear Legislators:

The [agency name] intends to adopt [or repeal] rules that [describe what the rules regulate and why they are obsolete].

We plan to publish a Notice of Intent to Repeal Obsolete Rules in the [date], *State Register* and are now sending the Notice under Minnesota Statutes, section 14.3895, subdivision 3.

As required, we are sending you a copy of the Notice and the proposed rules.

If you have any questions or concerns, please contact me at [email/phone number].

Sincerely,

[Name]

[Title]

Enclosures:

- Notice of Intent to Repeal Obsolete Rules
- Proposed obsolete rules to be repealed

[Dates, names, and other information should be changed to reflect your agency's submission.]

VIA EMAIL

Date

Legislative Reference Library
sonars@lrl.leg.mn

In the Matter of the Proposed [Permanent] Rules Relating to [Topic]; Revisor's ID Number [number]

Dear Legislative Reference Library:

The Minnesota [agency name] intends to adopt rules relating to [topic]. We plan to publish a [Dual Notice] [Notice of Hearing] [Notice of Intent to Adopt Rules without a Public Hearing] in the [date], *State Register*.

We have prepared a Statement of Need and Reasonableness. As required under Minnesota Statutes, sections 14.131 and 14.23, we are sending the library an electronic copy of the Statement of Need and Reasonableness at the same time that we are sending our Notice of Intent to Adopt Rules.

If you have any questions or concerns, please contact me at [email/phone number].

Sincerely,

[Name]

[Title]

Enclosure: Statement of Need and Reasonableness

[Dates, names, and other information should be changed to reflect your agency's submission.]

VIA EMAIL

[Date]

[EBO Name]

Executive Budget Officer

Minnesota Management and Budget

In the Matter of the Proposed [Permanent] Rules Relating to [Topic]; Revisor's ID Number [number]; [OAH Docket No. [Number]]

Dear [EBO Name]:

Minnesota Statutes, section 14.131, requires that an agency engaged in rulemaking consult with the commissioner of Minnesota Management and Budget "to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government."

Enclosed for your review are copies of the following documents on proposed rules relating to [topic]:

1. The Governor's Office Proposed Rule and SONAR Form, signed by Commissioner [Name].
2. The [date] Revisor's draft of the proposed rule.
3. The [date] SONAR draft.

I am also sending copies of these documents to the Governor's Office today.

If you have any questions or concerns, please contact me at [email/phone number].

Sincerely,

[Name]

[Title]

RULEMAKING CHECKLIST - RULES ADOPTED WITHOUT A HEARING

NOTES:

1. If rules are pursuant to a newly adopted or amended rulemaking mandate, the agency must publish its Request for Comments (step 5) within 60 days of the law's effective date. MS14.101,subd.1.
2. The agency must publish a notice of intent to adopt rules (step 15) within 18 months of the effective date of the law authorizing or requiring rules to be adopted, amended, or repealed. Otherwise the agency will lose the authority to do the rules. MS14.125. This applies only to first-time rule adoptions under the statutory authority and not to subsequent amendments or repeals, unless the Legislature subsequently alters the authority. Failure to adopt rules within 180 days of issuance of the ALJ's report must be explained to the Legislature. MS14.19.
3. The steps are listed in the recommended order, but the steps do not have to be done in the sequence indicated. However, steps 1–10 *must* be completed before step 12.
4. The Rulemaking Manual Editor *strongly* recommends that you write the SONAR (or at least make notes about what will go into the SONAR) concurrently with rule development.
5. For the precise deadlines for submissions to the State Register, see [Minnesota's Bookstore \(https://mn.gov/admin/bookstore/\)](https://mn.gov/admin/bookstore/).

Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
1.	Authorization from Commissioner or Board to begin project. At least 1 week before step 5	BD-NTC		
2.	Obtain Revisor's ID Number and send Preliminary Proposal Form to the Governor's Office via email to Emmet Hedin, Emmet.Hedin@state.mn.us, (651) 201-3408. * Governor's Office 9/13/13 rules review policy GOV-PLCY: "When an agency has developed a rule idea, it should complete the Preliminary Proposal Form [GOV-PRLM] and submit it to the Governor's Office. The form must be signed by the Commissioner or Director of the agency and will serve as the official notification to the Governor's Office that an agency is seeking a rule. Regardless of the type of rule the agency is proposing (Exempt, Expedited, Permanent or Good-Cause Exemption), this form should be completed in its entirety and submitted to the Legislative Coordinator of LACA. The information contained in the Preliminary Proposal Form likely will be broad and general because of the proposal being at the very beginning stages of rulemaking. Although, this information is important to the Governor's Office, the Policy Advisors cannot perform a substantive review of the proposed rule until they receive the Statement of Need and Reasonableness (SONAR). Therefore, the agency does not need to wait for a response from the Governor's Office before publishing the Request for Comments. Should the	GOV-PRLM		

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Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	<p>information contained in the Preliminary Proposal Form be of concern to the Policy Advisor he or she will contact the agency.</p> <p>* Huge Hint: The Preliminary Proposal Form to the Governor's Office is an excellent opportunity <i>at the beginning of your rules project</i> to clearly set out your goals for the project and to write a first complete draft of the statement of need and the statutory authority for the rules. Having worked on many rules projects with the need and the goals <i>clearly in mind</i>, it became quickly apparent after doing one Governor's form that it was preferable and beneficial to have the need and the goals <i>clearly on paper</i>. The project goals and statutory authority will fit nicely into the SONAR.</p> <p>* Note on Repealing Rules. Per Governor's Office 9/19/19 rules review policy: Agencies do not need to submit rule repeals to the Governor's Office for approval. However, an agency should send an informational memo identifying the obsolete, unnecessary, or duplicative rule(s) to be repealed, describing the rationale for repeal, and indicating any potential controversies. This memo will serve to notify the Governor's Office that the agency is seeking to repeal a rule. No approval is necessary, at any stage, in the rule repeal process.</p>			
3.	<p>Begin saving documents for official rulemaking record.</p> <p>* If needed, establish a rules advisory committee. Consult with affected parties, such as trade associations and agency advisory councils.</p>	RECORD		
4.	<p>Develop an Additional Notice Plan, which must be included in SONAR (step 8b). MR 1400.2060.</p>			
5.	<p>Request for Comments - submit to State Register via electronic copy in Word format with Printing Order form using the Revisor's Office ID no.</p> <p>Published the Monday, 6 days after submission to the State Register.</p>	REQUEST		
6.	<p>Request for Comments - mail to people on mailing list; (optional); prepare Certificate of Mailing.</p> <p>At least 3 days before publication</p> <p>* Notify additional people, if this is part of the Additional Notice Plan for the Request for Comments</p>	CRT-GNRC		
7.	<p>Request for Comments – publish in State Register</p>	ADV-COMM		

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Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	<p>At least 60 days before Notice of Intent to Adopt</p> <p>* NOTE: At any time there is a significant change from the initial proposal, send a memo to Emmet Hedin. From the 9/19/19 Governor's rule review policy GOV-PLCY: "The Governor's Office recognizes that agencies cannot predict all controversies at the outset of a rules project. As a result, the agency should use its judgment to send issues to the Governor's Office for review throughout the process. Additional review might be necessary if a rule suddenly becomes controversial. If the agency believes that an issue or proposed change might be in conflict with the Governor's beliefs and principles, the agency should notify its Policy Advisor."</p> <p>* Only if you are using a rules advisory committee: Meet with the committee to discuss the rulemaking timeline and possible rule language</p>			
8.	Steps 8a, 8b, 8c, and 8d can be done in any order; they are often done concurrently.			
8a.	Ask Revisor for preliminary draft of proposed rules.	REVISOR		
8b.	<p>Draft SONAR, including Additional Notice Plan</p> <p>Concurrent w/ rule development</p> <p>*Decide whether to use a Dual Notice or Notice of Intent to Adopt Rules Without a Hearing. Use a Dual Notice if you're not sure whether or not the proposed rules will be controversial.</p>	SONAR		
8c.	<p>Get rules & SONAR, including Additional Notice Plan, approved by commissioner or executive director.</p> <p>When rules & SONAR completed</p>			
8d.	<p>Send Additional Notice Plan to OAH for approval (optional, yet encouraged)</p> <p>After rules & SONAR approved at agency</p>	NP-RLNTC		
9.	<p>Send rules & SONAR electronically to Governor's Office</p> <p>Almost final rules & SONAR</p> <p>* From the Governor's Office 9/19/19 administrative rule review policy, GOV PLCY: "After the agency has published its Request for Comment, created the SONAR, and has final or almost final draft rules, it should complete the Proposed Rule and SONAR Form [GOV PRPS] and the Commissioner or Director sign it. The</p>	GOV-PRPS		

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Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	<p>agency must then submit the completed form, SONAR, and draft rules to the Governor's Office.</p> <p>"This stage is crucial to rulemaking and is the critical point of information for the Governor's Office. The Proposed Rule and SONAR Form seeks the information received during the Request for Comment, an Executive Summary of the SONAR, supporters, opponents, possible controversies, and any significant changes from the Preliminary Proposal Form. The form also contains an 'other' box. The Governor's Office understands that every rulemaking experience is slightly different. Therefore, the 'other' box seeks information that might not fit into the SONAR or one of the other boxes of information requested. The 'other' box can be viewed as 'any information that may be of importance to this rule.'</p> <p>"The Proposed Rule and SONAR Form again seeks fiscal impact information. However, at this point, only two options (yes or no) exist. The fiscal impact 'yes' box should be checked for positive or negative fiscal impact to the State of Minnesota. If the fiscal impact declaration changed from the Preliminary Proposal Form, the agency should explain why. Within the SONAR Executive Summary box, the agency should include all fiscal information that affects individuals, businesses, units of government, or the agency itself. . . .</p> <p>"The agency must receive official approval from the Legislative Coordinator of LACA before proceeding with the Notice of Intent to Adopt Proposed Rules. In most cases, the agency will receive the approval to proceed with the Notice of Intent to Adopt Proposed Rules within three weeks of the Governor's Office's receiving the SONAR, draft rules, and Proposed Rules and SONAR Form. If the agency hasn't received a communication by the 21st day after the Governor's Office received this information, the agency should contact the Legislative Coordinator for a status report."</p>			
10.	<p>Draft Notice of Intent to Adopt Rules. Have commissioner or executive director sign Notice & SONAR.</p> <p>After Gov's Office approval and when rules & SONAR are final</p> <p>* If you hope to proceed without a hearing, your Notice of Intent to Adopt can be either a Notice of Intent to Adopt Rules Without a Public Hearing or a Dual Notice.</p>	NTC-DL or NTC-NH		

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Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	<p>Refer to paragraph 5.1 in the Rulemaking Manual for the pros and cons of how to proceed.</p> <ul style="list-style-type: none"> * Allow 30-day comment period; add day if last day is holiday. * If you are using a Dual Notice, you need to have at least 10 days between the close of the comment period and the hearing date. 			
11.	<p>Notice of Intent to Adopt – submit to State Register electronic copy, the Revisor’s document number for the rules, Printing Order form.</p> <p>6 or 12 days before publication (check State Register website for exact due date)</p>	ST-REG		
12.	<p>Notice of Intent to Adopt - give notice to persons on rulemaking mailing list and per your Additional Notice Plan. Prepare Certificate of Mailing, Certificate of Accuracy of Mailing List, and Certificate of Giving Additional Notice</p> <p>After submit Notice of Intent to Adopt State Register; no later than 33 days before end of comment period.</p>	CRT-MLNG CRT-LIST CRT-GNRC		
13.	<p>Send SONAR to Legislative Reference Library via email; prepare Certificate of Mailing to library OR make copy of cover letter.</p> <p>When SONAR becomes available to the public.</p>	LRL CRT-LRL		
14.	<p>Send notice to legislators - chairs and ranking minority party members of House & Senate policy & budget committees; PLUS chief legislative authors of rulemaking authority if it is within two years of the effective date of the authority; prepare Certificate of Mailing to legislators OR make copy of cover letter</p> <p>When Notice is mailed</p> <ul style="list-style-type: none"> * Send to other legislative committees if required in special circumstances. For example, MS62J.07 requires reports to the Legislative Commission on Health Care Access. * Provide other notices if required in special circumstances. See, for example, MS14.111 re notice to Department of Agriculture on rules that affect farming operations; MS3.9223,s4, re notice to Council on Affairs of Chicano/Latino People on rules that have their primary effect on Chicano/Latino people. 	LEG		
15.	<p>Notice of Intent to Adopt - published in State Register. Make copy for RECORD.</p>			

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Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	Published on the Monday 12 or 6 days after submission to State Register, depending on the length.			
16.	Comments: maintain folder with comments and any responses you make. Comments must be received within 30 calendar days of publication in State Register			
17.	Proceed according to number of hearing requests. After end of comment period * If you published NTC NH and you got fewer than 25 hearing requests, proceed with this checklist. * If you published NTC NH and you got 25+ hearing requests, you may have to start over and give a NTC HR. Refer to paragraph 5.17 of the Rulemaking Manual for some of your options. * If you published NTC DL and you got fewer than 25 hearing requests, you will likely want to cancel the hearing. You must do this at least four working days before the hearing, see MS14.25,s2. Notify ALJ and notify persons who requested a hearing. If you were able to get hearing requests withdrawn so that there are fewer than 25 requests, see MS14.25,s2. See ALJ CNCL, NTC HRWD, CRT HRWD, NTC CNCL, & NTC NH2. * If you published NTC DL and you got 25+ hearing requests, switch to step 19 of HR CKLST, the checklist for adopting rules after a hearing.			
18.	After considering comments, decide if you will make any changes. Changes may not make rules substantially different than when proposed*. Ask Revisor for draft showing changes. After end of comment period. *If the agency wants to adopt a substantially different rule, see MS14.05,s2, and MR1400.2110.			
19.	Get Governor's Office approval. Before sending Order Adopting Rules to OAH * When the agency is adopting rules without a hearing: the agency must submit the completed Final Rule Form [GOV-FNL] to the Office of the Governor when the agency has decided on the final rules and its SONAR is complete. The agency must	GOV-FNL		

Minnesota Rulemaking Manual - Appendix

Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	<p>wait for the Office’s approval before submitting its request to Office of Administrative Hearings (OAH) for rule review and approval. If the ALJ makes any substantive recommendations to the rule or if defects are found, the agency should resubmit the Final Rule Form, clearly labeling it as a revised form. The agency must explain its response to the ALJ’s Report, including any large deletions from the rule. A copy of the ALJ Report should be submitted to the Governor’s Office with the revised Final Rule Form. Upon final approval of the rule by the Policy Advisor, the Legislative Coordinator will contact the agency and inform them that it may submit the signed Order Adopting Rules to the OAH. . . .</p> <p>“If the proposed rule remained substantially unchanged from the SONAR stage, final review of the rule should take less than a week. If the agency hasn’t received a communication by the 7th day after the Governor’s Office received the above information, the agency should contact the Legislative Coordinator for a status report.”</p>			
20.	<p>Order Adopting Rules signed by Commissioner or Board designee. For Boards, Board first passes resolution adopting rules.</p> <p>After end of comment period, or at next board meeting.</p>	ORD-ADPT & BD-ADPT		
21.	<p>Ask Revisor for official draft of rules as adopted.</p> <p>After agency approval to adopt the rule</p>			
22.	<p>Immediately before submitting rule documents to OAH, mail Notice of Submission to OAH to persons who requested to be notified.</p> <p>After getting approved rules from Revisor and before submitting file to OAH</p>	NTC-SBM CRT-SBM		
23.	<p>Submit rule documents to OAH. These documents are listed in NH-REVW.</p> <p>Within 180 days after comment period ends</p> <p>*You must submit the rules to OAH within 180 days after the comment period ends. MS14.26,s1.</p> <p>*Include in the documents you send to OAH the ones listed in MR1400.2310 plus other relevant documents such as the board resolution authorizing rulemaking per step 1, a list of the legislators per step 14 if these are not listed in your SONAR, evidence of compliance with the Additional Notice Plan per steps 8b & 12, and evidence of compliance with MS14.25,s2, per step 17.</p>	NH-REVW		

Minnesota Rulemaking Manual - Appendix

Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
24.	OAH reviews and approves rules and asks Revisor for rules draft approved for filing with Secy of State. Within 2 weeks of submission of documents to OAH * If OAH disapproves the rules, refer to MR1400.2300 for what to do.			
25.	OAH files rules as adopted with Secretary of State * Secretary of State forwards rules to the Governor, who may veto within 14 days. MS14.05,s6. * Secretary of State also forwards rules to the Revisor.			
26.	OAH sends approval memo and the rules file to agency. Revisor drafts Notice of Adoption and sends to agency.			
27.	After you are sure Governor will not veto: Submit Notice of Adoption to State Register by submitting the Revisor's document number & Printing Order form. Thursday at noon, 12 to 6 days before publication, depending on length; (Holidays may change deadlines).	ST-REG		
28.	State Register publishes Notice of Adoption. The Monday, 12 or 6 days after submission to State Register			
29.	Rules take effect 5 working days after publication in State Register			
30.	Notify staff of rule change ASAP	CLOSURE		
31.	Inform regulated persons. Publish information about rules in newsletter and/or web page. ASAP			
32.	Finalize Official Rulemaking Record and archive rule documents. MS14.365	RECORD		

Minnesota Rulemaking Manual - Appendix

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

[Agency Logo]

VIA EFILING

[Date]

The Honorable Judge [Name]
Administrative Law Judge
Office of Administrative Hearings

In the Matter of the Proposed Rules Relating to [Topic]; Revisor's ID Number [number]; OAH Docket No. [Number]

Dear Judge [Name]:

The Minnesota [agency name] requests that the Office of Administrative Hearings review and approve its rules governing [topic] for legality and form according to Minnesota Statutes, section 14.26. Enclosed for your review are the documents required under Minnesota Rules, part 1400.2310, items A to P. Paragraphs A to P of this letter are keyed to items A to P of part 1400.2310. Unless otherwise stated, the document is enclosed.

- A. Enclosed: the Request for Comments as published in the *State Register* on [date].
- B. Not enclosed: a petition for rulemaking because no petition was filed on the rules.
[Or] Enclosed: the petition for rulemaking filed with the [Department/Agency/Board]
- C. Enclosed: the proposed rules dated ##/##/##, with the Revisor's approval.
- D. Enclosed: the Statement of Need and Reasonableness.
- E. Enclosed: the Notice of Intent to Adopt Rules, as sent and published in the *State Register* on [date].
- F. Not enclosed: a letter from the Chief Administrative Law Judge authorizing the department to omit the text of the proposed rules from the Notice of Intent to Adopt Rules published in the *State Register*. This is not enclosed because the [Department/Agency/Board] included the text of the proposed rules with the Notice of Intent to Adopt Rules published in the *State Register*.

[Or] Enclosed: the letter from the Chief Administrative Law Judge authorizing the [Department/Agency/Board] to omit the text of the proposed rules from the Notice of Intent to Adopt Rules published in the *State Register*.

- G. Enclosed: the Certificate of Mailing the Notice of Intent to Adopt Rules and the Certificate of Accuracy of the Mailing List.
- H. Enclosed: the Certificate of Additional Notice or a copy of the transmittal letter.
- I. Enclosed: the Certificate of Mailing the Statement of Need and Reasonableness to the Legislative Reference Library.

[Or] Enclosed: a copy of the transmittal letter showing that the [Department/Agency/Board] sent the Statement of Need and Reasonableness to the Legislative Reference Library.

