MINNESOTA

Minnesota Rulemaking Manual

A REFERENCE BOOK FOR THE PRACTITIONER

25th Edition

August 15, 2020

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www.health.state.mn.us/rules/manual/

To obtain this information in a different format, call: 651-201-5923.

Acknowledgments: Contributors to the *Minnesota Rulemaking Manual*

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 annually since. Dave Orren (Ret.), 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, now assumes this role.

Without the contributions of the following people, this manual would not have been possible. A very special thank you to all who have contributed over the years to its writing, review, updating, and production:

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Chapter 1–Rulemaking in General

COVID-19 Disclaimer. [New in 2020] Uncertainty prevails as agencies grapple with how to function during the COVID-19 pandemic. The notable example for rulemaking is how the Office of Administrative Hearings (OAH) will hold public hearings. At the time of publication, the best advice the Editor can give is to check with OAH (website and by phone) and your administrative law judge (ALJ) before you proceed. Check also with your Interagency Rules Committee (IRC) colleagues and watch for IRC notices. This 2020 Manual does not address these changes.

In general. This chapter briefly describes the basis for rulemaking and the history of the Minnesota Administrative Procedure Act, lists ongoing rule management responsibilities, and gives information about an informal group of state agency rules staff and rules help desk.

ON THE WEB. The Manual is at MDH Rulemaking (https://www.health.state.mn.us/data/rules/index.html)
It is available in Adobe Acrobat format and MS WORD Format.

ACCESSIBILITY. Minnesota law requires all products produced by the State of Minnesota to be accessible to all individuals. A document or application is considered accessible if 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, hard of hearing, or who have cognitive impairments. We believe all documents that make up this Manual now meet these state standards. See your agency's accessibility coordinator for further information or if you believe these documents require further modification for your use.

PLAIN LANGUAGE. On March 4, 2014, Governor Dayton signed Executive Order 14-07, which requires state agencies to use plain language "to communicate with Minnesotans." According to the Order, "Plain Language is a communication, which an audience can understand the first time they read or hear it." (This Order is addition to various agencies' statutes that already require that they use plain language and Minnesota Statutes, in and section 14.07, subdivision 3(3), already requires that, in determining the drafting form of rules, the Revisor's Office, "to the extent practicable, use plain language in rules and avoid technical language.") Order 14-07 also states, "The Office of the Governor will provide guidance for implementing Minnesota's Plain Language policy." The Editor's best determination of how this plain-language directive jibes with agencies' work is the following principle: communications that agencies push out to the general public must adhere to this plain-language order; legal documents, such as those that meet the APA, must be legally accurate. **[New in 2018]** Having stated the official requirements, the Editor notes that there are important practical reasons to embrace plain language. Plain language is the best way for you to tell the story of your rulemaking. Your agency's communicators can help. If your agency does not have communicators, check with other agencies that do to find communicators willing to help.

1.1 Selected statutory provisions.

- **Rule.** "'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." Minnesota Statutes, section 14.02, subdivision 4.

- **Nonapplicability.** "The definition of a rule in section 14.02, subdivision 4, does not include:
  (1) rules concerning only the internal management of the agency or other agencies that do not directly affect the rights of or procedures available to the public;
  (2) an application deadline on a form; and the remainder of a form and instructions for use of the form to the extent that they do not impose substantive requirements other than requirements contained in statute or rule;
  (3) the curriculum adopted by an agency to implement a statute or rule permitting or mandating minimum educational requirements for persons regulated by an agency, provided the topic areas to be covered by the minimum educational requirements are specified in statute or rule;
  (4) procedures for sharing data among government agencies, provided these procedures are consistent with chapter 13 and other law governing data practices." Minnesota Statutes, section 14.03, subdivision 3, paragraph (a).

- **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." Minnesota Statutes, section 14.06, paragraph (a).

- **[New in 2018]** Counting time. "To count a time period, the day of filing, mailing, publication, or other action is not counted and the last day of the time period is counted. Saturdays, Sundays, and legal holidays are included in calendar day time periods and are not included in working day time periods. If a calendar day time period ends on a Saturday, Sunday, or legal holiday, the time period ends on the next day which is not a Saturday, Sunday, or legal holiday. A time period is in calendar days unless it is stated as 'working days.'" Minnesota Rules, part 1400.2030, subpart 1. [Editor's note: I added this here for convenience because it applies at many points in rulemaking, even though it also appears in various other places throughout the manual, where applicable.]

1.2 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. 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. However, legislative delegation of authority to an

administrative agency will be sustained only if the delegation was accompanied by "ascertainable" or "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, it 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 highly specialized or rapidly changing subject matter.

1.3 The Minnesota Administrative Procedure Act. Rulemaking in Minnesota follows procedures outlined in the Minnesota Administrative Procedure Act (APA), Minnesota Statutes, chapter 14. (This is distinct from rulemaking by the federal government and by other states—this Manual will address only the Minnesota APA.) A codified set of procedures for relating to rulemaking was first enacted in Minnesota by the 1945 Legislature. The statutory history of chapter 14 began in 1957. In the early days of rulemaking under chapter 14, all rules had to go through a hearing before adoption. This was changed because at the great majority of rule hearings, no one from the public showed up to testify. The current chapter 14 allows rules to be adopted with or without a hearing, depending on whether 25 or more persons request a hearing.

1.4 Office of Administrative Hearings Rules. The Office of Administrative Hearings (OAH) is charged with many responsibilities under the Minnesota APA. OAH has, therefore, adopted rules "to implement or make specific the law enforced or administered by" OAH. More specifically, OAH has adopted rules to implement or make specific the Minnesota APA. These rules are at Minnesota Rules, chapter 1400. (Note that throughout this Manual, these rules are cited as "OAH Rules.") The most recent OAH amendments to chapter 1400 were in 2001. These amendments included a general update of existing rules and the addition of new rules for the expedited rulemaking process in Minnesota Statutes, section 14.389. For general information about OAH, refer to **OAH-INF** in the appendix.

1.5 Governor's Office Rule Review Process. [Revised in 2019] In 1999, the Governor was given authority to veto rules by Minnesota Statutes, section 14.05, subdivision 6. This veto authority is at the end of the rulemaking process when 99.9% of the work on the rules is done. Governor Pawlenty's Office (and Governor Ventura's Office before that) responded by putting a policy in place where agencies submit rules to the Governor's Office for review while the rules are in the draft stage. This way, if the Governor is opposed to the rules, the agency can stop the rules project early in the process and avoid wasting everyone's time and effort. Or, if the Governor wants the rules to take a different direction, the agency can redirect the rules at a point in the process where the advisory committee and the public have a chance to respond to the Governor's decision. Governor Dayton's Office issued its rules review policy on 9/21/11, which it subsequently revised on 9/13/13 and 9/17/15. **Governor Walz's Office updated this last version in 2019 and reissued it on 8/15/20.** For a copy of the rules review policy, see **GOV-PLCY** in the appendix.

Madeline Hormann (651) 201-3427, Legislative Coordinator, is managing the rules review process for the Governor's Office and will work with Governor's Office staff to ensure a quick turn-around when rules are submitted for review.

Editor's note: [Revised in 2017] The Governor's office has returned to 130 State Capitol**.** Also, the Governor's Office is encouraging agencies to deliver documents via email. This means you may submit electronic rulemaking forms in PDF format to Madeline Hormann at Madeline.Hormann@state.mn.us.

[Revised in 2016] 1.6 Minnesota Administrative Procedure Act—2015 changes: The Legislature made two procedural changes that affect various sections of Chapter 14, effective January 1, 2016. First, it authorized agencies to file rule-related documents electronically with the Office of Administrative Hearings. Second, it codified the practice for final steps of adopting and filing rules that OAH and the agencies had already been using. Minnesota Laws 2015, Chapter 63. In January 2016, OAH launched its e-filing system, plus another system for receiving public comments electronically, as described below:

> 1.6.1 E-filing rule-related documents. **[Revised in 2019]** OAH asks that agencies e-file all rule-related documents wherever possible. This means all documents submitted for ALJ review should be e-filed. 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/). (The page also includes a link to frequently asked questions.) You may also request a hearing date through e-filing, or, if you have difficulty with the e-filing system, you may call OAH via telephone.
>
> Opening an e-filing account with OAH—you must obtain a docket number and ALJ assignment before submitting your documents for OAH review. Here's what to do:
>
> 1) Complete a 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/) or form OAH-NOA in the Appendix, which is customized for rulemaking use.
> 2) Use the online Contested Case Docket Request (also at OAH Forms (https://mn.gov/oah/forms-and-filing/forms/); skip any not-applicable fields in the request form. Identify the responsible agency unit as the Party Name.
>
> OAH staff will respond with an ALJ assignment and OAH docket number.
>
> 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 since those items might not remain in the e-file.
>
> 1.6.2 Public Comments Using OAH's eComment website.] **[Revised in 2019]** Consider using OAH's eComment website for collecting your public comments. If agencies request it, OAH will collect public comments on its eComments website (https://minnesotaoah.granicusideas.com/) (as well as regular U.S. mail) (Public

instructions for making comments can be found at eComments.) To set up your public e-comment site, contact OAH Denise Collins, Legal Assistant at Denise.Collins@state.mn.us or (651) 361-7875 at least a week before you publish your notice in the State Register or e-file your case. Provide the following information:

1) OAH docket number assigned to the rulemaking.
2) The dates the comment period will open and close.
3) If the agency maintains a rulemaking webpage, provide the link. OAH will link to the agency's rulemaking webpage on your public eComments webpage.
4) If applicable, the date 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: a Request for Comments, proposed rules, a Notice, SONAR, etc.
6) *See* OAH-INF for more details about what to provide.

Note: Agencies must use this system after public hearings on proposed rules. Minnesota Rule 1400.2230 requires that commenters must submit their comments to the ALJ then. OAH will set up a public comment webpage 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.

[**Editor's note: [Revised in 2018]** With the advent of e-filing and eComments, OAH's systems continue to evolve. As of publication, e-filing will be necessary for most circumstances. Using the eComments system remains voluntary unless the APA requires the ALJ to receive comments (as noted above and in the individual chapters). OAH, the Revisor's Office, and Secretary of State's Office now accomplish the final steps electronically as permitted in Minnesota Statutes, section 14.16. This is how it works. When the agency e-files the signed Order Adopting Rules, OAH requests the Final Rules from the Revisor's Office. OAH files the Final Rules with the Secretary of State's Office. The Secretary of State's Office serves the Final Rules on the Governor's Office to start the 14-day veto period via email to the Governor's Office, using a distribution list that includes the agency. The email contains no explanation and is how you will know your rule has been served on the Governor's Office, so you must watch for it. Also, these steps can take place swiftly.

Questions remain about the exact procedure, so giving precise instructions that fit all situations is elusive. The editor expects further experience will yield clarity for editing subsequent editions. As always, the editor welcomes your suggestions for adding to our collective wisdom. Also, the Interagency Rules Committee will continue to monitor, discuss, and share these developments.]

1.7 [Revised in 2018] Ongoing rule management and oversight responsibilities. An agency has a number of ongoing responsibilities regarding the agency's rules. While not a new requirement, the Editor added a new section 1.7.1 for convenience.

1.7.1 Rulemaking Mailing List. The agency must maintain a rulemaking mailing list under Minnesota Statutes, section 14.14, subd. 1a, which states:

> "(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."

Editor's note: The statute further states, "[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."

1.7.2 Public rulemaking docket. The agency must maintain a current, public rulemaking docket. The rulemaking docket must contain a listing of each possible proposed rule currently under active consideration and each pending rulemaking proceeding. There is an extensive list of details that must be included for each rulemaking project. Minnesota Statutes, section 14.366.

1.7.3 Obsolete rules report. These are the main requirements of Minnesota Statutes, section 14.05, subdivision 5:

- By December 1 of each year, the agency must submit a report to the governor, the Legislative Coordinating Commission [or 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 give a timetable for repeal of 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 repeal of the rules.
- The report must also give the status of any rules identified in the agency's prior year's report.

Editor's Note: The LCC specifically requests that we submit the annual reports via electronic copy to lcc@lcc.leg.mn . Submission in electronic format has become so prevalent and accepted for official business, however, that the Editor sees no reason to send this report in paper to any of the other officials named in the statute either.]

1.7.3 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."

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

1.8 Interagency Rules Committee. The IRC is an informal group of agency staff that meets approximately quarterly to discuss common issues related to rulemaking. It was begun in February 1995 by a cadre of state agency rules staff. Meeting attendance is usually ranges between 15 to 30 persons. The committee communicates via a subscription service (see below). The IRC has provided the organization and contributed expertise for developing this *Minnesota Rulemaking Manual*. It also sponsors the annual rulemaking seminar. And it serves as an interagency forum to discuss proposed legislation governing rulemaking procedures.

Communication System. The Interagency Rules Committee communicates through GovDelivery Client Services, a web-based subscription service that delivers email messages to those who have subscribed. Thus the messages you receive will be from Interagency Rules Committee <MDH@public.govdelivery.com>. If you wish to subscribe, send a message using your agency email address to Cretia Weaver at cretia.weaver@state.mn.us and she will register you.

Here's how our communication works.

- **Posting: [Revised in 2020]** To post a communication for those on the list, send an email to either **josh.skaar@state.mn.us** or MDHLegal@state.mn.us. Please identify the subject that should appear and the text you wish to send. Your proposed posting will be reviewed and if changes are needed you will be notified via email.
- **Starting a discussion** IMPORTANT: This system is for delivery only. If you wish to engage in discussions with other committee members, post your message but be sure to include an invitation *using your own email address* so the group can communicate by direct response using "reply to all" buttons.

1.9 Rules help desk. The Interagency Rules Committee has established a "help desk" function. The "help desk" consists of the following individuals:

- OAH no longer has staff attorneys available by telephone. For questions about the status of filings that have been made or other OAH-related questions, you may contact Legal Assistant Denise Collins at Denise.Collins@state.mn.us or (651) 361-7875.
  For legal advice, you should seek the counsel of your agency's in-house legal staff or your Assistant Attorney General. The Administrative Law Judge reviewing a particular set of rules makes any final determinations after all the facts are considered.

- **[New in 2017]** Beth Scheffer, Department of Transportation, at (651) 366-4792, is available for questions about APA or non-APA issues.
- **[New in 2017]** Mary H. Lynn, Pollution Control Agency, at (651) 757-2439, is available for questions about APA or non-APA issues.
- **[Revised in 2020]** Rebecca W. Gaspard, **POST (Peace Officer Standards and Training Board), at (651) 201-7781**, is available for questions about APA or non-APA issues.
- **[New in 2020] Josh Skaar, Department of Health, at (651) 201-5923, is also available for questions about APA or non-APA issues.**

1.10 Training for Agency Rulemaking Staff. Minnesota Management and Budget (MMB) must provide training to agency staff involved in rulemaking. MMB must do this in cooperation with OAH, the AG, the Revisor, and experienced agency rulemaking staff. Minnesota Statutes, section 43A.04, subdivision 11. This is the basis for this Manual and the annual rulemaking seminars.

1.11 What this Manual covers and what it does not cover. This Manual covers in detail the development and adoption of rules that go through the main process in Minnesota Statutes, chapter 14. This Manual also covers in detail the adoption of exempt rules under Minnesota Statutes, sections 14.386 and 14.388, and the expedited process for adopting rules in Minnesota Statutes, section 14.389. This Manual does not cover how to deal with rulemaking petitions or variances to rules.

[Revised in 2017] 1.12 Information on the cost of rulemaking. Refer to **COST-INF** in the appendix for information on approximate costs for rulemaking. This document, updated in 2017, 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 the Office of Administrative Hearings. This cost information might not be right on point for agencies whose rules are not as controversial as these contributing agencies and do not have the history that they have. This is, however, the best cost information available and will provide a valuable starting point in estimating rulemaking costs. **[New in 2017] Editor's Note:** OAH charges are one category of rulemaking costs. If your agency is not aware that OAH bills agencies directly for all time administrative law judges and other professionals spend working on your agency's rules, you will need to inform them. This includes reviews before publishing notices and approving additional notice plans, in addition to complete records. OAH review is mandatory, so these are necessary costs of rulemaking for agencies.

1.13 Comments and suggestions for the Manual. [Revised in 2020] If you have any comments or suggestions for improvement for the Manual, please give them to **Josh Skaar**, editor of the Manual, at (651) 201-5748 or **josh.skaar@state.mn.us**.

1.14 Acknowledgment of resource materials.

- 1 Davis, *Administrative Law Treatise* (1958).
- Beck, G., L. Bakken, and T. Muck. *Minnesota Administrative Procedure* (1987).
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- **[Revised in 2016]** Beck, G., and M. Konar-Steenberg, *Minnesota Administrative Procedure, Third Edition* (2014).
  The digitized, updated version is now available online and free to the public at: Minnesota Administrative Procedure (http://mitchellhamline.edu/minnesota-administrative-procedure/)
- The Minnesota Department of Human Services Rulemaking Manual before 1995.

1.15 [Revised in 2018] The acknowledgments for the Rulemaking Manual now appear on the page following the cover page.

Chapter 2–Request for Comments

In General. The Request for Comments is the first formal step in Minnesota's rulemaking process. This chapter will discuss how to do 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 for a Request for Comments.

2.1 Timing requirements. Minnesota Statutes, section 14.101, subdivision 1, sets out two timing requirements 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 has been published.

2.2 Get agency approval to publish request. How you go about getting 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. 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 multi-member board will need to 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. This form was adapted from the recommended form from the now repealed AG Rules, part 2010.9910.

2.3 Get a Revisor's ID Number [Revised in 2016] Both the Revisor's Office and Governor's Office track rule proceedings using a unique project identifier called the "Revisor's ID number." This is the same number assigned to rules draft using "RD" or "AR" followed by "0" and four digits. (Numbers already assigned will simply acquire the "0" as the Revisor's Office makes this transition.) Any time an agency requests the Revisor's Office to open a rule file and assign an ID number, the Revisor's Office will do so, even if this 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 the Office of Administrative Hearings. 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 cancel the number.

2.4 Governor's Office review. The Governor's Office 9/19/2019 administrative rule review policy, **GOV-PLCY**, states as follows:

> "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 Preliminary Proposal Form to the Governor's Office, **GOV-PRLM**, should clearly set out why you need to do rules and what specific things you want to accomplish. In addition to notifying the Governor, this form can serve several other very important purposes for the rules project. Completing the form at this early stage of the rules project helps the agency focus on specific, rather than general, goals for the rules project. Specific goals, written early in the project, will be a guide for the agency throughout the entire rules project and will help to keep the rules project on track. Parts of this form can also be the first draft of two important parts of the SONAR. The form should 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. Sections 3.1.5 and 4.4.2 of this Manual give ideas on how to approach the statement of need for the rules. The Rulemaking Manual Editor highly recommends making the effort to craft a high quality Governor's form. Having the need and the goals for your rules project clearly in mind is necessary, but having them also *clearly on paper*, is highly desirable and beneficial. Make sure to leave sufficient time to let the draft rest so you can reflect on what is there.

2.5 Publish the Request for Comments in the State Register. Minnesota Statutes, section 14.101, subdivision 1, requires an agency to publish a Request for Comments in the State Register.

> **2.5.1 Requirements for the Request for Comments in the State Register.** The Request for Comments that is published in the State Register must:
> - include a description of the subject matter of the proposal;
> - include the types of groups and individuals likely to be affected;

- indicate where, when, and how persons may comment on the proposal; and
- indicate whether and how drafts of any proposal or "possible rules" may be obtained from the agency.

Minnesota Statutes, section 14.101, subdivision 1.

[New in 2018] Editor's drafting suggestion: If you will not have a draft for people to review, it is a very good idea to direct them 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.

[Revised in 2018] Editor's suggestion: You might wish to build some leeway into the scope of your subject matter by adding a general phrase such as "other things that come up, but only as we have time" or other agency-specific criteria. You might also wish to include references to applicable regulatory analysis-related topics and other information that you will need for the SONAR. See Section 4.2 of this Manual for the requirements and consider soliciting comments that would help you determine the answers for the questions those requirements pose**,** especially when costs are in question. **[New in 2016]** A new possibility to consider is using the e-comment system established by the Office of Administrative Hearings (OAH) for collecting your comments. [See section 1.6.2.] Whether to do this depends on many agency-specific factors that you must gauge. You will need to draft your Request for Comments to indicate this. To set up a public eComment site for your rule, contact Legal Assistant Denise Collins at denise.collins @state.mn.us or (651) 361-7875 at least a week before your notice is published in the State Register. For further information, see section 1.6.2.

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 from Office of Administrative Hearings (OAH) Rules, part 1400.2510, and the editor added practice tips.

2.5.3 Finalize the Request. Make any last changes and then print the Request. Note: you no longer need a separate version for the State Register, so you can just print a single version of the Request, single-spaced and with margins adjusted to fit neatly for copying and mailing (if you chose to mail the Request as part of your additional notice).

2.5.4 Publish in the State Register. See **ST-REG** in the appendix for information on how to publish in the State Register. The State Register publishes on Mondays. A publication order for a Request for Comments must be received by the State Register by 12:00 noon on the Tuesday 6 days before the publication date. Only in rare circumstances, *and if approved by the State Register editor in advance*, will you be allowed to submit your publication order a day or two later than the deadline. Also, be careful if there is a holiday between the order date and the publication date because this will sometimes move up the State Register deadline.

2.6 Seek information by other methods designed to reach affected persons. 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." *Note:* At present, OAH is viewing publication of the Request for Comments in the State Register as sufficient to meet the statutory requirement; *additional notice is optional*. Notwithstanding that additional notice is optional, if your rules are potentially controversial or have a substantial impact, you may very well want to give additional notice. If you do give additional notice, see section 2.7 on getting OAH prior approval of your Additional Notice Plan.

2.6.1 Reach affected persons. There are probably many ways for an agency to reach affected persons. To reach them, you have to 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. 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 to persons on the agency's rulemaking mailing list, even though this is not specifically required by section 14.101.

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 this is a small group of persons, perhaps mailing (or emailing) individual letters would be effective. If this is a large group of persons where an individual mailing is too expensive or cumbersome, then mail to persons who have inquired or shown an interest in the subject matter. Also, mail to trade or professional associations representing affected persons. Also, ask to have a notice published in the newsletters of these trade or professional associations and, where appropriate, send press releases to general circulation newspapers. Agencies are also using on-line 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. Of course, you would include a copy of the Request for Comments as published in the State Register. For any mailed notice, do a certificate of mailing with a copy of the notice and mailing list attached. Create a similar document for electronic mailings. 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 when you propose the rules for adoption. 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.

2.6.2 Seek information by other methods. Once you have identified and reached affected persons, what methods should you use to seek information from them? You would certainly accept written comments and probably also accept comments given in person and by telephone. For many rules, it is beneficial to have an advisory committee of interested persons to advise the agency on the rules. See chapter 3 of this Manual on Rule Development for an expanded discussion on how to get input on rule development.

2.6.3 Inform the Legislature. Legislative interest in rulemaking has ebbed and flowed. But do not forget the Legislature. Minnesota Statutes, section 14.116, requires an agency to notify certain Legislators at the time of formally proposing rules. The Legislators listed in section 14.116 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 (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. Even though this requirement applies only when you propose your rules, you may want to notify these Legislators and any other interested Legislators at the time of publishing your Request and keep them informed throughout. 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). [Revised in 2016]OAH Rules, part 1400.2060, allows an agency to 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. Why do this? If any question arises about the reasonableness of an agency's Additional Notice Plan arises, the agency's having sought and received approval would prove to have been wise. 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.

Frequently Asked Question: How does an agency determine whether to seek approval of its Additional Notice Plan: at the Request for Comments stage or the intent to adopt rules stage?
Answer: The answer is as varied as the nature and breadth of state agencies' rules. 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, it 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.

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; (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, section 14.101, i.e., why its 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. OAH Rules, part 1400.2060. 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-RQUST**. This letter is designed to serve as a checklist for meeting the requirements of part 1400.2060 to request prior approval of your Additional Notice Plan.