- J. Enclosed: all written comments and submissions on the proposed rules that the [Department/Agency/Board] received during the comment period, requests for hearing, and withdrawals of requests for hearing, except those that only requested copies of documents.

[There is no need to state how many of each type of request were received. However, if no requests, submissions, or comments of any kind were received, perhaps put in:

“Not enclosed: written comments and submissions on the proposed rules, requests for hearing, and withdrawals of requests for hearing received by the [Department/Agency/Board], except those that only requested copies of documents. The [Department/Agency/Board] received no such comments, submissions, or requests.”

Note that you are only required to submit comments received during the 30-day comment period. You are not required to submit comments received in response to a Request for Comments. This is made explicitly clear in the text of item J.]

[This is a good place to submit your agency’s responses to the comments received. See **section 8.2** for suggestions about how to do this.]

- K. Enclosed: the notice of withdrawal of hearing request, evidence that the [Department/Agency/Board] sent notice of withdrawal to all persons who requested a hearing, and any responsive comments received.

[Or, possibly] Not enclosed: a notice of withdrawal of hearing request, evidence that the [Department/Agency/Board] sent its notice of withdrawal to all persons who requested a hearing, and any responsive comments received. These are not enclosed because Minnesota Statutes, section 14.25, subdivision 2, did not require the [Department/Agency/Board] to send a notice of withdrawal of hearing request.

- L. Enclosed: a copy of the adopted rules dated ##/##/##.

[The following sentence may be needed:] The modifications to the proposed rules are reflected in the rules as adopted and are approved by the revisor.

Note: if the proposed rules will be adopted without changes, then the rules as adopted will be the stripped copy sent by the revisor after the Notice of Intent to Adopt is published in the *State Register*. (This copy will not have the revisor's approval indicated on it.) If the department wants to make changes to the proposed rules, ask the revisor to make these changes. The revisor will send back a copy of the rules with the changes requested.

- M. Not enclosed: a notice of adopting substantially different rules that was sent to people or groups that commented during the comment period and evidence that the notice was sent to these people or groups. This is not enclosed because the [Department/Agency/Board] did not adopt substantially different rules.

[Or] Enclosed: a copy of the Notice of Adopting Substantially Different Rules that the [Department/Agency/Board] sent to persons who commented during the comment period and evidence that the notice was sent to those persons.

- N. Enclosed: the unsigned Order Adopting Rules that complies with part 1400.2090.

- O. Not enclosed: a notice of submission of rules to the Office of Administrative Hearings and a copy of a transmittal letter or certificate of mailing the notice of submission of rules to the Office of Administrative Hearings. No people requested notification of the submission of the rules to the Office of Administrative Hearings.

[Or] Enclosed: the Notice of Submission of Rules to the Office of Administrative Hearings and a copy of the transmittal letter or Certificate of Mailing the Notice of Submission of Rules to the Office of Administrative Hearings.

- P. Enclosed: any other document or evidence to show compliance with any other law or rule that the [Department/Agency/Board] must follow to adopt the rules.

- P.1. [A copy of the transmittal letter showing the agency sent notice to Legislators] [Or] [The Certificate of Sending Notice to Legislators] per Minnesota Statutes, section 14.116.
- P.2. [A copy of the transmittal letter showing the agency consulted with MMB] [Or] [The Certificate of Consulting with MMB] per Minnesota Statutes, section 14.131. [And possibly] MMB's memo dated [date] in response.
- P.3. [Possibly] The certificate showing compliance with Minnesota Statutes, section 14.111, regarding farming operations.
- P.4. [If you have not addressed this requirement in your SONAR] The compliance cost determination required by Minnesota Statutes, section 14.127.
- P.5. [If you have not addressed this requirement in your SONAR] The analysis and determination about whether local ordinance adoption is required and effective date required by Minnesota Statutes, section 14.128.
- P.6. [as an example of a law that applies to only some rulemakings: the Affidavit of Mailing the Notice of Intent to Adopt Rules to the Legislative Commission on Health Care Access, as required by Minnesota Statutes, section 62J.07, subdivision 3.]
- P.7. [If you have not included responses to comments in Paragraph J above, this is another place to submit them.]

If you have any questions or concerns, please contact me at [email/phone number].

Sincerely,

[Name]

[Title]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

[Agency Logo]

VIA EFILING

[Date]

The Honorable Judge [Name]
Administrative Law Judge
Office of Administrative Hearings

In the Matter of the Proposed Repeal of Obsolete Rules Relating to [Topic]; Request for Review and Approval of Notice Plan; Revisor's ID Number [number]; [OAH Docket No. [Number]]

Dear Judge [Name]:

The Minnesota [agency name] requests that you review and approve our Notice Plan for giving notice of the repeal of obsolete rules under Minnesota Statutes, section 14.3895, subdivision 2.

Enclosed are the following:

1. The proposed obsolete rules to be repealed, certified by the revisor.
2. Our proposed Notice of Intent to Repeal Rules.
3. Our Obsolete Rules Report dated [date] that identified the rules as obsolete, unnecessary, or duplicative.
4. Our explanation of why we believe that the Notice Plan complies with Minnesota Statutes, section 14.3895, subdivision 2.

We believe that our Additional Notice Plan complies with the statute because [give reasons].

If you have any questions or concerns, please contact me at [email/phone number].

Sincerely,

[Name]

[Title]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

[Agency Logo]

VIA EFILING

[Date]

The Honorable Judge [Name]
Administrative Law Judge
Office of Administrative Hearings

In the Matter of the Proposed [Permanent] Rules Relating to [Topic]; Request for Review and Approval of Additional Notice Plan; Revisor's ID Number [number]; OAH Docket No. [Number]

Dear Judge [Name]:

The [agency name] requests that you review and approve our Additional Notice Plan for giving Notice of Intent to Adopt Rules Without a Public Hearing under Minnesota Statutes, section 14.22. The Additional Notice Plan is on the [Department/Agency/Board]'s proposed rules relating to [topic].

Enclosed with this letter are the documents for your review, as required by Minnesota Rules, part 1400.2060, subpart 2, item B:

1. The proposed rules.
2. A draft of the Statement of Need and Reasonableness under part 1400.2070, containing our proposed Additional Notice Plan. Our Additional Notice Plan is described on page [#].
3. The proposed Notice of Intent to Adopt Rules Without a Public Hearing under part 1400.2080.

Part 1400.2060, subpart 2, item B, also requires an explanation of why we believe our Additional Notice Plan constitutes reasonable efforts to notify persons or classes of persons who might be significantly affected by the rules. We believe that our Additional Notice Plan complies with the statute because [give reasons].

If you have any questions or concerns, please contact me at [email/phone number].

Sincerely,

[Name]

[Title]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable. For the letter author: See section 2.6 of the Manual for suggestions about additional notice plans.]

[Agency Logo]

VIA EFILING

[Date]

The Honorable Judge [Name]
Administrative Law Judge
Office of Administrative Hearings

In the Matter of the Proposed [Permanent] Rules Relating to [Topic]; Request for Review and Approval of Additional Notice Plan; Revisor's ID Number [number]; [OAH Docket No. [Number]]

Dear Judge [Name]:

The [agency name] requests that you please review and approve our Additional Notice Plan for our Request for Comments under Minnesota Statutes, section 14.101. The Request for Comments is for the [Department/Agency/Board]'s planned rules relating to [description of the subject matter].

Enclosed for your review is the proposed Request for Comments on the planned rules as required by Minnesota Rules, part 1400.2060, subpart 2, item A.

Part 1400.2060, subpart 2, item A, also requires that we describe our proposed Additional Notice Plan and explain why we believe our Additional Notice Plan constitutes good-faith efforts to seek information by other methods designed to reach persons or classes of persons who might be significantly affected by the proposal.

Our proposed Additional Notice Plan consists of [describe the Additional Notice Plan].

We believe that our Additional Notice Plan complies with the statute because [give reasons].

If you have any questions or concerns, please contact me at [email/phone number].

Sincerely,

[Name]

[Title]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

Notice of Cancellation of Hearing to Persons Who Requested a Hearing

Minnesota [Agency Name]

Proposed [Amendment to] [Repeal of] Rules Relating to [Topic], Minnesota Rules, [citation]; Revisor's ID No. [number]

To people who requested a hearing. The [Department/Agency/Board] is sending this notice to all people who requested a hearing.

The hearing is canceled. On [date], in the *State Register*, on pages [#] to [#], the [Agency Name] published a Notice of Intent to Adopt Rules relating to [topic]. The Notice stated that a hearing would be held on the proposed rules if 25 or more people submitted written requests for a hearing. In response, the [Department/Agency/Board] received [#] requests for a hearing. Consequently, the [Department/Agency/Board] is canceling the hearing.

The [Department/Agency/Board] will adopt the rules without a hearing and then submit the rules and other required documents to the Office of Administrative Hearings for review. The [Department/Agency/Board] will consider all written comments when it adopts the rules.

Agency contact person. The agency contact person is [name, agency, address, and phone]. Questions or comments about the cancellation of the hearing or about the rule adoption process should be directed to [name].

[Name]

[Title]

[This may be signed by the Commissioner, the Division Director, or the Rule Writer.]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received

Minnesota [Agency Name]

[Title] Division [THIS LINE IS OPTIONAL]

Proposed [Amendment to] [Repeal of] Rules Relating to [Topic], *Minnesota Rules*, [citation]; Revisor's ID Number [number]; OAH docket number [number]

[Identify the title and rule chapter or part numbers as assigned by the Revisor. Note: if you are proposing to repeal any entire rule parts, you must specifically list the rule parts you are proposing to repeal, per Minnesota Rules, part 1400.2080, subpart 2, item D.]

Introduction. The Minnesota [Agency Name] intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You may submit written comments and/or a written request that a hearing be held on the proposed rules until **4:30 p.m. on [day], [month] [day], [year]**.

Hearing. If 25 or more persons submit a written request for a hearing on the rules by **4:30 p.m. on [day], [month] [day], [year]**, the agency will hold a virtual public hearing on **[day], [month] [day], [year], at [insert start time]**. You can participate in the virtual hearing, which will be conducted by an Administrative Law Judge from the Office of Administrative Hearings, via WebEx by using this link along with the associated access code and password:

For a video and audio connection, join the hearing through an internet connection:

- Web link: <https://minnesota.webex.com>
- Meeting Number (access code): #...
- Password: #....

For audio-only connection, join the virtual hearing by telephone:

- Call: 1-###-###-#### (this is not a toll-free number)
- Access code: [insert code]
- Password: [insert password]

To find out whether the agency will adopt the rules without a hearing or if it will hold the hearing, you should contact the agency contact person or check the agency website at [insert web link] **after [date comment period ends] and before [date of hearing].**

Subject of Rules. The proposed rules are about [subject of rules and, if applicable, that an entire rule is being repealed and a citation to the rule].

[See section 6.6.2 of the Manual on drafting the description of the rules in the Notice in a way that may affect whether modifications to the rules will make the adopted rules “substantially different” from the proposed rules. For example, if you have two substantially different alternative rule provisions OR rules that set a numerical value (i.e., pollution discharge levels, noise levels, minimum number of employees to trigger a requirement, or utility rates), you may be able to draft the description of the rules in the Notice so that it will allow the Department to adopt either alternative or adopt a value within a range without having to go through additional rule proceedings to adopt substantially different rules.]

Statutory Authority. The statutory authority to adopt these rules is [citation to most recent Minnesota Statutes citation, or Minnesota Laws if the statute has not yet been codified]

Publication of proposed rules. A copy of the proposed rules is published in the *State Register* [and attached to this notice as mailed]. [The proposed rules may be viewed at: (insert web URL).]

[If the proposed rules are not attached to the mailed notice, then this notice must include an easily readable and understandable description of the rules’ nature and effect and include the announcement that: A free copy of the rules is available upon request from the agency contact person listed below.]

Statement of Need and Reasonableness. The statement of need and reasonableness (SONAR) contains a summary of the justification for the proposed rules, a description of who will be affected by the proposed rules, and an estimate of the probable cost of the proposed rules. You may review or obtain copies for the cost of reproduction by contacting the agency contact person. [The SONAR may also be viewed at: [insert web URL].]

Agency Contact Person. The agency contact person is [name] at [Agency Name, address, phone, fax, and *email*]. You may contact the agency contact person with questions about the rules.

[The agency contact person should be a person who is available throughout the comment period. If a different person will be sending out copies of the rules and SONAR, you may identify that person separately in the Notice.]

Public Comment. You have until **4:30 p.m. on [day], [month] [date], [year]**, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules.

Your comment must be in writing and received by the due date. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change you propose. Any comments that you have about the legality of the proposed rules must be made during this comment period. All evidence that you present should relate to the proposed rules. If the proposed rules affect you in any way, the agency encourages you to participate. All comments or responses received are public data and will be available for review.

[Choose whether you will use the OAH's eComments system for accepting comments and adapt the following two paragraphs accordingly. It is not recommended to have comments submitted BOTH to the agency contact person and OAH eComments – choose one or the other. If you are using eComments and the agency receives comments directly, send them to William Moore at OAH to post on the eComments site.]

Submit written comments [to the agency contact person listed above] [via the [Office of Administrative Hearings Rulemaking eComments website \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/)], by U.S. Mail delivered to the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, or by fax 651-539-0310].

All comments or responses received are public data and will be available for review [on the eComments website] [at the [agency] or on the Agency's website at [URL]].

Request for a Hearing. In addition to submitting comments, you may also request that the agency hold a public hearing on the rules. You must make your request for a public hearing in writing by **4:30 p.m. on [day], [month] [date], [year]**. You must include your name and address in your written request for hearing. You must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules. Any request

that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the agency will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to bring about the withdrawal, and ask for written comments on this action. If the agency is required to hold a public hearing, it will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Cancellation of Hearing. The agency will cancel the hearing scheduled for [month] [date], [year], if the agency does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the agency will notify you before the scheduled hearing whether the hearing will be held. You may also call the agency contact person at [telephone number] after [date comment period ends] to find out whether the hearing will be held. [On the scheduled day, you may check for whether the hearing will be held by calling {phone #} or going online at {web address}.]

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, the agency will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The agency will hold the hearing on the date and at the time and place listed above. The hearing will continue until [time] or until all interested persons have been heard, whichever occurs first. Administrative Law Judge [judge's name] is assigned to conduct the hearing. Judge [name] can be reached by contacting William Moore, Rules Coordinator, Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7893, and william.t.moore@state.mn.us.

Hearing Procedure. If the agency holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules.

You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing, the Administrative Law Judge may order this five-day comment period extended for a longer period but for no more than 20 calendar days.

After the comment period, there is a five-working-day rebuttal period when the agency and any interested person may respond in writing to any new information submitted. No one may submit new evidence during the five-day rebuttal period.

The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge via the [Office of Administrative Hearings Rulemaking eComments website \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/) no later than 4:30 p.m. on the due date. If using the eComments website is not possible, you may submit post-hearing comments in person or via United States mail addressed to Judge [ALJ's last name] at the address listed above. All comments or responses received are public data and will be available for review on the eComments website.

This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge, through William Moore, the OAH Rules Coordinator listed above.

Modifications. The agency may modify the proposed rules either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted during the public comment and rule hearing process. The adopted rules may not be substantially different than these proposed rules unless the agency follows the procedure under *Minnesota Rules*, part 1400.2110. If the final rules are identical to the rules originally published in the *State Register*, the agency will publish a notice of adoption in the *State Register*. If the final rules are different from the rules originally published in the *State Register*, the agency must publish a copy of the changes in the *State Register*.

[Insert other notices required by law or chosen to be inserted in this notice]

Adoption Procedure if No Hearing. If no hearing is required, the agency may adopt the rules after the end of the comment period. The agency will submit the rules and supporting documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want to receive notice of this, to receive a copy of the adopted rules, or to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Adoption Procedure after a Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the agency adopts the rules and the rules are filed with the

Secretary of State, or register with the agency to receive notice of future rule proceedings by requesting this at the hearing or by writing to the agency contact person stated above.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You may direct questions about this requirement to the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

*[For information on what to do if you get a request to make the Notice available in an alternative format or for an accommodation to make the hearing accessible, see **ACCMMDTN** in the appendix.]*

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

[Date]

[Name]

[Commissioner/Director]

[Date and signature are required on the Notice. OAH Rules, part 1400.2080, subpart 2, item 1.]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

Notice of Intent to Adopt Expedited Rules

Minnesota [Agency Name]

[Title] Division [THIS LINE IS OPTIONAL]

NOTICE OF INTENT TO ADOPT EXPEDITED RULES WITHOUT A PUBLIC HEARING

Proposed [Amendment to] [Repeal of] Rules Relating to [Topic], *Minnesota Rules*, [citation];
Revisor's ID Number [number]

[Identify the title and rule chapter or part numbers as assigned by the Revisor. Note: if you are proposing to repeal any entire rule parts, you must specifically list the rule parts you are proposing to repeal, per Minnesota Rules, part 1400.2080, subpart 2, item D.]

Introduction. The Minnesota [Agency Name] intends to adopt rules under the expedited rulemaking process following the rules of the Office of Administrative Hearings, *Minnesota Rules*, part 1400.2410, and the Administrative Procedure Act, *Minnesota Statutes*, section 14.389. You may submit written comments on the proposed expedited rules until **4:30 p.m. on [day], [month] [day], [year]**.

Subject of the Expedited Rules. The proposed expedited rules are about [subject of rules and, if applicable, that an entire set of rules is being repealed and a citation to the repealed rules].

[See section 5.7 of the Manual on drafting the description of the rules in the Notice in a way that may affect whether modifications to the rules will make the adopted rules "substantially different" from the proposed rules.]

Statutory Authority. The statutory authority to adopt these rules is [citation to most recent Minnesota Statutes citation, or Minnesota Laws if the statute has not yet been codified]

The statutory authority to adopt the rules under the expedited rulemaking process is [citation to statutory authority to adopt rules under Minnesota Statutes, section 14.389].

Publication of proposed rules. A copy of the proposed rules is published in the *State Register* [and attached to this notice as mailed]. [The proposed expedited rules may be viewed at: (insert web URL).]

[If the proposed rules are not attached to the mailed notice, then this notice must include an easily readable and understandable description of the rules' nature and effect and include the announcement that a free copy of the rules is available upon request from the agency contact person listed below.]

Agency Contact Person. The agency contact person is [name] at [Agency Name, address, phone, fax, and email]. You may contact the agency contact person with questions about the rules.

[The agency contact person should be a person who is available throughout the comment period.]

Public Comment. You have until **4:30 p.m. on [day], [month] [date], [year]**, to submit written comment in support of or in opposition to the proposed expedited rules and any part or subpart of the rules.

Your comment must be in writing and received by the agency contact person by the due date. Your comment should identify the portion of the proposed expedited rules addressed and the reason for the comment. In addition, you are encouraged to propose any change desired. You must also make any comments that you have on the legality of the proposed rules during this comment period. If the proposed expedited rules affect you in any way, the agency encourages you to participate in the rulemaking process.

[Choose whether you will use the OAH's eComments system for accepting comments and adapt the following two paragraphs accordingly. It is not recommended to have comments submitted BOTH to the agency contact person and OAH eComments – choose one or the other. If you are using eComments and the agency receives comments directly, send them to William Moore at OAH to post on the eComments site.]

Submit written comments [to the agency contact person listed above] [via the [Office of Administrative Hearings Rulemaking eComments website \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/)], by U.S. Mail delivered to the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, or by fax (651) 539-0310].

All comments or responses received are public data and will be available for review [on the eComments website] [at the [agency] or on the Agency's website at [URL]].

[If the agency is accepting requests for a public hearing, the following 2 paragraphs must be included in this Notice]

Request for Hearing. In addition to submitting comments, you may also request that the agency hold a public hearing on the rules. You must make your request for a public hearing in writing by **4:30 p.m. on [day], [month] [date], [year]**. You must include your name and address in your written request for hearing. You must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules. Any request that does not comply with these requirements is not valid and the agency cannot count it for determining whether it must hold a public hearing.

Withdrawal of Requests. If 50 or more persons submit a valid written request for a hearing, the agency will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 50, the agency must give written notice of this to all persons who requested a hearing, explain the action the agency took to bring about the withdrawal, and ask for written comments on this action. If the agency is required to hold a public hearing, it will follow the procedures in *Minnesota Statutes*, section 14.131 to 14.20.

Modifications. The agency may modify the proposed expedited rules using either of two avenues: The agency may modify the rules directly so long as the modifications do not make them substantially different as defined in *Minnesota Statutes*, section 14.05, subdivision 2, paragraphs (b) and (c). Or the agency may adopt substantially different rules if it follows the procedure under *Minnesota Rules*, part 1400.2110. If the final rules are identical to the rules originally published in the *State Register*, the agency will publish a notice of adoption in the *State Register*. If the final rules are different from the rules originally published in the *State Register*, the agency must publish a copy of the changes in the *State Register*.

[Insert other notices required by law or chosen to be inserted in this notice]

Adoption and Review of Expedited Rules. [If no hearing is required, the] (or) [The] agency may adopt the rules at the end of the comment period. The agency will then submit rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date that the agency submits the rules. If you want to be so notified or want to receive a copy of the adopted rules or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You may direct questions about this requirement to the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial

Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Alternative Format. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

*[For information on what to do if you get a request to make the Notice available in an alternative format, see **ACCMMDTN** in the appendix.]*

[Date]

[Name]

[Commissioner/Director]

[Signature is required on the Notice per Minn. Rules, part 1400.2085, subpart 2, item O.]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

Notice of Intent to Adopt Rules with a Hearing

Minnesota [Agency Name]

[Title] Division [THIS LINE IS OPTIONAL]

Proposed [Amendment to] [Repeal of] Rules Relating to [Topic], *Minnesota Rules*, [citation]; Revisor's ID Number [number]; OAH Docket Number [number]

[Identify the title and rule chapter or part numbers as assigned by the Revisor. Note: if you are proposing to repeal any entire rule parts, you must specifically list the rule parts you are proposing to repeal, per Minnesota Rules, part 1400.2080, subpart 2, item D.]

Introduction. The Minnesota [Agency Name] intends to adopt rules after a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2200 to 1400.2240, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.131 to 14.20. You may submit written comments on the proposed rules until **4:30 p.m. on [day], [month] [day], [year]**.

Public Hearing. The agency will hold a virtual public hearing on the above-named rules on **[day], [month] [date], [year]**, at [insert start time] and [continuing until the hearing is completed] OR [until [time hearing ends]].

You can participate in the virtual hearing, which will be conducted by an Administrative Law Judge from the Office of Administrative Hearings, via WebEx by using this link along with the associated access code and password:

For a video and audio connection, join the hearing through an internet connection:

- Web link: <https://minnesota.webex.com>
- Meeting Number (access code): #...
- Password: #....

For audio-only connection, join the virtual hearing by telephone:

- Call: 1-###-###-#### (this is not a toll-free number)
- Access code: [insert code]
- Password: [insert password]

The agency will schedule additional days of hearing if necessary. All interested or affected persons will have an opportunity to participate by submitting either oral or written comments, statements, or arguments. Statements may be submitted without appearing at the hearing.

If the public hearing is postponed or rescheduled, the agency will send a notice of such a change to the organization listed on its additional notice plan and post the notice of such a change on its website at **[insert URL]**.

Administrative Law Judge. Administrative Law Judge [judge's name] will conduct the hearing. The judge can be reached by contacting William Moore, Rules Coordinator, Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7893, and william.t.moore@state.mn.us.

Subject of Rules. The proposed rules are about [subject of the rules and, if applicable, that an entire rule is being repealed and a citation to the rule [*Minnesota Rules*, [citation]]].

[See section 7.8 of the Manual on drafting the description of the rules in the Notice in a way that may affect whether modifications to the rules will make the adopted rules "substantially different" from the proposed rules. For example, if you have two substantially different alternative rule provisions OR rules that set a numerical value (i.e., pollution discharge levels, noise levels, minimum number of employees to trigger a requirement, or utility rates), you may be able to draft the description of the rules in the Notice in a way that will allow the Department to adopt either alternative or adopt a value within a range without having to go through additional rule proceedings to adopt substantially different rules.]

Statutory Authority. The statutory authority to adopt these rules is [citation to most recent Minnesota Statutes citation, or Minnesota Laws if the statute has not yet been codified].

Publication of Proposed Rules. A copy of the proposed rules is published in the *State Register* [and attached to this notice as mailed]. [The proposed rules may be viewed at: [insert web URL].]

[If the proposed rules are not attached to the mailed notice, then this notice must include an easily readable and understandable description of the rules' nature and effect and include the announcement that: A free copy of the rules is available upon request from the agency contact person listed below.]

Statement of Need and Reasonableness. The statement of need and reasonableness (SONAR) contains a summary of the justification for the proposed rules, a description of who will be affected by the proposed rules, and an estimate of the probable cost of the proposed rules. You

may obtain copies for the cost of reproduction by contacting the agency contact person listed below. The SONAR may be viewed at: [insert web URL].

Agency Contact Person. The agency contact person is [name] at [Agency Name, address, phone, fax, and *email*]. You may contact the agency contact person with questions about the rules.

[The agency contact person should be a person who is available throughout the comment period.]

Public Comment. You and all interested or affected persons, including representatives of associations and other interested groups, will have an opportunity to participate. The Administrative Law Judge will accept your views orally at the hearing or in writing at any time before the close of the hearing record.

Submit written comments to the Administrative Law Judge via the [Office of Administrative Hearings Rulemaking eComments website \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/). All evidence that you present should relate to the proposed rules. If the proposed rules affect you in any way, the agency encourages you to participate.

You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing the Administrative Law Judge may order this five-day comment period extended for a longer period but for no more than 20 calendar days.

After the comment period, there is a five-working-day rebuttal period during which the agency and any interested person may respond in writing to any new information submitted. No one may submit additional evidence during the five-day rebuttal period.

The Office of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge via the Office of Administrative Hearings Rulemaking e-comments website at [Office of Administrative Hearings Rulemaking eComments website \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/) no later than 4:30 p.m. on the due date. If using the eComments website is not possible, you may submit post-hearing comments in person or via United States mail addressed to Judge [ALJ's last name] at the address listed above.

All comments or responses received are public data and will be available for review on the eComments website [and at the [agency] or on the Agency's website at [URL]].

Hearing Procedure. The rule hearing procedure is governed by *Minnesota Statutes*, sections 14.131 to 14.20, and by the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2000 to 1400.2240. You should direct questions about the rule hearing procedure to the Administrative Law Judge through William Moore, the OAH Rules Coordinator listed above.

Modifications. The agency may modify the proposed rules either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted during the public comment and rule hearing process. The adopted rules may not be substantially different than these proposed rules unless the agency follows the procedure under *Minnesota Rules*, part 1400.2110. If the final rules are identical to the rules originally published in the *State Register*, the agency will publish a notice of adoption in the *State Register*. If the final rules are different from the rules originally published in the *State Register*, the agency must publish a copy of the changes in the *State Register*.

[Insert other notices required by law or chosen to be inserted in this notice]

Adoption Procedure after the Hearing. After the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the agency adopts the rules and the rules are filed with the Secretary of State, or register with the agency to receive notice of future rule proceedings by requesting this at the hearing or by writing to the agency contact person stated above.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You may direct questions about this requirement to the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

[For information on what to do if you get a request to make the Notice available in an alternative format or for an accommodation to make the hearing accessible, see ACCMMDTN in the appendix.]

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

[Date]

[Name]

[Commissioner/Director]

[Date and signature are required on the Notice. OAH Rules, part 1400.2080, subpart 2, item I.]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

Notice of Hearing to Those Who Requested a Hearing

Minnesota [Agency Name]

Proposed [Amendment to] [Repeal of] Rules Relating to [Topic], Minnesota Rules, [citation]; Revisor's ID No. [number]; OAH Docket No. [number]

To people who requested a hearing. In accordance with Minnesota Statutes, section 14.25, subdivision 1, the [Department/Agency/Board] is sending this Notice to all people who requested a hearing.

There will be a hearing. On [date], in the *State Register*, on pages {#} to [#], the [Agency Name] published a Notice of Intent to Adopt Rules relating to [topic]. The Notice stated that the [Department/Agency/Board] would hold a hearing on the proposed rules if 25 or more people submitted written requests.

The [Department/Agency/Board] has received a sufficient number of requests for a hearing. The hearing will be conducted as stated in the *State Register* online via Webex, [continuing until the hearing is completed] OR [until [time hearing ends]].

Administrative law judge. Administrative Law Judge [Name] will conduct the hearing. The judge can be reached by contacting William Moore, OAH Administrative Rule and Applications Specialist, at William.T.Moore@state.mn.us or (651) 361-7893. You should direct questions on the rule hearing procedure to William Moore.

Agency contact person. The agency contact person is [name, agency, address, phone, and email]. You should direct questions or comments about the rules to [name]. A copy of the Notice of Intent to Adopt Rules is available upon request from [name].

[Name]

[Title]

[This may be signed by the Commissioner, the Division Director, or the Rule Writer.]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

Notice of Withdrawal of Hearing Requests

Minnesota [Agency Name]

Proposed [Amendment to] [Repeal of] Rules Relating to [Topic], Minnesota Rules, [citation]; Revisor's ID No. [number]; OAH Docket No. [number]

To people who requested a hearing. In accordance with Minnesota Statutes, section 14.25, subdivision 2, the [Department/Agency/Board] is sending this notice to all people who requested a hearing because (1) there were withdrawals of hearing requests, (2) the withdrawals reduced the number of hearing requests below 25, and (3) the [Department/Agency/Board] has taken actions to obtain the withdrawals.

There will be no hearing. On [date], in the *State Register*, on pages [#] to [#], the [Agency Name] published a Notice of Intent to Adopt Rules relating to [topic]. The Notice stated that a hearing would be held on the proposed rules if 25 or more people submitted written requests for a hearing unless a sufficient number withdrew their requests in writing.

In response to the Notice, the [Department/Agency/Board] received [#] hearing requests, but [#] hearing requests were subsequently withdrawn. Consequently, there will be no hearing because there are fewer than 25 outstanding hearing requests.

The [Department/Agency/Board] will adopt the rules without a hearing and then submit the rules and other required documents to the Office of Administrative Hearings for review. The [Department/Agency/Board] will consider all written comments when it adopts the rules.

Withdrawal of hearing requests. The hearing requests were withdrawn because [explain why].*

Comments relating to the withdrawals. If you have comments or questions relating to the withdrawals, please contact [name, address, phone, and email] **within five working days**. This notice and all written comments that the [Department/Agency/Board] receives become part of the rulemaking record, which an administrative law judge will review.

[Name]

[Title]

[This may be signed by the Commissioner, the Division Director, or the Rule Writer.]

*Section 14.25, subdivision 2, requires that this Notice explain why the requests were withdrawn, including a description of any actions the department has taken or will take that affected or may have affected the decision to withdraw the hearing requests. If there are several withdrawals for the same reason, you might want to explain this only once.

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

Notice of Intent to Adopt Rules Without a Public Hearing

Minnesota [Agency Name]

[Title] Division [THIS LINE IS OPTIONAL]

Proposed [Amendment to] [Repeal of] Rules Relating to [Topic], *Minnesota Rules*, [citation];
Revisor's ID Number [number]

[Identify the title and rule chapter or part numbers as assigned by the Revisor. Note: if you are proposing to repeal any entire rule parts, you must specifically list the rule parts you are proposing to repeal, per Minnesota Rules, part 1400.2080, subpart 2, item D.]

Introduction. The Minnesota [Agency Name] intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You may submit written comments and/or a written request that a hearing be held on the proposed rules until **4:30 p.m. on [day], [month] [day], [year]**.

Subject of Rules. The proposed rules are about [subject of rules and, if applicable, that an entire rule is being repealed and a citation to the rule].

[See section 5.7 of the Manual on drafting the description of the rules in the Notice in a way that may affect whether modifications to the rules will make the adopted rules "substantially different" from the proposed rules. For example, if you have two substantially different alternative rule provisions OR rules that set a numerical value (i.e., pollution discharge levels, noise levels, minimum number of employees to trigger a requirement, or utility rates), you may be able to draft the description of the rules in the Notice in a way that will allow the agency to adopt either alternative or adopt a value within a range without having to go through additional rule proceedings to adopt substantially different rules.]

Statutory Authority. The statutory authority to adopt these rules is [citation to most recent Minnesota Statutes citation, or Minnesota Laws if the statute has not yet been codified]

Publication of proposed rules. A copy of the proposed rules is published in the *State Register* [and attached to this notice as mailed]. [The proposed rules may be viewed at: (insert web URL).]

[If the proposed rules are not attached to the mailed notice, then this notice must include an easily readable and understandable description of the rules' nature and effect and include the announcement that: A free copy of the rules is available upon request from the agency contact person listed below.]

Statement of Need and Reasonableness. The statement of need and reasonableness (SONAR) contains a summary of the justification for the proposed rules, a description of who will be affected by the proposed rules, and an estimate of the probable cost of the proposed rules. You may review or obtain copies for the cost of reproduction by contacting the agency contact person. The SONAR may also be viewed at: [insert web URL].

Agency Contact Person. The agency contact person is [name] at [Agency Name, address, phone, fax, and *email*]. You may contact the agency contact person with questions about the rules.

[The agency contact person should be a person who is available throughout the comment period. If a different person will be sending out copies of the rules and SONAR, you may identify that person separately in the Notice.]

Public Comment. You have until **4:30 p.m. on [day], [month] [date], [year]**, to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules.

Your comment must be in writing and received by the due date. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change you propose. Any comments that you have about the legality of the proposed rules must be made during this comment period. All evidence that you present should relate to the proposed rules. If the proposed rules affect you in any way, the agency encourages you to participate.

[Choose whether you will use the OAH's eComments system for accepting comments and adapt the following two paragraphs accordingly. It is not recommended to have comments submitted BOTH to the agency contact person and OAH eComments – choose one or the other. If you are using eComments and the agency receives comments directly, send them to William Moore at OAH to post on the eComments site.]

Submit written comments [to the agency contact person listed above] [via the [Office of Administrative Hearings Rulemaking eComments website \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/)], by U.S. Mail delivered to the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, or by fax (651) 539-0310].

All comments or responses received are public data and will be available for review [on the eComments website] [at the [agency]] or on the Agency's website at [URL].

Request for a Hearing. In addition to submitting comments, you may also request that the agency hold a public hearing on the rules. You must make your request for a public hearing in writing by **4:30 p.m. on [day], [month] [date], [year]**. You must include your name and address in your written request for hearing. You must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the agency will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to bring about the withdrawal, and ask for written comments on this action. If the agency is required to hold a public hearing, it will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Modifications. The agency may modify the proposed rules as a result of public comment. It must support modifications by data and views submitted during the public comment process. The adopted rules may not be substantially different than these proposed rules unless the agency follows the procedure under *Minnesota Rules*, part 1400.2110. If the final rules are identical to the rules originally published in the *State Register*, the agency will publish a notice of adoption in the *State Register*. If the final rules are different from the rules originally published in the *State Register*, the agency must publish a copy of the changes in the *State Register*.

[Insert other notices required by law or chosen to be inserted in this notice]

Adoption and Review of Rules. If no hearing is required, the agency may adopt the rules after the end of the comment period. The agency will submit the rules and supporting documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want to receive notice of this, to receive a copy of

the adopted rules, or to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You may direct questions about this requirement to the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

*[For information on what to do if you get a request to make the Notice available in an alternative format or for an accommodation to make the hearing accessible, see **ACCMMDTN** in the appendix.]*

[Date]

[Name]

[Commissioner/Director]

[Date and signature are required on the Notice. OAH Rules, part 1400.2080, subpart 2, item I.]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

Notice That There Will Be No Hearing to Persons Who Requested a Hearing

Minnesota [Agency Name]

Proposed [Amendment to] [Repeal of] Rules Relating to [Topic], Minnesota Rules, [citation];
Revisor's ID Number [number]

To persons who requested a hearing. The [Department/Agency/Board] is sending this to all persons who requested a hearing.

There will be no hearing. In the [month] [date], [year], *State Register*, on pages [#] to [#], the [Agency Name] published a Notice of Intent to Adopt Rules Without a Public Hearing relating to [topic]. The Notice stated that a hearing would be held on the proposed rules if 25 or more persons submitted written requests for a hearing. In response to the Notice, the [Department/Agency/Board] received [#] requests for a hearing. Because the [Department/Agency/Board] received fewer than 25 hearing requests, it will not hold a hearing.

The [Department/Agency/Board] will adopt the rules without a hearing and then submit the rules and other required documents to the Chief Administrative Law Judge for review by the Office of Administrative Hearings. The [Department/Agency/Board] will consider all written comments when it adopts the rules.

Agency Contact Person. The agency contact person is: [name] at [agency, address, phone, fax, and email (fax # and email address are optional)]. You should direct questions or comments about the rule adoption process to the agency contact person.

[Name]

[Title]

[This may be signed by the Commissioner, the Division Director, or the Rule Writer.]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

Notice of Intent to Repeal Obsolete Rules

Minnesota [Agency Name]

[Title] Division [THIS LINE IS OPTIONAL]

Proposed Repeal of Obsolete Rules Relating to [Topic], *Minnesota Rules*, [citation]; Revisor's ID Number [number]; OAH Docket Number [number]

[Identify the title and rule chapter or part numbers as assigned by the Revisor. Note: if you are proposing to repeal any entire rule parts, you must specifically list the rule parts you are proposing to repeal, per Minnesota Rules, part 1400.2080, subpart 2, item D.]

Introduction. The Minnesota [Agency Name] intends to repeal obsolete rules under the rulemaking process in the Administrative Procedure Act, *Minnesota Statutes*, section 14.3895. You may submit written comments on the proposed repeal of obsolete rules until **4:30 p.m. on [day], [month] [day], [year]**.

Subject of Rules. The proposed obsolete rules are about [subject of rules and, if applicable, that an entire set of rules is being repealed and a citation to the repealed rules].

Statutory Authority. The agency identified the proposed obsolete rules to be repealed in its annual obsolete rules report under Minnesota Statutes section 14.05, subdivision 5. The statutory authority to repeal the obsolete rules is found in Minnesota Statutes, section 14.3895. The initial statutory authority under which these rules were created is found in Minnesota Statutes, section [cite authority], which gives the Commissioner of [Agency Name] the authority to make rules to [describe authority].

Publication of Proposed Rules. A copy of the proposed obsolete rules to be repealed is published in the *State Register* [and attached to this notice as mailed]. [The proposed obsolete rules to be repealed may be viewed at: (insert web URL).]

[If the proposed rules are not attached to the mailed notice, then this notice must include an easily readable and understandable description of the rules' nature and effect and include the announcement that a free copy of the rules is available upon request from the agency contact person listed above.]