{Revised in 2019] You may now e-file your request for approval documents with OAH. OAH asks that agencies e-file all rule-related documents wherever possible. This means all documents submitted for ALJ review should be e-filed. 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 1.6 for explicit instructions.**

{Revised in 2019] If you have questions about requesting prior approval of your Additional Notice Plan, you may contact Legal Assistant Denise Collins at **(**651) 361-7875 or denise.collins@state.mn.us. For the location of or other information about OAH, refer to **OAH-INF** in the appendix.

Note: 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 have to 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. Minnesota Statutes, sections 14.14 and 14.22. 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.

Note: [Revised in 2016] 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 2572 licensees." Agencies also often maintain subscriber-based email lists of people specifically interested in their programs or rulemaking projects. Since 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. **[Editor's 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 Editor's note in section 1.7.3 for Data Practices considerations to take into account.**]**

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**.

Checklist for Chapter 2 - Request for Comments

Date Done	Item
----------	**2 This entire chapter reviewed before proceeding.**
----------	**2.1 Timing requirements met.** - If newly adopted or amended rule grant, published w/in 60 days of grant's effective date. - Proposed rules not published until 60 days after Request for Comments.
----------	**2.2 Agency approval obtained for giving notice.** - If agency is a multi-member board that customarily gets board approval, **BD-NTC** form used.
----------	**2.3 Get a Revisor's ID Number**
----------	**2.4 Information memo sent to the Governor's Office.** - **GOV-PRLM** used.
----------	**2.5 Request for Comments published in the State Register.** - **2.5.1 Requirements met for Request for Comments.** - a description of the subject matter of the proposal; - the types of groups and individuals likely to be affected; - where, when, and how persons may comment on the proposal; and - whether & how drafts of any proposal may be obtained from agency. - **2.5.2 Request for Comments drafted.** - **REQUEST** form used. - OAH's e-Comment system described, if using (Optional) - **2.5.3 Request finalized.** - **2.5.4 State Register requirements met.** - **ST-REG** information sheet used. - deadline for Monday publication is previous Tuesday.
----------	**2.6 Information sought by other methods designed to reach affected persons. (Optional per OAH)** - **2.6.1 Affected persons reached.** - Affected persons identified & reached. Notes & records kept of efforts. - **CRT-GNRC** form used. - **2.6.2 Information sought by other methods.** - **2.6.3 Inform the Legislature.**
----------	**2.7 Prior approval of Additional Notice Plan obtained. (Optional)** - **NP-RQUST** letter used. - **OAH-INF** referred to.

Chapter 3–Rule Development

In 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. Minnesota Statutes, section 14.02, subdivision 4. 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 3 will only hit the high points of rule development. These points include the foundation or basis for the rules, input on rule development, and rule drafting. It is a good idea to review this entire chapter before proceeding.

[Revised in 2018] Expectations management and staff assignments. Before you dig into the development and writing of the rules, you need to define responsibilities for the rules project within your agency. 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 gets done? Also, consider bringing in 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 you should verify before you begin work on the development of your rules.

3.1.1 Statutory authority. The *sine qua non* for every set of rules or rule amendments is statutory authority. Statutory authority can come in the form of a statute that authorizes or directs the adoption of a specific set of rules. Or a statute might give an agency general authority to adopt rules to carry out its assigned duties. Minnesota Statutes, section 14.06, is a standing grant of authority to all agencies to adopt procedural rules, but it is not advisable to rely on this section alone for authority to adopt rules unless the rules are *purely* procedural. Without statutory authority, an agency cannot adopt rules.

3.1.2 Know and stay within the limits of your 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 setting out the duties assigned to the agency. In general:

- A rule must not exceed statutory authority conferred.
- A rule must not conflict with the governing statute or applicable law.
- A rule must have a reasonable relationship to 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 For certain rules, statutory authority expires 18 months after the effective date of the law authorizing the rules. Minnesota Statutes, section 14.125, puts a time limit on rulemaking authority. 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 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 the development and adoption of rules. It takes from six months to 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 appears to be complex or controversial enough that you will take more than 18 months to develop the rules, you will need to approach the Legislature for an exception from Minnesota Statutes, section 14.125.

3.1.5 Clearly understand the need for your rules. After you determine that you have statutory authority to do your rules, the most important thing to do is clearly set out why you are doing rules. This will give direction to the entire rule project. A statutory mandate to adopt rules will, by itself, establish the legal basis for need in your Statement of Need and Reasonableness (SONAR), but it will not guide you in the development of the rules. In this case, you need to find out the underlying problem that compelled the Legislature to mandate the adoption of rules and what the Legislature wants the rules to accomplish. If your rules or rule amendments are being done to implement statutory duties or to address a problem under a statutory duty, then these duties or the problem should be your focus throughout the entire rule project.

As noted in section 2.3 of this Manual, it is highly recommended that you put forth the effort to craft a high-quality Governor's Preliminary Proposal Form before doing the Request for Comments. Committing your thoughts to writing at the beginning of the rules project will help you throughout the project to more clearly understand the need for your rules and to focus on your goals.

[New in 2018] 3.1.6. Keep your options in mind from the beginning. As you develop your rules, keeping in mind your future procedural choices for adopting the rule is a good idea. While that 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. The following description briefly describes these possibilities. What you need to remember (but do not overly dwell on them at this point) is that you have three choices: You can give a Notice

of Hearing. You can give a Notice of Intent to Adopt Rules Without a Public Hearing. Or you can give a 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 persons request a hearing. In deciding how to proceed, the agency should consider a number of factors. If the rules are controversial and 25 or more persons are likely to request a hearing, you might as well just give a Notice of Hearing (chapter 7 of this Manual covers this procedure). 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 (chapter 5 of this Manual covers this procedure). If you really cannot predict whether there will be more or fewer than 25 persons requesting a hearing, you might want to go with a Dual Notice (chapter 6 of this Manual covers this procedure). 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 or not it thinks 25 persons will request a hearing.

3.2 Input on rule development. Getting public input in the development of almost every set of rules 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 decision makers. Agency decision makers need to be involved throughout the rules development. Agency decision makers include the main program person or expert who will be responsible for enforcing or working with the rules after they are adopted and every agency manager above that person who will have to approve the rules before the rules can be adopted.

At the outset of the rule project, the agency decision makers should set or approve the direction of the project. To help the agency decision makers, prepare an initiation proposal directed to them to ensure that they understand and approve the reason for the rule project and any fees or fiscal implications. Throughout the process, there needs to be communication between the agency decision makers 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 finish development of a set of rules and then have your commissioner for the first time see and disapprove an important advisory committee recommendation. A major decision by your commissioner needs to happen early enough in the rule development process so that the advisory committee has a meaningful chance to respond to the commissioner's decision.

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

When an agency is governed by a multi-member board, the opportunities are limited for getting direction and approval regarding 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 multi-member board than for an agency headed by a commissioner.

Make sure that your decision makers know certain rulemaking requirements. Even though they make the final decisions about rules, they still have to do so within their statutory authority. The decision makers are not mini-legislatures. By statute, commissioners and boards must be reasonable when they adopt rules; the Legislature is under no such restriction when it enacts laws.

3.2.2 The agency's Assistant Attorney General. The agency's Assistant Attorney General (AG) also needs to be informed and involved throughout the development of the rules. The role of the agency's AG varies from agency to agency and for each set of rules. The role of the agency's AG is determined by the agency and depends on such things as the availability and experience of the rule writer and the legal issues involved. In many cases, the agency will 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. See chapter 2 of this Manual for detailed information about the Request for Comments.

3.2.4 Interested Legislators. Interested legislators would first and foremost include any who have expressed an interest in the rule project or in the legislation that authorizes or requires the rulemaking. Interested legislators would also include those listed in Minnesota Statutes, section 14.116; namely, chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules and (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. Put interested legislators on your rule project mailing list in order 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. Minnesota Statutes, section 14.101, subdivision 2, states in part: "Each agency may also appoint committees to comment . . . on the subject matter of a possible rulemaking under active consideration within the agency." For controversial or complex rules or for rules that require in-depth knowledge of an industry, it is highly recommended that an agency form a committee to advise on the development of the rules. The following is a list of suggestions or comments regarding advisory committees.

3.2.5.1 When you form 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.
- Keep the advisory committee to a workable size of 15 to 20 persons.
- Find out which persons or groups are interested in this 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 out of the middle. Discussion by persons with opposing views tends to moderate the views and all advisory committee members might gain pride of ownership in the rules; they might "defenders" of the rules. By including both supporters and opponents of the rules, you would ideally be able to resolve the controversial issues 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?
- 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.
- Maintain the use of the advisory committee through adoption.

Note: Advisory committees appointed under Minnesota Statutes, section 14.101 are not subject to the Open Appointments process because they do not fall within the definition of "agency" in Minnesota Statutes, section 15.0597, subdivision 1.

3.2.5.2 Role of an advisory committee. The advisory committee's role is to advise. The committee has the power to inform and persuade the agency. The commissioner or board makes final decisions! Do a charge to the advisory committee members so they understand their advisory status and do not presume they have the authority to write, adopt, and administer the rules. 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 When you work with an advisory committee:

- Early in the process, give the advisory committee a rules draft to react to. It is impossible to draft rules by committee. Sometimes, you might want to wait for one or two meetings before issuing a rules draft so that the committee is free to identify issues without the structure and limitations imposed by a draft. It will also help the advisory committee in its work if you do a rule outline that has the topic areas and issues. On controversial issues, develop policy drafts (with your rationale). Route these issues and policy drafts up the agency chain of command and discuss them with the advisory committee early in the development of the rules.
- **[New in 2018]** 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.
  It is important to achieve consensus as much as is practical within your statutory authority and goals.
- In cases where there are polar opposite views on the rules within the advisory committee, you may want to use a mediator. Contact the Docket Coordinator at Office of Administrative Hearings, Cari Snaza, at (651) 361-7906 to find out the availability of mediators.
- For especially controversial or complex rules, you might want to augment the advisory committee schedule from time to time with special interest meetings, informational meetings, or mini hearings on special topics or with other interested parties.
- Be very careful when making 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 [Revised in 2018] Using advisory committee discussions to help you write your SONAR. Advisory committee discussions are an invaluable source of information for you when writing your Statement of Need and Reasonableness (SONAR). Start writing the SONAR now, if you haven't already. Tell the advisory committee members that it is important they give reasons for their recommendations. Keep notes of advisory committee discussions with the SONAR in mind.

3.2.5.4.1 Regulatory analysis. A broadly representative advisory committee is probably your best source of information for doing the regulatory analysis required by Minnesota Statutes, sections 14.131

and 14.23. Ask the advisory committee members to give their opinions regarding the eight factors the agency is required to analyze and regarding 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.

3.2.5.4.2 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 regarding the cost of compliance for small businesses and small cities, along with how they made their estimates. Also ask them to verify that 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 [Revised in 2018] 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 that this 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. Make sure everyone gets one.

3.2.6 Written comments. Keep careful track of all comments received. The main reason for this is that the agency needs to consider and respond to any policy issues raised. Another important reason to keep track of the comments is to keep all commenters informed of the remainder of the rulemaking process. Log in 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 do a standard response letter to all persons who comment, thanking them for the comment and telling them they will be put on the mailing list for the Notice.

3.2.7 Expert opinions. Get expert opinions when you feel it is appropriate.

3.2.8 Look at other similar rules and laws. Look at 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 exact subject matter that have already been drafted and adopted by other states.

3.2.9 Look at 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 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. In 1999, the Governor was given authority to veto rules. Minnesota Statutes, section 14.05, subdivision 6. This veto authority is at the end of the rulemaking process when 99.9% of the work on the rules is done. The Governor's Office responded by requiring agencies to submit rules to the Governor's Office for review while they are in the draft stage and at other key times in the rulemaking process. For a copy of the Governor's policy, see **GOV-PLCY** in the appendix. This review process helps ensure input by the Governor on key policy issues.

3.2.11 The Minnesota Department of Management and Budget (MMB) consultation about local government impact. The APA amendment requires agencies to consult with the Commissioner of MMB to help evaluate the fiscal impact and benefits of proposed rules on local governments. So far, MMB has not issued an official formal review process statement for agencies, so this Manual section reflects current practice. 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 the EBO for your agency to initiate the consultation with MMB. Agencies' experience is that sometimes, but not always, MMB confirms 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. **[New in 2018]** You do not need to wait for MMB's response before moving forward.

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 **REVISOR** in the appendix for general information regarding the Revisor's role in assisting agencies in drafting rules, the statutes related to the Revisor's rule drafting functions, and directory information about the Revisor's staff.
- Before proposed rules and a Notice of Intent to Adopt Rules may be published, the proposed rules must be in the Revisor's format (i.e., printed from the Revisor's computer) and there must be a Revisor's certificate saying the rules are approved for publication.
- 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/). Do this early in the project.
- To get draft rules in Revisor's format, you have to give the Revisor a draft and ask the Revisor to produce a Revisor's draft. While you may give the Revisor a paper copy, emailing an electronic copy is usually the most expedient, especially if there is a large amount of new text. 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 problems.

- Usually, the Revisor will give you a preliminary draft to review to make sure that the Revisor's editorial changes do not make substantive changes. When your rules are ready to propose, give the Revisor any last changes and ask for a draft approved for publication.
- The time it takes to get a preliminary Revisor's draft will 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 be produced quickly if there are only a few changes from the preliminary draft.
- When should you first ask the Revisor for a Revisor's draft? In the early stages of developing your rules, you want your working drafts in your own computer so that you can easily work on them and make changes. Only when your rules are in almost final form should you ask the Revisor for a Revisor's draft. If you turn your rules over to the Revisor too early in the development stage, a lot of time will be wasted each time you want changes to your working draft while you wait for the Revisor to input and return your latest changes when you could have done them instantly on your own computer.
- If you have not worked on rules for a while (or ever), definitely contact the Revisor's Office early in the process to get advice on drafting rules, but you might still want to wait until the rules are in almost-final form to get a Revisor's draft.
- Use information from the Revisor: Minnesota Rules Drafting Manual with Styles and Forms (https://www.revisor.mn.gov/revisor/pubs/arule_drafting_manual/Cover1.htm); and Rulemaking in Minnesota: A Guide (https://www.revisor.mn.gov/revisor/pubs/arule_drafting_manual/ruleguide.htm).

3.3.2 Draft clearly.

- **[Revised in 2018]** When writing a requirement, clearly state who the requirement applies to and what must be done. State this actively, not passively. For example:
  - Use "The licensee shall have the purchase agreement on file." (This statement clearly identifies the agent responsible for carrying out the duty.)
  - Do not use "The purchase agreement must be kept on file by the licensee." (Passive voice)
  - For sure do not use "The purchase agreement must be kept on file." (Who must do this?)
  - Be especially alert to this phenomenon when amending outdated rules and correct them.
  - Be consistent in the use of terms and in the phrasing of similar requirements. Use identical language and construction wherever possible in similar requirements.
  - Do not use "machine shop," "machining business," and "machining company" in successive paragraphs to describe the same entity.

- Instead, use just one of these terms throughout.
- Writing rules clearly so the public knows what is required and what is prohibited is imperative. Start with a noun, add a verb, and see what else you need.
- Avoid the use of vague terms like “sufficient,” “appropriate,” “adequate,” and “other equivalent methods.”
- Eliminate jargon and replace it with commonly used and understood terms.
- Break up unnecessarily long sentences. Sentences should average 25 words or less. Use items. Avoid going below the sub-item 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 can 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 wording in similar rules and statutes from your agency and other agencies so terms are defined consistently as much as possible. Be consistent in how you use defined words throughout the rules. And remember, definitions define words and phrases; policy belongs in the body of the rules.

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 of the rules. How do you structure a new set of rules? One option is to use the Revisor’s format of part, subpart, item, and sub-item from the very beginning of the project. Another option is to do the first several drafts of new rules in outline form. This allows the rules to be in a logical structure that is comfortable to you. The rules would be put in the Revisor’s format after the basic organization of the rules is established. Remember that the layout of the rules is subject to a great deal of writer’s license with the bottom line being: “Can the readers find what they need to know?”

A common format for the layout of a set of rules is definition, scope, substantive requirements. A workable approach to drafting is to focus on what has to be done (substantive requirements), by whom (scope), and then the details (definitions).

3.3.6 Incorporation by Reference. An agency may incorporate by reference text from other sources into its rules. Under Minnesota Statutes, section 14.07, subdivision 4, agencies may incorporate text from Minnesota Statutes, Minnesota Rules, United States Statutes at Large, United States Code, Laws of Minnesota, Code of Federal Regulations,

and the Federal Register. Agencies may also incorporate text from other publications and documents.

To use other publications and documents the Revisor's Office must determine the text to be 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."

Rulemaking Manual Editor's 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.**
>
> 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 incorporate state and federal law by reference, 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 documents and publications" and incorporating future amendments to them. While further discussion is beyond the Manual's scope, you should know that there are both a non-delegation doctrine and case law that suggest that there are limits to some of these incorporations of future amendments. Seek legal advice if this issue becomes a sticking point.

3.3.7 Et cetera.

- 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 third and thirteenth 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.
- Use "rules" (plural) rather than "rule" (singular) when referring to a project that has more than one requirement.

- 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 underlying purpose of the operational standards.
- **[Revised in 2018]** "Shall" versus "must." Disputes over "shall" have rendered it a very unfavorable word for drafting, making "must" the favored word of most plain-writing experts. Editor's note: By statute, shall and must are defined as "mandatory." Minnesota Statutes, section 645.44, subdivisions 15a and 16. A rule writers' best avenue is to work with the agency's assigned attorney from the Revisor's Office.
- Do not just restate the statute.
- 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. And the ALJ will very likely disapprove them.
- Variances must be limited to case-by-case situations. If alternatives of general applicability and future effect will be considered, criteria need to 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. *See* Minnesota Statutes, Section 14.07, subdivision 4.
- The use of "may" is generally 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.
- Singularize applicability.
- Avoid gender-specific language.
- Rules are regulatory tools; not educational documents.
- 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?
- **[New in 2018]** 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)

Chapter 4–Developing the Statement of Need and Reasonableness

In General. This chapter will discuss:
- When you must prepare the Statement of Need and Reasonableness;
- The required contents of the Statement of Need and Reasonableness;
- Where to find the form for the Statement of Need and Reasonableness; and
- Suggestions for drafting the Statement of Need and Reasonableness.

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 Statement of Need and Reasonableness.

[New in 2019] You will find two SONAR forms in this year's Manual. You will need to read them together. The SONAR form remains the traditional annotated explanation of how to develop your SONAR using the SONAR form. The second version is the newly added, fully accessible SONAR–TEMPLATE. The annotated form contains the usual advice and tips you rely on. SONAR–TEMPLATE is a bare-bones outline designed for you to insert your own content, sparing you from having to delete the instructions and reformat it. It also uses a different typeface, which you are free to adopt or revert to the customary Times New Roman if you prefer. As usual, this addition will evolve over time so please let us know how this works.

4.1 When the Statement of Need and Reasonableness must be prepared. Agencies must prepare a Statement of Need and Reasonableness (SONAR) on or before the signature date on the Notice of Intent to Adopt Rules. (Note that the agency must send a copy of the SONAR to the Legislative Reference Library when the Notice of Intent to Adopt Rules is mailed.) Minnesota Statutes, sections 14.131 and 14.23; Minnesota Rules, part 1400.2070, subpart 3.

4.2 The required contents of the Statement of Need and Reasonableness. 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. This includes citations to research, studies, or law the agency anticipates relying on to support the rules. It also includes any information required by statutes specific to the agency that impose extra rulemaking requirements (see, for example, Minnesota Statutes, section 115.43, subdivision 1; and section 116.07, subdivision 6). For a complete list of the required contents of a SONAR, read Minnesota Rules, part 1400.2070, and Minnesota Statutes, sections 14.131 and 14.23.

Under sections 14.131 and 14.23, the SONAR must contain a regulatory analysis that includes the following information, to the extent the agency can get this information through reasonable effort:
1. The SONAR must describe the classes of persons who will probably be affected by the proposed rules, including those who will bear the costs of the rules and those who will benefit from the rules;
2. The SONAR must estimate 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. The SONAR must discuss whether there are less costly or less intrusive methods of achieving the purpose of the rules;
4. The SONAR must describe 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. The SONAR must estimate 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. The SONAR must estimate 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. The SONAR must discuss any differences between the rules and existing federal regulations and specifically analyze the need for and reasonableness of each difference; and
8. The SONAR must include an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

Sections 14.131 and 14.23 set out other SONAR requirements:

- 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.
- The SONAR must describe the agency's efforts to provide additional notice to persons who may be affected by the proposed rules or explain why such efforts were not made.
- The agency must consult with Minnesota Management and Budget 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. Do this at the same time as you send the Governor's Office Proposed Rule and SONAR form. Send the same materials to the EBO as you send the Governor's Office. **[See sections 5.4, 6.4, and 7.4]**

Part 1400.2070 requires that the SONAR contain an explanation of what effort the agency made to obtain any information that it states could not be ascertained through reasonable effort. It also requires that, if a hearing is scheduled, an agency include a list of any nonagency witnesses the agency anticipates asking to testify and a summary or description of their testimony.

Section 14.127 (first enacted in 2005) requires an 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. There is nothing in section 14.127 that requires the agency's determination to be in the SONAR. The Rulemaking Manual Editor, however, can think of no better place to put the 14.127 determination than in the SONAR. Section 14.127 requires that the agency make its determination before the close of the hearing record, or before the agency submits the record to the ALJ if there is no hearing. This is one to two months after the SONAR is completed and submitted to the Legislative Reference Library. Certainly, the agency might receive input during this time that would persuade the agency to change the determination it made in the SONAR. But since the SONAR is already complete,

the question becomes: how to change it? A signed SONAR is the final SONAR and it is too late to change it. The best practices for the agency to supplement the hearing record as best it can are 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 here and remember to include this supplemental piece in the official rulemaking record.

The main requirements and other details about section 14.127 are:

1. 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.
2. A small business is a business (either for-profit or nonprofit) with less than 50 full-time employees and a small city is a city with less than ten full-time employees.
3. The agency must make its determination before the close of the hearing record, or before the agency submits the record to the ALJ if there is no hearing.
4. 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.
5. There are several safety valves or exceptions to the provisions of 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.

In 2009, the Legislature added Minnesota Statutes, section 14.128, which requires the 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." For more discussion on this topic, see the **SONAR** form in the appendix. **[New in 2018]** Editor's note: If 14.128 applies, you may need to put the effective date in your rules. Read the statute to see how this applies to 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.

4.3 Where to find the form for the Statement of Need and Reasonableness. A form for the SONAR is in the appendix as **SONAR**. The form is the same for all types of rulemaking procedures.

4.4 Suggestions for drafting the Statement of Need and Reasonableness. Because of 1) the variety of regulatory needs that cause an agency to propose rules, 2) the differing scope of various rules, and 3) the variety of reasons that can lead an agency to regulate different parties in different ways, there is no "cookbook" for drafting a SONAR. What follows are a few observations about writing SONARs that might help agency staff in drafting these documents.

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 non-expert reader, such as an Administrative Law Judge 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 him or her down with excruciating detail. The following are general suggestions for drafting SONARs.

4.4.1 Review other SONARs. Early in the process of drafting proposed rules, locate and review SONARs drafted for other rules. If you can, look at SONARs for rules that are similar to the rules 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 would be helpful to review the SONAR that justified the rules you are amending. Finding SONARs for rules that bear some similarity to the rules you are proposing will assist you in determining 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. At present, the Library has a vast collection of SONARs that it continues to add to. The SONARs are available online as PDF documents. To find these SONARs simply: Go to the Legislative Reference Library's home page, click on the Historical tab and choose the State Government link and then click on the link to SONARs in the Other Information column on the lower left side of the screen. This will take you to the SONARs page (http://www.leg.state.mn.us/lrl/sonar/sonar.aspx) or click on the preceding link.

4.4.2 Statement of Need. The statement of need explains of 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.

If rules are being proposed to adopt federal standards that are required for Minnesota to retain delegations or authorizations to implement federal programs, for example, the statement of need can be a fairly short statement that demonstrates that the state needs to adopt the federal standards into Minnesota Rules in order to maintain equivalency with the federal standards. If rules are being proposed in direct response to a statutory mandate to do 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.

Further, 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.