Agency Contact Person. The agency contact person is [name] at [Agency Name, address, phone, fax, and *email*]. You may contact the agency contact person with questions about the rules.

[The agency contact person should be a person who is available throughout the comment period.]

Public Comment. You have until **4:30 p.m. on [day], [month] [date], [year]**, to submit written comment in support of or in opposition to the proposed repeal of obsolete rules and any part or subpart of the repeal. [Make sure that your comment period is at least 60 days as required by Minnesota Statutes, section 14.3895, subd. 3.]

Your comment must be in writing and received by the agency contact person by the due date. Your comment should identify the portion of the proposed obsolete rules to be repealed addressed and the reason for the comment. In addition, you are encouraged to object to the repeal of any part or subpart. You must also make any comments that you have on the legality of the proposed rules during this comment period. If the proposed repeal of obsolete rules affects you in any way, the agency encourages you to participate in the rulemaking process.

[Choose whether you will use the OAH's eComments system for accepting comments and adapt the following two paragraphs accordingly. It is not recommended to have comments submitted BOTH to the agency contact person and OAH eComments – choose one or the other. If you are using eComments and the agency receives comments directly, send them to William Moore at OAH to post on the eComments site.]

Submit written comments [to the agency contact person listed above] [via the [Office of Administrative Hearings Rulemaking eComments website \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/)], by U.S. Mail delivered to the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, or by fax (651) 539-0310].

All comments or responses received are public data and will be available for review [on the eComments website] [at the [agency] or on the Agency's website at [URL]].

Request for Hearing. In addition to submitting comments, you may also request that the agency hold a public hearing on the rules. You must make your request for a public hearing in writing by **4:30 p.m. on [day], [month] [date], [year]**. [This too requires 60 days.] You must include your name and address in your written request for hearing. You must identify the portion of the proposed repealed rules that you object to or state that you oppose the entire set of rules. You are also encouraged to state the reason for the request and any changes you

want made to the proposed rules. Any request that does not comply with these requirements is not valid and the agency cannot count it for determining whether it must hold a public hearing.

Effect of Requests. If 25 or more people submit a written request, the agency will have to meet the requirements of Minnesota Statutes, sections 14.131 to 14.20 for rules adopted after a hearing or the requirements of Minnesota Statutes, sections 14.22 to 14.28 for rules adopted without a hearing, including the preparation of a statement of need and reasonableness and the opportunity for a hearing.

Modifications. The agency might modify its choice of these designated rules or parts proposed for repeal (for example, fixing a typo or deciding not to repeal a rule because the rule is discovered not to be obsolete), based on comments and information submitted to the agency. If the final rules are identical to the rules originally published in the *State Register*, the agency will publish a notice of adopting the repealer(s) in the *State Register*. If the final rules are different from the rules originally published in the *State Register*, the agency must publish a copy of the changes in the *State Register*.

[Insert other notices required by law or chosen to be inserted in this notice]

Repeal and Review of Obsolete Rules. If no hearing is required, the agency may repeal the obsolete rules after the end of the comment period. The agency will submit the rules and supporting documents to the Office of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the office. If you want to receive notice of this, to receive a copy of the repealed obsolete rules, or to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

[Date]

[Name]

[Commissioner/Director]

[Signature is required on the Notice. OAH Rules, part 1400.2085, subpart 2, item O.]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

Notice of Submission of [Rules Proposed for Adoption Without a Public Hearing] [Repeal of Obsolete Rules] to the Office of Administrative Hearings

Minnesota [Agency Name]

[Amendment to] [Repeal of] [Obsolete] Rules Relating to [Topic]; Minnesota Rules, [citation]; Revisor's ID Number [number]; OAH Docket No. [number]

Date: [date] [Make sure this date is the same as the date in the first paragraph, below.]

To: All Interested Persons

As you requested under Minnesota Statutes, section 14.26, subdivision 1, please note that the [Department/Agency/Board] will submit the above-named proposed rules to the Office of Administrative Hearings on the date of this notice, [Month] [Date], [Year].

The [Department/Agency/Board] will also submit the proposed rules and Notice of Intent to [Adopt] [Repeal] as published in the *State Register*, the rules as proposed for [adoption] [repeal], any written comments received by the [Department/Agency/Board], [the Statement of Need and Reasonableness for the rules], and other required documents to the Office of Administrative Hearings.

[If the proposed rule has been modified:] The proposed rules that were published in the *State Register* on [Month] [Date], [Year], have been modified. A free copy of the rules as modified is available upon request from the [Department/Agency/Board] by contacting [Name] at [Address] and [Phone]. [OR] A copy of the rules as modified is enclosed with this Notice.

[Name]

[Title]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

Notice of Submission of Rules Proposed for Adoption Without a Public Hearing to the Office of Administrative Hearings

Minnesota [Agency Name]

Amendments to Rules Relating to [Topic]; Minnesota Rules, [citation]; Revisor's ID Number [number]; OAH Docket No. [number]

Date: [date] [Make sure this date is the same as the date in the second paragraph, below (or earlier).]

To: All Interested Persons

In accordance with Minnesota Statutes, section 14.388, subdivision 2, this Notice is being sent to all persons who have registered their name with the [Department/Agency/Board] under Minnesota Statutes, section 14.14, subdivision 1a. This Notice is also posted on the website of the [Agency Name].

PLEASE TAKE NOTICE that the above-cited rules proposed for adoption will be submitted to the Office of Administrative Hearings on the date of this Notice, [date]. A copy of the rule modification is attached to this Notice.

All interested persons have five business days after the date of this Notice to submit comments to the [Office of Administrative Hearings Rulemaking eComments website \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/). If using the eComments website is not possible, you may submit post-hearing comments in person or via United States mail addressed to Judge [ALJ's last name] at 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620.

[City and describe authorizing law] By **Laws of Minnesota YEAR, Special Session, chapter #, article #, section #**, the Minnesota Legislature requires the commissioner of [agency name] to adopt or amend rules relating to [topic]. [Include additional paragraphs for additional applicable law]

The [Department/Agency/Board] is using the good cause exemption process under Minnesota Statutes, section 14.388, subd. 1, clause (3), to make the specific change stated in the laws cited above without additional interpretation.

The agency contact person is [name, agency, address, phone, and email]. You should direct questions or comments about the rules to [name]. For special accommodation, you may contact agency contact person. Questions concerning the rules should be directed to the agency contact person.

[Name]

[Title]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

Notice of Filing Rules with the Secretary of State

Minnesota [Agency Name]

**Adopted [Amendment to] [Repeal of] Rules Relating to [Topic], Minnesota Rules, [citation];
Revisor's ID No. [number]; OAH Docket No. [number]**

Date: [date] [Make sure this date is the same as the "File Date" below.]

To: All Interested Persons

On [Hearing Date], at the hearing for the [topic] rules, you requested that the [Department/Agency/Board] inform you when it adopts the rules and files them with the Secretary of State. This letter is to inform you that the Commissioner of [Name] signed the Order Adopting Rules on [Adopt Date]. The Office of Administrative Hearings is filing the rules with the Secretary of State today, [File Date].

Please note that there are still several steps that must take place before the rules become effective:

1. The Secretary of State will send a copy of the adopted rules to the Revisor of Statutes and to the Governor.
2. The Revisor of Statutes will prepare an official Notice of Adoption and send this Notice to the [Agency Name].
3. The Governor may veto the rules. The Governor must do so within 14 days of receiving it from the Secretary of State and must publish notice of the veto in the *State Register*.
4. If the Governor does not veto the rules, the [Department/Agency/Board] will publish the Notice of Adoption in the *State Register*.
5. The rules become effective five working days after the *State Register* publishes it.

The remaining steps will take approximately three to five weeks to complete. If you have any questions, contact [Name] at [Address] and by phone at [(XXX) XXX-XXXX] or by email at [email address].

[Name]

[Title]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

Notice of Withdrawn Rules

Minnesota [Agency Name]

Proposed Rules Relating to [Topic], Minnesota Rules, [citation]; Revisor's ID No. [number]; [OAH Docket No. [number]]

The Minnesota [Agency Name] is withdrawing its possible amendments to rules relating to [topic] that were published in the *State Register* on [publication date] (## SR #####). [Give reason such as Administrative Law Judge [Name] determined that [Department/Agency/Board] lacks the statutory authority to adopt the proposed amendments to *Minnesota Rules*, Chapter #####] OR [the [Department/Agency/Board]'s proposed amendments to Chapter ##### are disapproved as not meeting the requirements of *Minnesota Statutes*, section 14.26, subdivision 3(a), and *Minnesota Rules* part 1400.2100, item [item letter]].

The [Department/Agency/Board] is withdrawing the following proposed amendments:
Minnesota Rules, parts [parts #s].

[Name]

Commissioner

Date: _____

OAH Information

Location. The Office of Administrative Hearings (OAH) is located on the first and second floors of the Harold Stassen Office Building in the Capitol complex. The street address is 600 Robert Street North, St. Paul, Minnesota 55164-0620. The mailing address is P.O. Box 64620, St. Paul, MN 55164-0620. The hearing rooms are located on the first floor in the Stassen Building.

From Minneapolis take 94 East to 10th Street exit; take 10th Street to Wabasha; turn left onto Wabasha Street; turn right onto 11th Street, turn left onto Jackson Street (just before I-35E entrance), turn left onto 14th Street, turn left into either the 14th Street Lot or Lot W.

The 14th Street Lot at the corner of 14th Street and Robert Street and the Lot W at the corner of 14th Street and Jackson Street provide all-day hour metered parking. The meters accept coins and debit/credit cards. Meters are enforced 7:00 AM to 4:00 PM.

Recommended Forms. For many of the forms used in the Manual, we started with the forms contained in Minnesota Rules 1400.2510–.2570 and then added practice tips. The Manual’s forms are designed to be checklists for meeting the requirements of OAH Rules. The forms, however, are recommendations. It is best to apply your judgment, review them before using, and choose what best fits your needs or customize them as you see fit. Of course, you must meet all statutory and rule requirements at a minimum. If you make your forms more readable, that is better. If you write to your audience, that is better yet. **In addition, on April 8, 2019, Governor Tim Walz signed Executive Order 19-29, which requires state agencies to use plain language in their communications with the public.** So, you should draft with this in mind.

eFiling Rule-Related Documents. OAH requires agencies to eFile all rule-related documents. OAH has posted step-by-step instructions for creating an account and filing your documents on its website at [OAH eFiling \(https://mn.gov/oah/forms-and-filing/efiling/\)](https://mn.gov/oah/forms-and-filing/efiling/). (The page also includes a link to frequently asked questions.) You may also request a hearing date through eFiling, or, if you have difficulty with the eFiling system, you may call OAH via telephone.

OAH-Received Comments. Strongly consider using OAH’s eComments website for collecting your public comments. If agencies request to use an eComments site, OAH will collect public comments on its [Office of Administrative Hearings Rulemaking eComments website \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/), as well as through U.S. Mail, eFiling, personal delivery, or fax. Public instructions for making comments can be found at [Office of Administrative Hearings Rulemaking eComments website \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/).

When you are seeking comments from the public that they will be submitting to OAH, keep the following in mind:

- Agencies must use this system after public hearings on proposed rules, when comments must be submitted to the ALJ under Minnesota Rule 1400.2230. OAH will set up an eComments page after the hearing.
- Agencies may also use this system for collecting public comments during the 60-day comment period after the Request for Comments is published or the 30-day comment period after rules are proposed.
- To set up your public eComments site, contact OAH Administrative Rule and Applications Specialist, William Moore, at William.T.Moore@state.mn.us or (651) 361-7893 at least a week before you publish your notice in the *State Register* or eFile your case. When requesting to set up a public eComments page for your rule, please provide the following:
 1. OAH docket number, if already assigned.
 2. The dates that the comment period will open and close.
 3. A link to the agency's rulemaking webpage, if applicable. OAH will add a link to the agency's rulemaking webpage on the eComments site.
 4. If applicable, the date that the Request for Comments or Notice will appear in the *State Register*.
 5. Optional: Finalized, accessible copies of the documents you want to appear on the OAH eComments webpage, if any. These might include the Notice, proposed rules, SONAR, etc. See the [Office of Accessibility \(https://mn.gov/mnit/about-mnit/accessibility/\)](https://mn.gov/mnit/about-mnit/accessibility/) for more information on making documents accessible.

For giving instructions to the public:

1. Announce OAH's eComments website for accepting electronic comments [Office of Administrative Hearings Rulemaking eComments website \(https://mn.gov/oah/forms-and-filing/ecomments/\)](https://mn.gov/oah/forms-and-filing/ecomments/) and the rule subject at the hearing. The same deadline that applies to written comments applies to eComments.

2. People submitting comments will be able to see their comments on the website, making a hard copy unnecessary.
3. eComments will collate comments by their respective rulemaking subjects, eliminating the need for the commenter to add the OAH Docket Number.
4. The agency will be able to collect the comments directly from eComments, so there is no need to email them to the agency.

For advising the agency:

1. At the end of the comment period or any time the agency requests, OAH will provide a report to the agency. The reports will include comments, each commenter's name and email address, and the date and time each comment was posted. The report is available as a PDF document. To request reports, email William Moore at william.t.moore@state.mn.us.
2. The agency will also be able to download comments mailed to OAH in a PDF format.
3. The agency will need to print out the comments and include them in the record.

Telephone/Fax. The OAH telephone number is (651) 361-7900. The fax number is (651) 539-0310.

Questions about Notice Plans or Rulemaking Process. If you have questions about requesting OAH prior approval of your Notice Plan or about the rulemaking process, contact OAH by sending an email to William Moore.

Requesting an OAH docket number or schedule a hearing date. You must obtain a docket number and ALJ assignment before submitting your documents for OAH review.

1. Complete the Notice of Appearance form. You may use either the form available on the OAH website at [OAH Forms \(https://mn.gov/oah/forms-and-filing/forms/\)](https://mn.gov/oah/forms-and-filing/forms/) or form **OAH-NOA** in the Appendix, which is customized for rulemaking use. (Skip the OAH Docket Number field at the top of the form. You will receive your docket number as part of this process.)
2. Complete the online [Contested Case Docket Request on the OAH website \(https://mn.gov/oah/lawyers-and-litigants/administrative-law/docket-request.jsp\)](https://mn.gov/oah/lawyers-and-litigants/administrative-law/docket-request.jsp); skip any nonapplicable fields in the request form. Identify the responsible agency unit as the

Party Name. Attach the Notice of Appearance to your request. (Note that the Contested Case Docket Request form is used, even though rulemaking does not involve a contested case hearing. That is why some of the fields do not apply or field labels are an awkward fit, such as “Party Name.”)

3. OAH staff will create an eFiling folder and notify you of the ALJ assignment and OAH docket number via the Initial Scheduling Email from an OAH scheduler.
4. A separate, automated email will be sent to your email address for eFiling access. Check your spam folder if you do not receive an email. Click the link in the email to view your eFile folder (and activate your account if this is your first time eFiling). The email address(es) listed on the Notice of Appearance will be the one(s) that are granted eFiling access.

Frequently Asked Questions from Agencies:

How can the agency find out who the assigned ALJ’s legal assistant is?

The best way to identify the judge’s legal assistant is to refer to the Initial Scheduling Email you received when first opening the case at OAH. The judge’s legal assistant will be listed there.

What do the legal assistants do compared to the staff attorneys? Do the legal assistants also bill for their time?

Legal assistants assist the judge in finalizing and serving rule related documents. Their time is included in the judge’s rate. Staff attorneys, who do bill for their time, often help the judge prepare the report. If you have questions about where to direct your questions, email **William Moore** at william.t.moore@state.mn.us.

Can agency staff reply to comments on the eComments website?

Yes. Any agency staff member who registers for an account and has a valid email address may comment on pending rulemaking matters. The agency can also request that their response to the comments be posted as a PDF on the agency’s public eComments webpage by emailing the accessible PDF to William Moore at william.t.moore@state.mn.us.

How will the agency receive the comments?

During the comment period, the agency may view comments via the eComments website. At the end of the comment period or any time the agency requests, OAH will also provide a report to the agency. The reports will include comments, each commenter’s name and email address,

and the date and time each comment was posted. The report is available as a PDF. To request reports, email William Moore at william.t.moore@state.mn.us.

What information about the commenter will be provided to the agency contact person?

The agency will be given the commenter's name and email address.

Will the agency be able to see the eComments as they are received?

Yes. Comments are visible in real time. They are posted as they are received and can be viewed by anyone viewing the eComments website.

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

[Amended] Order Adopting Rules

Minnesota [Agency Name]

Division of [Name, or Unit, Bureau, etc.] [Optional]

[Adoption of][Repeal of Obsolete] Rules Relating to [Topic], Minnesota Rules, [citation];
Revisor's ID Number [number], OAH Docket Number [number]

BACKGROUND INFORMATION

1. [For Repeal of Obsolete Rules add the following: The rules repealed by this order are obsolete and were identified in the [Agency Names]'s annual obsolete rules report dated [date] under Minnesota Statutes section 14.05 subd. 5.]

2. The [Agency Name] has complied with all notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law. [For multimember agencies, add the following: A copy of the Board's authorization to propose the rules is attached. **OR** The Board authorized proposing the rules at its meeting on [date], and a quorum was present.] [Note: Refer to **BD-NTC** in the appendix for a recommended form for a Board Resolution authorizing proposing the rules by giving Notice of Intent to Adopt Rules.] [For rules adopted without a public hearing, if all notice and procedural requirements were not complied with, state what happened, what corrective action was taken (if any), and why the Office of Administrative Hearings should find it to be harmless under Minnesota Statutes, section 14.26, subdivision 3, paragraph (d).]

3. [For rules adopted without a public hearing, state the following: The [Department/Agency/Board] received [no] written comments and submissions on the rules. [Number] persons requested a public hearing [, [number] of whom subsequently withdrew their requests]. [Note: if you had 25 or more hearing requests and you obtained enough withdrawals to bring the total under 25, you might want to state whether the withdrawals received any comments and, if so, whether this fits the criteria of Minnesota Statutes, section 14.25, subdivision 2.] Therefore, there are not 25 or more [outstanding] requests for a public hearing. The [Department/Agency/Board] received [number] requests for notice of submission to the Office of Administrative Hearings.] **OR** [For rules adopted after a public hearing, state the following: The [Department/Agency/Board] adopts the Administrative Law

Judge's Report dated [date] and incorporates the Report into this Order [,except as described below].]

4. **[If any changes were made between the proposed rules and the adopted rules, explain each change, why the change is reasonable, and why the change does not make the rules substantially different.]** [Note: See **SMPLFNDS** for sample findings justifying changes to proposed rules. **SMPLFNDS** also sets out Minnesota Statutes, section 14.05, subdivision 2, which gives the criteria for determining whether a change makes rules substantially different.] [This requirement does not apply to rules adopted after a public hearing if the judge's report approved the specific change.] **[Or, if the procedures in part 1400.2110 were followed, a statement that the [Department/Agency/Board] followed the procedures in part 1400.2110 before adopting the changes.]**

5. [The rules are needed and reasonable.] [or] [The rules are obsolete, unnecessary, or duplicative.]

6. [For multimember agencies, add the following: A copy of the Board's authorization to adopt the rules is attached. **OR** The Board adopted the rules at its meeting on [date], a quorum was present, and the undersigned was authorized to sign this order.] [Note: Refer to **BD-ADPT** in the appendix for a recommended form for a Board Resolution Adopting Rules.]

ORDER

The above-named rules, in the form published in the State Register on [month] [date], [year], [Note: this is the date the Notice of Intent to Adopt was published] [with the modifications as indicated in the Revisor's draft, file number #####, dated ##/##/##,] are adopted under my authority in Statutes, section [specific citation].

[Date]

[Name]
[Commissioner/Director]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

[Proposed] Order Adopting Rules

Minnesota [Agency Name]

Division of [Name, or Unit, Bureau, etc.] [Optional]

Adoption of Rules Relating to [Topic], Minnesota Rules, [citation]; Revisor's ID Number [number], OAH Docket Number [number]

BACKGROUND INFORMATION

1. The [Agency Name] has complied with all notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law.
2. The Office of Administrative Hearings received [#] written comment on the rules.
3. By Laws of Minnesota [year], chapter [#], article [#], sections [#] and [#], the Minnesota Legislature requires the commissioner of [Department] to make the following rule changes:
 - A. Amend Minnesota Rules, part [citation], subpart [#], as follows:
 - (1) delete ["whatever"] and insert ["replacement text"]; and
 - (2) insert [a new item that reads]:
["text"]; [etc. through all changes]
 - B. Amend Minnesota Rules, [citation], subpart [#], to [do what] by [deleting, inserting] [whatever] and [whatever].
4. The use of the [good cause] exempt rulemaking process for these rules is authorized by Laws of Minnesota [year], chapter [#], article [#], sections [#] and [#]. According to Minnesota Statutes, section [14.386] [14.388, subdivision 1, clause (3) [good cause]], these changes incorporate specific changes stated in applicable statutes that require no interpretation of law.
5. The rules are needed and reasonable.

ORDER

The rules of the [Agency Name] governing [topic] in the form set out in the Revisor's draft, file number [#] dated [date], are adopted under my authority in Laws of Minnesota Laws of Minnesota [year], chapter [#], article [#], sections [#] and [#].

[Date]

[Name]

[Commissioner/Director]

Official Rulemaking Record

[Agency Name]

[Year] [Topic] Rules, Chapter #####

Notice of Adoption Published: [Date]

Effective Date: [Date]

Revisor's ID Number [Number]

[Customize your filing system and the following paragraphs to suit the way you think is best for organizing your Official Rulemaking Record.]

[This binder contains the documents for the official rulemaking record. The binder is divided into sections that correspond to the requirements of Minnesota Statutes, §14.365, the Official Rulemaking Record. The last section contains additional documents that are not required but may be useful to keep.]

[Documents in the Official Rulemaking Record have been sorted into the following files: (1) Rules Drafts; (2) Procedural Documents; (3) Written Submissions Received; and (4) Miscellaneous. All rules drafts and written submissions required to be in the official rulemaking record are in their respective files. All other documents required to be in the official rulemaking record are in the Procedural Documents file. Relevant but not required documents are in the Miscellaneous file. Documents are arranged in chronological order within each file.]

Under Minnesota Statutes, section 14.365, the Official Rulemaking Record contains:

1. Copies of all publications in the State Register pertaining to the rules. State Register publications include:
 - a. Request for Comments - dated [date].
 - b. Notice of Intent to Adopt Rules, with rules as proposed - dated [date].
 - c. [Notice of Adoption - dated [date]]. [Notice of Repealed Obsolete Rules - dated [date]].
2. All written petitions, requests, submissions, or comments received by the [Department/Agency/Board] or the Administrative Law Judge after publication of the Notice of Intent to [Adopt] [Repeal Obsolete] Rules in the State Register pertaining to the rules.

The Department and the Administrative Law Judge received a total of [#] letters about these rules. [Number] of these letters requested a hearing.

3. The Statement of Need and Reasonableness.

Dated [date].

[Or:] No SONAR was required as this was [exempt under Minnesota Statutes, section 14.386 or not required under Minnesota Statutes section 14.3895].

4. The official transcript of the hearing if one was held, or the tape recording of the hearing if a transcript was not prepared.

The [official transcript] [tape recording] of the hearing is stored as part of the Official Record.

[Or:] There is no transcript or tape because no hearing was held.

5. The report of the Administrative Law Judge.

The Official Record contains the report of the Administrative Law Judge [and the report of the Chief Administrative Law Judge].

[Or:] There is no report because no hearing was held.

6. The rules in the form last submitted to the Administrative Law Judge under Minnesota Statutes, sections 14.14 to 14.20 [or 14.3895], or first submitted to the Administrative Law Judge under Minnesota Statutes, sections 14.22 to 14.28 [or 14.3895].

The rules as adopted, dated [date], were [last submitted to the Administrative Law Judge under Minnesota Statutes, sections 14.14 to 14.20 or 14.3895] [first submitted to the Administrative Law Judge under Minnesota Statutes, sections 14.22 to 14.28 or 14.3895].

The Rules Draft file also contains [Note: your record may include more or less than these]:

- a. initial draft, dated [date]
- b. the rules as proposed, dated [date]
- c. the rules as amended and first submitted to the Administrative Law Judge, dated [date]
- d. the rules as adopted, dated [date]

- e. the Notice of Adoption, dated [date]
 - f. a stripped version of the rules, dated [date]
 - g. and a complete version of Minnesota Rules, chapter [chapter], which incorporates all revisions from this rulemaking.
7. The Administrative Law Judge's written statement of required modifications and of approval or disapproval by the Chief Administrative Law Judge, if any.

No such written statement is included because the rules went to a hearing.

[Or:] The Administrative Law Judge's written statement of required modifications is dated [date]. The Chief Administrative Law Judge's written [approval/disapproval] of the rules is dated [date].

8. Any documents required by applicable rules of the Office of Administrative Hearings.

Documents required by OAH Rules that are not listed elsewhere in this document include:

[Note: OAH Rules do not explicitly list what should be contained in the rulemaking record. However, OAH Rules do list documents that must be submitted into the record or filed as part of the process. Review the following two lists of documents and, if a document is not included as part of the record by some other provision, include it in the rulemaking record and list the document under this provision.]

[Option 1] Documents required under part 1400.2220 for rules adopted after a hearing:

- A. the Request for Comments published in the State Register;
- B. the Petition for Rulemaking, if the rules were proposed in response to it;
- C. the proposed rules, including the Revisor's approval;
- D. the Statement of Need and Reasonableness;
- E. a copy of the transmittal letter or a certificate showing that the Department sent a copy of the Statement of Need and Reasonableness to the Legislative Reference Library;
- F. the Notice of Hearing as mailed and as published in the State Register;
- G. the Certificate of Mailing the Notice of Hearing and Certificate of Mailing List;

- H. a certificate of additional notice, if given;
- I. any written comments on the proposed rules received by the Department;
- J. if the Chief Administrative Law Judge authorized the Department to omit from the Notice of Intent to Adopt Rules the text of any proposed rules, a copy of the document authorizing the omission; and
- K. any other document or evidence to show compliance with any other law or rule which the agency is required to follow in adopting these rules. [Specifically name all documents submitted under item K. This would include, at a minimum, the Certificate of Sending Notice to Legislators as required by Minnesota Statutes, section 14.116.]

[OR]

[Option 2] Documents required under part 1400.2310 for rules adopted without a hearing as submitted to the Administrative Law Judge for review on [date]: (these documents are itemized in NH-REVV)

- A. the Request for Comments published in the State Register;
- B. the Petition for Rulemaking, if the rules were proposed in response to it;
- C. the proposed rules, including the Revisor's approval;
- D. the Statement of Need and Reasonableness;
- E. the Notice of Intent to Adopt Rules as mailed and as published in the State Register;
- F. if the Chief Administrative Law Judge authorized the Department to omit from the Notice of Intent to Adopt Rules the text of any proposed rules, a copy of the document authorizing the omission;
- G. the Certificate of Mailing the Notice of Intent to Adopt Rules and Certificate of Mailing List;
- H. a certificate of additional notice, if given;
- I. a copy of the transmittal letter or a certificate showing that the Department sent a copy of the Statement of Need and Reasonableness to the Legislative Reference Library;

- J. all written comments and submissions on the proposed rules, requests for hearing and withdrawals of requests for hearing received by the Department, except those that only requested copies of documents;
 - K. if required by Minnesota Statutes, section 14.25, subdivision 2, the Notice of Withdrawal of Hearing Request, evidence that the Notice of Withdrawal was sent to all persons who requested a hearing, and any responsive comments received;
 - L. a copy of the adopted rules, showing any modifications to the proposed rules and the Revisor's approval of them;
 - M. if the Department adopted substantially different rules using the procedure in part 1400.2110, a copy of the notice that was sent to persons or groups who commented during the comment period and evidence that the notice was sent to those persons or groups;
 - N. the Order Adopting the Rules;
 - O. the Notice of Submission of the Rules to the Office of Administrative Hearings, if anyone requested this notice, and a copy of the transmittal letter or certificate showing that the Department sent out this notice; and
 - P. any other document or evidence to show compliance with any other law or rule which the agency is required to follow in adopting these rules. [Specifically name all documents submitted under item P. This would include, at a minimum, the Certificate of Sending Notice to Legislators as required by Minnesota Statutes, section 14.116.]]
9. The Department's Order Adopting Rules.

The Commissioner signed the Order Adopting Rules on [date].

10. The Revisor's certificate approving the form of the rules.

The Revisor's approval of the form of the rules is contained on the [date1], [date2], and [date3] rules drafts.

11. A copy of the adopted rules as filed with the Secretary of State.

The adopted rules, dated [date1], were filed with the Secretary of State on [date2].

[Optional:] In addition to documents required under Minnesota Statutes, section 14.365, the Official Rulemaking Record also contains documents to show compliance with rulemaking requirements and other important documents:

- A. Administrative Law Judge approval of the Dual Notice and Additional Notice Plan, dated [date]
- B. Outreach and mailing lists for Request for Comments
- C. Comments received following publication of the Request for Comments
- D. A copy of the rulemaking outline/checklist for this rulemaking. [Note: It is a good idea to include this outline/checklist with the Official Record as this will document that all procedural requirements have been met.]
- E. Correspondence regarding the Governor's Office review of the rules.
- F. The Department's [Date] letter transmitting the file to the Office of Administrative Hearings for the official review.
- G. A fiscal note.
- H. Anything else you may have that should be included.

[Note: You may use the following to make labels for the rulemaking record files.]

OFFICIAL RULEMAKING RECORD

[YEAR] [TITLE] RULES, CHAPTER #####

This file is to be kept permanently.

Do not discard or destroy this file.

Do not remove materials from file.

This is file folder #[#] out of [total#].

[YEAR] [TITLE] RULES, CHAPTER #####

RULES DRAFTS

[YEAR] [TITLE] RULES, CHAPTER #####

PROCEDURAL DOCUMENTS

[YEAR] [TITLE] RULES, CHAPTER #####

WRITTEN SUBMISSIONS RECEIVED

[YEAR] [TITLE] RULES, CHAPTER #####

MISCELLANEOUS DOCUMENTS

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

Request for Comments

Minnesota [Agency Name]

Division of [Name, or Unit, Bureau, etc.] [Optional]

Possible [Amendment to][Repeal of] Rules Relating to [Topic], Minnesota Rules, [citation];
Revisor's ID Number [number]

Subject of Rules. The Minnesota [Agency Name] requests comments on its possible [rules] [rule amendments] [repeal of rules] that [give a detailed description of the subject matter of the possible rules].

[You can include a summary of the issues to be considered or a list of rule parts to be updated. To build leeway into the scope of your subject matter, you could add a general phrase such as "other things that come up, but only as we have time" or other agency-specific criteria that makes it clear that this is the agency's prerogative.]

Persons Affected. The [amendment to] [repeal of] the rules would likely affect the following groups and individuals:

- [insert list (can list categories of individuals instead of names)]

Statutory Authority. *Minnesota Statutes*, section [#], [authorizes/requires] the [Department/Agency/Board] to adopt rules [briefly describe or quote your statutory authority].

Agency Contact Person. Written [or oral] comments, questions, [requests to receive a draft of the rules] [when it has been prepared], and requests for more information on these possible rules should be directed to [name] at [agency, address, phone, fax, and *email*] or [submit written comments via the Office of Administrative Hearings Rulemaking eComments website at <https://minnesotaoah.granicusideas.com/discussions>.]

Public Comment. Interested persons or groups may submit comments or information on these possible rules in writing [or orally] [until 4:30 p.m. on [date]] **OR** [until further notice is published in the *State Register* that the [Department/Agency/Board] intends to adopt or to withdraw the rules.

The [Department/Agency/Board] will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments.

The [Department/Agency/Board] [does / does not] plan to appoint an advisory committee to comment on the possible rules. [It is optional for an agency to use an advisory committee and it is optional for an agency to state its plans regarding an advisory committee. Nevertheless, it is highly recommended that the agency be very open about its plans regarding an advisory committee, so you may also want to give details about the formation, work, and timeline of any planned advisory committee.]

[Consider that if your rule might require local government to adopt or amend an ordinance or other regulation under Minnesota Statutes, section 14.128, including a request that local governments provide you with information about their ordinances. For example, you might say:

The [Department/Agency/Board] is also interested in whether local governments might be required to adopt or amend an ordinance or other regulation to implement these rules and therefore requests that local governments provide us with relevant information about their ordinances.

[You might seek information about whether the cost of complying with the rule in the first year after the rule takes effect will cost will exceed \$25,000 for one small city or business under Minnesota Statutes, section 14.127. **OR** you also might request comments about the “cumulative effect of the rule with other federal and state regulations,” as required by Minnesota Statutes, section 14.131(8).]

This public comment opportunity is associated with the development of possible rules. Comments received in response to this notice will not be included in the formal rulemaking record submitted to the Administrative Law Judge if and when a proceeding to adopt rules is started. The [Department/Agency/Board] is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submit comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you must resubmit the comments after the rules are formally proposed.

Rules Drafts. The [Department/Agency/Board] [insert either: [has / has not yet] drafted the possible rules [amendments] [repeal] **OR** does not anticipate that a draft of the rules [amendments] [repeal] will be available before the publication of the proposed rules].

Alternative Format. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an

accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

*[For information on what to do if you get a request to make the Request for Comments available in an alternative format, see **ACCMMDTN** in the appendix.]*

[Date]

[Name]

[Commissioner/Director]

[Dates, names, and other information should be changed to reflect your agency's submission. Replace "Agency" with "Department/Board/Bureau/Commission" as applicable.]

[Agency Logo]

VIA EFILING

[Date]

The Honorable Judge [Name]
Administrative Law Judge
Office of Administrative Hearings

In the Matter of the Proposed Repeal of Obsolete Rules Relating to [Topic]; Request for Review and Approval of Repeal; Revisor's ID Number [number]; OAH Docket No. [Number]

Dear Judge [Name]:

The Minnesota [agency name] proposes to repeal obsolete rules relating to [topic]. This letter requests that the Office of Administrative Hearings review and approve the repeal of these rules under Minnesota Statutes, section 14.3895.

Enclosed are the documents required under Minnesota Rules, part 1400.2410, subpart 2, items A to K. Paragraphs A to K of this letter are keyed to items A to K of part 1400.2410. Unless otherwise stated, the document is enclosed.

- A. Enclosed: the proposed repealer, including the Revisor's approval.
- B. Enclosed: the Notice of Intent to Repeal Obsolete Rules as mailed and published in the *State Register* on [date].
- C. Enclosed: the Certificate of Mailing the Notice of Intent to Repeal Obsolete Rules and the Certificate of Accuracy of the Mailing List.
- D. Enclosed: the Certificate of Additional Notice [or a copy of the transmittal letter].

[Or possibly] Not enclosed: the Certificate of Additional Notice because no additional notice was given.

- E. Enclosed: all written comments and submissions on the proposed repeal of obsolete rules. [State how many comments or submissions you received. However, if you received no requests, submissions, or comments state so] Not enclosed: written

comments and submissions on the proposed repeal of obsolete rules because we received no written comments or submissions.

- F. Not enclosed: the Notice of Withdrawal of Hearing Requests and related documents because no hearing requests were received [or withdrawn].

[Or] Enclosed: the Notice of Withdrawal of Hearing Requests, evidence we sent notice of withdrawal to all persons who requested a hearing, and any responsive comments received.

- G. Enclosed: a copy of the adopted rules dated [date], with modifications [or without modifications].

- H. Not enclosed: a Notice of Adopting Substantially Different Rules because the [Department/Agency/Board] did not adopt substantially different rules.

[Or] Enclosed: a copy of the Notice of Adopting Substantially Different Rules that we sent to persons who commented during the comment period and evidence that we sent the notice to these persons.

- I. Enclosed: the unsigned Order Adopting Rules that complies with Minnesota Rules, part 1400.2090.

- J. Not enclosed: a Notice of Submission of Rules to the Office of Administrative Hearings and related documents because no one requested to be notified of the submission.

[Or rarely] Enclosed: the Notice of Submission of Rules to the Office of Administrative Hearings and a copy of the transmittal letter or Certificate of Mailing the Notice of Submission of Rules to the Office of Administrative Hearings.

- K. Enclosed: any other document or evidence to show compliance with any other law or rule that the [Department/Agency/Board] must follow in adopting the rules [if submitted, replace this item with K1, K2, etc. and list document].

[Or] Not enclosed: any other document or evidence because the [Department/Agency/Board] isn't required to submit any other document or evidence.

If you have any questions or concerns, please contact me at [email/phone number].

Sincerely,

[Name]

[Title]

Sample Findings to Explain Changes Between Proposed and Adopted Rules

In general. This form contains several sample findings to justify changing proposed rules. These sample findings are to serve as examples only. They are not meant to imply that there is a formula for writing findings. There is no doubt an infinite number of ways to write adequate findings. Your findings must explain why you are making a change to the proposed rules, show that the change is reasonable, and show that the change does not make the adopted rules substantially different than the proposed rules. For issues that are particularly controversial or that involve a great deal of discussion and compromise, a finding may be several paragraphs or even several pages long.

Notes on Substantial Difference. The limitations on changing proposed rules are contained in Minnesota Statutes, section 14.05, subdivision 2, which prohibits an agency from modifying proposed rules so that they are substantially different from the proposed rules. Section 14.05, subdivision 2, states:

“14.05 GENERAL AUTHORITY.

Subd. 2. Authority to modify proposed rule. (a) An agency may modify a proposed rule in accordance with the procedures of the administrative procedure act. However, an agency may not modify a proposed rule so that it is substantially different from the proposed rule in the notice of intent to adopt rules or notice of hearing.

(b) A modification does not make a proposed rule substantially different if:

(1) the differences are within the scope of the matter announced in the notice of intent to adopt or notice of hearing and are in character with the issues raised in that notice;

(2) the differences are a logical outgrowth of the contents of the notice of intent to adopt or notice of hearing and the comments submitted in response to the notice; and

(3) the notice of intent to adopt or notice of hearing provided fair warning that the outcome of that rulemaking proceeding could be the rule in question.

(c) In determining whether the notice of intent to adopt or notice of hearing provided fair warning that the outcome of that rulemaking proceeding could be the rule in question the following factors must be considered:

(1) the extent to which persons who will be affected by the rule should have understood that the rulemaking proceeding on which it is based could affect their interests;

(2) the extent to which the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of intent to adopt or notice of hearing; and

(3) the extent to which the effects of the rule differ from the effects of the proposed rule contained in the notice of intent to adopt or notice of hearing.”