As noted in section 2.3 of this Manual, it is highly recommended that you put out the effort to craft a high-quality Governor's Preliminary Proposal Form before doing the Request for Comments. If you have done this, you can use this part of the form as the first draft of your statement of need.

4.4.3 Statement of Reasonableness. This part of the SONAR explains why the approach taken in the proposed rules is a good one. In drafting the statement of reasonableness, it is often useful to begin the discussion by paraphrasing briefly the content of the proposed rule section 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 actually *explaining why* the agency staff chose to draft the rules with the provisions they contain. Virtually every section of a set of proposed rules reflects a decision made by staff as it undertook to solve the regulatory problem that is causing staff 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 will not be sufficient.

The statement of the reasons for what agency staff is 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 it did. It is not, however, sufficient to simply state that the agency has concluded that the rules are reasonable. An independent reader needs to see specific reasons and evidence in the SONAR why staff reached that conclusion.

Issues that come up in drafting many SONARs concern justifying the applicability section, justifying the definitions, and dealing with repetitive changes in various rules that are of a similar nature. A first draft 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 persons that rules apply to is thus one of the central parts of the SONAR, and should be thoroughly explained.

In drafting a section explaining the reasonableness of the definitions, reference to 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.

4.4.4 Justify each requirement in the rules. For requirements so obvious that no one will question them, you can do the justification in about one sentence: this provision is self-explanatory. 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.

To justify each requirement in the rules, going subpart by subpart is advisable. At other times, it is advisable to justify topic by topic. Note that 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 to have at least enough to hang your hat on. This will give you something to expand on in your response to comments.

One common approach to writing the justification for all requirements in the rules is to first look at justifying each requirement separately. This would mean justifying each subpart and each item separately, and sometimes even justifying each requirement within a subpart or item separately. Sometimes, the justifications for related provisions are very similar. In this case, group the provisions in the SONAR and give the main part of the justification once and perhaps just add a sentence for each separate provision that ties it to the main justification.

[New in 2018] Repealers are also rules, so you need to justify them too. For large rules with lots 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.

4.4.5 Approaches to drafting the SONAR. To accomplish the task of drafting a SONAR, one or both of the following suggestions might be helpful: first, when you are drafting the proposed rules, make notes of why you drafted the proposed rules the way you did. Often, the proposed rules 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 determine the agency's future 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.

A second approach that might assist you in drafting 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, instead of starting with an introduction, a statement of need, a general statement of the reasonableness of the rules as a whole, trudging through the definitions and then some of the more peripheral requirements of the rules before you get to the core requirements, you start instead 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 as a whole are reasonable. Starting from the core rules requirements and working out from that core to draft a complete SONAR is almost certainly easier than trying to proceed linearly from the SONAR form's start to finish.

The best time to start polishing a SONAR section is when the proposed rule text is in pretty good shape. Working and reworking a section of the SONAR is not helpful, if a midstream basic policy change reverses the initial approach. Conversely, it is important to not completely finish the proposed rules, and then think that you can just sit down and write out the SONAR over the weekend. The SONAR is a lot of 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.

Another experienced rule writer's approach is to draft a relatively complete statement of need at the very 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. Again, drafting the memo to the Governor's Office before the Request for Comments prompted this insight.

4.4.6 Get information from an advisory committee to draft the regulatory analysis and the cost determination. The agency has to use reasonable methods to get the information required for the regulatory analysis under sections 14.131 and 14.23. A broadly representative advisory committee is, in many cases, your best source of information for doing the regulatory analysis. Ask advisory committee members to identify costs, benefits, parties affected, and other regulatory analysis factors. Also, ask advisory committee members for suggestions on performance-based standards per sections 14.002 and 14.131. These are standards that would emphasize both superior achievement in meeting the agency's regulatory objectives *and* maximum flexibility for the regulated party and the agency in meeting those goals. Similarly, the advisory committee will likely have valuable information and insight into the regulatory analysis and cost determination the agency needs to make under 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. Also, run advisory committee opinions through your own filter to make sure they make sense and are balanced. Finally, review section 3.2.5 of the Manual and consider distributing **ADV-COMM**, as you have adapted it to fit your circumstances, to the advisory committee.

Checklist for Chapter 4 - Developing the Statement of Need and Reasonableness

Date Done	Item
----------	**4 This entire chapter reviewed before proceeding.**
----------	**4.1 Timing requirements met.** - SONAR prepared before publication of Notice ordered in State Register.
----------	**4.2 SONAR requirements met. [Revised in 2020]** - a summary of the agency's evidence to justify need and reasonableness. - a regulatory analysis that describes or estimates, through reasonable effort: 1. the classes of persons who will probably be affected; 2. agency's probable costs & any anticipated effect on state revenues; 3. less costly or less intrusive methods to achieve the rules' purpose; 4. other ways of achieving the rules' purpose seriously considered by the agency; 5. probable costs of complying with the rules, including the portion of the costs that will be borne by identifiable categories of affected parties; 6. probable costs or consequences of not adopting the proposed rules, including those borne by identifiable categories of affected parties; 7. differences between the rules and existing federal regs; and 8. the cumulative effect of the rule with other federal and state regs. - describe agency consideration of performance-based rules. - describe agency efforts to provide additional notice to affected persons. - explain agency effort to obtain any information that could not be ascertained through reasonable effort. - consultation with MMB on local government impact **at the same time the Governor's PRPS form is sent to the Governor's Office [MMB-LTR used] [Note: this also appears in sections 5.4, 6.4, and 7.4]** - 14.127 analysis about costs to small business and or cities - 14.128 determination about whether local governments will have to amend an ordinance or regulation to comply with the proposed rules. - list of the agency's witnesses for the hearing
----------	**4.3 SONAR drafted using SONAR form.**
----------	**4.4 Suggestions for drafting the SONAR reviewed.** - **4.4.1 Review other SONARs.** - **4.4.2 Statement of Need.** - **4.4.3 Statement of Reasonableness.** - **4.4.4 Justify each requirement in the rules, including repealers.** - **4.4.5 Approaches to drafting the SONAR.** - **4.4.6 Get info from advisory committee for regulatory analysis.**

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

In General. This chapter tells you how your agency starts the formal rules 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 a Notice of Intent to Adopt Rules Without a Public Hearing.

5.1 Decide how to proceed. You have three choices in how to start your rulemaking. You can give a Notice of Hearing. You can give a Notice of Intent to Adopt Rules Without a Public Hearing. Or you can give a 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 persons request a hearing. In deciding how to proceed, the agency should consider a number of factors. If the rules are controversial and 25 or more persons are likely to request a hearing, you might as well just give a Notice of Hearing (chapter 7 of this Manual). 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 persons requesting a hearing, you might want to go with a Dual Notice (chapter 6 of this Manual). 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 or not it thinks 25 persons will request a hearing.

5.2 Time considerations and other considerations before you get started.

5.2.1 Rules and SONAR must be done. Before you start this chapter, you should be finished developing your rules and writing your Statement of Need and Reasonableness (SONAR). This Manual contains information on rule and SONAR development in chapter 3, "Rule Development," and chapter 4, "Developing the Statement of Need and Reasonableness."

5.2.2 [Revised in 2018] 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 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 Wednesday morning to sign documents so that the documents can meet the State Register's 12:00 noon deadline.

5.2.3 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 on the rules. This Manual contains information on the Request for Comments in chapter 2, "Request for Comments."

5.2.4 Rulemaking authority expires 18 months after the effective date of the law authorizing the rules. Minnesota Statutes, section 14.125, time limit on rulemaking authority. 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. This applies to first-time rule adoptions under the statutory authority and not to subsequent amendments or repeals of the rules.

[Revised in 2019] 5.2.5 E-filing rule-related documents. OAH asks agencies to e-file all rule-related documents wherever possible. **[See section 1.6 for explicit instructions.]** This means all documents submitted for ALJ review should be e-filed. 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/). (The page also includes a link to frequently asked questions.) 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 a prudent practice. In addition, save any correspondence or documents you receive from OAH for your own records since those items might not remain in the e-file.

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

- Minnesota Statutes, section 14.111, states in pertinent part: "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."
- Minnesota Statutes, section 14.14, subdivision 1b, states: "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."

Everybody is affected by everything to some degree or another, 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 requirements of sections 14.111 and 14.14, 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 requirements of sections 14.111 and 14.14, 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 Administrative Law Judge (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. It will take more decisions related to this issue to know whether this will be a general rule for determining whether a set of rules affects farming operations or whether this decision is unique to the facts of this rulemaking. In the meantime, this decision will at least give an agency a basis to determine whether its rules affect farming operations.

There is no formal Office of Administrative Hearings (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. Perhaps OAH or the Commissioner of Agriculture would, if asked, give guidance early in the rulemaking process as to whether your rules affect farming operations. So far, no one has requested this assistance from OAH. Perhaps the Legislature will add guidance or a means to formally seek prior approval to these statutory sections. Until the Legislature acts or until precedent is established for interpreting this statute, use your best judgment in asserting that your rules do or do not affect farming operations.

[Revised in 2016] If section 14.111 applies to your rules and you notify the Commissioner of Agriculture, send a copy to Doug Spanier, Department Counsel for Agriculture.

5.2.7 If proposed rules have their primary effect on Chicano/Latino people. The Legislature repealed Minnesota Statutes, section 3.9223 in 2015, thus eliminating this council. Minnesota Laws 2015, Chapter 77 (codified at Minnesota Statutes, section 15.0145) created three new ethnic councils and does not require that the rules be submitted for review.

5.2.8 Counting time. Minnesota Rules, part 1400.2030, subpart 1, states:

> "To count a time period, the day of filing, mailing, publication, or other action is not counted and the last day of the time period is counted. Saturdays, Sundays, and legal holidays are included in calendar day time periods and are not included in working day time periods. If a calendar day time period ends on a Saturday, Sunday, or legal holiday, the time period ends on the next day which is not a Saturday, Sunday, or legal holiday. A time period is in calendar days unless it is stated as 'working days.'"

5.3 Get agency approval to give notice. How you go about getting 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 Attorney General (AG) to review and sign off on all rule projects. An agency that is a multi-member board will need to 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**, which was adapted from the recommended form from the now repealed AG Rules, part 2010.9910.

5.4 Get Governor's Office approval to give notice; consult with MMB. The Governor's Office 9/19/2019 administrative rule review policy, **GOV-PLCY**, states:

> "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.
>
> 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.
>
> 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."

[Revised in 2018] Note that 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 your rules will be reviewed within the time you need them.

This is also the time for the agency to consult with the Minnesota Department of Management and Budget (MMB) to help evaluate the fiscal impact and benefits of proposed rules on local governments. Send a copy of the Governor's Office form, 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.

5.5 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 (i.e., printed from the Revisor's computer). The Revisor's draft must also have a Revisor's certificate stating that the rules are approved for publication.

To get a draft of the rules in the Revisor's format, you have to give the Revisor a draft (on paper or electronically) and ask the Revisor to produce a Revisor's draft. The Revisor will copy your rules and, as necessary, assign rule part numbers and titles; it will also 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 problems. Usually, the Revisor will give you a preliminary draft to review to make sure that the Revisor's editorial changes do not make substantive changes. When your rules are ready to propose, give the Revisor any last changes and ask for "a draft approved for publication." Getting a preliminary Revisor's draft may take anywhere from several days to several weeks, depending on the length of your rules and how busy the Revisor is 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.

5.6 Calculate the date for the end of the 30-day comment period. Consider the following factors in 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 have the option of requesting OAH to review and approve your Additional Notice Plan. The ALJ has 5 working days to review and approve or disapprove your Additional Notice Plan (OAH Rules, part 1400.2060, subpart 3). See section 5.8 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 need to add on 30 days before you publish in the State Register to comply with Minnesota Statutes, section 14.111.
- **Rules with primary effect on Chicano/Latino people. [Repealed in 2015]**
- **State Register lead time. [Revised in 2091]** The State Register publishes on Mondays. Short proposed rules (10 or fewer pages) have a one-week deadline and are due by 12:00 noon on the Tuesday before publication. **Rules 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.** Hint: the 30-day comment period for a Notice published on a Monday would end at 4:30 p.m. on the Wednesday, four weeks and two days after the Monday. When you send your documents to the State Register, you will also need to inform the editor, using your Revisor's ID number. He will request the Revisor's Office to transmit the draft directly to the State Register electronically.
- **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 rules draft or your SONAR is not yet done 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.

5.7 Draft the Notice of Intent to Adopt Rules Without a Public Hearing. [Revised in 2016] A Notice of Intent to Adopt Rules Without a Public Hearing must contain the information specified in OAH 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**. To draft this form, the Editor used the recommended form from OAH Rules, part 1400.2520, and added practice tips. **NTC-NH** is designed to be a checklist for meeting the requirements of part 1400.2080.

5.7.1 Collecting comments. [Revised in 2019] Consider using OAH's eComment website for collecting your public comments. If agencies request it, OAH's will collect public comments on its eComments website (https://minnesotaoah.granicusideas.com/) (as well as regular U.S. mail) (Public instructions for making comments can be found at OAH Rulemaking eComments Website (https://mn.gov/oah/forms-and-filing/e-comments/).) To set up your public e-comment site, contact OAH Denise Collins, Legal Assistant at Denise.Collins@state.mn.us or (651) 361-7875 at least a week before you publish your notice in the State Register or e-file your case. Provide the following information:

1) OAH docket number assigned to the rulemaking.

2) The dates the comment period will open and close.
3) If the agency maintains a rulemaking webpage, provide the link. OAH will link to the agency's rulemaking webpage on your public eComments webpage.
4) If applicable, the date 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: a Request for Comments, proposed rules, a Notice, SONAR, etc.

Whether to do this depends on many agency-specific factors for you to gauge. For information see section 1.6.2 and **OAH-INF**.

- **5.7.2 Drafting and "substantially different" rules.** In drafting the Notice, consider that the description of the rules in the Notice might affect whether modifications to the rules will make the adopted rules "substantially different" from the proposed rules. To adopt rules that are substantially different from the proposed rules, you must go through additional rule proceedings under OAH Rules, part 1400.2110. See also Minnesota Statutes, section 14.05, subdivision 2, and section 14.24, and OAH Rules, part 1400.2300, subpart 7. 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 in 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 (i.e., 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.]

- **5.7.3 Timing the signatures.** The Notice of Intent to Adopt Rules Without a Public Hearing must be signed and dated. Note: you may want to wait to have this done if you are submitting your Additional Notice Plan to OAH for review and approval. Once the Notice is ready to be signed, the person authorized to give notice of hearing, usually a commissioner or board chair or the designee of one of these persons, signs it.

5.8 Develop an Additional Notice Plan and get it approved by OAH.

5.8.1 Develop an Additional Notice Plan. Minnesota Statutes, section 14.22, subdivision 1, requires an agency to publish proposed rules and the Notice of Intent to Adopt Rules Without a Public Hearing in the State Register and to mail the proposed rules and the Notice of Intent to Adopt Rules Without a Public Hearing to the agency's rulemaking mailing list. In addition, 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 has to develop and implement an Additional Notice Plan to reach significantly affected persons and then to 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 is to mail to persons who have inquired, shown an interest, or commented on the rules. 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 the newsletters of these trade or professional associations. In some cases, your plan would include press releases to general circulation newspapers or to broadcast media. Agencies are also using on-line 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. [Note: another good reason to seek advance ALJ approval is if you are relying on electronic communications. Ask OAH for guidance about using email notification. See Section 5.8.2 below] 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 5.13 of this chapter discusses giving notice per your Additional Notice Plan and documenting your efforts.

5.8.2 It is recommended to get OAH prior approval of Additional Notice Plan.
OAH Rules, part 1400.2060, allows an agency to ask OAH for prior approval of its Additional Notice Plan. The editor recommends that an agency seek prior approval of its 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 where it would be difficult to correct a problem without going back and beginning the process again. Further, OAH review of your Additional Notice Plan is in keeping with the spirit of the 1995 Administrative Procedure Act amendments because this helps ensure that the agency will have made reasonable

efforts to give adequate and timely notice of the rules to persons who may be significantly affected by them.

To request prior approval of your Additional Notice Plan, you must file with OAH: (1) the proposed rules; (2) a draft or final copy 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, section 14.14, subdivision 1a, i.e., why its Additional Notice Plan constitutes reasonable efforts to notify persons or classes of persons who might be significantly affected by the rules. [**[Revised in 2017]** See e-filing requirements in 5.8.3 below for submitting your documents to OAH.] OAH has five working days to review and approve or disapprove an Additional Notice Plan. Note that if you do request prior approval of your Additional Notice Plan, part 1400.2060 requires that you do so before you publish and mail your Notice and rules. 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 of part 1400.2060 to request prior approval of your Additional Notice Plan.

5.8.3 OAH information. If you have questions about the Additional Notice Plan or you wish to deliver your letter personally to OAH, refer to **OAH-INF** in the appendix for the location of or general information about OAH.

[Revised in 2017] OAH asks that agencies e-file all rule-related documents wherever possible. See section 1.6. This means all documents submitted for ALJ review should be e-filed. 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/) . (The page also includes a link to frequently asked questions.)

5.9 Finalize the Notice. After your Additional Notice Plan is completed, you need to finalize the Notice. Make any last changes and then print the Notice. Note: you no longer need a separate version for the State Register, so you can just print a single version of your Notice, single-spaced and with margins adjusted to fit neatly for copying and mailing. The Notice of Intent to Adopt Rules Without a Public Hearing must be signed and dated by the person authorized to give the notice, which is usually a commissioner or board chair or the designee of one of these persons.

5.10 Mail the SONAR to the Legislative Reference Library. When an agency mails 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 (LRL). Minnesota Statutes, section 14.23. The Legislative Reference Library now requests that all agencies submit SONARs in electronic form 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 format). You should keep a copy of your cover letter or complete a certificate documenting compliance with this requirement (form **CRT-LRL** in the appendix). Note: the date on the certificate and cover letter should be the

same as or earlier than the date you email the Notice of Intent to Adopt. Why send a cover letter with your email transmission? According to the Legislative Reference Library, the library retains the cover letters because they provide useful information, which could answer future questions about your project. Forms for the cover letter and certificate are in the appendix as **LRL** and **CRT-LRL**. If you have questions for the LRL, you may contact David Schmidtke at (651) 215-9058.

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. See **ST-REG** in the appendix for information on how to publish in the State Register. Note that the Chief ALJ may authorize an agency to omit the full text of the rules from the published Notice in the State Register if the publication would be unduly cumbersome, expensive, or otherwise inexpedient. See Minnesota Statutes, section 14.22, subdivision 1, paragraph (b), if you think this rare situation applies to your rules. Then, 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. If you receive this permission, the Revisor's Office requests that you keep either the *adopted* rules or a link to them posted on your website at least until the Revisor has incorporated them into the official rules.

5.11.1 State Register lead time. [Revised in 2019] The State Register publishes on Mondays. Publication deadlines depend on the length or complexity of your rules:

- Short proposed rules (10 or fewer pages) have a one-week deadline and are due by 12:00 noon on the Tuesday before publication.
- **Rules 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.** Only in rare circumstances, *and if approved by the State Register editor in advance*, will you be allowed to bring in your publication order a day or two later than the deadline. Also, be careful if there is a holiday between the order date and the publication date because this will sometimes move up the State Register deadline.

5.12 Mail the Notice. You must mail the Notice of Intent to Adopt Rules Without a Public Hearing to everyone on your agency's rulemaking mailing list. Under OAH Rules, part 1400.2080, subpart 6, the Notice must be mailed at least 33 days before the end of the comment period. It is a good idea to set this mailing in motion immediately after submitting the Notice to the State Register for publication. (There is no good reason to wait until three days before the publication date to begin work on the mailing.) Copying and mailing can be a major undertaking if your agency's rulemaking mailing list is large. Note that if you have a large mailing list or you frequently get additions to your mailing list, make sure that you 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 mail a copy of your rules along with the Notice. Although it is not required, it is a good idea to mail a copy of the rules along with the Notice, unless it would be too expensive to copy and mail your rules 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. Minnesota Statutes, section 14.22, subdivision 1.

A Certificate of Accuracy of the Mailing List and a Certificate of Mailing must be completed and put in the file to document compliance with the mailing requirement. The date on the Certificate of Mailing List should be the same as the date of mailing. 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.

5.13 Give notice per your Additional Notice Plan. [Revised in 2016] Give notice according to your Additional Notice Plan. Document what you do. For any mailed notice, whether using regular mail or email, do a certificate of mailing with a copy of the notice and the mailing list attached. [**Editor's 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 Editor's note in section 1.7.3 for Data Practices considerations to take into account.] Detail any efforts you made to develop your mailing list. For more traditional paper-based notice, get copies of any newsletters or newspapers in which a notice is published. Get tapes or transcripts of any 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. Minnesota Statutes, section 14.116, requires an agency to notify certain Legislators when it mails notice of intent to adopt rules. The agency must send a copy of the notice and a copy of the 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.

[Revised in 2017] 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** and **CRT-LEG**. Note: The statute says "send," but does not specify the method. In the past, OAH has granted approval to send these documents by email on case-by-case basis. But that was before email reached its current universal acceptance. Some legislators accept only email correspondence. Agencies have been directed to use paperless communication wherever possible. The legislature added the requirement in 2012 that agencies also notify the Legislative Coordinating Commission (LCC). How to give notice to the LCC? Send your notice to lcc@lcc.leg.mn (preferred address) or 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 this rulemaking. For example, Minnesota

Statutes, section 62J.07, subdivision 3, requires that the "commissioners of health, commerce, and human services . . . shall notify members of the [Legislative Commission on Health Care Access] when a draft of a proposed rule [related to the 1992 HealthRight Act and the 1993 and subsequent MinnesotaCare Acts] has been completed and scheduled for publication in the State Register. At the request of a member of the commission, a commissioner shall provide a description and a copy of a proposed rule." Document what you do to comply with any other statutory or rule requirements.

5.16 Keep track of comments. After the Notice of Intent to Adopt Rules Without a Public Hearing has been given, carefully track all written comments to the proposed rules. This is important for a number of reasons. The first and foremost is that the agency needs to consider and respond to any policy issues raised. Other important reasons to keep track of the comments include:

- The comments must be filed (along with any agency responses) with OAH as part of the rulemaking record reviewed by the ALJ. Minnesota Rules, part 1400.2310.
- All requests for a hearing must meet the requirements of Minnesota Statutes, section 14.25, subdivision 1, in order to be counted. These requirements are that the request 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 have 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 mailed, the agency must give a free copy of the rules to any person who requests one. Minnesota Statutes, section 14.22.
- The agency must place persons on the agency's rulemaking mailing list when requested to do so. Minnesota Statutes, section 14.14.
- If a hearing is required, after the hearing and at the very end of this 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. Minnesota Statutes, section 14.16.
- If a hearing is not required, the agency must mail notice of the date of submission of the proposed rules to the Chief ALJ to any person requesting to receive this notice. Minnesota Statutes, section 14.26.

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.

5.17 Proceed according to the number of hearing requests. Note: whether an agency will proceed with or without a hearing is determined not by the number of hearing requests, but by the number of *outstanding* hearing requests *when the agency adopts the rules*. Hearing requests may be withdrawn after the end of the 30-day comment period. Minnesota Statutes, section 14.25, requires a hearing if there are 25 or more hearing requests.

[Frequently asked questions: What constitutes a hearing request? A separate document or a signature on a letter? Answer: A signature. Therefore, one letter with 27 signatures is 27 hearing

requests. Also note: the APA contains nothing that limits valid requests to those that come from individuals within Minnesota. Requests might come from other states or countries, a likely prospect with internet-based global communication.

How to handle invalid hearing requests? Answer: There is no single or simple answer. For example, if well before the deadline, you receive 25 or more identical requests for a hearing that don't meet the statutory requirements and you know the group behind them, ignoring them would probably not be a wise course of action. You wield the power of the state and should treat all participants with helpful respect. Notifying them that their requests are defective and why would give them an opportunity to file valid requests and maintain your relationship with that group. 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 give the individuals notice that the hearing will be held. You will have to develop a strategy as best you can on a case-by-case basis.]

Although section 14.25 addresses the withdrawal of hearing requests, it is silent as to any 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 (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 process. The only time deadlines or considerations for obtaining hearing request withdrawals are those imposed by other rulemaking requirements or other factors. For example, with a Notice of Intent to Adopt Rules Without a Public Hearing, under section 14.26, subd. 1, the agency has 180 days from the end of the comment period to submit the rules to OAH for review, but the agency may want its rules in place sooner than that.