Sample findings. The sample findings listed here run the gamut from very straightforward to relatively controversial. The sample findings have been taken from actual rulemakings but have been edited for use as samples. The sample findings include:

- The first two sample findings (A1 and A2) are very straightforward. They are from Department of Public Safety rules relating to disposition of a driver’s license following non-alcohol-related offenses, adopted in 1991.
- The next sample finding (B1) is somewhat more involved and is from Department of Health rules governing the collection of aggregate data from hospitals, adopted in 1994.
- The next sample finding (C1) is more controversial and addresses contested issues. This sample finding is from Department of Health rules governing health maintenance organizations, adopted in 1998.

Sample Finding A1.

Part 7409.3600 of the proposed rules is amended to add a reference to Minnesota Statutes, section 65B.67.

This amendment to the proposed rules conforms with a statutory change which occurred during this rulemaking. Minnesota Laws 1991, chapter 333, section 31, amends Minnesota Statutes, section 171.30, as follows:

“In any case where a person’s license has been suspended under section 171.18 or revoked under section 65B.67, 169.121, 169.123, 169,792 or 171.17, the commissioner may issue a limited license to the driver including under the following conditions:”

This change does not make the rule substantially different because it is clearly within the scope of “disposition of a driver’s license following non-alcohol-related offenses” as announced in

the notice of intent to adopt rules. Further, conforming rules to statutory changes made during the rulemaking process is a logical outgrowth of a notice of intent to adopt rules. Finally, this rule change does not diminish the fair warning to persons who will be affected by the rule, it just applies the rule to persons consistent with a statutory change.

Sample Finding A2.

Part 7409.4000, item C, of the proposed rules has been amended to read:

“C. if the driver is not the owner of the vehicle involved in the incident and the driver does not own a vehicle, proof of insurance for a non-owner operator policy or proof of insurance verifying that the person is a named insured.”

The language inserted above makes paragraph C consistent with the language in the proposed rules, part 7409.3800, item C, which also deals with reinstatement of a driver’s license after an insurance related incident. The additional language does not change the meaning of item C, but provides for consistent language within the rules. Since the additional language does not change the rule’s meaning, it clearly does not make the rule substantially different.

Sample Finding B1.

(Note: the names of the three persons who commented on this rulemaking have been replaced with AB, CD, and EF.)

AB, an administrator of a small, rural hospital, commented on part 4650.0112, subpart 3, item C, and the requirement for detailed reporting of support services expenses. AB requested that hospitals with fewer than 50 licensed beds be exempted from detailed reporting of these expenses because these hospitals “use a standard chart of accounts and no one else requests the expense data in this format.” AB asserted that individual staff members at small hospitals each perform a variety of functions and that “it will be almost impossible to accurately separate out detailed expenses by these functions.” AB pointed to the fact that these small hospitals make up about 60% of the hospitals in the state, but their combined total budgets represent only about 6% of the total of all hospital budgets in the state. AB asserted that any potential benefits from this data would be negligible. AB requested a hearing on the proposed rules because of this issue.

CD, a manager at the Minnesota Hospital Association, and 17 of CD’s co-workers requested a public hearing on the issue identified by AB. EF, a vice president at Metropolitan Healthcare Council, and six of EF’s co-workers also requested a public hearing on this issue. The Minnesota Hospital Association is an organization that works with all of the hospitals in the state who are

governed by these rules. Metropolitan Healthcare Council is an organization of metropolitan area hospitals.

The Department entered into discussions with CD and EF, the results of which are contained in the Department's September 27, 1994, and September 29, 1994, letters to CD and EF and their letters to the Department dated September 27, 1994, September 28, 1994, and September 29, 1994. AB was informed of these discussions by telephone and facsimile machine.

The Department proposes to amend part 4650.0112, subpart 3, items B and C, as follows:

"B. a statement of management information systems expenses and plant, equipment, and occupancy expenses. A hospital licensed for 50 or more beds shall make percentage allocations of management information systems expenses and plant, equipment, and occupancy expenses must be made to each of the support services functions listed in item C. A hospital licensed for fewer than 50 beds shall estimate percentage allocations of management information systems expenses and plant, equipment, and occupancy expenses to total support services;

C. a statement of total support services expenses for the facility, and. A hospital licensed for 50 or more beds shall make a statement of expenses for each of the following support services functions: admitting; patient billing and collection; accounting and financial reporting; quality assurance; community and wellness education; promotion and marketing; research; education; taxes, fees, and assessments; malpractice; and other support services. The statements required by this item may be estimated from existing accounting methods with allocation to specific categories based on a written methodology that is available for review by the commissioner and that is consistent with the methodology described in this part;"

The Department believes support services expenses in hospitals with 50 or more beds are reasonably representative of these expenses in hospitals with fewer than 50 beds. This exemption for small hospitals will not significantly affect the data received by the Department. At the same time, this exemption will reduce the burden of the rules on small hospitals.

This change does not make the rules substantially different. Clearly, this change is within the scope of the matter announced in the notice of intent to adopt rules; namely, the collection of aggregate data from hospitals. Further, it is a logical outgrowth of the notice and the comments submitted in response by AB, CD, and EF, as summarized above. Finally, the notice provided fair warning that this rule change could result because: the commenters clearly understood (and in fact urged) that this rule would result; the rule is not greatly different than originally proposed;

and the rule reduces the burden on small hospitals while not significantly affecting the data received by the Department.

Sample Finding C1.

(Note: at the hearing on these rules, the Department had proposed several preliminary modifications to the proposed rules. Several of the preliminary modifications were challenged as making the rules substantially different than the proposed rules. This sample finding does not set out the proposed preliminary modification again, but instead dives right into the substantial difference argument. Also note: the name of the person who commented on this rulemaking has been replaced with GH.)

Allegation of substantial change

At the public hearing on August 3, 1998, the Department introduced, as Exhibit M of Hearing Exhibit 1, several preliminary modifications to the proposed rules which the Department is considering based upon the comments received. Three of the preliminary modifications, relating to durable medical equipment, home health services, and coordination with participating providers, were questioned by the Minnesota Council for Health Plans (hereinafter "Council"). Specifically, GH, on behalf of the Council, commented at the hearing that the preliminary modifications proposed by the Department would result in substantially different rules than the proposed rules in the notice of intent to adopt rules. The Department believes that the preliminary modifications will not result in substantially different rules than the proposed rules, but has revised certain of the preliminary modifications, attached hereto as Exhibit K1, as additional preliminary modifications of the proposed rules pursuant to Minnesota Statutes, section 14.24.

Minnesota Statutes, section 14.24, provides that "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 substantially different rule as determined under section 14.05, subdivision 2, from the rules originally proposed." The attached modifications were based on numerous comments received by the Department suggesting that the proposed rule, listing durable medical equipment as a permissible exclusion, was an unreasonable and unnecessary rule. Review of the current practice of HMOs indicates that most, if not all, HMOs include durable medical equipment as a benefit, albeit with certain limitations. Further, numerous comments received from individuals and entities argue that durable medical equipment is a medically necessary service. Based upon these comments and the Department's understanding that HMOs currently provide some level of these services as a benefit, the Department tentatively decided to move durable medical equipment to Minnesota Rules, part 4685.0700, subpart 3, item B, as a permissible limitation.

Minnesota Statutes, section 14.05, subdivision 2, sets forth the standard for determining whether a modification of proposed rules makes the rules substantially different. That law provides three criteria for determining whether a modification makes rules substantially different from the proposed rules. Those criteria are discussed below.

1) The differences are within the scope of the matter announced in the notice of intent to adopt or notice of hearing and are in character with the issues raised in that notice. (Minnesota Statutes, section 14.05, subdivision 2, paragraph (b), clause (1)).

The Department published several different notices relating to these rules. The first notice, a Request for Comments for Planned Amendment to Rules Governing Health Maintenance Organizations, Minnesota Rules, Chapter 4685, (Exhibit A of Hearing Exhibit 1) was published in the State Register on August 5, 1996, and stated that as well as amending or appealing outdated rule provisions:

“(T)he Department is considering amendments to rule provisions that may be unclear, outdated, or no longer necessary. For example, the rule provisions that govern permissible limitations and exclusions on the provision of comprehensive health maintenance services, Minnesota Rules, part 4685.0700, are being considered for amendment. The comprehensive health maintenance services affected may include **durable medical equipment**, medical supplies, cosmetic surgery, dental services, vision care services, eye glasses, ambulance transportation, experimental and investigative services, custodial care, domiciliary care, **home health care**, maternity services, outpatient treatment of mental illness and chemical dependency, prescription drug services, in-patient hospital services, and underwriting restrictions. The Department is considering defining several terms as amendments to the rule provisions that govern quality assurance, Minnesota Rules, parts 4685.1100 to 4685.1130. These rule amendments may address definition of terms, HMO quality assurance programs, activities, quality evaluation steps, focus study steps, filed written plans, and work plans.” (Emphasis added.)

Subsequently, on June 22, 1998, the Department published in the State Register a Dual Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing If 25 or More Requests For A Hearing Are Received (hereinafter “Dual Notice”). That notice, submitted as Exhibit F of Hearing Exhibit 1, advised interested parties that the proposed rules were about health maintenance organizations and community integrated service networks. Finally, on July 23, 1998, the Department of Health issued a notice of hearing to those who requested a hearing about proposed amendments to rules governing health maintenance organizations, Minnesota Rules, chapter 4685. The preliminary

modifications announced by the Department prior to and at the August 3, 1998, hearing all relate to state regulation of HMOs and CISNs. (Exhibit K of Hearing Exhibit 1) Accordingly, the modification is within the scope of the matter announced by the various rulemaking notices.

2) The differences are a logical outgrowth of the contents of the notice of intent to adopt or notice of hearing and the comments submitted in response to the notice. (Minnesota Statutes, section 14.05, subdivision 2, paragraph (b), clause (2)).

The rules as published in the Dual Notice specifically listed durable medical equipment and home health services as possible exclusions to the list of comprehensive services required to be provided by HMOs. The Department received many comments strongly suggesting that placement of durable medical equipment as a “permissible exclusion” was unreasonable because enrollees in HMOs need durable medical equipment as a matter of medical necessity. It was also pointed out that most HMOs provide some level of durable medical equipment, and that the proposed rule, rather than being a technical change as intended by the Department was a significant change, which reduced the benefits available to enrollees. Further, the Department became aware that most, if not all, HMOs include durable medical equipment in the benefits they provide, and consequently, the technical change proposed by the Department in the Dual Notice was a significant change with an unintended effect which would be unreasonable. As a result of this determination, and in response to the comments received, the Department submitted a preliminary modification at the hearing indicating that it would consider moving durable medical equipment to the permissible limitation category.

Upon further review it became apparent that home health services were handled much the same as durable medical equipment by HMOs and their enrollees, and thus the same modification was suggested for that health benefit. These modifications are logical outgrowths of the Dual Notice and are based upon the comments received in response to that notice. As stated in the Statement of Need and Reasonableness, the Department does not wish to change the benefit set currently offered and these modifications maintain the status quo.

The modification requiring HMOs to coordinate with participating providers in developing and implementing written guidelines regarding network capacity is not a substantial change because the development of such written guidelines is within the regulation of HMOs and CISNs. It is a logical outgrowth of the proposed rule that required the development of such guidelines and clearly the Council understood that the rule may affect the interests of its members. Indeed, for an HMO to develop and implement standards without coordinating with participating providers may well lead to the development of network standards which cannot be met by individual providers. The proposed modification specifies one element of the

development process, but allows substantial latitude on how HMOs “coordinate” with participating providers and thus is a reasonable, as well as a necessary modification.

3) The notice of intent to adopt or notice of hearing provided fair warning that the outcome of the rule making proceeding could be the rule in question. (Minnesota Statutes, section 14.05, subdivision 2, paragraph (b), clause (3)).

GH suggests the proposed modifications run afoul of the “fair warning” portion of the substantive change law. For purposes of determining whether or not fair warning was provided Minnesota Statutes, section 14.05, subdivision 2, paragraph (c), provides that the following factors must be considered:

- (1) The extent to which persons who will be affected by the rule should have understood that the rulemaking proceedings on which it could be based could affect their interests;
- (2) The extent to which the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of intent to adopt or notice of hearing;
- (3) The extent to which the effects of the rule differ from the effects of the proposed rule contained in the notice of intent to adopt or notice of hearing.

It is clear that persons affected by the rule not only should have understood that the rulemaking proceeding could affect their interest but did understand that effect and commented on the rule and its impact on them. Durable medical equipment and home health services were listed in the original Request for Comments; further, durable medical equipment, home health services, and coordination with participating providers are within the subject matter contained in the Dual Notice. In addition, the Department met with interested parties prior to the rule hearing, including representatives of the Council, and advised them that it was considering the preliminary modifications in question.

At the rules hearing, GH, on behalf of the Council, appeared to agree that the difference in the proposed modifications were within the scope of the matter announced, that the differences are a logical outgrowth of the Dual Notice, and only challenged whether the industry had received fair warning that the outcome of the rulemaking proceeding could be the rule in question. GH suggested that the effects of the preliminary rule modifications differ from the effects of the proposed rule contained in the Dual Notice because the Dual Notice allowed HMOs to totally exclude durable medical equipment. GH, in response to questions asked at the hearing, indicated, however, that most of the industry currently provides durable medical

equipment, and GH's concern, as explained at the hearing, is that by moving these terms from permissible exclusions to permissible limitations the plans may not be able to exclude total classes of durable medical equipment. When asked for an example of the class of durable medical equipment which a health plan might want to exclude, GH gave the example of general use items such as air conditioners and computers. The Department believes that general use items, such as air conditioners or computers, are not medical devices, so are excludable according to existing or modified law. It was not the intent of the Department, by placing durable medical equipment in the "permissible limitation" category, to expand benefits beyond those which are medical in nature. The effect of the proposed modification by the Department is that HMOs may continue to limit the type of durable medical equipment that they provide to their enrollees, but they may not totally exclude durable medical equipment.

GH further suggested that "without the benefit of the SONAR, we do not know how the Department intends to interpret 'permissible limitation.'" (Hearing Exhibit 7, p. 9). In fact, interpretation of "permissible limitation" is addressed at length in the SONAR on pp. 23-24, and durable medical equipment is discussed on pp. 24-25 of the SONAR.

In Exhibit I-25 of Hearing Exhibit 1, the Council suggests that "the proposed language be amended back to track language in the existing rule and reflect current practice." The Department believes that in making the modification suggested, moving durable medical equipment and home health services to the permissible limitation section, it has done what is suggested by the Council. The proposed modification reflects existing practice and tracks the existing format of the rule.

Although home health services were also included in GH's comments as a potentially substantially different rule, no testimony was submitted to indicate that the effect of the rule modification differs from the effect of the proposed rule contained in the Dual Notice.

In comments at the hearing, admitted as Hearing Exhibit 7, GH suggests that requiring HMOs to develop guidelines in coordination with participating providers makes the rules substantially different "because it reduces an HMO's ultimate responsibility for this managed care policy. We prefer the language to read: 'The health maintenance organization shall seek input from participating providers' . . . " It is unclear whether the Council believes "seeking input" from providers is not a substantial change while "coordination" is a substantial change, because the terms are similar. Indeed, "coordination" with participating providers would appear to offer more flexibility than "seeking input."

As mentioned previously, the proposed modification can be implemented in a variety of ways, and the Department does not believe that requiring an HMO to coordinate with participating providers in developing access guidelines reduces the HMO's responsibility for development of

those guidelines. It would be unreasonable, however, to allow an HMO to develop such guidelines in a vacuum, because the HMO must implement such standards through its participating providers.

It is clear that interested parties, including the health plans, were given fair warning that this rulemaking proceeding could result in the modification in question, since the Department provided all interested parties with the preliminary modifications that it was considering prior to the rule hearing, and those preliminary modifications were the subject of substantial written comment as well as testimony at the hearing itself.

GH suggested that the Department should withdraw the proposed rules because the proposed modifications make the rule substantially different than the proposed rules. It appears GH was suggesting that only the proposed rules on durable medical equipment (part 4685.0700, subpart 3, item B), home health services (part 4685.0700, subpart 3, item C), and coordination with providers (part 4685.1010, subpart 2) be withdrawn. As is clear from the above discussion, the Department believes that the proposed rules are needed and reasonable and the modifications to these proposed rules do not result in substantially different rules than proposed. Accordingly, the Department does not withdraw the rules.

[Agency Logo Here]

STATEMENT OF NEED AND REASONABLENESS

Proposed [Amendment to] [Repeal of] Rules Relating to
[Topic], Minnesota Rules, [citation]; Revisor's ID Number
[number]

[Agency Name]

[Division of [Name, Unit, Bureau, etc.] [Optional]

[Month], [Year]

[Important Note about Writing a SONAR: In writing a SONAR, the bottom line is that you must meet all statutory requirements. Other important goals include making the SONAR easy to read and persuasive to your audience, especially the ALJ. This means you have considerable writer’s license in how you structure and write the SONAR. This form should serve as a checklist, not as a rigid formula. So, feel free to move sections around, combine or split sections, and write your arguments in a way that best suits your rules.

At the bottom of each page, print a footer with the date of the draft. This is a good idea because somewhere between the third and thirteenth draft, you will lose track of what you did when. The footer should be in the general form: “[Topic] SONAR Draft Dated [MM/DD/YR] - Page #.” When your SONAR is finished, you should still have a footer with the topic and page #, but you can delete the word “Draft” and the date.]

General information:

1. Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency’s Public Notices website: [\[Insert agency link, if applicable\]](#)
2. View older rule records at: [Minnesota Rule Statutes](https://www.revisor.mn.gov/rules/status/)
<https://www.revisor.mn.gov/rules/status/>
3. Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact [agency rules contact, [Rulemaking Coordinator or other title], [agency], [address], St. Paul, MN 551XX-XXXX; telephone 651-XXX-XXXX; 1-800-XXX-XXXX; email firstname.lastname@state.mn.us; or use your preferred telecommunications relay service. [For information on what to do if you get a request to make the SONAR available in an alternative format, see **ACCMMDTN** in the appendix.]
4. How to read a Minnesota Statutes citation: Minn. Stat. § 999.09, subd. 9(f)(1)(ii)(A) is read as Minnesota Statutes, section 999.079, subdivision 9, paragraph (f), clause (1), item (ii), subitem (A).
5. How to read a Minnesota Rules citation: Minn. R. 9999.0909, subp. 9(B)(3)(b)(i) is read as Minnesota Rules, chapter 9999, part 0909, subpart 9, item B, subitem (3), unit (b), subunit (i).

[Note to drafter: This template anticipates you will use the Revisor's Office style, which spells out the citations in full. If you choose to use the abbreviated citation form, include paragraphs 4 and 5 above to describe the abbreviations for your audience. Otherwise, omit them if you use the Revisor's Office

style. Your SONAR will appear better to your reader if choose your citation style and use it consistently throughout the document. Do not forget to remove this instruction.]

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Acronyms

APA	Administrative Procedures Act
ALJ	Administrative Law Judge
CFR	Code of Federal Regulations
MAT	MN Association of Townships
Minn. R. pt	Minnesota Rules part
Minn. Stat.	Minnesota Statutes
MMB	Minnesota Management and Budget
MN	Minnesota
MORS	MN Office of the Revisor of Statutes
OAH	Office of Administrative Hearings
SONAR	Statement of Need and Reasonableness
[More as needed]	[Additional definitions]

[Dates, names, and other information should be changed to reflect your agency’s submission. Replace “Agency” with “Department/Board/Bureau/Commission” as applicable.]

Introduction and Overview

Introduction

[Briefly describe the subject matter of the proposed rules and relevant history, such as the process that your agency used to draft the rules (Request for Comments, use of advisory committees, public meetings, etc.).]

[The introduction should be written for a reader who knows very little about the agency and nothing about this set of rules. This does not need to be an in-depth history of the agency and need for the rules, but it should be enough to orient the ALJ to the agency and the rules. If information generally relates to all parts of the rules, mention it in the Introduction. If you have important, but lengthy, background information about the need for or reasonableness of the rules, you might want to create a separate section of the SONAR to present it. Also, if your rules are especially comprehensive and technical, introducing them with an executive summary might be wise, but make sure the summary helps the reader and does not merely bog the SONAR down by adding redundant text. If information is specific to one portion of the rules, mention it in the Rule-by-Rule Analysis.]

Statement of General Need

[Briefly provide a general statement about the need for the rules.]

The proposed [rules/amendments to rules] are intended to [insert description]. They are necessary to [insert reason rules are needed].

Scope of Proposed Amendments

The following chapters of Minnesota rules are affected by the proposed changes:

- [Rule part] [Title]

[Add more information as needed.]

Statutory Authority

[Reminder: review the discussion in the Manual in section **3.1.3** about the 18-month time limit on the use of new statutory authority, per Minnesota Statutes, section 14.125. Note that section 14.125 permits the subsequent amendment or repeal of rules where the statutory authority was first used

within the time limit. Also, per Minnesota Laws 1995, chapter 233, article 2, section 58, this time limit applies only to statutory authority enacted after January 1, 1996. Check to make sure that your authority to adopt the rules has not expired per section 14.125 and then, as part of your discussion of statutory authority, include reasons why section 14.125 does not apply. Also, include a statement similar to either: [All sources of statutory authority were adopted and effective before January 1, 1996, and have not been revised by the Legislature since then, and so Minnesota Statutes, section 14.125, does not apply.] See Minnesota Laws 1995, chapter 233, article 2, section 58. [OR] This rulemaking is [an amendment/a repeal] of rules for which the Legislature has not revised the statutory authority since and so Minnesota Statutes, section 14.125, does not apply.]]

The [Department's/Agency's/Board's] statutory authority to adopt the rules is stated in Minnesota Statutes section [section #], which provides: [Quote the statute].

[If your statutory authority is complex or has a lengthy history, you need to spell that out explicitly. This will save you money if you shorten the time that OAH needs for reviewing your authority.]

Under [this statute/these statutes], the [Department/Agency/Board] has the necessary statutory authority to adopt the proposed rules.

Background

[Background text here]

[This is for quoted statutory text.]

[More information as needed.]

Public Participation and Stakeholder Involvement

[Describe any early engagement and/or use of advisory committee.]

Example (these are not all required):

Consistent with the Administrative Procedures Act (APA), the [Department/Agency/Board] published a Request for Comments in the Minnesota State Register on [date]. To increase accessibility and opportunity for feedback, the [Department/Agency/Board] created a web page which displayed relevant information on this rulemaking process and provided the opportunity to make comments. The webpage was available from the time the Request for Comments was published until the [Department/Agency/Board] published the [Notice/Dual Notice of Intent to Adopt Rules].

The [Department/Agency/Board] formed an advisory committee comprised of members representing different areas of expertise. [Describe membership and overview of what advisory committee accomplished.]

[If applicable] In compliance with the requirements of Minnesota Statutes, section 10.65, the Department consulted with the governing body of each individual Tribal government. [Describe what you did.]

Additionally, the [Department/Agency/Board] solicited initial feedback on the proposed rules from a variety of organizations that are most likely to be affected by the rule revisions:

- [list organizations]

Finally, in accordance with the requirements of Minnesota Statutes, Chapter 14, and Minnesota Rules, Chapter 1400, the Department sought input and comments from the public, stakeholders, and individuals affected by these rules. These activities are described in detail on pages [insert] of this SONAR.

Reasonableness of the Amendments

General Reasonableness

[Statement of general reasonableness]

Rule-by-Rule Analysis

[This is the hardest and yet most important part of the SONAR to complete. Refer to the discussion in Chapter 4, Developing the Statement of Need and Reasonableness, for suggestions on drafting the SONAR.]

[In this section, give a justification for each provision of the rules. Make a numerical and headnote reference to each part, subpart, item, and subitem. Give a narrative explanation why each reference is needed and reasonable. There should be sufficient specificity so that interested persons will be able to fully prepare any testimony or evidence in favor of or in opposition to the proposed rules.]

[How to approach the Rule-by-Rule Analysis portion of the SONAR.

- Need: why in the world are we writing a rule on this topic in the first place; what problem is there that needs to be addressed; what thing do we need to do; why is it important to do something?
- Summary: what does this rule requirement do?

- Reasonableness: why is this rule requirement a reasonable solution to the need or the problem identified under “Need”?]

[Do this for each requirement in the rules. For obvious requirements that no one will question, you can summarize the Need\Summary\Reasonableness in about one sentence. For controversial requirements, you may need a paragraph, a page, or several pages of justification for the Need\Summary\Reasonableness. The amount of justification depends directly on your judgment of the anticipated controversy and the sophistication or complexity of the factors involved in your analysis.]

[Frequently Asked Question: When drafting a SONAR, do you suggest going subpart by subpart and justifying everything line-by-line? For example, if you had a section titled xxx, with subparts 1, 2, and 3, and items and subitems under each subpart, would you do an item-by-item justification, or justify by subject matter, or what?]

[Answer: There is a lot of writer’s license in how you write the SONAR. You need at least minimal justification for each requirement, but exactly how you do it is up to you. In case a requirement gets challenged, you want at least enough to hang your hat on. This will give you something to expand on in your response to comments.]

[Additional Answer: A first approach is to look at justifying each requirement in the rules separately. This would mean justifying each subpart and each item separately, and sometimes even justifying each requirement within a subpart or item separately. However, there are exceptions to this approach. There are times that the justifications for related provisions are very similar. In this case, you can group the provisions in the SONAR and give the main part of the justification once and maybe sometimes just add a sentence for each separate provision that ties it to the main justification.]

Example:

The [Department’s/Agency’s/Board’s] proposed rules include best practices and recommendations from the Office of the Revisor including:

- changing the term “shall” to “must” throughout the entire chapter;
- breaking rules structured as paragraphs into “outline” structure, with subpart, item, and subitem entries, as the rule text might require; and
- using active in place of passive voice.

All other proposed changes are identified below and followed by a justification.

PART [number] – [TITLE]

[Text of rule with strikeouts/underlines]

Justification for part [number]

[Text here]

PART [number] – [TITLE]

[Text of rule with strikeouts/underlines]

Justification for part [number]

[Text here]

Regulatory Analysis

[This part addresses the requirements of Minnesota Statutes, section 14.131 (a), which require state agencies to address a number of questions in the SONAR. In some cases, the response will depend on a specific amendment being proposed and specific detail will be provided. However, for most of the questions, the [agency’s] response can be general and will apply across all of the components of this rulemaking, regardless of the specific amendment being proposed.]

[You may want to do the Regulatory Analysis as a single section of your SONAR (as is shown here) or you may want to do the required analyses separately for each rule requirement in the Rule-by-Rule Analysis section of the SONAR. Or you may choose some combination of these two approaches.]

[It is important to discuss each of the factors and sub-factors, so the following format is set out very basically to ensure that this is done. You must include the following to the extent you, through reasonable effort, can ascertain this information. If you cannot ascertain the information through reasonable effort, you have to explain the effort you made to obtain the information.]

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. The sections below quote these factors and then give the [Department’s/Agency’s/Board’s] response.

Classes Affected

A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

[Describe:

- the classes of affected persons;
- those that will bear the costs of the proposed rule; and
- those that will benefit from the proposed rule.]

Department/Agency Costs

The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

[Estimate:

- the probable costs to the agency of implementation and enforcement;
- the probable costs to any other agency of implementation and enforcement; and
- any anticipated effect on state revenues.]

Less Costly or Intrusive Methods

A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

[Determine whether the purpose of the proposed rule can be achieved through:

- less costly methods; or
- less intrusive methods.]

Alternative Methods

A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

[Describe:

- any alternative methods for achieving the purpose of the proposed rule that were seriously considered; and
- the reasons why they were rejected in favor of the proposed rule.]

Costs to Comply

The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

[Estimate:

- the probable costs of complying with the proposed rule; and
- the portion of costs to be borne by identifiable categories of affected parties.]

Costs of Non-Adoption

The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

[Estimate:

- the probable costs or consequences of not adopting the proposed rules; and
- the portion of those costs or consequences borne by identifiable categories of affected parties.]

Differences from Federal Regulations

An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

[Describe:

- any differences between the proposed rule and existing federal regulations; and
- the need for and reasonableness of each difference.]

Cumulative Effect

An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

['Cumulative effect' means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time.]

[Describe the collective regulatory results from adding the incremental impact of the proposed rule to other state and federal rules related to the same specific purpose.]

The Editor recommends you elaborate as best you can to show thoughtful analysis.

Here's an example from the Minnesota Pollution Control Agency's SONAR for the Clean Water Partnership (CWP) rules.

“The primary objective of this rulemaking is to streamline the existing administrative process for obtaining grant funding for nonpoint source pollution sources. Initiation of the streamlining is made possible as a result of statutory revisions per *Laws 2011, chapter 107, sections 53 through 64.*”

“The CWP is not, by nature, a regulatory program designed to regulate “numerical effluent limits” of nonpoint source pollution activities. Chapter 7076 “*provides for the administration of the state clean water partnership financial assistance program and the federal nonpoint source management program*”. The proposed rule revisions benefit local units of government by assisting them with a streamlined process to obtain state CWP funding in dealing with local nonpoint source pollution issues. MPCA believes that local units of government will find that this proposed rule is not a burden, as it provides local financial, economic and water quality benefit.

“The state and federal programs generally do not overlap and are considered to complement each other as each focuses on funding nonpoint sources based on differing criteria. For example, the Section 319 Program, a federal program, also provides funding assistance to abate nonpoint source pollution as defined in an approved state nonpoint source management plan. Minnesota’s approved Nonpoint Source Management Program Plan is a comprehensive analysis of the nonpoint sources pollution abatement needs of Minnesota and outlines strategies that Minnesota will take to address these needs. Minnesota’s Section 319 Program is focused more on innovative methods and demonstration projects, as well as the implementation of best management practices outlined in an approved total maximum daily load (TMDL) study and implementation plan, in order to enhance the effectiveness of nonpoint pollution abatement. In contrast, the proposed rule revisions allow funding for other types of projects in areas which currently meet water quality standards. The proposed rule revisions, therefore, complement the Section 319 Program, because they allow funding for broader nonpoint source pollution abatement needs.

“The Legislative Citizens Commission on Minnesota’s Resources (LCCMR), also provides grant funding. The function of the LCCMR is to make funding recommendations

to the legislature for special environment and natural resource projects, primarily from the Environment and Natural Resources Trust Fund (ENRTF). According to Article XI, Section 14 of the State Constitution, *“The assets of the fund shall be appropriated by law for the public purpose of protection, conservation, preservation, and enhancement of the state’s air, water, land, fish, wildlife, and other natural resources.”* The LCCMR funded past projects which would also meet the project criteria in the proposed rule. However, the proposed rule provides a more streamlined process for application and approval of a project than is found with the LCCMR process, a process which often takes two years to complete. Therefore, the proposed CWP rule revisions would streamline the process to obtain state funding and benefit local units of government.

“The Clean Water, Land & Legacy Amendment (Amendment) was approved by voters on November 4, 2008, and provides funding, according to Article XI, Section 15 of the State Constitution, *“to protect, enhance, and restore water quality in lakes, rivers, and streams and to protect groundwater from degradation.”* Funding for these efforts is provided and seven state agencies work jointly on Minnesota’s water resource management activities under the Clean Water Fund (CWF). Much of this funding is provided to the Minnesota Board of Water and Soil Resources (BWSR) to fund best management practices as defined in MPCA approved TMDL and watershed restoration and protection strategy (WRAPS) implementation plans. Concerned that local needs may not always be met by WRAPS, MPCA has provided additional CWF funding to the CWP program to increase the number of implementation projects which will enhance, protect and restore local water bodies. Thus, the proposed streamlining accomplished by the proposed rule revisions work with the Amendment towards making funding more accessible to local units of government as they work towards enhancing, protecting and restoring local water bodies. Drinking water protection activities have also been funded by the agency through the CWF. This revised rule would provide greater flexibility for funding these types of local activities, although it has not been used frequently for such activities in the past. Thus, it is considered complementary to the Amendment.

“As discussed above, the primary purpose of this rulemaking is to streamline the administrative process. The proposed revisions work in unison with existing and federal laws without adding burden to the process of accessing state funding. These proposed revisions will benefit local units of government and citizens of the state by protecting and enhancing Minnesota’s environment.”

Here’s an example from the Minnesota Department of Health’s immunization rules SONAR.

“There are no federal regulations on school and childcare immunizations. It is a state function, and all 50 states have School Immunization Laws. The current School and Child Care Immunization Law is the only regulatory scheme for childhood immunizations in Minnesota. It not only saves lives and prevents lifelong disability, but also reduces health care costs in the long run (see above). The legislature first enacted the Minnesota School Immunization Law in 1967 and has updated it throughout the years to align it with current medical standards based on new scientific research. This change continues that process to ensure children and all Minnesotans are protected from vaccine-preventable diseases.”

Finally, when there are no other regulations to consider, you might say something like this:

“The proposed rules cover areas that are not addressed by federal law or other Minnesota state laws. Therefore, this consideration is not applicable for [those portions of the] [this] rule.”

Notice Plan

Minnesota Statutes, section 14.131, requires that an agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

Details on the previous measures taken to ensure stakeholders received both required and additional notice of this rulemaking during the Request for Comments and rule development period can be found on pages [numbers] of this SONAR.

Required Notice

The [Department/Agency/Board] is required under Minnesota Statutes, chapter 14 to identify and send notice to several groups. The steps the [Department/Agency/Board] will take to meet those statutory requirements are laid out in detail below.

Consistent with Minnesota Statutes, section 14.14, subd. 1a, on the day the [Dual Notice/Notice of Intent to Adopt Rules] is published in the *State Register*, the [Department/Agency/Board] will send via email or U.S. mail a copy of the [Dual Notice/Notice of Intent to Adopt Rules] [and the proposed rule] to the contacts on the [Department’s/Agency’s/Board’s] list of all persons who have registered with the [Department/Agency/Board] for the purpose of receiving notice of rule proceedings. There are roughly [#] people on the [Department’s/Agency’s/Board’s] list of persons who have requested notice via United States Postal Service, and roughly [#] persons who have requested noticed of all rule

proceedings via [email/GovDelivery]. The [Dual Notice/Notice of Intent to Adopt Rules] will be sent at least [33/63] days before the end of the comment period.

Consistent with Minnesota Statutes, section 14.116(b), the [Department/Agency/Board] will send a copy of the [Dual Notice/Notice of Intent to Adopt Rules], a copy of the proposed rules, and a copy of the SONAR to the chairs and ranking minority party members of the [applicable finance and policy committees] and the Legislative Coordinating Commission. These documents will be sent at least [33/63] days before the end of the comment period.

Consistent with Minnesota Statutes, section 14.131, the [Department/Agency/Board] will send a copy of the SONAR to the Legislative Reference Library when the [Dual Notice/Notice of Intent to Adopt Rules] is sent.

[There are several notices required under Minnesota Statutes, chapter 14 in certain situations that do not apply for this rulemaking. These notices are laid out in detail below.]

Minnesota Statutes, section 14.116(c) requires the [Department/Agency/Board] “make reasonable efforts to send a copy of the notice and the statement to all sitting legislators who were chief house of representatives and senate authors of the bill granting the rulemaking authority” if it is within two years of the effective date of the law granting rulemaking authority. [This requirement does not apply because the [Department/Agency/Board] was granted rulemaking authority for [description of rule] and no bill within the past two years granted the [Department/Agency/Board] additional authority for this rulemaking.]

Minnesota Statutes, section 14.111 requires the [Department/Agency/Board] to provide the commissioner of agriculture with a copy of the proposed rule change if the agency plans to adopt or repeal a rule that affects farming operations. [This requirement does not apply because the proposed amendments will not have any effect on farming operations in Minnesota.]

Additional Notice

[Describe your Additional Notice Plan.]

[In addition to the required notice referenced above, the [Department/Agency/Board] will make the [Dual Notice/Notice of Intent to Adopt Rules], SONAR, and proposed rule available on the webpage created for this rulemaking.]

The [Department/Agency/Board] also intends to send an electronic notice with a hyperlink to electronic copies of the [Dual Notice/Notice of Intent to Adopt Rules], SONAR, and proposed rule to:

- [List those to whom you will email the notice

[If applicable:] On [date], the [Department/Agency/Board] received confirmation from OAH that these steps meet the notice requirements for persons or classes of persons who may be affected by the proposed amendments to these rules under Minn. Stat. § 14.14, subd. 1a.

Performance-Based Rules

Minnesota Statutes, section 14.002, requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the [Department's/Agency's/Board's] regulatory objectives while allowing maximum flexibility to regulated parties and to the [Department/Agency/Board] in meeting those objectives.

[Describe how you did this.]

Consideration of [other factors that your statutes require that you take into account]

[Delete this section if it does not apply to your rulemaking.]

In exercising its powers, the [Department/Agency/Board] is required by Minnesota Statutes, section [reference] and [other statutes?] to consider:

[Description of what the department/agency/board must consider.]

[text here]

[Description of how the department/agency/board is addressing the considerations.]

[Other statements, as needed (e.g., Environmental Justice Policy, Health Equity Policy, Consideration of Equity...)]

[Text regarding environmental justice, health equity, overall equity, etc., as needed.]

Consultation with MMB on Local Government Impact

[Minnesota Statutes, section 14.131, requires the agency to consult with Minnesota Management and Budget or MMB) to help evaluate the fiscal impact and benefits of proposed rules on local governments. Contact the Executive Budget Officer (EBO) for your agency to initiate the consultation with MMB. A form for a letter to your EBO is in the appendix as **MMB-LTR**. Document this consultation in your SONAR.]

As required by Minnesota Statutes, section 14.131, the [Department/Agency/Board] will consult with Minnesota Management and Budget (MMB). We will do this by sending MMB copies of the documents that we send to the Governor’s Office for review and approval on the same day we send them to the Governor’s office. We will do this before the [Department/Agency/Board] publishes the [Dual Notice/Notice of Intent to Adopt Rules]. The documents will include: the Governor’s Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The [Department/Agency/Board] will submit a copy of the cover correspondence and any response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

[Although section 14.131 does not explicitly require this, it might be a good idea to describe your evaluation of the fiscal impact and benefits of the proposed rules on local governments.]

Impact on Local Government Ordinance and Rules

[Minnesota Statutes, section 14.128 requires an agency to determine whether a local government will have to adopt or amend an ordinance or other regulation to comply with a proposed agency rule and submit this determination for ALJ approval. An agency must make this determination before the close of the hearing record or before the agency submits the record to the administrative law judge if there is no hearing. Although the statute does not require that the SONAR contain this discussion, the Editor suggests that the SONAR is a logical place for it. Furthermore, placing it here will assure that your agency does the analysis. The statute defines “local government” as “a town, county, or home rule charter or statutory city.”]