5.17.1 If there are 25 or more hearing requests, start over with the Notice of Hearing procedures. If 25 or more persons request a hearing, the agency must hold a hearing (unless a sufficient number of requests are withdrawn). Minnesota Statutes, section 14.25, subdivision 1, requires the agency to: (1) hold a hearing by proceeding under the provisions of sections 14.14 to 14.20; (2) publish a Notice of Hearing in the State Register; and (3) mail a copy of the Notice to persons who requested a hearing. In other words, you have to start over and give a Notice of Hearing. Use chapter 7 of this Manual, "Giving Notice of Hearing" 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 only a citation to the State Register pages where the text appears.

5.17.2 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 of this Manual, "Adopting Rules Without A Hearing" for this. Note: when adopting rules

without a hearing, *you need to 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, 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 to adopt the rules without a hearing.
- All persons 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. Section 14.25, subdivision 2, sets out the requirements for this Notice. A form for this notice is in the appendix as **NTC-HRWD**. This 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 persons who requested a hearing that there will be no hearing and the agency will proceed to adopt the rules without a hearing. Even though this is not specifically required by section 14.25, mailing a Notice of this to these persons soon after the end of the comment period is a good idea. A form for this notice is in the appendix as **NTC-NH2**.

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

Date Done	Item
----------	**5 This entire chapter reviewed before proceeding.**
----------	**5.1 Decision made on how to proceed.**
----------	**5.2 Things considered before process started.** - **5.2.1 Rules and SONAR done.** - **5.2.2 Plenty of time allowed for completion of steps.** - **5.2.3 At least 60 days after Request for Comments.** - **5.2.4 Rulemaking authority within 18 month time limit.** - **5.2.5 E-filing rule-related documents.** - **5.2.6 If proposed rules affect farming operations.** - **5.2.7 If proposed rules have primary effect on Chicano/Latino people. [Repealed in 2015]** - **5.2.8 Counting time.**
----------	**5.3 Agency approval obtained for giving notice.** - If agency is a multi-member board, **BD-NTC** form used.
----------	**5.4 Governor's Office approval obtained for giving notice.** - **GOV-PRPS** used.
----------	**5.5 Revisor's rules draft approved for publication obtained (with certificate signed by the Revisor)**
----------	**5.6 End of 30-day comment period calculated. Factors considered:** - **30-Day comment period.** - **OAH review time.** 5 working days. - **Rules affecting farming operations.** 30 days' additional notice. - **Rules with primary effect on Chicano/Latino people. [Repealed in 2015]** - **State Register lead time.** 11 days if lengthy; 7 days if short. - **Give yourself enough time.**
----------	**5.7 Notice of Intent to Adopt Rules Without a Hearing drafted.** - **NTC-NH** form used.

----------	**5.8 Additional Notice Plan developed and approved by OAH.**
	- **5.8.1 Additional Notice Plan developed.**
	- **5.8.2 Additional Notice Plan approved by OAH. (Optional)**
	  - **NP-RLNTC** used for cover letter.
	  - **OAH-INF** referred to.

Checklist for Chapter 5 (Continued)

Date Done	Item
----------	**5.9 Notice finalized.** - Notice signed and dated by _____.
----------	**5.10 SONAR mailed to the Legislative Reference Library.** - **LRL** and **CRT-LRL** used.
----------	**5.11 Notice published in the State Register.** - **ST-REG** used.
----------	**5.12 Notice mailed.** - **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** and **CRT-LEG** used.
----------	**5.15 Other applicable statutory 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 a 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.

----------	**5.17 Proceeded according to number of hearing requests.**
	- **5.17.1 If 25 or more, chapter 7 used to give Hearing Notice.**
	- **5.17.2 If fewer than 25, rules adopted w/o hearing using chapter 8.**
	  - 180-day time limit for submission to OAH noted.
	  - Agency management, staff, and any others notified.
	  - If hearing withdrawals reduce # of requests below 25, requesters notified. **NTC-HRWD** & **CRT-HRWD** used.
	  - If fewer than 25 hearing requests (and Department has done nothing to obtain withdrawals), requesters notified. **NTC-NH2** used.

Chapter 6–Giving Dual Notice

In General. This chapter tells you how your agency starts the formal rules 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 Decide how to proceed. You have three choices in how to start your rulemaking. You can give a Notice of Hearing. You can give a Notice of Intent to Adopt Rules without a Hearing. Or you can give a 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 persons request a hearing. In deciding how to proceed, the agency should consider a number of factors. If the rules are controversial and 25 or more persons are likely to request a hearing, you might as well just give a Notice of Hearing (chapter 7 of this Manual). 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 Hearing (chapter 5 of this Manual). If you really cannot predict whether there will be more or fewer than 25 persons requesting a hearing, you might want to go with a Dual Notice (this chapter). 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 or not it thinks 25 persons will request a hearing. [Frequently asked question: What constitutes a hearing request: a separate document or a signature on a letter? Answer: a signature. Therefore, one letter with 27 signatures is 27 hearing requests.]

6.2 Time considerations and other considerations before you get started.

6.2.1 Rules and SONAR must be done. Before you start this chapter, you should be finished developing your rules and writing your Statement of Need and Reasonableness (SONAR). This Manual contains information on rule and SONAR development in chapter 3, "Rule Development," and chapter 4, "Developing the Statement of Need and Reasonableness."

6.2.2 [Revised in 2018] 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 it needs to be signed or approved. Some things take time, like getting signatures for various approvals and getting Revisor's drafts of the rules. People are not always available on a Wednesday morning to sign documents so that the documents can meet the State Register's 12:00 noon deadline.

6.2.3 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 on the rules. This Manual contains information on the Request for Comments in chapter 2, "Request for Comments."

6.2.4 Rulemaking authority expires 18 months after the effective date of the law authorizing the rules. Minnesota Statutes, section 14.125, limits time on rulemaking authority. 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. This applies only to first-time rule adoptions under the statutory authority and not to subsequent amendments or repeals of the rules.

[Revised in 2018] 6.2.5 E-filing rule-related documents. OAH asks agencies to e-file all rule-related documents wherever possible. This means all documents submitted for ALJ review should be e-filed. **[See section 1.6 for explicit instructions.]** 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/) . (The page also includes a link to frequently asked questions.) 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 a prudent practice. In addition, save any correspondence or documents you receive from OAH for your own records since those items might not remain in the e-file.

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

- Minnesota Statutes, section 14.111, states in pertinent part: "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."
- Minnesota Statutes, section 14.14, subdivision 1b, states: 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.

Everybody is affected by everything to some degree or another, 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 in order 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 might 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 requirements of sections 14.111 and 14.14, 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 requirements of sections 14.111 and 14.14, 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 Administrative Law Judge (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 may occur, it would be no more than the impact to the community in general. Further basis for the decision was that no regulatory controls were directed at or triggered by farming operations as such. It will take more decisions related to this issue to know whether this will be a general rule for determining whether a set of rules affects farming operations or whether this decision is unique to the facts of this rulemaking. In the meantime, this decision will at least give an agency a basis to determine whether its rules affect farming operations.

There is no formal Office of Administrative Hearings (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. Perhaps OAH or the Commissioner of Agriculture would, if asked, give guidance early in the rulemaking process as to whether your rules affect farming operations. So far, no one has requested this assistance from OAH. Perhaps the Legislature will add guidance or a means to formally seek prior approval to these statutory sections. Until the Legislature acts or until precedent is established for interpreting this statute, use your best judgment in asserting that your rules do or do not affect farming operations.

[Revised in 2016] If section 14.111 applies to your rules and you notify the Commissioner of Agriculture, send a copy to Doug Spanier, Department Counsel for Agriculture.

6.2.7 If proposed rules have their primary effect on Chicano/Latino people. [Revised in 2015] The Legislature repealed Minnesota Statutes, section 3.9223 in 2015, thus eliminating this council. Minnesota Laws 2015, Chapter 77 (codified at Minnesota Statutes, section 15.0145) created three new ethnic councils and does not require that the rules be submitted for review.

6.2.8 Counting time. Minnesota Rules, part 1400.2030, subpart 1, states:

> "To count a time period, the day of filing, mailing, publication, or other action is not counted and the last day of the time period is counted. Saturdays, Sundays, and legal holidays are included in calendar day time periods and are not included in working day time periods. If a calendar day time period ends on a Saturday, Sunday, or legal holiday, the time period ends on the next day which is not a Saturday, Sunday, or legal holiday. A time period is in calendar days unless it is stated as 'working days.'"

6.3 Get agency approval to give notice. How you go about getting approval within your agency is as individual as your agency. Your agency might use a memo that contains a brief description of

the rules and details any controversial issues or policy decisions. If the rules are highly controversial, it may be necessary or expedient to meet with those agency persons who have to sign off on the rules. 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 Dual Notice.

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 will need to 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**, which was adapted from the recommended form from the now repealed AG Rules, part 2010.9910.

6.4 Get Governor's Office approval to give notice; consult with MMB. The Governor's Office 9/19/2019 administrative rule review policy, **GOV-PLCY**, states:

> "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.
>
> "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.
>
> .*.*.*
>
> "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."

[Revised in 2018] Note that 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 your rules will be reviewed within the time you need them.

This is also the time for the agency to consult with the Department of Minnesota Management & Budget to help evaluate the fiscal impact and benefits of proposed rules on local governments. Send a copy of the Governor's Office form, SONAR, and draft rules to the Executive Budget Officer (EBO) for your agency to initiate the consultation with Minnesota Management & Budget. 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.

6.5 Get a Revisor's draft approved for publication. Before the agency may publish rules and the Dual Notice, the rules must be in the Revisor's format (i.e., printed from the Revisor's computer). The Revisor's draft must also have a Revisor's certificate stating that the rules are approved for publication.

To get a draft of the rules in the Revisor's format, you have to give the Revisor a draft (on paper or electronically) and ask the Revisor to produce a Revisor's draft. The Revisor will copy your rules and, as necessary, assign rule part numbers and titles. It will also 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 problems. Usually, the Revisor will give you a preliminary draft to review to make sure that the Revisor's editorial changes do not make substantive changes. When your rules are ready to propose, give the Revisor any last changes and ask for "a draft approved for publication." Getting a preliminary Revisor's draft might take anywhere from several days to several weeks, depending on the length of your rules and how busy the Revisor is 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.

6.6 Develop an Additional Notice Plan. Minnesota Statutes, section 14.14, subdivision 1a, and section 14.22, subdivision 1, require an agency to publish proposed rules and the Dual Notice in the State Register and to mail the proposed rules and the Dual Notice to the agency's rulemaking mailing list. In addition, the agency is required to "make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule [being proposed] by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication." Minnesota Statutes, sections 14.131 and 14.23, require 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 has to develop and implement an Additional Notice Plan to reach significantly affected persons and then to 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 is to mail to persons who have inquired, shown an interest, or commented on the rules. 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 the newsletters of these trade or professional associations. In some cases, your plan would include press releases to general circulation newspapers or to broadcast media. Agencies are also using on-line 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. [Note: another good reason to seek advance ALJ approval is if you are relying on electronic communications. Ask OAH for guidance re: using email notification. See Section 6.9.1 below.]

There are undoubtedly other reasonable ways to reach potentially affected persons. In deciding what is reasonable, give some thought to 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 6.9.1 of this chapter discusses requesting OAH approval of your Additional Notice Plan. Section 6.14 of this chapter discusses giving notice per your Additional Notice Plan and documenting your efforts.

6.7 Set a tentative hearing date and location and make initial contact with OAH.

6.7.1 Choose a hearing date and arrange for a room before contacting OAH. [Revised in 2018] In most cases, it is best to find a hearing date **and time** that is compatible with all necessary agency personnel (including your AG) and to secure a hearing room on that date before you call OAH to request an Administrative Law Judge (ALJ). As a general rule, you will have more trouble finding a workable hearing date and scheduling a hearing room than scheduling an ALJ. If more than one day is needed for the hearing, schedule accordingly. **If you plan to accommodate people outside of regular business hours, you will need to plan accordingly for this too and disclose that fact when requesting an ALJ.**

6.7.2 Choose a hearing date. Consider the following factors in choosing a hearing date:

- **30-Day comment period. [Revised in 2018]**The Dual Notice must be published at least 30 days before the end of the comment period. Also see section 6.8 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 hearing to approve changes.**
- **10 Additional days after the end of the comment period.** Minnesota Statutes, section 14.22, subdivision 2, allows agencies to give a Dual Notice and states: [i]f a hearing is required, there must be at least ten calendar days between the last day for requesting a hearing and the day of the hearing.
- **OAH review time.** Before you can publish your Dual Notice, you have to 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 (OAH Rules, part 1400.2080, subpart 5). If you also submit your Additional Notice Plan for review and approval at this time, the ALJ has five working days to review and approve or disapprove your Additional Notice Plan (OAH Rules, part 1400.2060, subpart 3). 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 need to add on 30 days before you publish in the State Register to comply with Minnesota Statutes, section 14.111.
- **Rules with primary effect on Chicano/Latino people. [Revised in 2015]** This no longer applies. The Legislature repealed Minnesota Statutes, section 3.9223 in 2015, thus eliminating this council. Minnesota Laws 2015, Chapter 77 (codified at Minnesota Statutes, section 15.0145) created three new ethnic councils and does not require that the rules be submitted for review.
- **State Register lead time. [Revised in 2019]** The State Register publishes on Mondays. Publication deadlines depend on the length or complexity of your rules: Short proposed rules (10 or fewer pages) have a one-week deadline and are due by 12:00 noon on the Tuesday before publication (except when the deadline is changed by a holiday). **Rules 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.**

Hint: the 30-day comment period for a Notice published on a Monday would end at 4:30 p.m. on the Wednesday, four weeks and two days after the Monday. This means that for a Dual Notice published on a Monday, the earliest the hearing could be would be the Monday, six weeks after the publication date.

- **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 the development of 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). At the time 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 at this time to also 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, let OAH choose the actual hearing date from among those available.
- **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.

6.7.3 Arrange for a room. Just about any room is okay for the hearing if it is large enough for the number of persons likely to attend the hearing and if it is accessible to persons with disabilities. A board room or meeting room at your agency would be okay if it is large enough. If you want to hold the hearing close to the State Capitol, call (651) 296-5408 for hearing rooms in the State Office Building or call (651) 296-0866 for Senate hearing rooms at the Capitol. If your rules affect farming operations and if you have a public hearing, remember that at least one hearing has to be in an agricultural area of the state (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.

6.7.4 Consider a videoconference hearing. If your rules affect persons from around the state, you might consider making your hearing available via videoconference. Especially if the affected persons are not well represented by interest groups or lobbyists. Especially if the affected persons cannot easily hop in the car and travel many hours to the Twin Cities

for a hearing. Especially if you want to hold the hearing in various locations around the state, but your agency has a limited budget for the rules project. The cost of holding your hearing via videoconference is amazingly reasonable. If you want information about videoconference sites, costs, and other information, call the videoconference coordinator for your agency. **[Revised in 2015**] For information about how to make this work with OAH, contact Legal Assistant Denise Collins at **(**651) 361-7875 or denise.collins@state.mn.us.

6.7.5 Contact OAH. [Revised in 2019] After finding one or more workable dates, prepare almost-finished drafts of the Dual Notice (section 6.8 of this chapter) and cover letter to OAH (section 6.9 of this chapter). Then schedule a hearing date by completing the Contested Case Docket Request (https://mn.gov/oah/lawyers-and-litigants/administrative-law/docket-request.jsp) on OAH's website**, using your OAH account and assigned docket number**. **[see section 1.6.1]** Provide the subject of the rules and the Revisor's ID number. When an ALJ is assigned, follow OAH's directions. You want to immediately complete the Notice and cover letter and e-file them to officially request the ALJ assignment and to schedule the hearing.

6.8 Draft the Dual Notice. A Dual Notice must contain the information in OAH Rules, part 1400.2080, subparts 2, 3, and 4. A form for the Dual Notice is in the appendix as **NTC-DL**. To draft this form, the Editor used the recommended form from OAH Rules, part 1400.2540, and added practice tips. **NTC-DL** is designed to be a checklist for meeting the requirements of part 1400.2080.

In drafting the Notice, consider that the description of the rules in the Notice might affect whether modifications to the rules will make the adopted rules "substantially different" from the proposed rules. To adopt rules that are substantially different from the proposed rules, you must go through additional rule proceedings under OAH Rules, part 1400.2110. See also Minnesota Statutes, section 14.05, subdivision 2, section 14.16, and section 14.24, and OAH Rules, part 1400.2240, subpart 7, and part 1400.2300, subpart 7. 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 in 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 (i.e., 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.]

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. **[New in 2018]** If your agency is a multi-member 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.**

[Revised in 2019] Public Comments Using OAH's eComment website. Consider whether to use OAH's eComment system for collecting comments during the 30-day period. Note: You will have to use it for post-hearing comments. **[See section 1.6.2 and OAH-INF for explicit instructions.]** Whether to do this depends on many agency-specific factors for you to gauge. If you choose to do this, you must draft your notice accordingly. (Public instructions for making comments can be found at eComments website (https://minnesotaoah.granicusideas.com/))

[Revised in 2018] Agencies *must* use this system after public hearings on proposed rules when comments must be submitted to the ALJ. (*See* Minnesota Rule 1400.2230.) OAH will set up a public eComment site for your rule when you arrange your hearing. If you have questions, contact Legal Assistant Denise Collins at denise.collins@state.mn.us or (651) 361-7875. [Editor's Note: While agencies must use the eComments system, the public may also submit comments to OAH by regular mail, email, and fax. So you will need to check for and respond to such comments.]

Note that 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. As soon as the Notice can be signed, the person authorized to give notice of hearing, usually a commissioner or board chair or the designee of one of these persons, signs it.

6.9 Get OAH approval of Notice. Under OAH Rules, part 1400.2020, subpart 1, the Chief ALJ must promptly assign an ALJ to a rule proceeding after the Chief ALJ receives a request to schedule a rule hearing. OAH Rules, part 1400.2080, subpart 5, requires that a request to schedule a rule hearing must be accompanied by (1) the Dual Notice, (2) a copy of the proposed rules approved as to form by the Revisor, and (3) a draft or final copy of the SONAR. The agency must obtain the ALJ's 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 in order 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.

> **6.9.1 It is recommended to also get OAH prior approval of Additional Notice Plan. [Revised in 2016]** OAH Rules, part 1400.2060, allows an agency to ask OAH for prior approval of its Additional Notice Plan. (See section 6.6 of this chapter on developing an Additional Notice Plan.) The Editor recommends that an agency seek prior approval of its 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 where it would be difficult to correct a problem without going back and beginning the process again. Further, OAH review of your

Additional Notice Plan is in keeping with the spirit of the 1995 Administrative Procedure Act amendments because this helps ensure that reasonable efforts will be made to give adequate and timely notice to persons who might be significantly affected by the rules. To request prior approval of your Additional Notice Plan, you must file with OAH: (1) the proposed rules; (2) a draft or final copy of the SONAR containing the agency's proposed Additional Notice Plan; (3) the proposed Dual Notice; and (4) an explanation of why the agency believes that its Additional Notice Plan complies with Minnesota Statutes, section 14.14, subdivision 1a, i.e., why its Additional Notice Plan constitutes reasonable efforts to notify persons or classes of persons who may be significantly affected by the rules. OAH has five working days to review and approve or disapprove an Additional Notice Plan. Note that if you do request prior approval of your Additional Notice Plan, part 1400.2060 requires that you do so before you publish and mail your Notice and rules. Remember that this is a rule-related submission appropriate for e-filing as discussed in section 6.2.5.

6.9.2 Letter to OAH requesting a hearing. A form for the cover letter to the Chief ALJ requesting a hearing and assignment of an ALJ 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.

6.9.3 OAH information. If you have questions about the Notice or the Additional Notice Plan or you wish to deliver your letter personally to OAH, refer to **OAH-INF** in the appendix for the location of or general information about OAH.

6.10 Finalize the 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. Note: you no longer need a separate version for the State Register, so you can just print a single version of your Notice, single-spaced and with margins adjusted to fit neatly for copying and mailing. The Dual Notice must be signed and dated by the person authorized to give the notice, which is usually a commissioner or board chair or the designee of one of these persons.

6.11 Mail the SONAR to the Legislative Reference Library. When an agency mails out the Dual Notice, the agency must send a copy of the SONAR to the Legislative Reference Library (LRL). Minnesota Statutes, sections 14.131 and 14.23. The Legislative Reference Library requires that agencies submit SONARs in electronic form 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 format). You should keep a copy of your cover letter or complete a certificate documenting compliance with this requirement (form **CRT-LRL** in the appendix). Note: the date on the certificate and cover letter should be the same as or earlier than the date you email the Notice of Intent to Adopt. Why send a cover letter with your email transmission? According to the Legislative Reference Library, the library retains the cover letters because they provide useful information, which could answer future questions about your project. Forms for the

cover letter and certificate are in the appendix as **LRL** and **CRT-LRL**. If you have questions for the LRL, you may contact David Schmidtke at (651) 215-9058.

6.12 Publish the Notice in the State Register. [Revised in 2015] 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. See **ST-REG** in the appendix for information on how to publish in the State Register. Note that the Chief ALJ may authorize an agency to omit the full text of the rules from the published Notice in the State Register if the publication would be unduly cumbersome, expensive, or otherwise inexpedient. See Minnesota Statutes, section 14.14, subdivision 1a, paragraph (b), and section 14.22, subdivision 1, paragraph (b), if you think this rare situation applies to your rules. Then, 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. If you receive this permission, the Revisor's Office requests that you keep either the *adopted* rules or a link to them posted on your website at least until the Revisor has incorporated them into the official rules.

> **6.12.1 State Register lead time. [Revised in 2019]** The State Register publishes on Mondays. Publication deadlines depend on the length or complexity of your rules: Short proposed rules (10 or fewer pages) have a one-week deadline and are due by 12:00 noon on the Tuesday before publication. **Rules 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.** Only in rare circumstances, *and if approved by the State Register editor in advance*, will you be allowed to bring in your publication order a day or two later than the deadline. Also, be careful if there is a holiday between the order date and the publication date because this will sometimes move up the State Register deadline. When you deliver your documents to the State Register, you will also need to inform the editor of the Revisor's draft number, which will be "RD" plus four digits. He will request the Revisor's Office to transmit the draft directly to the State Register electronically.

6.13 Mail the Notice. You must mail the Dual Notice to everyone on your agency's rulemaking mailing list that you keep per Minnesota Statutes, section 14.14, subdivision 1a. Under OAH Rules, part 1400.2080, subpart 6, the Notice must be mailed at least 33 days before the end of the comment period and must be published in the State Register at least 30 days before the end of the comment period. If a hearing is required after using a dual notice, there must be at least ten days between the end of the comment period and the start of the hearing. It is a good idea to set this mailing in motion immediately after submitting the Notice to the State Register for publication. (There is no good reason to wait until three days before the publication date to begin work on the mailing.) Copying and mailing can be a major undertaking if your agency's rulemaking mailing list is large. Note that if you have a large mailing list or you frequently get additions to your mailing list, make sure that you 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 mail a copy of your rules along with the Notice. Although it is not required, it is a good idea to mail a copy of the rules along with the Notice, unless it would be too expensive to copy and mail your rules 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. Minnesota Statutes, section 14.14, subdivision 1a, and section 14.22, subdivision 1.

A Certificate of Accuracy of the Mailing List and a Certificate of Mailing must be completed and put in the file to document compliance with the mailing requirement. The date on the Certificate of Mailing List should be the same as the date of mailing. 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.

6.14 Give notice per your Additional Notice Plan. [Revised in 2016] Give notice according to your Additional Notice Plan. Document what you do. For any mailed notice, whether using regular mail or email, do a certificate of mailing with a copy of the notice and the mailing list attached. **[Editor's 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 Editor's note in section 1.7.3 for Data Practices considerations to take into account.] Detail any efforts you made to develop your mailing list. For more traditional paper-based notice, get copies of any newsletters or newspapers in which a notice is published. Get tapes or transcripts of any 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**. Create a similar document for electronic mailings.