[NOTE: If the agency determines that the proposed rule requires the local government to adopt or amend an ordinance or other regulation, or if the administrative law judge disapproves the agency’s determination that the rule does not have this effect, the rule’s effective date is delayed. The rule will not take effect until either (1) the next July 1 or January 1 after the agency publishes its notice of adoption in the State Register or (2) a later date provided by law or specified in the proposed rule. The statute, however, contains exceptions: The delay does not apply to a rule adopted under section 14.388 [exempt rules], 14.389 [expedited rules], or 14.3895 [obsolete rules] or under another law specifying that the rulemaking procedures of chapter 14 do not apply. It does not apply if the agency has been directed by law to adopt the rule or to commence the rulemaking process. It does not apply if the ALJ approves an agency’s determination that the rule has been proposed because of a specific federal statutory or regulatory mandate that requires the rule to take effect before the deferred date. Nor does the delay apply if the governor waives it. If 14.128 applies, you may need to put the effective date in your rules. Read the statute to see how it affects your rule. Whether put the date in your rules draft or in your Order Adopting Rules depends on your circumstances. You will need to pay particular attention to this when you adopt the rules to make sure you have accurately stated this, as circumstances can change during rulemaking, especially if there are delays.]

As required by Minnesota Statutes, section 14.128, subdivision 1, the [Department/Agency/Board] has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. [The [Department/Agency/Board] has determined that they do not because [then describe your reasons to support the determination]] OR [describe requirements for local government, plus whether the effective date is not affected because of one of the exceptions in Minnesota Statutes, section 14.128, subdivision 3.]

Costs of Complying for Small Business or City

Agency Determination of Cost

[For most proposed rules, Minnesota Statutes, section 14.127, requires the agency to determine if the cost of complying with proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. A small business is defined as a business (either for profit or nonprofit) with less than 50 full-time employees and a small city is defined as a city with less than ten full-time employees. Although the statute does not require that this information be included in the SONAR, including the information in the SONAR is a simple way to ensure that the information is transmitted to the ALJ in a timely manner. If for some reason the agency is unable to make this determination by the time the SONAR is completed, the agency should submit this determination in a separate letter to the ALJ before submitting the record to the ALJ (if there is no hearing) or before the close of the hearing record (if there is a hearing).]

[PUC rules are exempt from the requirements of Minnesota Statutes, section 14.127.]

[If this is a rule proposed by the PUC, include the following paragraph:]

For some proposed rules, Minnesota Statutes, section 14.127, requires the agency to determine if the cost of complying with proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city. The proposed rules are exempt from this requirement, however, because the requirement does not apply to rules proposed to be adopted by the Public Utilities Commission¹.

[If your proposed rules are NOT PUC rules, include the following:]

As required by Minnesota Statutes, section 14.127, the [Department/Agency/Board] has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will

¹ Minnesota Statutes, section 14.127, subdivision 4(d).

exceed \$25,000 for any small business or small city. The [Department/Agency/Board] has determined that the cost of complying with the proposed rules in the first year after the rules take effect [will not exceed \$25,000 for any small business or small city] [OR] [will exceed \$25,000 for one or more small businesses or small cities.] [Note: If you can identify the small businesses and cities for which the cost of complying in the first year will exceed \$25,000, insert the names of those businesses and cities here.]

[Describe how you reached this determination. For example: [The [Department/Agency/Board] has made this determination based on the probable costs of complying with the proposed rule, as described in the Regulatory Analysis section of this SONAR on pages _____.] [The [Department/Agency/Board] asked the Advisory Committee members (listed in Exhibit A) whether these costs would exceed \$25,000 during the first year for any small business or city. The Advisory Committee members, which included a representative from a small business/city, stated that the costs would not exceed \$25,000.] [OR] [The [Department/Agency/Board] asked _____, the owner of _____ (a small business affected by the proposed rules) to estimate the cost of complying with the proposed rules during the first year. _____ stated that the cost would be in excess of \$25,000 for his/her business and for other small businesses in Minnesota. Similarly, the [Department/Agency/Board] asked _____, a representative of the City of _____ (a small city affected by the proposed rules) to estimate the cost to the city of complying with the proposed rules during the first year. _____ stated that the cost would be in excess of \$25,000 for the city and for other small cities in Minnesota.] [Be sure to include your own analysis as to why you think the advice is accurate or why you think it is not accurate, in which case, you would have to put your own estimate of costs and why it is better than the advice that you quote here.]]

[Note: If after completing the SONAR you receive information that changes your agency's determination under Minnesota Statutes, section 14.127, you should spell this out in a letter to the ALJ and distribute it to the same persons who received the SONAR. This letter should be sent to the ALJ before the close of the hearing record or, if there is no hearing, when the SONAR is filed with the ALJ.]

Effect of Cost Determination

[If the agency or ALJ determines that the cost of complying with the proposed rules during the first year would exceed \$25,000 for a small business or small city, the small business or small city can generally file a statement with the agency and be exempt from the rules until a law is passed approving the rules. There are some situations, however, when the small business or small city would not be exempt. If the agency believes that one of these situations applies, as described below, then the SONAR should include this section on Effect of Cost Determination.]

[If the Legislature has appropriated money to fund the small business’s or small city’s cost of complying with the proposed rules, include the following paragraph:]

The Minnesota Legislature has appropriated money to sufficiently fund the expected cost of the proposed rules upon each small business and/or small city identified above. Specifically, [insert details regarding legislative funding.] Therefore, under Minnesota Statutes, section 14.127, subdivision 4(a), no small business and/or city can claim a temporary exemption from the proposed rules.

[If the rules have been proposed under a specific federal statutory or regulatory mandate, include the following paragraph:]

The rules are being proposed under a specific federal [statutory] [OR] [regulatory] mandate. The federal law that mandates the proposed rules is discussed in more detail on pages ____ of this SONAR. Therefore, under Minnesota Statutes, section 14.127, subdivision 4(b), no small business or small city can claim a temporary exemption from the proposed rules.

[If the Governor has waived the requirement of legislative approval, include the following paragraph:]

If an agency or administrative law judge determines that the cost of complying with the proposed rules during the first year would exceed \$25,000 for a small business or small city, the small business or small city can generally file a statement with the agency and be exempt from the rules until a law is passed approving the rules. This is not the case, however, when the Governor issues a waiver of the requirement that a law be passed approving the rules². The Governor has issued a waiver of the requirement that a law be passed approving the proposed rules. A copy of the waiver is attached as Exhibit _____. On [date], the Governor sent notice of the waiver to the Speaker of the House of Representatives and the President of the Senate (see letter attached as Exhibit ____). In addition, the waiver was published in the State Register on [date] (see copy of publication attached as Exhibit ____). Therefore, no small business or small city can claim a temporary exemption from the proposed rules.

[Other Required Information]

[If not included in other sections, include here any information or discussion required by statutes specific to your Department/Agency/Board or to this rulemaking.]

² Minnesota Statutes, section 14.127, subdivision 4, paragraph (e).

Example:

Differences with Federal and Other State Standards

Minnesota Statutes, section [999.99, subdivision 2], requires that for proposed rules adopting [relevant standards], the SONAR must include an assessment of any differences between the proposed rule and existing federal standards adopted under the [relevant Act, title 99, section 9999(a)(1); and Named Acts, United States Code, title 99, sections 9999(a) and others]; similar standards in states bordering Minnesota; and similar standards in states within the US [Relevant Agency (ABC) Region 1; and a specific analysis of the need and reasonableness of each difference.

[Description of differences between Federal and State]

Authors, Witnesses, and Exhibits

Authors

The primary authors of this SONAR are [list authors, including title, division, agency].

Witnesses

[You only need to list witnesses if a hearing is scheduled. Also, you only need to list *non-agency* witnesses³. As a courtesy to the public, you may want to also list agency staff who will be important witnesses. **Rulemaking Manual Editor’s Note: You might not know whether you are going to hearing. The following text covers these unknowns.]**

If these rules go to a public hearing, the [Department/Agency/Board] anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

- Mr./Ms. [Name] will testify about [Briefly describe the anticipated testimony].
- [Repeat format of number 1 for each witness anticipated to testify at the hearing].
- [Name], [Title], Department of [Name] will testify about [describe].

³ M.R. 1400.2070, subpart 1

Exhibits (optional)

In support of the need for and reasonableness of the proposed rules, the Department anticipates that it will enter the following exhibits into the hearing record:

- [List the exhibits.]

Conclusion

In this SONAR, the Department has established the need for and the reasonableness of each of the proposed amendments to Minnesota Rules, [citation]. The [Department/Agency/Board] has provided the necessary notice and documented its compliance with all applicable administrative rulemaking requirements of Minnesota statute and rules.

Based on the forgoing, the proposed amendments are both needed and reasonable.

Commissioner/Director
[Department/Agency/Board]

Date

[The SONAR must have the date it is made available for public review, per OAH Rules, part 1400.2070, subpart 1, item E.]

[Even though it is not required that the SONAR be signed, it is a good idea to have management review and sign off on the SONAR to get their buy in. Often, having the commissioner sign is wise.]

[References to Published Materials. Published materials should not be attachments or exhibits to the SONAR. The following published materials may just be referenced in the SONAR: Minnesota Statutes, Minnesota Rules, United States Statutes at Large, United States Code, Laws of Minnesota, Code of Federal Regulations, and the Federal Register. If you rely on or refer to other published materials in the SONAR, it would be a good idea to attach a bibliography to the SONAR and include a statement on where the material is available or the url links to find the material online.]

[References to Nonpublished Materials. Nonpublished materials such as letters from expert witnesses should either be exhibits attached to the SONAR or the content of the letter should be directly quoted in the SONAR. Note: All exhibits that are not attached to the SONAR must be available for review.]

Minnesota [Agency Name]

Memorandum

Date: [date]

To: [Name]

From: [Name], [Title]

Phone: [phone number]

Subject: [Topic] Rule Hearing

Below are several things to think about in preparation for the rule hearing to be held on [date].

- *At the hearing, we should not answer questions that would set department policy.* We may answer questions that will clarify misunderstandings about the proposed rules, but we should be careful not to discuss policies that are not already in the proposed rules. Our standard response to policy questions should be that we will consider the suggestion and make our decision after receiving and considering all comments made during the hearing and the post-hearing comment period.
- Each of us should take complete notes about each person's testimony, including the name of the person and a summary of the testimony. If you have a recommendation for how we should respond to the comment, include this. It is important that each of us take complete notes so that we do not miss anything when we submit the department's response to the Administrative Law Judge.
- We may have to submit the department's initial response within five working days of the hearing and the final response within five working days after that. For this reason, we need to meet as soon after the hearing as possible to compare notes and discuss our suggestions regarding each issue raised at the hearing. I would like to meet for this purpose on [date]. Let me know if you have a conflict with this time.
- Shortly after the hearing, I will prepare a first draft of the department's letter in response to comments made at the hearing.
- If you have any questions regarding this memo or about the hearing, please let me know as soon as possible.

State Register Information

Submitting State Register Copies to OAH. The State Register publishes primarily electronic editions and prints only a very small number of paper copies. Limited numbers of paper copies are available after publication. To get a paper copy of your notice to submit to OAH, print a copy from the State Register website [Minnesota State Register \(https://mn.gov/admin/bookstore/register.jsp\)](https://mn.gov/admin/bookstore/register.jsp)

Editor’s Note: In Fiscal Year 2025, the State Register will continue billing agencies for rule related publications.

State Register publication deadlines. The State Register publishes on Mondays (Tuesdays when Monday is a holiday). A “4-week Deadline Schedule” is printed in each State Register magazine on its inside cover page, and a State Register publication schedule is attached to this info sheet. For more detailed information, refer to “The Minnesota State Register Guidelines and Procedures” handout, available from the State Register Editor, Sean Plemmons, (651) 201-3204.

- The following due dates are sometimes moved up one day if the 4th of July, Thanksgiving, Christmas, or New Year’s holidays occur between the due date and the publication date. The most current publication schedule can be found online at: [Minnesota State Register \(https://mn.gov/admin/bookstore/register.jsp\)](https://mn.gov/admin/bookstore/register.jsp)
- Requests for Comments, as well as short, proposed rules and notices of adoption (10 or fewer pages) have a one-week deadline and are due by 12:00 noon on the Tuesday before publication.
- Proposed rules and notices of adoption that are long (are more than 10 pages) or complex (include complex tables or graphics) are due by 12:00 noon on the Thursday, 11 calendar days (or 7 working days) before publication.

To publish in the State Register:

1. **Prepare your text.** The Request for Comments or Notice of Intent to Adopt must be submitted electronically in Microsoft Word format (NO PDFs to the State Register), attached to an email to sean.plemmons@state.mn.us . You no longer need to submit a paper copy of these documents. The State Register does have formatting standards for you to follow—see “State Register Formatting” later in this information sheet. On the electronic version for the State Register notice, instead of blank lines for the signature and date, indicate who signed the document and when. For example: signed by

Commissioner Chris Jones on September 20, 2018. Note: For all rules, whether proposed, adopted, exempt, expedited, or emergency, you need to submit only your State Register Printing Order form and the Revisor's ID Number (either **RD####** for Proposed Rules or **SR####** for Notice of Adoption. The State Register does not accept numbers that begin with "AR"). However, even though the State Register will obtain the rules electronically from the Revisor's office, having a copy of the rules for reference is useful. So please send one to the State Register, too.

2. **Complete the State Register Printing Order Form.** (A sample of a blank State Register Printing Order Form is at the end of this information sheet.)
 - Check the box "Request for Publication."
 - Fill in the "Desired Date(s) Of Publication."
 - You will want to get a copy of the publication for your records or you will need to print a copy from the State Register website.
 - **If you want an "Affidavit of Publication," note how many copies of the affidavit you will need. This is an extra charge on top of the submission cost.**
 - Complete the "Title/Headline of Agency Submission." Also, if your agency needs a cost estimate for internal approval, enter this amount in this box. See #3 below for how to estimate the cost.
 - Check with your agency's finance person as to which boxes need to be completed by you and then complete these boxes.

3. **Estimate the Dollar Amount.** The estimated rate for FY25 is \$135 per State Register page.
 - For Requests for Comments, count the pages in your notice and submit that number.
 - For Rules, count the pages in your notice and add the number of pages in your rules draft.
 - You may also ask the editor for a more exact quote if you need to prepare a purchase order. Send in your notice and the editor will get back to you with an approximate price for your submission.

4. Have the form signed by your agency's State Register Liaison Officer. If you don't have a Liaison Officer, have your supervisor appoint you by sending the State Register Editor an email notifying him of the change or addition of a new liaison officer. Have your supervisor appoint a second liaison officer to cover your agency when you are sick, on vacation or some other kind of leave.

5. Give the form to your agency finance person, who will put in the sequence number and generate a printed purchase order from the State Wide Integrated Financial Tools (SWIFT) accounting system. (A sample of a SWIFT purchase order form is at the end of this info sheet.) There might be expedited procedures in your agency for submitting to the State Register before the purchase order approval. Keep a copy of the printing order form for your records.
6. The Editor is Sean Plemmons, (651) 201-3204. Submit:
 - An electronic copy of the document prepared by you (Request for Comments or Notice of Intent to Adopt), attached to an email to sean.plemmons@state.mn.us
 - The Revisor's ID Number document number (either RD#### for Proposed Rules or SR#### for Notice of Adoption), the State Register Printing Order Form, and the SWIFT purchase order. You can submit these three documents by attaching them to an email. **An electronic signature is acceptable on the Printing Order Form.**
 - Note that the State Register will request from the Revisor an electronic copy of the Proposed OR Adopted Rules. However, it is helpful to include a copy of your rules when available to estimate space needed in the State Register. You will have to supply any Notice that accompanies the Rules in electronic form.

State Register Formatting

The State Register has several rules of thumb for formatting documents. While your submission will not be rejected for failure to meet these rules, following them will make it easier on the State Register's editor. These changes have already been made to the boilerplate language in the Rulemaking Manual forms for State Register publication. However, please try to follow these rules for any language that you add to those forms.

1. Never use underlines to highlight words, phrases, clauses, or sentences. The State Register only uses underlines to indicate new rule language. Text will be emphasized by printing it in bold-faced type.
2. The following situations are the only ones in which the use of ALL CAPS is acceptable:
 - * in the case of a direct quote from another source
 - * in the title phrases

- REQUEST FOR COMMENTS
- NOTICE OF HEARING
- DUAL NOTICE
- NOTICE TO ADOPT RULES WITHOUT A PUBLIC HEARING

* in the opening words of an entry:

- NOTICE IS HEREBY GIVEN that the agency is proposing

* in certain parts of Executive Orders, Commissioners' Orders, and Revenue Notices:

- WHEREAS
- NOW THEREFORE
- FINDINGS OF FACT
- CONCLUSIONS OF LAW
- ORDER
- ORDER FOR HEARING

3. Indent for paragraphs.

4. Spell out and italicize:

- * Minnesota Rules
- * Minnesota Statutes
- * Public Law
- * State Register
- * Federal Register
- * Code of Federal Regulations
- * United States Code

* Laws of 1997

* The Revisor's Manual

Do not italicize the section or part numbers that follow these titles. The following are examples of the appropriate way to use italics: *Minnesota Statutes*, section 16C.15; *Minnesota Rules*, part 1400.2300.

5. Document titles must appear with only the principal words capitalized and have no period or other punctuation at their end. Capitalize specific official titles and names: Department of Health, Governor Walz, Commissioner Jan K. Malcolm, the Minnesota Legislature, the 2012 Legislature, Attorney General Ellison, Minnesota House of Representatives, Judge Eric Lipman.

Use lower case for common words used to refer to proper bodies: the department, the board, the state, the commissioner, the governor, state government, the legislature, the attorney general.

6. Use caps and lower case for titles, with no caps for articles and prepositions, except for the following words: With; Without; Under; Unless; and If. Capitalize the first letter of all other words in the title of a notice.
7. Place in the upper, left-hand corner of the first page of the document your Agency and division names, and document title. If you don't supply them, the State Register will, and you may not like what they choose.

Place the agency proper name flush left in 14-point type.

Skip a line and indent the agency division proper name and any units you wish to include.

A suitable short title which explains the nature and content of the document must appear two spaces below the division title.

Additional subtitles are sometimes necessary.

8. ALWAYS include a phone number, fax number, and/or email. If you don't include at least one of these numbers, the State Register will supply them, and you might not like the ones they choose.

9. Please bold and italicize all email addresses and urls:

joe.rulewriter@agency.state.mn.us;

<https://www.agency.state.mn.us/divison/rules/topic/publicinput.html>

10. The State Register uses the abbreviation for facsimile—fax: (651) 555-1212.

Instructions for the *State Register* Printing Order Form

The *State Register* printing order form is used to request publication in the *State Register*. To open the form, you will need to have the Adobe Acrobat Reader plug-in installed in your browser. Acrobat Reader may be downloaded for free of charge from the Adobe website. Visually impaired users should download the Accessible Adobe Acrobat Reader.

Once open, you can fill it out online by clicking the interactive check boxes and by typing in the required information. Press the tab key to move from field to field. Hit the tab key to exit the last field you type in and print the form. There is no need to physically print out the form and scan it in. Typing in the liaison's name as a form of signature on the interactive PDF form is perfectly fine. You may want to save a copy of this PDF on your computer for future use. If needed, print out and fill out the form by hand. Then you can scan it and send via email, though the interactive version is preferred by the editor.

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