6.15 Give notice to Legislators. Minnesota Statutes, section 14.116, requires an agency to notify certain Legislators when it mails notice of intent to adopt rules. The agency must send a copy of the notice and a copy of the 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.

[Revised in 2017] 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** and **CRT-LEG**. [Outdated discussion about seeking OAH approval to send these documents via email omitted.] Agencies have been directed to use paperless communication wherever possible. Agencies must also notify the Legislative Coordinating Commission (LCC). How to give notice to the LCC? Send your notice to lcc@lcc.leg.mn (preferred address) or to the Legislative Coordinating Commission, 72 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul MN 55155.

6.16 Meet any other applicable statutory or rule requirements. Meet any other statutory or rule requirements that are specific to your agency or to this rulemaking. For example, Minnesota Statutes, section 62J.07, subdivision 3, requires that the "commissioners of health, commerce, and human services . . . shall notify members of the [Legislative Commission on Health Care Access]

when a draft of a proposed rule [related to the 1992 HealthRight Act and the 1993 and subsequent MinnesotaCare Acts] has been completed and scheduled for publication in the State Register. At the request of a member of the commission, a commissioner shall provide a description and a copy of a proposed rule." Document what you do to comply with any other statutory or rule requirements.

6.17 Keep track of comments. After you have given the Dual Notice, carefully track all written comments about the proposed rules. This is important for the agency for a number of reasons. The first and foremost is that the agency needs to consider and respond to any policy issues raised. Other important reasons to keep track of the comments include:

- The comments must be filed with OAH (along with any agency responses) as part of the rulemaking record reviewed by the ALJ. Minnesota Rules, parts 1400.2220 and 1400.2310.
- All requests for a hearing must meet the requirements of Minnesota Statutes, section 14.25, subdivision 1, in order to be counted. These requirements are that the request 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 have 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 mailed, the agency must give a free copy of the rules to any person who requests one. Minnesota Statutes, sections 14.14 and 14.22.
- The agency must place persons on the agency's rulemaking mailing list when requested to do so. Minnesota Statutes, section 14.14.
- If a hearing is required, the agency must notify persons who have requested notification on the date the rules are filed with the Secretary of State. Since OAH now does the Secretary of State filing, OAH will notify you when they file so you can give this notice. Minnesota Statutes, section 14.16.
- If a hearing is not required, the agency must mail notice of the date of submission of the proposed rules to the Chief ALJ to any person requesting to receive this notice. Minnesota Statutes, section 14.26.

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.

6.18 Proceed according to the number of hearing requests. Note: whether an agency will proceed with or without a hearing is determined not by the number of hearing requests at the end of the 30-day comment period, but by the number of *outstanding* hearing requests *when the agency adopts the rules*. Hearing requests may be withdrawn after the end of the 30-day comment period. Minnesota Statutes, section 14.25, requires a hearing if there are 25 or more hearing requests.

[Frequently asked questions: What constitutes a hearing request? A separate document or a separate name on a letter? Answer: A separate name or signature. Therefore, one letter with 27

signatures is 27 hearing requests. A signature, however, is not required by either statute or rule. Plus, requests made by email count. Since no written signature is required, use common sense to accept individual names that in context appear to be individual citizens joining in a group request for a hearing. Also note: the APA contains nothing that limits valid requests to those that come from individuals within Minnesota. Requests might come from other states or countries, a likely prospect with internet-based global communication.

How to handle invalid hearing requests? Answer: There is no single or simple answer. For example, if well before the deadline, you receive 25 or more identical requests for a hearing that don't meet the statutory requirements and you know the group behind them, ignoring them would probably not be a wise course of action. You wield the power of the state and should treat all participants with helpful respect. Notifying them that their requests are defective and why would give them an opportunity to file valid requests and maintain your relationship with that group. 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 give the individuals notice that the hearing will be held. You need to develop a strategy as best you can on a case-by-case basis.]

Although section 14.25 addresses the withdrawal of hearing requests, it is silent as to any 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 (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 adopt its rules using the no-hearing process. The only deadlines or considerations for obtaining hearing request withdrawals are those imposed by other rulemaking requirements or other factors. For example, with a Dual Notice, it is necessary to resolve all hearing request withdrawals by the deadline for canceling the hearing; namely, at least three working days before the hearing, per Minnesota Statutes, section 14.25, subdivision 2. With a Notice of Intent to Adopt Rules Without a Public Hearing, the agency has 180 days to submit the rules to OAH for review, but the agency may want its rules in place sooner than that.

6.18.1 If there are 25 or more hearing requests, prepare for the hearing. If 25 or more persons request a hearing, the agency must hold the hearing (unless a sufficient number of requests are withdrawn). Use chapter 9 of this Manual, "Adopting Rules With A Hearing." Other things you need to do include:

- Notify agency management, those 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.
- Notify the persons 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 those persons 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 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).

6.18.2 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 of this Manual, "Adopting Rules Without A Hearing." Note: when adopting rules without a hearing, *you need to 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, those agency staff members involved in the rulemaking process, and the agency 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.
- Call the ALJ 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**. 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 persons 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. Section 14.25, subdivision 2, sets out the requirements for this Notice. A form for this notice is in the appendix as **NTC-HRWD**. This 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 are fewer than 25 hearing requests (and the agency has done nothing to obtain withdrawals), notify the persons who requested a hearing that the hearing has been canceled. Even though this is not specifically required by section 14.25, mailing a Notice of Cancellation to these persons as soon as possible after the end of the comment period is a good idea. A form for this notice is in the appendix as **NTC-CNCL**.

Checklist for Chapter 6 - Giving Dual Notice

Date Done	Item
----------	**6 This entire chapter reviewed before proceeding.**
----------	**6.1 Decision made on how to proceed.**
----------	**6.2 Things considered before process started.** - **6.2.1 Rules and SONAR done.** - **6.2.2 Plenty of time allowed for completion of steps.** - **6.2.3 At least 60 days after Request for Comments.** - **6.2.4 Rulemaking authority within 18 month time limit.** - **6.2.5 E-filing rule-related documents.** - **6.2.6 If proposed rules affect farming operations.** - **6.2.7 If proposed rules have primary effect on Chicano/Latino people. [Repealed in 2015]** - **6.2.8 Counting time.**
----------	**6.3 Agency approval obtained for giving notice.** - If agency is a multi-member board, **BD-NTC** form used.
----------	**6.4 Governor's Office approval obtained for giving notice.** - **GOV-PRPS** used.
----------	**6.5 Approved rules draft obtained from the Revisor.**
----------	**6.6 Additional Notice Plan developed.**

----------	**6.7 Tentative hearing date & location set; OAH contacted.**
	- **6.7.1 Hearing date and room set before contacting OAH.**
	- **6.7.2 Factors used in choosing a hearing date.**
	  - **30-Day comment period and 10 more days at 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.
	  - **Rules with primary effect on Chicano/Latino people. [Repealed in 2015]**
	  - **State Register lead time. 11 days if lengthy; 7 days if short.**
	  - **Availability of key agency personnel/clear your calendar.**
	  - **If several hearing dates are possible.**
	  - **Give yourself enough time.**
	- **6.7.3 Hearing room arranged.**
	- **6.7.4 Videoconference hearing considered.**

Checklist for Chapter 6 (Continued)

Date Done	Item
	- **6.7.5 OAH contacted.**
----------	**6.8 Dual Notice drafted.** - **NTC-DL** form used. - **[New in 2018] BD-WKSHEET (Optional for boards, used to choose a hearing date)**
----------	**6.9 Notice approved by OAH.** - **6.9.1 Additional Notice Plan also approved by OAH. (Optional)** - **6.9.2 Letter to OAH requesting a hearing.** - **HR-RQST** used. - **6.9.3 OAH information.** - **OAH-INF** referred to.
----------	**6.10 Notice finalized.** - Notice signed and dated by _____.
----------	**6.11 SONAR mailed to the Legislative Reference Library.** - **LCC** and **CRT-LCC** used.
----------	**6.12 Notice published in the State Register.** - **ST-REG** used.
----------	**6.13 Notice mailed.** - **CRT-LIST** and **CRT-MLNG** used.
----------	**6.14 Notice given per Additional Notice Plan.** - Actions documented. - **CRT-GNRC** used.
----------	**6.15 Notice given to Legislators.** - **LEG** and **CRT-LEG** used.
----------	**6.16 Other applicable statutory or rule requirements met.**
----------	**6.17 Comments tracked; lists maintained.** - comments on the rules, written or oral. - hearing requests and hearing request withdrawals. - requests for a 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.

Checklist for Chapter 6 (Continued)

Date Done	Item
----------	**6.18 Proceeded according to number of hearing requests.** - **6.18.1 If 25 or more, hearing preparations made & chapter 9 used.** - Hearing requesters notified. **NTC-HR25** and **CRT-HR25** used. - **6.18.2 If fewer than 25, hearing canceled & chapter 8 used to adopt.** * Hearing canceled at least three working days before the hearing. - 180-day time limit for submission to OAH noted. - Agency management, staff, and others notified. - ALJ called and follow-up letter sent. **ALJ-CNCL** used. - Hearing room canceled. - If hearing withdrawals reduce # of requests below 25, requesters notified. **NTC-HRWD** & **CRT-HRWD** used. - If fewer than 25 hearing requests (and Department has done nothing to obtain withdrawals), requesters notified. **NTC-CNCL** used.

Chapter 7–Giving Notice of Hearing

In General. This chapter tells you how your agency starts the formal rules 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 Decide how to proceed. You have three choices in how to start your rulemaking. You can give a Notice of Hearing. You can give a Notice of Intent to Adopt Rules Without a Hearing. Or you can give a 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 persons request a hearing. In deciding how to proceed, the agency should consider a number of factors. If the rules are controversial and 25 or more persons are likely to request a hearing, you might as well just give a Notice of Hearing (this chapter). 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 Hearing (chapter 5 of this Manual). If you really cannot predict whether there will be more or fewer than 25 persons requesting a hearing, you might want to go with a Dual Notice (chapter 6 of this Manual). In some cases, the issues surrounding the rules are so controversial or so political that the agency will choose to give Notice of Hearing regardless of whether or not it thinks 25 persons will request a hearing.

7.2 Time considerations and other considerations before you get started.

7.2.1 Rules and SONAR must be done. Before you start this chapter, you should be finished developing your rules and writing your Statement of Need and Reasonableness (SONAR). This Manual contains information on rule and SONAR development in chapter 3, "Rule Development," and chapter 4, "Developing the Statement of Need and Reasonableness."

7.2.2 [Revised in 2018] 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 it needs to be signed or approved. Some things take time, like getting signatures for various approvals and getting Revisor's drafts of the rules. People are not always available on a Wednesday morning to sign documents so that the documents can be brought to the State Register before the 12:00 noon deadline.

7.2.3 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 on the rules. This Manual contains information on the Request for Comments in chapter 2, "Request for Comments."

7.2.4 Rulemaking authority expires 18 months after the effective date of the law authorizing the rules. Minnesota Statutes, section 14.125, limits on rulemaking authority.

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. This applies to only first-time rule adoptions under the statutory authority and not to subsequent amendments or repeals of the rules.

[Revised in 2018] 7.2.5 E-filing rule-related documents. OAH asks agencies to e-file all rule-related documents wherever possible. [See section 1.6.] This means all documents submitted for ALJ review should be e-filed. 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/) . (The page also includes a link to frequently asked questions.) 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 a prudent practice. In addition, save any correspondence or documents you receive from OAH for your own records since those items might not remain in the e-file.

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

- Minnesota Statutes, section 14.111, states in pertinent part: "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."
- Minnesota Statutes, section 14.14, subdivision 1b, states: "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."

Everybody is affected by everything to some degree or another, 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 might 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 requirements of sections 14.111 and 14.14, 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 requirements of sections 14.111 and 14.14, 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 Administrative Law Judge (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 or 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. Further basis for the decision was that no regulatory controls were directed at or triggered by farming operations as such. It will take more decisions related to this issue to know whether this will be a general rule for determining whether a set of rules affects farming operations or whether this decision is unique to the facts of this rulemaking. In the meantime, this decision will at least give an agency a basis to determine whether its rules affect farming operations. There is no formal Office of Administrative Hearings (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. Perhaps OAH or the Commissioner of Agriculture would, if asked, give guidance early in the rulemaking process as to whether your rules affect farming operations. Perhaps the Legislature will add guidance or a means to formally seek prior approval to these statutory sections. Until the Legislature acts or until precedent is established for interpreting this statute, use your best judgment in asserting that your rules do or do not affect farming operations.

[Revised in 2016] If section 14.111 applies to your rules and you notify the Commissioner of Agriculture, send a copy to Doug Spanier, Department Counsel for Agriculture.

7.2.7 If proposed rules have their primary effect on Chicano/Latino people. The Legislature repealed Minnesota Statutes, section 3.9223 in 2015, thus eliminating this council. Minnesota Laws 2015, Chapter 77 (codified at Minnesota Statutes, section 15.0145) created three new ethnic councils and does not require that the rules be submitted for review.

7.2.8 Counting time. Minnesota Rules, part 1400.2030, subpart 1, states:

> "To count a time period, the day of filing, mailing, publication, or other action is not counted and the last day of the time period is counted. Saturdays, Sundays, and legal holidays are included in calendar day time periods and are not included in working day time periods. If a calendar day time period ends on a Saturday, Sunday, or legal holiday, the time period ends on the next day which is not a Saturday, Sunday, or legal holiday. A time period is in calendar days unless it is stated as 'working days.'"

7.3 Get agency approval to give notice. How you go about getting approval within your agency is as individual as your agency. It is a good idea to circulate draft document 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. If the rules are highly controversial, it may be necessary or expedient to meet with those agency persons who have to sign off on the rules. 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 Hearing.

In some agencies, it is standard practice for the agency's Attorney General (AG) to review and sign off on all rule projects. An agency that is a multi-member board will need to 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**. This form was adapted from the recommended form from the now-repealed AG Rules, part 2010.9910.

7.4 Get Governor's Office approval to give notice; consult with MMB. The Governor's Office 9/19/2019 administrative rule review policy, **GOV-PLCY**, states:

> "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.
>
> "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.
>
> .*.*.*
>
> "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."

[Revised in 2018] Note that the Governor's Office has been reliably timely about 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 your rules will be reviewed within the time you need them.

This is also the time for the agency to consult with the Minnesota Department of Management and Budget (MMB) to help evaluate the fiscal impact and benefits of proposed rules on local governments. Send a copy of the Governor's Office form, 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.

7.5 Get a Revisor's draft approved for publication. Before the agency may publish the rules and the Notice of Hearing, the rules must be in the Revisor's format (i.e., printed from the Revisor's computer). The Revisor's draft must also have a Revisor's certificate stating that the rules are approved for publication.

To get a draft of the rules in the Revisor's format, you have to give the Revisor a draft (on paper or electronically) and ask the Revisor to produce a Revisor's draft. The Revisor will copy your rules and, as necessary, assign rule part numbers and titles. It will also 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 problems. Usually, the Revisor will give you a preliminary draft to review to make sure that the Revisor's editorial changes do not make substantive changes. When your rules are ready to propose, give the Revisor any last changes and ask for a draft approved for publication. Getting a preliminary Revisor's draft might take anywhere from several days to several weeks, depending on the length of your rules and how busy the Revisor is 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.

7.6 Develop an Additional Notice Plan. Minnesota Statutes, section 14.14, subdivision 1a, requires an agency to publish proposed rules and the Notice of Hearing in the State Register and to mail the proposed rules and the Notice of Hearing to the agency's rulemaking mailing list. In addition, the agency is required to "make reasonable efforts to notify persons or classes of persons

who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication." Minnesota Statutes, section 14.131, 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 has to develop and implement an Additional Notice Plan to reach significantly affected persons and then to 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 is to mail to persons who have inquired, shown an interest, or commented on the rules. 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 the newsletters of these trade or professional associations. In some cases, your plan would include press releases to general circulation newspapers or to broadcast media. Agencies are also using on-line 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 potentially affected persons. [Note: another good reason to seek advance ALJ approval is if you are relying on electronic communications. Ask OAH for guidance re: using email notification. See Section 7.9.1 below.] In deciding what is reasonable, give some thought to 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 7.9.1 of this chapter discusses requesting OAH approval of your Additional Notice Plan. Section 7.14 of this chapter discusses giving notice per your Additional Notice Plan and documenting this.

7.7 Set a tentative hearing date and location and make initial contact with OAH.

7.7.1 Choose a hearing date and arrange for a room before contacting OAH. [Revised in 2018] In most cases, it is best to find a hearing date **and time** that is compatible with all necessary agency personnel (including your AG) and to secure a hearing room on that date before you call OAH to request an ALJ. As a general rule, you will have more trouble finding a workable hearing date and scheduling a hearing room than scheduling an ALJ. If more than one day is needed for the hearing, schedule accordingly. If you plan to

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

7.7.2 Choose a hearing date. Consider the following factors in choosing a hearing date:

- **30-Day comment period. [Revised in 2018]** The Notice of Hearing must be published *at least* 30 days prior to the hearing. Also see section 7.8 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 hearing to approve changes.
- **OAH review time.** Before you can publish your Notice of Hearing, you have to 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 (OAH Rules, part 1400.2080, subpart 5). If you also submit your Additional Notice Plan for review and approval at this time, the ALJ has five working days to review and approve or disapprove your Additional Notice Plan (OAH Rules, part 1400.2060, subpart 3). 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 need to add on 30 days before you publish in the State Register to comply with Minnesota Statutes, section 14.111.
- **Rules with primary effect on Chicano/Latino people.** This no longer applies. The Legislature repealed Minnesota Statutes, section 3.9223 in 2015, thus eliminating this council. Minnesota Laws 2015, Chapter 77 (codified at Minnesota Statutes, section 15.0145) created three new ethnic councils and does not require that the rules be submitted for review.
- **State Register lead time. [Revised in 2019]** The State Register publishes on Mondays. Publication deadlines depend on the length or complexity of your rules: Short proposed rules (10 or fewer pages) have a one-week deadline and are due by 12:00 noon on the Tuesday before publication (except when the deadline is changed by a holiday). **Rules 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.**
  Hint: the 30-day comment period for a Notice published on a Monday would end at 4:30 p.m. on the Wednesday, four weeks and two days after the Monday. This means that for a Notice of Hearing published on a Monday, the earliest the hearing could be would be on the Thursday, four weeks and three days after the Monday.
- **Availability of key agency personnel/clear your calendar.** Check with 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 the development of 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). At the time 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 at this time to also 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, let OAH choose the actual hearing date from among those available.
- **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.

7.7.3 Arrange for a room. Just about any room is okay for the hearing if it is large enough for the number of persons likely to attend the hearing and if it is accessible to persons with disabilities. A board room or meeting room at your agency would be okay if it is large enough. If you want to hold the hearing close to the State Capitol, call 651/296-5408 for hearing rooms in the State Office Building or call 651/296-0866 for Senate hearing rooms at the Capitol. If your rules affect farming operations and if you have a public hearing, remember that at least one hearing has to be in an agricultural area of the state (section 7.2.6 of this chapter). Also, be aware of any hearing location requirements that might be specific to your rules or your agency.

7.7.4 Consider a videoconference hearing. If your rules affect persons from around the state, you might consider making your hearing available via videoconference. Especially if the affected persons are not well represented by interest groups or lobbyists. Especially if the affected persons cannot easily hop in the car and travel many hours to the Twin Cities for a hearing. Especially if you want to hold the hearing in various locations around the state, but your agency has a limited budget for the rules project. The cost of holding your hearing via videoconference is amazingly reasonable. If you want information about videoconference sites, costs, and other information, call the videoconference coordinator for your agency or contact the videoconference center at the Minnesota Department of Health by sending an email to HEALTH.videoconference@state.mn.us. For information about how to make this work with OAH, contact Legal Assistant Denise Collins at (651) 361-7875 or denise.collins@state.mn.us.

7.7.5 Contact OAH. [Revised in 2019] After finding one or more workable dates, prepare almost-finished drafts of the Notice of Hearing (section 7.8 of this chapter) and cover letter to OAH (section 7.9 of this chapter). Then schedule a hearing date by completing the

Contested Case Docket Request (https://mn.gov/oah/lawyers-and-litigants/administrative-law/docket-request.jsp) on OAH's website**, using your OAH account and assigned docket number**. **[see section 1.6.1]** Provide the subject of the rules and the Revisor's ID number. When an ALJ is assigned, follow OAH's directions. You want to immediately complete the Notice and cover letter and e-file them to officially request the ALJ assignment and to schedule the hearing.

7.8 Draft the Notice of Hearing. A Notice of Hearing must contain the information in OAH Rules, part 1400.2080, subparts 2 and 4. A form for the Notice of Hearing is in the appendix as **NTC-HR**. To draft this form, the recommended form from OAH Rules, part 1400.2530, was used and practice tips were added. **NTC-HR** is designed to be a checklist for meeting the requirements of part 1400.2080.

In drafting the Notice, consider that the description of the rules in the Notice might affect whether modifications to the rules will make the adopted rules "substantially different" from the proposed rules. To adopt rules that are substantially different from the proposed rules, you must go through additional rule proceedings under OAH Rules, part 1400.2110. See also Minnesota Statutes, section 14.05, subdivision 2, section 14.16, and section 14.24, and OAH Rules, part 1400.2240, subpart 7, and part 1400.2300, subpart 7. 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 in 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 (i.e., 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.]

You may want to build in more time to 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. **[New in 2018]** If your agency is a multi-member 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.**

[Revised in 2020] Public Comments Using OAH's e-comment website. Consider whether to use OAH's e-Comment system for collecting comments during the 30-day period. Note: You will have to use it for post-hearing comments. **[See section 1.6.2 and OAH-INF for explicit instructions.]** You may collect the comments by directing them to the agency as usual. Whether to do this depends on many agency-specific factors for you to gauge. If you choose to do this, you must draft your notice accordingly. (Public instructions for making comments can be found at eComments site

(https://minnesotaoah.granicusideas.com/). OAH will set up a public e-comment site for your rule when you arrange your hearing. If you have questions, contact Legal Assistant Denise Collins at denise collins@state.mn.us or (651) 361-7875. **Note that agencies must notify OAH to activate the site when publishing your Notice so that it is open when the comments begin to arrive. (See section 1.6.2)** Also, agencies *must* use this system after public hearings on proposed rules, when comments must be submitted to the ALJ. (*See* Minnesota Rule 1400.2230.)

Note that the Notice of Hearing 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. Once the Notice can be signed, the person authorized to give notice of hearing, usually a commissioner or board chair or the designee of one of these persons, signs it.

7.9 Get OAH approval of Notice. [Revised in 2020] Under OAH Rules, part 1400.2020, subpart 1, the Chief ALJ must promptly assign an ALJ to a rule proceeding after the Chief ALJ receives a request to schedule a rule hearing. OAH Rules, part 1400.2080, subpart 5, requires that a request to schedule a rule hearing must be accompanied by (1) the Notice of Hearing, (2) a copy of the proposed rules approved as to form by the Revisor, and (3) a draft* or final copy of the SONAR. The agency must obtain the ALJ's 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. Note: if you send a draft SONAR to OAH at this time, be sure to send the final SONAR to OAH when it is completed. This is important because when you do a Notice of Hearing, the Notice says that the SONAR will be available for review at OAH. ***Remember to submit a final SONAR to OAH if you submitted a draft SONAR for seeking approval.**

7.9.1 It is recommended to also get OAH prior approval of Additional Notice Plan. OAH Rules, part 1400.2060, allows an agency to ask OAH for prior approval of its Additional Notice Plan. (See section 7.6 of this chapter on developing an Additional Notice Plan.) The Editor recommends that an agency seek prior approval of its 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 going back and beginning the process again. Further, OAH review of your Additional Notice Plan is in keeping with the spirit of the 1995 Administrative Procedure Act amendments because this helps ensure that the agency will have made reasonable efforts to give adequate and timely notice to persons who may be significantly affected by the rules. To request prior approval of your Additional Notice Plan, you must file with OAH: (1) the proposed rules; (2) a draft or final copy of the SONAR containing the agency's proposed Additional Notice Plan; (3) the proposed Notice of Hearing; and (4) an explanation of why the agency believes that its Additional Notice Plan complies with Minnesota Statutes, section 14.14, subdivision 1a, i.e., why its Additional Notice Plan constitutes reasonable efforts to notify persons or classes of persons who may be significantly affected by the rules. OAH has five working

days to review and approve or disapprove an Additional Notice Plan. Note that if you do request prior approval of your Additional Notice Plan, part 1400.2060 requires that you do so before you publish and mail your Notice and rules.

7.9.2 Letter to OAH requesting a hearing. A form for the cover letter to the Chief ALJ requesting a hearing and assignment of an ALJ 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.

7.9.3 OAH information. If you have questions about the Notice or the Additional Notice Plan or you wish to deliver your letter personally to OAH, refer to **OAH-INF** in the appendix for the location of or general information about OAH.

7.10 Finalize the Notice. 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. Note: you no longer need a separate version for the State Register, so you can just print a single version of your Notice, single-spaced and with margins adjusted to fit neatly for copying and mailing. The Notice of Hearing must be signed and dated by the person authorized to give the notice, which is usually a commissioner or board chair or designee of one of these persons.

7.11 Mail the SONAR to the Legislative Reference Library. When an agency mails out the Notice of Intent to Adopt, the agency must send a copy of the SONAR to the Legislative Reference Library (LRL). Minnesota Statutes, sections 14.131 and 14.23. The SONAR need not be signed but a signature is a good idea to show that it is official. The Legislative Reference Library requests that all agencies submit SONARs in electronic form 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 format). You should keep a copy of your cover letter or complete a certificate documenting compliance with this requirement (form **CRT-LRL** in the appendix). Note: the date on the certificate and cover letter should be the same as or earlier than the date you email the Notice of Intent to Adopt. Why send a cover letter with your email transmission? According to the Legislative Reference Library, the library retains the cover letters because they provide useful information, which could answer future questions about your project. Forms for the cover letter and certificate are in the appendix as **LRL** and **CRT-LRL**. If you have questions for the LRL, you may contact David Schmidtke at (651) 215-9058.

7.12 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 hearing. See **ST-REG** in the appendix for information on how to publish in the State Register. Note that the Chief ALJ may authorize an agency to omit the full text of the rules from the published Notice in the State Register if the publication would be unduly cumbersome, expensive, or otherwise inexpedient. See Minnesota Statutes, section 14.14, subdivision 1a, paragraph (b), if you think this rare situation applies to

your rules. Then, 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. If you receive this permission, the Revisor's Office requests that you keep either the *adopted* rules or a link to them posted on your website at least until the Revisor has incorporated them into the official rules.

> **7.12.1 State Register lead time. [Revised in 2019]** The State Register publishes on Mondays. Publication deadlines depend on the length or complexity of your rules: Short proposed rules (10 or fewer pages) have a one-week deadline and are due by 12:00 noon on the Tuesday before publication. **Rules 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.** Only in rare circumstances, *and if approved by the State Register editor in advance*, will you be allowed to bring in your publication order a day or two later than the deadline. Also, be careful if there is a holiday between the order date and the publication date because this will sometimes move up the State Register deadline.

7.13 Mail the Notice. You must mail the Notice of Hearing to everyone on your agency's rulemaking mailing list. Under OAH Rules, part 1400.2080, subpart 6, the Notice must be mailed at least 33 days before the start of the hearing. It is a good idea to set this mailing in motion immediately after submitting the Notice to the State Register for publication. (There is no good reason to wait until three days before the publication date to begin work on the mailing.) Copying and mailing can be a major undertaking if you have a large number of people on your agency's rulemaking mailing list. Note that if you have a large mailing list or you frequently get additions to your mailing list, make sure that you 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 mail a copy of your rules along with the Notice. Although it is not required, it is a good idea to mail a copy of the rules along with the Notice, unless it would be too expensive to copy and mail your rules 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. Minnesota Statutes, section 14.14, subdivision 1a.

A Certificate of Accuracy of the Mailing List and a Certificate of Mailing must be completed and put in the file to document compliance with the mailing requirement. The date on the Certificate of Mailing List should be the same as the date of mailing. 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.

7.14 Give notice per your Additional Notice Plan. [Revised in 2016] Give notice according to your Additional Notice Plan. Document what you do. For any mailed notice, whether using regular mail or email, do a certificate of mailing with a copy of the notice attached. **[Editor's 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 Editor's note in section 1.7.3 for Data Practices considerations to take into account.] Detail any efforts you made to develop your mailing list. For more traditional paper-based notice, get copies of any newsletters or newspapers in which a notice is published. Get tapes or transcripts of any 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**.

7.15 Give notice to Legislators. Minnesota Statutes, section 14.116, requires an agency to notify certain Legislators when it mails its notice of intent to adopt rules. The agency must send a copy of the notice and a copy of the 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.

[Revised in 2017] 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 and CRT-LEG. [Outdated discussion about seeking OAH approval to send these documents via email omitted.] Agencies must also notify the Legislative Coordinating Commission (LCC). How to give notice to the LCC? Send your notice to lcc@lcc.leg.mn (preferred address) or to the Legislative Coordinating Commission, 72 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul MN 55155.

7.16 Meet any other applicable statutory or rule requirements. Meet any other statutory or rule requirements that are specific to your agency or to this rulemaking. For example, Minnesota Statutes, section 62J.07, subdivision 3, requires that the "commissioners of health, commerce, and human services . . . shall notify members of the [Legislative Commission on Health Care Access] when a draft of a proposed rule [related to the 1992 HealthRight Act and the 1993 and subsequent MinnesotaCare Acts] has been completed and scheduled for publication in the State Register. At the request of a member of the commission, a commissioner shall provide a description and a copy of a proposed rule." Document what you do to comply with any other statutory or rule requirements.

7.17 Keep track of comments. After the Notice of Hearing has been given, forward all written comments to the ALJ. (If you receive any written comments, make copies for the agency and forward the comments to the ALJ.) The agency should check periodically with the ALJ to find out what comments have been received by the ALJ. Even though the ALJ is the repository for the comments, it is important for the agency to keep track of comments for a number of reasons. The first and foremost is that the agency needs to consider and respond to any policy issues raised. Other reasons to keep track of the comments include:

- If the proposed rules were not attached to the Notice as mailed, the agency must give a free copy of the rules to any person who requests one. Minnesota Statutes, section 14.14.

- The agency must notify persons who have requested notification on the date the rules are filed with the Secretary of State. Minnesota Statutes, section 14.16.
- The agency must place persons on the agency's rulemaking mailing list when requested to do so. Minnesota Statutes, section 14.14.

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

7.18 Proceed with the hearing. Proceed with the hearing using chapter 9 of this Manual, "Adopting Rules With A Hearing."

Checklist for Chapter 7 - Giving Notice Of Hearing

Date Done	Item
----------	**7 This entire chapter reviewed before proceeding.**
----------	**7.1 Decision made on how to proceed.**
----------	**7.2 Things considered before process started.** - **7.2.1 Rules and SONAR done.** - **7.2.2 Plenty of time allowed for completion of steps.** - **7.2.3 At least 60 days after Request for Comments.** - **7.2.4 Rulemaking authority within 18 month time limit.** - **7.2.5 E-filing rule-related documents.** - **7.2.6 If proposed rules affect farming operations.** - **7.2.7 If proposed rules have primary effect on Chicano/Latino people. [Repealed in 2015]** - **7.2.8 Counting time.**
----------	**7.3 Agency approval obtained for giving notice.** - If agency is a multi-member board, **BD-NTC** form used.
----------	**7.4 Governor's Office approval obtained for giving notice.** - **GOV-PRPS** used.
----------	**7.5 Approved rules draft obtained from the Revisor.**
----------	**7.6 Additional Notice Plan developed.**

----------	**7.7 Tentative hearing date & location set; OAH contacted.**
	- **7.7.1 Hearing date and room set before contacting OAH.**
	- **7.7.2 Factors used in choosing a hearing date.**
	  - **30-Day 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.
	  - **Rules with primary effect on Chicano/Latino people. [Repealed in 2015]**
	  - **State Register lead time.** 11 days for lengthy rules; 7 days for short rules.
	  - **Availability of key agency personnel/clear your calendar.**
	  - **If several hearing dates are possible.**
	  - **Give yourself enough time.**
	- **7.7.3 Hearing room arranged.**
	- **7.7.4 Videoconference hearing considered.**

Checklist for Chapter 7 (Continued)

Date Done	Item
	- **7.7.5 OAH contacted.**
----------	**7.8 Notice of Hearing drafted. [Revised in 2020]** - **NTC-HR** form used. - **BD-WKSHEET** [New in 2018] (Optional for multi-member boards, used to choose hearing date) - **Notify OAH to activate the eComments site.**

----------	**7.9 Notice approved by OAH.**
	- **7.9.1 Additional Notice Plan also approved by OAH. (Optional)**
	- **7.9.2 Letter to OAH requesting a hearing.**
	  - **HR-RQST** letter used.
	- **7.9.3 OAH information.**
	  - **OAH-INF** referred to.
	- **[Revised in 2020] Submit final SONAR with OAH (if you submitted a Draft SONAR for seeking OAH approval.)**

----------	**7.10 Notice finalized.** - Notice signed and dated by _____.
----------	**7.11 SONAR mailed to the Legislative Reference Library.** - **LRL** and **CRT-LRL** used.
----------	**7.12 Notice published in the State Register.** - **ST-REG** used.
----------	**7.13 Notice mailed.** - **CRT-LIST** and **CRT-MLNG** used.
----------	**7.14 Notice given per Additional Notice Plan.** - Actions documented. - **CRT-GNRC** used.
----------	**7.15 Notice given to Legislators.** - **LEG** and **CRT-LEG** used.
----------	**7.16 Other applicable statutory or rule requirements met.**
----------	**7.17 Comments tracked.**
----------	**7.18 Chapter 9 used to proceed with the hearing.**

Chapter 8–Adopting Rules Without A Hearing

In General. This chapter tells you what to do after the 30-day comment period has ended and your agency will 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 for adopting rules without a hearing.

Deadline. Be aware of the deadline set by Minnesota Statutes, section 14.26, subdivision 1, which requires that the rules be submitted to OAH within 180 days of the end of the comment period or the rules are automatically withdrawn.

8.1 Decide on any changes to the rules; get agency and Governor's office approval before proceeding. During the 30-day comment period, the agency will often receive comments on the proposed rules that urge changes. Sometimes these comments are persuasive. Also during the 30-day comment period, you might find minor errors that need correcting. If you make changes to the proposed rules, get agency decision makers to approve not only the changes, but also the rationale for the changes. You do not need to make changes suggested by the public, but it is nevertheless a good idea to get agency decision makers to sign off on decisions not to act. How you go about getting 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 multi-member board will need to 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**. This form was adapted from the recommended form from the now-repealed AG Rules, part 2010.9925.

8.2 Prepare Agency Responses to Comments Received During 30-day Comment Period. Frequent questions are when and how to respond to comments, as well as what form that response should take. There are no set answers to these queries so you have flexibility to craft a solution that works for your project. You should start drafting your answers as soon as you know you will not have a hearing. Since you must submit them for OAH review, adding them to the exhibits that you submit to comply with OAH Rules, part 1400. 2310, using **NH-REVW** makes sense. [This process appears in section **8.6** below.] You could either intersperse your response with the comments or create a separate document of responses to file. Paragraph J gives you a good place to collect your responses organized in a way that makes sense to your readers, especially the Administrative Law Judge who will be officially reviewing the record. Paragraph J says:

> "Enclosed: all written comments and submissions on the proposed rules that the Department received during the comment period, requests for hearing and withdrawals of requests for hearing, except those that only requested copies of documents."

Remember, first and foremost, 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 and every comment. Grouping the comments by subject and responding collectively is a good method for minimizing duplication or volume. Focusing on the controversial or technical issues is a wise use of limited time. Whatever you can do to help the public and ALJ understand your agency's rationale will serve your agency well. Also, the sample letter for responding to comments made at a hearing **HR-RSPNS** might provide a useful format to consider adapting for this purpose.

After you decide on the final rules, you need to get approval from the Governor's Office. Per the Governor's Office 9/19/2019 rules review policy, **GOV-PLCY**:

> "[The Governor's Final 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.* [**Rulemaking Manual Editor's Note:** the agency should submit its Order Adopting Rules in unsigned draft form for the ALJ review. [emphasis supplied]]
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> **"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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> * * *
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> **"…** 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."

8.3 Get 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 caption to this draft will indicate the rules are "adopted." 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 make the changes and send you a copy of the adopted rules so you can send it to OAH for the official review. The Revisor will take your request on paper, by fax, by email, and sometimes by phone. In your request, indicate when you would like the adopted rules back and the Revisor will tell you if that is workable.

8.4 Draft the Order Adopting the rules. The commissioner (or other person authorized to adopt the rules) must sign an Order Adopting Rules. The requirements for the Order are contained in OAH Rules, part 1400.2090. A form for the Order is in the appendix as **ORD-ADPT**. The Editor drafted this using the recommended form from OAH Rules, part 1400.2560, and added practice tips. The form for the Order 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**.

Rulemaking Manual Editor's Note: Carefully watch your timing for *signing* the Order Adopting Rules because it is complicated. Submit an *unsigned draft* for OAH review and here's why. For rules adopted without a hearing, part 1400.2310, item N requires that agencies file "the order adopting the rule that complies with the requirements in part 1400.2090." [See section 8.4 below.] But until the ALJ has issued his or her 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*. Per the Governor's Office 9/19/2019 rules review policy, **GOV-PLCY**:

> "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." [emphasis supplied]

An advantage that this procedure provides is eliminating the agency's having to get its director or commissioner's signature on the order more than once. More importantly, it also prevents OAH from having the signed order prematurely, which could lead to OAH's mistakenly putting the final steps in motion without your knowledge. [These final steps are in section 8.8 below.] The hazard is that the Governor's Office could receive the filed rules from the Secretary of State, triggering the 14-day veto period, before the Governor's Office has approved the final rule. Thus it is important to retain control of this proceeding by using an unsigned draft order at this stage. Just remember that the next step here is submitting the file for OAH official review, not signing the order. Simply do not worry about getting the signed order until you have received the OAH report.

[Revised in 2016] E-filing rule-related documents. Rulemaking Manual Editor's Note: In 2015, the Legislature amended Minnesota Statutes, section 14.07 by adding subdivision 7, which

permits agencies to file rule-related documents electronically. This change is effective on January 1, 2016. *See* Minnesota Laws 2015, Chapter 63, sections 1 and 6. See explanation at section 8.5 below.

[Revised in 2017] Also in 2015, the Legislature amended Minnesota Statutes, section 14.08(d) to codify the practice that OAH and the agencies have already been using for final steps of adopting and filing rules. This change too is effective on January 1, 2016. *See* Minnesota Laws 2015, Chapter 63, sections 2 and 6. See explanation at section 8.5 below.

[Revised in 2019] 8.5 Submit the file to OAH for the official review. After you have taken the above steps and the Governor's Office has approved, you are ready to submit your file to OAH. OAH Rules, part 1400.2310, items A to P, set out the documents you must file with OAH for official review of your adopted rules. OAH asks agencies to e-file all rule-related documents wherever possible. This means all documents submitted for ALJ review should be e-filed. 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/) . (The page also includes a link to frequently asked questions.) A sample cover letter to OAH is in the appendix as **NH-REVW**. 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. OAH has 14 days to review the rules for form and legality. 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, per Minnesota Statutes, section 14.26, subdivision 1.

[Revised in 2019] Editor's note: Best Practices for Working Within OAH's E-filing System. To accommodate e-filing, 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 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. 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. You can adapt the cover-letter text (NH-REVW) 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.

Also, consider your timing when e-filing. After you request OAH to assign an ALJ to your rulemaking, it is a good idea to communicate with the assigned ALJ (through the ALJ's legal assistant) 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 you have the file ready to submit. The key is to avoid keeping the ALJ waiting, anticipating a file will be arriving imminently for review.

If you have questions about submitting your rules file to OAH or you wish to deliver your letter personally 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 screen shot 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 since those items might not remain in the e-file.

8.6 If requested, give Notice of Submission of Rules to OAH. Under Minnesota Statutes, section 14.26, the agency must give notice to all persons who requested to be informed of when you submit the rules to OAH for the official review. This notice must be given on the *same day* that the rules are submitted to OAH. 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**.

8.7 Withdrawal, disapproval, or new modifications of the rules. If you withdraw your rules from OAH review, refer to OAH Rules, part 1400.2300, subpart 4, for how to proceed. Note that Minnesota Statutes, section 14.05, subdivision 3 requires that you publish notice in the State Register that you have withdrawn the rules.

> **8.7.1 Disapproval and you choose to make suggested changes.** If OAH disapproves your rules based on part 1400.2300, subpart 6 (the process for the ALJ to follow), subpart 7 (based on substantial difference), or subpart 9 (based on need and reasonableness) AND if the agency chooses to make the changes suggested by the ALJ and Chief ALJ to solve the problems identified in the rules, then the agency should follow the steps set out in part 1400.2300, subpart 8, for resubmission of the rules to the Chief ALJ. You will need a Revisor's certified copy of the changes for doing this.
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> **8.7.2 Disapproval based on substantial difference and you don't want to make the suggested changes.** If OAH disapproves your rules under part 1400.2300, subpart 7, because they are substantially different than the proposed rules AND if 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 which are not substantially different; (3) start a new rule proceeding to adopt the substantially different rules; or (4) proceed under OAH Rules, part 1400.2110. The procedure to adopt substantially different rules is clearly set out in part 1400.2110 and is not repeated in this Manual.

8.7.3 Disapproval based on need and reasonableness and you don't want to make the suggested changes. If OAH disapproves your rules under part 1400.2300, subpart 9, because the agency has not shown the rules to be needed and reasonable AND if the agency chooses not to make the changes suggested by the Chief ALJ, the agency may then submit the rules to the Legislative Coordinating Commission and the Senate and House Governmental Operations Committees for review under Minnesota Statutes, section 14.26, subdivision 3. The procedure for this is set out clearly in the statute and is not repeated in this Manual.

8.7.4 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 OAH Rules, part1400.2300, subparts 8 and 8a, for resubmission. The Chief ALJ has five working days to make a decision. See OAH Rules, part 1400.2300, subpart 8a.

8.8 [Revised in 2018] Approval; get order signed; file with the Secretary of State; get Notice of Adoption from the Revisor. After OAH approves your rules under OAH Rules, part 1400.2300, subpart 5, the Commissioner (or other authorized person) signs the Order Adopting Rules. If you have not made changes since you received Governor's Office approval in section 8.3 above, you do not need to submit another Governor's Final Form for approval. Go forward with submitting the signed order to OAH. E-file your signed copy as you would your other documents.

[Revised in 2018] [Editor's note: OAH, the Revisor's Office, and Secretary of State's Office now accomplish the final steps electronically as permitted in Minnesota Statutes, section 14.16. This is how it works. When the agency e-files the signed Order Adopting Rules, OAH requests the Final Rules from the Revisor's Office. OAH files the Final Rules with the Secretary of State's Office. The Secretary of State's Office serves the Final Rules on the Governor's Office to start the 14-day veto period via email to the Governor's Office, using a distribution list that includes the agency. The email contains no explanation and is how you will know your rule has been served on the Governor's Office, so you must watch for it. Also, these steps can take place swiftly. *See* section 1.6 above.

It is the Revisor's standard practice to prepare the Notice of Adoption after notification from Secretary of State and send you copies without any request from you. One copy of the Notice of Adoption is for you to send to the State Register for publication and the other is for the Official Rulemaking Record. If time is of the essence, you should notify the Revisor of that so they expedite the notice. Also, note that the Revisor usually sends the Notice of Adoption to the agency

contact person listed in the Notice of Intent to Adopt. If this is someone other than you, alert this person to give you the Notice of Adoption as soon as it arrives.

8.9 Publish the Notice of Adoption in the State Register. See **ST-REG** in the appendix for information on how to publish in the State Register. The State Register will obtain electronic copies directly from the Revisor's Office based on your instructions, using the Revisor's ID Number. 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. Minnesota Statutes, section 14.27.

> **8.9.1 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. Minnesota Statutes, section 14.05, subdivision 6.
>
> **8.9.2 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, the Editor highly recommends that the agency wait to submit its Notice of Adoption to the State Register for publication until after the agency is certain the Governor will not veto the rules.
>
> **8.9.3 State Register lead time. [Revised in 2019]** The State Register publishes on Mondays. Publication deadlines depend on the length or complexity of your rules: Short notices of adoption (10 or fewer pages) are due by 12:00 noon on the Tuesday before publication. **Rules 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.** Only in rare circumstances, *and if approved by the State Register editor in advance*, will you be allowed to submit your publication order a day or two later than the deadline. Also, be careful if there is a holiday between the order date and the publication date because this will sometimes move up the State Register deadline.

8.10 Prepare and store the Official Rulemaking Record. [Revised in 2019] After publishing the Notice of Adoption, you can complete the last official step, which is preparing and storing the Official Rulemaking Record. The rulemaking record requirements appear in Minnesota Statutes, section 14.365, clauses (1) to (11). 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 section 14.365, so this form can serve as a checklist to meet the requirements of section 14.365. 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 Minnesota Statutes, section 14.365, after your rulemaking has concluded.

[New in 2017] Editor's Note: With e-filing, 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. (For example, a network drive, a document management system, a SharePoint library, etc. Work with your agency's records manager.) This e-file and any others not included will become your official record, which your agency must preserve as a permanent record. OAH does not keep these records indefinitely and will delete its files after it has sent the record to you.

8.11 Get a complete version of the entire chapter of the new Rules. Shortly after the Notice of Adoption is published in the State Register, the Revisor will send you a stripped copy of the rules with the stricken text deleted and the underscoring removed. For first-time, all-new material, this will give you a complete version of the rules. However, for amended rules, this will give you only the amended portions of the rules. 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, 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/). Your rules will be available after the Revisor has finished editing them.

8.12 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. A form for the memo is in the appendix as **CLOSURE**.

Checklist for Chapter 8 - Adopting Rules Without A Hearing

Date Done	Item
----------	**8 This entire chapter reviewed before proceeding.**
----------	**8.1 Decide on any rule changes; get agency & Governor approval.** - If agency is a multi-member board, **BD-ADPT** form used. - Governor's approval obtained. **GOV-FNL** used.
----------	**8.2 Prepare Agency Responses to Comments.**
----------	**8.3 Copies of adopted rules obtained from the Revisor.**
----------	**8.4 Order Adopting Rules Drafted.** - **ORD-ADPT** and **SMPLFNDS** used.
----------	**8.5 File submitted to OAH for official review. [Revised in 2020]** - **Notify ALJ when you will file your record for review, or wait until your record is ready to request OAH to appoint an ALJ.** - Submitted within 180 days of the end of the comment period. - **NH-REVW** used; **OAH-INF** referred to.
----------	**8.6 Notice Given of Submission of Rules to OAH.** - **NTC-SBM** and **CRT-SBM** used.
----------	**8.7 If rules Withdrawn or Disapproved.**
----------	**8.8 Rules Approved by OAH.** - Order Adopting Rules signed by _____. - Filed with the Secretary of State - Notice of Adoption obtained from the Revisor.
----------	**8.9 Notice of Adoption published in the State Register.** - **ST-REG** used. - Notice submitted to State Register after agency is certain Governor will not veto rules.
----------	**8.10 Official Rulemaking Record prepared.** - **RECORD** used.
----------	**8.11 Complete version of entire chapter of new Rules obtained.**
----------	**8.12 Agency decision makers notified of completion of the process.** - **CLOSURE** used.

Chapter 9–Adopting Rules With A Hearing

In General. This chapter tells you what to do after the 30-day comment period has ended and your agency will 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 Preparation 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 as soon after the hearing 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 Attorney General (AG) review and sign off on rules projects, then be sure to consider including the AG at this point in the process as well.) If you wait to do all of the work of preparing your response until near the end of the post-hearing comment period, there will not be time to complete the response. If you do not take care of these decisions right away, it will be almost impossible to get your response done by the deadline.

As noted in the chapters on giving Notice of Hearing and giving Dual Notice, 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 the 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 on the rules.

9.1.2 Notify the ALJ. If your hearing follows publishing a Dual Notice, let the Administrative Law Judge (ALJ) know that the hearing will be held as scheduled. At this time, you can ask the ALJ whether you can use the documents already on file with the Office of Administrative Hearings (OAH) to introduce into the record at the hearing as exhibits. These documents are the proposed rules and the Statement of Need and Reasonableness (SONAR).

9.1.3 Make copies of the Rules and SONAR to distribute at the hearing. OAH Rules, part 1400.2220, subpart 2, requires that the agency have copies of the proposed rules and the SONAR available at the hearing. Make sufficient copies for the anticipated attendance at the hearing.

9.1.4 Prepare documents to submit into the record. OAH Rules, part 1400.2220, subpart 1, requires the agency to place into the hearing record the following documents:

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 SONAR;
E. a copy of the transmittal letter or a certificate showing that the agency sent a copy of the SONAR to the Legislative Reference Library;
F. the Notice of Hearing or Dual Notice as mailed and as published in the State Register;
G. the Certificate of Mailing the Notice of Hearing and the Certificate of Accuracy of the Mailing List;
H. a Certificate of Additional Notice, if given, or a copy of the transmittal letter;
I. any written comments on the proposed rules received by the agency during the comment period;
J. if the Chief ALJ has authorized the agency to omit from the Notice of Hearing published in the State Register 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. Examples include Minnesota Statutes, section 14.111 (farming operations), section 14.116 (notice to Legislators), section 14.127 (compliance costs, if you have not addressed this requirement in your SONAR), and section 14.131 (consultation with MMB).

[Revised in 2018] E-filing rule-related documents. Rulemaking Manual Editor's Note: In 2015, the Legislature amended Minnesota Statutes, section 14.05 by adding subdivision 7, which permits agencies to file rule-related documents electronically. This change is effective on January 1, 2016. *See* Minnesota Laws 2015, Chapter 63, sections 1 and 6.

OAH asks agencies to e-file all rule-related documents wherever possible. This means all documents submitted for ALJ review should be e-filed. You will likely need special permission to paper 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/) . (The page also includes a link to frequently asked questions (FAQs).)

OAH expects that users will be able to see that documents are filed after you upload them. As a practical matter, however, it is best to file your documents electronically because eventually e-filing will replace paper-based filing. OAH continues to make changes to its system as it gains experience. Check the instructions and FAQs each time you do e-filing to make sure you are following the latest procedures. Always check to make sure that the system uploads your documents. Saving a screen shot 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 since those items might not remain in the e-file. 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 immediately following their public hearings. This chapter contains several revisions below to accommodate these OAH requests.

[Revised in 2019] [Editor's note: Best Practices for Working Within OAH's E-filing System. To accommodate e-filing, 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 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. 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. You can adapt the cover-letter text (NH-REVW) 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.

Also, consider your timing when e-filing. After you request OAH to assign an ALJ to your rulemaking, it is a good idea to communicate with the assigned ALJ (through the ALJ's legal assistant) 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 you have the file ready to submit. The key is to avoid keeping the ALJ waiting, anticipating a file will be arriving imminently for review.

[Revised in 2016] Note: The State Register publishes primarily electronic editions and prints only a very small number of paper copies. To get a paper copy of your notice for scanning to submit to OAH, print a copy from the State Register website (http://www.comm.media.state.mn.us/bookstore/mnbookstore.asp?page=archives)

[Revised in 2018] Preparing an exhibit list and attaching exhibit labels to the documents before the hearing will make things go more smoothly at the hearing. Ask the ALJ if he or she has a preference for the type of label and whether and how to mark the labels. Some

ALJs prefer numbers instead of letters for identifying the exhibits. Also, the agency typically submits the original documents (e.g., written comments received during the comment period) into the hearing record. Be sure, however, to ask the ALJ if he or she has a preference. You will need to provide the ALJ with a paper copy of the exhibits for his or her use during the hearing. You will also need to provide another paper copy of the exhibits to have available for public inspection during the hearing.

Further, if the agency is conducting a video-conferenced public hearing, you will need to ensure that a copy of the hearing exhibits is also available at each of the locations participating in the hearing.

[Revised in 2018] Customarily, the ALJ brings a packet of items to the hearing: the sign-in sheet for attendees and a hearing-procedure handout. OAH no longer provides envelopes at hearing. Instead, OAH asks for email addresses on the signup sheet it provides, and each person checks the corresponding places to indicate which notices that he or she wants to receive. Confirm this with the judge's legal assistant so you know what to expect.

9.1.5 Prepare a summary to read at the hearing. For most rules, a five- to ten-minute presentation is sufficient. The summary would be 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. Print the summary double-spaced for ease of reading at the hearing. A four- or five-page summary is probably sufficient unless the rules are extremely complex or unless you know there will be opposition to the rules that you want to counter by putting on witnesses, submitting additional exhibits, or performing demonstrations.

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, take copious notes, and arrange to meet immediately after the hearing. Let them know what to expect regarding 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**.

[New in 2018] 9.1.7 Respond to pre-hearing comments. Start drafting your *preliminary responses* for the pre-hearing 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 post-hearing responses. Ideally, the agency would e-file and post *preliminary responses* on the day of, or within a couple days of, 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. You will need to come up with a plan. Keep in mind that the comments and responses are to further public participation and assist the ALJ to understand your rules. So do the best you can to deliver these

responses quickly.

[Revised in 2018] 9.1.8 Decide on any proposed rule changes you want to announce at the hearing. During the 30-day comment period, you might receive comments that will persuade your agency to make rule changes. You might also discover the need to make some minor corrections to the rules. If this is the case, 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 persons attending the hearing. [Editor's note: You do not need a Revisor's draft when you announce changes at the hearing. Besides, your decision could change or you might make further changes, so waiting to request a Revisor's draft is probably wise. Keep in mind that you will need one for submitting to OAH with your proposed Order Adopting Rules. Shortly after the Notice of Intent to Adopt 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 9/19/2019 rules 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."

9.1.9 Set the room up for the hearing. In most cases, agencies will have to 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 disabilities. A suggested room arrangement is included in the appendix as **HEARING ROOM SETUP.**

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 letter to the ALJ at the end of the post-hearing 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 you will have the rebuttal before the record closes.

9.2.2 Copious notes or court reporter. At least two or three agency persons 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. The notes should include the note taker's recommendation as to the agency's opinion or position on the issues raised. It is important that each person take complete notes so that you do not miss anything when you submit the agency's response.

Immediately after the hearing, give the notes to support staff to transcribe. The notes should be transcribed in numerical order of the rule part discussed. Ideally, this transcribing will be done within a day or two.

There might be situations in which you would want a court reporter to attend and transcribe the hearing. 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. **[Revised in 2017]** Also, make this decision in plenty of time, since you must arrange for a court reporter and order the transcripts yourself. In a change from past practices, OAH will no longer 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 the Office of Administrative Hearings before the hearing.

[Revised in 2018] Finally, 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.

9.2.3 Place Hearing Exhibits on Agency's Website. [Revised in 2016] ALJs have directed the agency to make all exhibits introduced into the hearing record available on the agency's website immediately following the hearing. [**Editor's note**: How this practice will jibe with eComments is not yet known. The editor suggests you seek clarification from your assigned ALJ about how closely to adhere to the past practice stated in the following description.] Sometimes this request is limited to the major pieces of rulemaking—the Request for Comments, the SONAR, the Notice of Intent to Adopt, etc.—while in other cases the direction includes all the certificates. Seek clarification from your ALJ of what exactly he or she is asking you to post. This usually includes the exhibits submitted into the

hearing record both by your agency and interested parties who provided testimony during the hearing. If the ALJ clarifies this before the hearing, you can have electronic copies ready of whatever exhibits you will need to post in advance. You should also apprise your website staff that the agency needs to post these exhibits expeditiously on the agency's web page after the hearing. In addition, immediately following the hearing, the agency will need to convert the paper copies of exhibits that interested parties submit into the hearing record into electronic files, so the agency can also place them on the agency's website. Remember, you may also need to upload these documents in OAH's eComment system.

Note also, as identified in section 9.3.9, that the OAH is routinely asking agencies to promptly post the comments submitted during the *post-hearing 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 amount of 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 *post-hearing comment period* and the *rebuttal period*. Following the hearing, there is a *comment period* that lasts for five working days. This *comment period* 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 post-hearing *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 post-hearing *comment period*. No new evidence may be submitted during the *rebuttal period*. These time periods are set out in Minnesota Statutes, section 14.15, subdivision 1, and further elucidated in OAH Rules, parts 1400.2230, 1400.2530, and 1400.2540.

[NOTE: [Revised in 2018] See section 9.3.9, related to how to collect the comments that the ALJ received during the post-hearing *comment period and rebuttal period* for timely posting on the agency's website and uploading them to the OAH eComments website. Since OAH's eComments are mandatory after hearings, you will need to retrieve these according to the ALJ's directions.] [Editor's Note: While agencies must use the eComments system, the public may also submit comments to OAH by regular mail, email, and fax. So you will need to check for and respond to such comments.]

9.3.2 What to include in the post-hearing *comment period*. Minnesota Statutes, section 14.15, subdivision 1, would lead one to believe that the agency's response and any intended changes to the rules should be submitted during the 5-day *rebuttal period*. In actual practice, the agency may submit its response and any intended rule changes during

the post-hearing *comment period*. In addition, particularly if the post-hearing *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 with respect to controversial issues. After considering any reactions, the agency would submit a final response before the end of the *rebuttal period*. In any event, ask the ALJ for his or her 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.

9.3.3 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. Use your transcribed notes from the hearing, making separate headings for each rule part discussed. 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 letter should justify the change and state why the change would not make the adopted rules substantially different from the proposed rules. Also, 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.

9.3.4 Monitor post-hearing comments. [Revised in 2016] At several points during the post-hearing *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 post-hearing 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.

9.3.5 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 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 and have it signed by the appropriate agency person.

9.3.6 *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 of 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 a discussion on why the intended changes will not make the adopted rules substantially different than the proposed rules.

9.3.7 Submitting the agency's responses; timing and method of delivery. [Revised in 2017] OAH has requested all rulemaking documents be submitted electronically. If you have a pressing need to submit your responses in paper, you will need to seek permission in advance. The agency must file its preliminary response during the post-hearing *comment period* and its final response that is filed during the *rebuttal period*, so that OAH *receives* it by 4:30 p.m. on the respective due dates. The agency must therefore complete its responses early on the due dates so that they can be delivered to OAH offices in St. Paul by 4:30 p.m. Also, presumably, being able to upload them in OAH's e-filing or eComments system will cut out the traditional risk of a heart attack or a traffic accident. But leaving e-filing to the very last minute is not wise either. Filing them by fax remains an option; the agency must then forward the original signed document to OAH within five days. For those who have a high stress tolerance, OAH Rules, part 1400.2030, subpart 3, provides that if a fax transmission is commenced before 4:30 p.m. on the due date, it is deemed to have been timely filed.

9.3.8 OAH information. If you have questions about the rulemaking process or wish to deliver the agency response personally to OAH, refer to **OAH-INF** in the appendix for the location of and general information about OAH.

[Revised in 2019] Rulemaking Manual Editor's Note: Public Comments Using OAH's eComment website. [See section 1.6.2 and OAH-INF for explicit instructions.] (Public instructions for making comments can be found at OAH Rulemaking eComments Website (https://mn.gov/oah/forms-and-filing/ecomments/) .) 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 this webpage after the hearing. If you have questions, contact Legal Assistant at ian.lewenstein@state.mn.us or (651) 361-7857. [Editor's Note: While agencies must use the eComments system, the public may also submit comments to OAH by regular mail, email, and fax. So you will need to check for and respond to such comments.]

9.3.9 Place comments received by the ALJ during the Post-Hearing *Comment Period* and *Rebuttal Period* on Agency's Website. [Revised in 2018] As of publication, the following section 9.3.9 is still our best advice though questions remain about exactly what to do. (See note at section 9.3.1 above.) By 4:30 pm, on the first working day after the post-hearing *comment period*, the OAH will send the agency an electronic version of all comments that

the ALJ received during the post-hearing *comment period*, together with a request that the agency promptly post these comments on the agency's website. Since this is also the first day of the five working-day *rebuttal period*, and because OAH no longer plans to post the comments on their website,* it is important that the agency not delay making these post-hearing comments available for the public to review. Optimally, you should forewarn your website staff that the documents will need to be posted expeditiously.

Similarly, after the *rebuttal period* closes, the OAH will provide the agency with an electronic copy of all comments received during the *rebuttal period*, together with a request that these comments also be promptly posted on the agency's Website.

*Although the OAH will not be posting the comments on the OAH website, Minn. R. 1400.2230, subp. 2, provides that the OAH must allow any interested persons to review the post-hearing comments submitted to the ALJ. Further, there is no statute or rule requiring that a state agency place hearing exhibits or comments received during the post-hearing *comment period* and *rebuttal period* on a website. Nevertheless, ALJs are more frequently requesting agencies post these documents so that the public can have access to them more readily. The ALJs may ask you to upload comments and responses that OAH receives by fax or email to the OAH eComments website. ALJs wish to enable the public to participate in the post-hearing rulemaking process, so you will need to plan accordingly.

9.4 The ALJ Report. After the post-hearing *comment period* and *rebuttal period* close, the ALJ has 30 days to complete the hearing report, unless the Chief ALJ orders an extension. Minnesota Statutes, section 14.15, subdivision 2. The huge majority of reports are completed within 30 days. The ALJ can do several things in the report. These include:

- Approving all or portions of the rules.
- Disapproving all or portions of the rules.
- Making suggestions for the agency to consider.

If the ALJ disapproves 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.

9.5 Decide how to proceed; get agency and Governor approval. 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. How you go about getting approval within your agency is as individual as your agency. 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 multi-member board will need to 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**. The Editor adapted this from the recommended form from the now-repealed AG Rules, part 2010.9925.

After you decide on the final rules, you need to get approval from the Governor's Office. Per the Governor's Office 9/19/2019 rules review policy, **GOV-PLCY**:

> "[The Governor's Final 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 supplied]]
>
> **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."

Rulemaking Manual Editor's Note: For many years, agencies have struggled with the remainder of the process for adopting rules after a hearing. In 2015, however, the Legislature enacted Minnesota Laws 2015, Chapter 63, which codified the process outlined in sections 9.6 to 9.9, the current OAH and the Revisor's interpretation and practice for completing the adoption of rules after a hearing.

[Revised in 2018] 9.6 Obtain approved rules draft from the Revisor; draft Order Adopting Rules. Shortly after the Notice of Intent to Adopt is published, the Revisor should have sent 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 post-hearing changes you intend to make to the proposed rules.

- If you do not make any changes to the proposed rules, you may use the stripped version that you already received.
- If you make any changes to the proposed rules for any reason, ask the Revisor to make the changes and to tell you if the rules will be approved as to form when the Chief ALJ requests certified copies.
- The Revisor will take your request on paper, by fax, by email, and sometimes by phone.

Then draft the Order Adopting Rules per the requirements stated in section 9.7 below. If you are making changes *other than* those approved in the initial ALJ report, you will need to submit your *unsigned* proposed Order Adopting Rules to the ALJ or Chief ALJ for approval before having it signed as is also stated in section 9.7. The Editor recommends checking with OAH, if you are uncertain whether OAH must approve the proposed Order.

9.7 Adopt the rules. 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 set out in sections 9.7.1 to 9.7.3. Minnesota Statutes, section 14.15, subdivision 2, states that the agency has to wait at least five working days after the report is issued before taking any action on the rules. (This limitation appears only to apply 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.) The commissioner (or other person authorized to adopt the rules) must sign an Order Adopting Rules. The requirements for the Order are contained in OAH Rules, part 1400.2090. A form for the Order is in the appendix as **ORD-ADPT**. To draft this form, the recommended form from OAH Rules, part 1400.2560, was used and practice tips were added. The form for the Order 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**.

9.7.1 To adopt proposed rules approved by the ALJ and changes to the proposed rules approved by the ALJ: 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 adopt your rules directly. Draft the Order Adopting Rules using **ORD-ADPT** as follows:

- Customize finding 1 for your agency and this rulemaking.
- In finding 2, delete everything before the "OR." Then use the sentence after the "OR," namely, "The Department adopts the Administrative Law Judge's Report dated [date] and incorporates the Report into this Order." Then, delete the optional clause ", except as described below" at the end of the sentence.
- Delete finding 3.
- Renumber findings 4 and 5.

* Note: when the ALJ Report approves the agency's proposed changes to the proposed rules, no special findings are necessary.

Then have the commissioner (or other authorized person) sign the Order Adopting Rules.

9.7.2 To adopt changes to the proposed rules other than those approved by the ALJ: 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 OAH Rules, part 1400.2240, subpart 5 to the Chief ALJ. These documents are:

- the rules as proposed;
- the agency's *proposed* Order Adopting Rules;
- the proposed rules showing the agency's proposed changes; and
- any other part of the hearing record requested by the Chief ALJ.

Ask the Revisor to prepare a draft with the changes and to tell you if the rules will be approved as to form when the Chief ALJ requests certified copies. 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: OAH Rules, part 1400.2240, subpart 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 this procedure for recommended changes, unless OAH advises otherwise.

To draft the Order Adopting Rules, use **ORD-ADPT** as follows:

- Customize finding 1 for your agency and this rulemaking.
- In finding 2, delete everything before the "OR." Then use the sentence after the "OR," namely, "The Department adopts the Administrative Law Judge's Report dated [date] and incorporates the Report into this Order." Also, keep the optional clause ", except as described below" at the end of the sentence.
- Add an additional specific finding for each change you make. Use the suggestions in finding 3 — explain the change, why the change is reasonable, and why the change does not make the rules substantially different.
- Renumber findings 4 and 5, as appropriate.

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 nevertheless a good idea to discuss your reasons for rejecting the recommendation.

The Chief ALJ has ten days to make a written decision, per OAH Rules, part 1400.2240, subpart 5. If the Chief ALJ approves the changes, you can proceed to adopt the rules by having the commissioner (or other person authorized to adopt the rules) sign the Order Adopting Rules.

9.7.3 If the rules are disapproved: If the ALJ disapproves the rules, the rules go to the Chief ALJ for further review. If the Chief ALJ disapproves the rules, he or she must explain why and tell the agency what changes are necessary for approval. 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. OAH Rules, part 1400.2240.

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 and to tell you if the rules will be approved as to form when the Chief ALJ requests certified copies. 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 or a request for reconsideration within five working days after receiving it. OAH Rules, part 1400.2240, subpart 4. If the Chief ALJ approves, you can proceed to adopt the rules.

To draft the Order, use **ORD-ADPT** as follows:

- Customize finding 1 for your agency and this rulemaking.
- In finding 2, delete everything before the "OR." Then use the sentence after the "OR," namely, "The Department adopts the Administrative Law Judge's Report dated [date] and incorporates the Report into this Order." Also, keep the optional clause ", except as described below" at the end of the sentence.
- Add an additional specific finding for each change you make. Use the suggestions in finding 3 — explain the change, why the change is reasonable, and why the change does not make the rules substantially different.
- Renumber findings 4 and 5, as appropriate.

Then have the commissioner (or other person authorized to adopt the rules) sign the Order. Then, email or fax the signed Order to OAH.

For disapprovals based on need and reasonableness or substantial difference, there are additional procedures available to the agency to adopt the rules:

9.7.3.1 If the rules are disapproved based on Need and Reasonableness: If the Chief ALJ disapproves the rules because the agency has not shown them to be needed and reasonable, and if the agency chooses not to follow the Chief ALJ's recommended corrections, statute allows the agency may adopt the rules after submitting them to the Legislative Coordinating Commission (LCC) and the House and Senate Governmental Operations Committees for review under Minnesota Statutes, section 14.15, subdivision 4. This course requires careful political consideration. If anyone has experience or wisdom to add to this section, the editor would welcome your contribution.

9.7.3.2 If the rules are disapproved based on substantial difference: If the Chief ALJ disapproves the rules because they are substantially different than the

proposed rules, the agency may adopt the portions of the rules that are not substantially different (OAH Rules, part 1400.2240, subpart 7), may start a new rule proceeding to adopt the substantially different rules, or may proceed under OAH Rules, part 1400.2110. The procedure to adopt substantially different rules is set out clearly in part 1400.2110 and is not repeated in this Manual.

[Revised in 2017] 9.8 Withdrawing rules. An agency always retains the option to withdraw rules as long as it has not yet filed them with the Secretary of State. Note that Minnesota Statutes, section 14.05, subdivision 3 requires that you publish notice that you have withdrawn the rules in the State Register. A form to use is included in the appendix as **NTC-WITHDRAWAL.**

9.9 Submit copy of signed Order to OAH; OAH files rules with the Secretary of State. [Revised in 2018] [Editor's note: OAH, the Revisor's Office, and Secretary of State's Office now accomplish the final steps electronically as permitted in Minnesota Statutes, section 14.16. This is how it works. When the agency e-files the signed Order Adopting Rules, OAH requests the Final Rules from the Revisor's Office. OAH files the Final Rules with the Secretary of State's Office. The Secretary of State's Office serves the Final Rules on the Governor's Office to start the 14-day veto period via email to the Governor's Office, using a distribution list that includes the agency. The email contains no explanation and is how you will know your rule has been served on the Governor's Office, so you must watch for it. Also, these steps can take place swiftly. *See* section 1.6 above.

9.10 Give notice of filing and obtain Notice of Adoption. [Revised in 2020] OAH will notify the agency on the day it files the rules with the Secretary of State. Minnesota Statutes, section 14.16, subdivision 1, requires the agency to give notice of the filing with the Secretary of State *on the same day* that the rules are filed. **Therefore, get this notice ready *before* you file the signed Order Adopting Rules with OAH.** Whom do you send the Notice of Filing to? Look on the ALJ's hearing register **in the hearing record that OAH returned to you** and see which persons checked the column to be notified of this filing. Also, send the Notice to any persons who have notified the agency directly that they want to get this Notice. Forms for the Notice and for the certificate showing the agency sent out this Notice are in the appendix as **NTC-SECY** and **CRT-SECY**.

When the Revisor receives the filed copy from the Secretary of State, it is the Revisor's standard practice to prepare the Notice of Adoption and send you copies without your making any request. One copy of the Notice of Adoption is for you to send to the State Register for publication and the other is for the Official Rulemaking Record. If time is of the essence, you should notify the Revisor's Office of that so they expedite the notice. Also, note that the Revisor usually sends the Notice of Adoption to the agency contact person listed in the Notice of Intent to Adopt. If this is someone other than you, alert this person to give you the Notice of Adoption as soon as it arrives.

9.11 Publish the Notice of Adoption; deadlines. See **ST-REG** in the appendix for information on how to publish in the State Register. The rules become effective five working days after the State Register published the Notice of Adoption, unless the rules specify a later effective date.

9.11.1 [Revised in 2018] Submit to State Register within 180 days. 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 commence and successfully complete a new rulemaking proceeding. The 180 days does not include days needed for Chief ALJ or the LCC review or because the Legislature delayed adoption of the rules. Minnesota Statutes, sections 14.126 and 14.19. 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. **[New in 2014] Editor's note**: The statute says 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.

9.11.2 State Register lead time. [Revised in 2019] The State Register publishes on Mondays. Publication deadlines depend on the length or complexity of your rules: Short notices of adoption (10 or fewer pages) are due by 12:00 noon on the Tuesday before publication. Rules 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. Only in rare circumstances, *and if the State Register editor approves in advance*, will you be allowed to bring in your publication order a day or two later than the deadline. Also, be careful if there is a holiday between the order date and the publication date because this will sometimes move up the State Register deadline.

9.11.3 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. Minnesota Statutes, section 14.05, subdivision 6.

9.11.4 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, the Editor highly recommends that the agency wait to submit its Notice of Adoption to the State Register for publication until after the agency is certain the Governor will not veto the rules.

9.12 Prepare and store the Official Rulemaking Record. After the Notice of Adoption is published, you can complete the last official step, which is to prepare and store the 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.

[Revised in 2019] Editor's Note: With e-filing, 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. (For example, a network drive, a document management system, a SharePoint library, etc. Work with your agency's records manager.) This e-file and any others not included will become your official record, which your agency must preserve as a permanent record. OAH does not keep these records indefinitely and will delete its files after it has sent the record to you. 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 Minnesota Statutes, section 14.365, after your rulemaking has concluded.

9.13 Get a complete version of the entire chapter of the new Rules. Shortly after the Notice of Adoption is published in the State Register, the Revisor will send you a stripped copy of the rules with the stricken text deleted and the underscoring removed. For first-time, all-new material, this will give you a complete version of the rules. However, for amended rules, this will give you only the amended portions of the rules. 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, 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/). 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. A form for the memo is in the appendix as **CLOSURE**.

[Revised in 2017] [Discussion of historical confusion about now-resolved conflicting statutory requirements for the last steps is omitted.]

Checklist for Chapter 9 - Adopting Rules With A Hearing

Date Done	Item
----------	**9 This entire chapter reviewed before proceeding.**

----------	**9.1 Hearing preparations complete.**
	- **9.1.1 Meetings scheduled; your calendar cleared.**
	- **9.1.2 ALJ notified.**
	- **9.1.3 Copies made of the Rules and SONAR.**
	- **9.1.4 Documents prepared to submit into the record.**
	  - Per list in OAH Rules, part 1400.2220, subpart 1.
	  - Attach and mark exhibit labels if OK with ALJ.
	- **9.1.5 Summary prepared to read at the hearing.**
	- **9.1.6 Agency staff prepared for the hearing.**
	  - **STAFF-HR** memo used.
	- **[New in 2018] 9.1.7 Respond to pre-hearing comments.**
	- **9.1.8 Any rule changes decided; ready to announce at hearing.**
	  - When needed, Governor's review and comment requested.
	- **9.1.9 Set the room up for the hearing.**
	  - **HEARING ROOM SETUP** is suggested room arrangement

----------	**9.2 At the hearing and immediately after.** - **9.2.1 What to say and what to not say at the hearing.** - **9.2.2 Copious notes/court reporter.** - **[New in 2017] Arrange for your court reporter, if applicable.** - **9.2.3 Place Hearing Exhibits on Agency's Website.** - **9.2.4 Meet with agency decision makers ASAP after hearing.**

----------	**9.3 Agency's response to comments in the hearing record prepared.**
	- **9.3.1 The *comment period* and the *rebuttal period*.**
	- **9.3.2 What to include in the *comment period*.**
	- **9.3.3 Agency's preliminary response drafted.**
	  - **HR-RSPNS** letter used.
	- **9.3.4 Post-hearing comments monitored.**
	- **9.3.5 Meet with agency decision makers; prelim response finalized.**
	- **9.3.6 Final response prepared and submitted.**
	- **9.3.7 Agency's responses; timing and method of delivery.**
	- **9.3.8 OAH information.**
	  - **OAH-INF** referred to.
	- **9.3.9 Comments rec'd during post-hearing *comment period* and *rebuttal period* placed on agency's website.**

----------	**9.4 ALJ Report issued.**

Checklist for Chapter 9 (Continued)

Date Done	Item
----------	**9.5 Decide on how to proceed; get agency and Governor approval.** - If agency is a multi-member board, **BD-ADPT** form used. - **GOV-FNL** used.
----------	**[Revised in 2018] 9.6 Approved rules draft obtained from the Revisor; draft Order Adopting Rules.** **- Draft Order Adopting Rules per section 9.7**

----------	**9.7 Rules Adopted.**
	- **ORD-ADPT** and **SMPLFNDS** forms used.
	- Order Adopting Rules signed by _____.
	- **9.7.1 Adopting rules and proposed changes approved by ALJ.**
	- **9.7.2 Adopting changes other than those approved by ALJ.**
	  - **CHNG-OTH** letter used.
	- **9.7.3 If the rules are disapproved:**
	  - **CHNG-DIS** letter used.
	  - **9.7.3.1 Rules disapproved based on Need and Reasonableness.**
	  - **9.7.3.2 Rules disapproved based on substantial difference.**

----------	**9.8 Withdrawing rules.** (If applicable) - Notice published in the State Register
----------	**9.9 Order submitted to OAH; OAH gets rules from Revisor's Office and files them with the Secretary of State.** - **NTC-SECY** and **CRT-SECY** forms used.
----------	**[Revised in 2018] 9.10 Notice of filing given; Notice of Adoption obtained from the Revisor.** **- Give notice *on the same day* that OAH files rules with the Secretary of State.**
----------	**9.11 Notice of Adoption published in State Register.** - Published within 180 days after the ALJ Report is issued. - **ST-REG** info sheet used. - Notice not submitted to State Register until agency is certain Governor will not veto rules.
----------	**9.12 Official Rulemaking Record prepared.** - **RECORD** form used.

Checklist for Chapter 9 (Continued)

---------- **9.13 Complete version of entire chapter of new Rules obtained.**

---------- **9.14 Agency decision makers notified of completion of the process.**
- **CLOSURE** memo used.

Chapter 10–Exempt Rules Under 14.386

[Revised in 2019]

In General. This chapter deals with rules that are adopted under the exempt rulemaking procedures found in Minnesota Statutes, section 14.386. Agencies may adopt rules using exempt procedures if a law authorizing the rules specifically exempts them from Chapter 14 or from the definition of a rule.

10.1 Determine which procedural requirements apply to your exempt rules. There are three types of exempt rules:

> **10.1.1 Exempt under 14.386.** The rulemaking authority for some rules exempts those 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. Those procedures are contained in Minnesota Statutes, section 14.386. The first part of this chapter describes the process for adopting exempt rules under 14.386.
>
> **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). 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 excepted from the normal rulemaking procedures for one or more "good cause" reasons (Good Cause Exemptions) stated in Minnesota Statutes, section 14.388. Chapter 11 of this Manual describes the process for adopting Good Cause Exempt rules under 14.388.

10.2 Draft your rules and obtain approval from your chain of command. [Revised in 2019] Draft your rules as you would any rules. **[See Chapter 3.]** Remember to have your chain of command review and approve your rules before you go on to the next step. This is important for obvious reasons but also because you are required to submit any 14.386 rules to the Governor's Office *before* OAH review, which requires the signature of your Director or Commissioner. Note that as part of the review-and-approval process, some agencies also choose to have their legal counsel review their rules.

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 policy memo, **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** when you are ready to move the exempt rules forward just as you would when the agency has developed a rule idea. If the Director or Commissioner has reviewed *and* approved as shown by properly signing the form, the agency does not need to wait for Governor's Office approval. If you have uncertainty 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. At least one agency awaited the expected approval unnecessarily. Thus, the Editor's advice is to move forward unless told otherwise.

10.3.2 Get approved draft from the Revisor. [Revised in 2019] Before you can adopt your 14.386 exempt rules, you must request the Revisor's Office to draft your rules in the Revisor's format (i.e., printed from the Revisor's computer). The Revisor's draft must also have a Revisor's certificate stating that the rules are approved for publication. Tell the Revisor that these rules are exempt rules under section 14.386. This will ensure that the title to the rules will include the exempt designation. You will need draft rules with a Revisor's *signed* certificate for your OAH submission. Scan a PDF copy of the approved rule, including the certification page, for filing with the OAH.

10.3.3 Draft Proposed Order Adopting Rules. [Revised in 2017] As soon you receive the Revisor's approved draft, you will be able to draft your proposed Order Adopting Rules. See **ORD-ADPT(EX)** in the appendix. The requirements for your Order Adopting Rules can be found in Minnesota Rules, part 1400.2400. When drafting your proposed Order, OAH rules, part 1400.2400, requires that you include a citation to the rules' statutory exemption, any argument (if necessary) to support this exemption, plus any other information required by law.

You do not need to provide any argument for the need and reasonableness of these rules. The Editor, however, recommends including some sort of argument for your rules to keep a record of how and why these rules were developed. Such a record is particularly helpful if your rules are later challenged. You should consider the nature of your rules when deciding whether or not including an explanation is advantageous.

10.4 Submitting your 14.386 rules to OAH. [Revised in 2019] OAH Rules, part 1400.2400, subpart 2, items A and B, list the documents you must file with the OAH for official review of your adopted rules. A form for the cover letter to the OAH submitting your adopted exempt rules for approval is in the appendix as EXEMPT-LTR. Submit the following two documents to OAH with the letter:

- the rules as approved by the Revisor (your scanned copy including the certification page if you are eFiling), and
- your proposed Order Adopting 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, have the finalized approved draft signed, and transmit a copy of the signed Order to OAH in a timely manner.

Rulemaking Manual Editor's Note: [Revised in 2017] In 2015, the Legislature amended Minnesota Statutes, section 14.05 by adding subdivision 7, which permits agencies to file rule-related documents electronically. This change is effective on January 1, 2016. *See* Minnesota Laws 2015, Chapter 63, sections 1 and 6.

[Revised in 2018] E-filing rule-related documents. OAH asks agencies to e-file all rule-related documents wherever possible. See section 1.6. This means all documents submitted for ALJ review should be e-filed. 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/) . (The page also includes a link to frequently asked questions.) 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 a prudent practice. In addition, save any correspondence or documents you receive from OAH for your own records since those items might not remain in the e-file.

10.4.1 [New in 2019**] Open an e-filing account with OAH. Opening the account will give you the necessary OAH docket number and ALJ assignment. First, complete a Notice of Appearance form. You may use either the form available the OAH website at OAH Forms (https://mn.gov/oah/forms-and-filing/forms/) or form OAH-NOA in the Appendix, which is customized for rulemaking use. Then use the online Contested Case Docket Request (also at OAH Forms (https://mn.gov/oah/forms-and-filing/forms/)); skip any not-applicable fields in the form. Identify the responsible agency unit as the Party Name. OAH staff will respond with an ALJ assignment and OAH docket number.**

10.4.2 [Revised in 2018] Best Practices for Working Within OAH's E-filing System. To accommodate e-filing, 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. 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 e-filing. After you request OAH to assign an ALJ to your rulemaking, it's a good idea to communicate with the assigned ALJ (through the ALJ's legal assistant) 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 you have the file ready to submit. The key is to avoid keeping the ALJ waiting, anticipating a file will be arriving imminently for review.

10.4.3 Letter to OAH submitting your exempt rules for approval. A form for the cover letter to the OAH submitting your exempt rules for approval is in the appendix as **EXEMPT-LTR**. This letter is designed to serve as a checklist for meeting the requirements stated in OAH Rules, part 1400.2400.

10.4.4 OAH standards of review. As with any other rules, you must make certain that the proposed rules comply with certain standards of legality before you submit them for OAH. OAH Rules, part 1400.2400, subpart 3, requires that exempt rules meet these standards for them to be approved. These standards require that the agency adopt their rules in compliance with exempt rules procedural requirements; that the rules comply with and do not exceed, conflict with, or grant the agency more discretion than allowed by law; that the rules are not unconstitutional or illegal; that the rules do not improperly delegate the agency's powers to another; and that they fit the statutory definition of a "'rule".

10.5 ALJ Review. [Revised in 2017] The ALJ has 14 days to review and approve or disapprove your rules. If the ALJ approves the rules, the OAH will send you a copy of the judge's decision and return your filing to you. [Text about final steps moved to 10.6.3 below.]

10.6 Adopting your approved exempt rules. If the ALJ approves your rules, you are now ready to officially adopt the rules. To do so, there are still two final requirements:

10.6.1 Finalize the Order Adopting Rules and have it signed. **[Revised in 2019]** You are now ready to finalize the Order Adopting Rules. Unless the ALJ has recommended any specific changes to your proposed Order Adopting Rules, use the proposed Order omitting the word "Proposed" from the title. This omission should be the only difference between the proposed Order and your final Order Adopting Rules. The Commissioner or Director may now sign it. Notify OAH by e-filing the signed order.

10.6.2 Determine whether to notify the Governor's Office further. If you have 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 9/19/19 rules 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 supplied]"

10.6.3 Filing your approved exempt rules. [Revised in 2019] Under Minnesota Statutes, section 14.08(d) agencies must confirm that the Order Adopting Rules has been signed, so e-file the signed Order Adopting Rules with OAH. OAH, the Revisor's Office, and Secretary of State's Office now accomplish the final steps electronically as permitted in Minnesota Statutes, section 14.16. This is how it works.

When the agency e-files the signed Order Adopting Rules, OAH usually requests the Final Rules from the Revisor's Office, certified (approved) for filing with the Secretary of State. With exempt rules, however, the agency has already e-filed the scanned 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. The Secretary of State's Office serves the Final Rules on the Governor's Office to start the 14-day veto period via email to the Governor's Office, using a distribution list that includes the agency. The email contains no explanation and is how you will know your rule has been served on the Governor's Office, so you must watch for it. Also, these steps can take place swiftly. *See* section 1.6 above.

10.6.4 Publish in the State Register. Before your rules can take effect, you must publish them in the State Register. Minnesota Statutes, section 14.386, paragraph (a), clause (4). The rules will take effect on the date of publication. **[Revised in 2019]** The State Register publishes on Mondays. Publication deadlines depend on the length or complexity of your rules: Short notices of adoption (10 or fewer pages) are due by 12:00 noon on the Tuesday before publication. Rules 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. When you deliver your documents to the State Register, you will also need to inform the editor of the Revisor's draft number from the rules as filed by OAH with the Secretary of State, which will be "SR" plus four digits. He will request the Revisor's Office to transmit the adopted rules directly to the State Register electronically.

10.6.5 Governor Veto. [Revised in 2019] 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. Minnesota Statutes, section 14.05, subdivision 6.

10.7 Procedure for resubmitting disapproved rules. If the ALJ does not approve your rules, you have the option of either resubmitting the rules with any necessary changes, challenging the disapproval, or neither. If you decide to do neither, please note that your rules cannot take effect unless they have been approved.

10.7.1 Resubmitting with corrections. If the ALJ has disapproved your rules and the defects noted are ones that can be corrected, and your agency agrees to the corrections, you can resubmit the corrected rules to the OAH for a subsequent review. You will need a Revisor's certified copy for doing this. The ALJ has 5 working days to review and approve or disapprove.

10.7.2 Procedure for appealing the ALJ decision. If the ALJ has disapproved your rules and the defects noted cannot be corrected or your agency is unwilling to make the corrections or changes, then you may ask the Chief ALJ to review the disapproved rules. To take advantage of this appeal avenue, the agency must make the request within five working days of receiving the ALJ's disapproval. The Chief ALJ then has 14 days to make a decision using the same standards of review as the ALJ.

10.7.3 Adopt the rules. As soon as the ALJ or Chief ALJ has approved your rules, go back to section 10.6 of this chapter for the remaining procedures.

10.8 Notice to affected parties. Although there is no formal requirement to notify affected parties when exempt rules are proposed or adopted, depending upon the type of rules in question, it might be a good idea to give direct notice to parties anyway to ensure compliance by these affected parties. This is discretionary, as your publication of 14.386 rules in the State Register meets normal due process concerns. As always, the key is *notice* to the public. In some cases, substantially affected parties already know about the change; added notice may stir up controversies already put to rest.

10.9 Expiration of exempt rules. Rules adopted in section 14.386 will expire two years from the date the rules are published in the State Register. Once expired, the law authorizing exemption will also expire so you will not be able to use the exempt process again.

10.10 Official Rulemaking Record. [Revised in 2019] After 14.386 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 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.
With e-filing, 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. (For example, a network drive, a document management system, a SharePoint library, etc. Work with your agency's records manager.) This e-file and any others not included will become your official record, which your agency must preserve as a permanent record. OAH does not keep these records indefinitely and will delete its files after it has sent the record to you. **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 Minnesota Statutes, section 14.365, after your rulemaking has concluded.**

Adopting Completely Exempt Rules under 14.386

10.11 Preparing Completely Exempt rules (exempted from Chapter 14 and also specifically exempted from section 14.386). Generally speaking, agencies may adopt these types of 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 the 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 since 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. But those of you in the executive branch who serve the Governor should note, however, that the Governor's policy memo, **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.

Specific statutory guidelines. Make certain you follow any specific guidelines presented in 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.

Notice Requirements. Although you have a complete exemption from rulemaking requirements found in the Minnesota 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 you seek to enforce and does not require comment.

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.

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.

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. Since 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.

[Revised in 2019] [Editor's note added in 2017 about e-filing and official rulemaking records has been moved to section 10.10 above.]

Checklist for Chapter 10 – Exempt Rules Under 14.386

[Revised in 2019]

Date Done **Item**

---------- **10 This entire chapter reviewed before proceeding.**

---------- **10.1 Determine which procedural requirements apply to your exempt rules.**

---------- **10.2 Draft your rules and obtain approval from your chain of command.**
- Tell the Revisor that these rules are exempt under §14.386.
- Seeking advice from interested parties is discretionary.
- If agency is a multi-member board, **BOARD-ADPT** is used.

---------- **10.3 Preparing your 14.386 rules for adoption.** [Revised in 2019]
- **10.3.1 Notify Governor's Office.**
  - Notify Governor's Office.
  - Preliminary Proposal Form **[GOV-PRLM]** used and signed.
  - Preliminary Proposal Form, copy of the draft rules, and any supporting argument sent to Gov's office (*approval NOT needed to proceed*).
- **10.3.2 Get approved draft from the Revisor.**
  - Revisor advised as to whether changes are needed.
  - Request Revisor's draft of rules approved (certified) as to form.
  - **Scan a PDF copy of the approved rule, including the certification page, for filing with the OAH.**
- **10.3.3 Draft Proposed Order Adopting Rules.**
  - Draft Proposed Order Adopting Rules **[ORD-ADPT(EX)]**.
  - Must include citation to the statutory exemption.

---------- **10.4 Submit your 14.386 rules to OAH via e-filing. [Revised in 2017]**
- **Submit to OAH via e-filing**
- Submission package is outlined in OAH Rules, part 1400.2400, subpart 2
- **EXEMPT-LETTER,** which serves as a checklist for meeting the OAH rules requirements used
- **10.4.1 [New in 2019] Open an e-filing account with OAH.**
  - complete Notice of Appearance form; use OAH website form or **OAH-NOA (in Appendix)**
  - **complete Contested Case Docket Request on OAH website**
- **10.4.2 [Revised in 2019] Best Practices for Working Within OAH's E-filing System**.
- **10.4.3 Letter to OAH submitting your exempt rules for approval.**
  - **EXEMPT-LETTER used**
- **10.4.4 OAH standards of review.**

Checklist for Chapter 10 (Continued)

Date Done	Item
----------	**10.5 [Revised in 2017] ALJ Review.** - ALJ has 14 days to review and approve the rules. ALJ issues decision.
----------	**10.6 Adopting your approved exempt rules**. **[Revised in 2019]** - **10.6.1 Finalize the Order Adopting Rules and have it signed.** - **10.6.2 Determine whether to notify the Governor's Office further.** - Determine whether to notify the Governor's Office further; **GOV-PLCY used** - **10.6.3 Filing your approved exempt rules. [Revised in 2019]** - Submit the signed order to OAH to start the final steps. - OAH orders final rule from Revisor and files the rules with the Secretary of State - OAH returns the document package to agency - Secretary of State's Office serves the Final Rules on the Gov's Office via email starting the 14-day veto period - **10.6.4 Publish in the State Register.** Publish the adopted rules and Order Adopting Rules in the State Register. - Consider giving direct notice to interested parties (discretionary). - * **<u>Rules are effective upon publication</u>** - **10.6.5 Governor Veto.**
----------	**10.7 Procedure for resubmitting disapproved rules.** - **10.7.1 Resubmitting with corrections.** - Resubmit the rules with any necessary changes; or - **10.7.2 Procedure for appealing the ALJ decision.** - Challenge the disapproval; or - Neither. (If you decide to do neither, rules cannot take effect unless they have been approved.) - **10.7.3 Adopt the rules.** - Adopt the rules (after the ALJ or Chief ALJ has approved rules).
----------	**10.8 Notice to affected parties.** - Notice (Not required for to this process) might be wise
----------	**10.9 Expiration of exempt rules.**
----------	**10.10 Official Rulemaking Record.** - Prepare Official Rulemaking Record. - Carry out internal agency communications for completing rulemaking.

Checklist for Chapter 10 (Continued)

Date Done	Item
----------	**10.11 Preparing Completely Exempt rules (exempted from Chapter 14 and also specifically exempted from section 14.386).**
	- 10.11.1 Practical considerations.

Chapter 11–Good Cause Exempt Rules Under 14.388

[Revised in 2019]

In General. This chapter deals with rules that are adopted, amended, or repealed under the "Good Cause Exemption" authority found in Minnesota Statutes, section 14.388. 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 the agency 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:

11.1.1 The rules address a serious and immediate threat to public health, safety, or welfare.

11.1.2 The rules comply with a court order or federal law requirement that does not allow for compliance with sections 14.14 to 14.28.

11.1.3 The rules incorporate specific changes stated in applicable statutes where no interpretation of law is required. In other words, technical changes might 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. When the statute is changed to all drivers to get the discount when they are over the age of 55, you would use this exemption to change all the 65s to 55s in your accident prevention course rules. If you, however, decide to make further changes to the course curriculum, this would be substantive changes to the rule and you must use regular rulemaking procedures under chapter 14.

11.1.4 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 then used was "gadgets." Since gadget has become an obsolete term, you need to change the terms used in your rules to widgets. You may take advantage of this exemption to substitute widget for gadget as long as this substitution doesn't change the meaning, sense, or effect of the current rule. A change in effect could occur if the term widget actually is broader than the term gadget and therefore your rule applies to more widgets than gadgets. In this instance, the effect of your rule has 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 and obtain approval from your chain of command. [Revised in 2019] Draft your rules as you would any rules. [See Chapter 3.] Remember to have your chain of command review and approve your rules before you go to the next step. This is important for obvious reasons but also because you are required to submit any Good Cause Exempt rules to the Governor's Office before OAH review. This requires the signature of your Director or

Commissioner. Note that as part of the review-and-approval process, some agencies also choose to have their legal counsel review the rules.

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 policy memo, **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** when you are ready to move the exempt rules forward just as you would when the agency has developed a rule idea. If the Director or Commissioner has reviewed *and* approved as shown by properly signing the form, the agency does not need to wait for Governor's Office approval. If you have uncertainty 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. At least one agency awaited the expected approval unnecessarily. Thus, the Editor's advice is to move forward unless told otherwise.

11.3.2 Get approved draft from the Revisor. [Revised in 2019] Draft your rules as you would any rules. Even though you are adopting exempt rules, you will need a Revisor's draft to do this. Refer to REVISOR in the appendix for general information regarding the Revisor's role in assisting agencies in drafting rules and directory information about the Revisor's staff. Give your draft 14.388 rules to the Revisor for approval as to form. The Revisor will enter your rules into the Revisor's system and edit them produce an official version for you to adopt. Advise the Revisor that these rules are exempt rules under section 14.388. This will ensure that the title to the rules receives the exempt designation. Scan a PDF copy of the approved rule, including the certification page, for filing with the OAH.

11.3.3 Draft Proposed Order Adopting Rules. After the Revisor approves your rules, you will be able to draft your proposed Order Adopting Rules. See **ORD-ADPT(EX)** in the appendix. The requirements for your Order Adopting Rules are stated in Minnesota Rules, part 1400.2400, which requires that your proposed Order include: any explanation needed to support the legality of the rule, an explanation of why the rule meets the Good Cause Exemption requirements, and any other information required by law or rule. Since the law requires notice, you might want to include in the Order a description of your notice and why 14.5.1it meets the requirement of the law, and perhaps even attach a copy of the notice to the Order.

You do not need to provide any argument for the need and reasonableness of these rules. An argument for the need for the rule changes, however, will most likely be a natural part of your Order when you explain why the rule falls under one of the Good Cause Exemptions. You should consider the nature of your rules when deciding whether it is advantageous to have an explanation that is more detailed than is required to meet the threshold. Some people believe that including a more detailed statement is beneficial for future rulemakings and for instances when your rule is later challenged.

11.4 Prepare and send your notice. [Revised in 2019] You must give electronic notice of your intent to amend your rules under the Good Cause Exemption under Minnesota statutes, section 16E.07, subdivision 3. Plus, you must give notice by United States mail or electronic mail to persons who have registered their names with your agency under Minnesota Statutes, section 14.14, subdivision 1a. Since you must give this notice no later than the date you submit the proposed rule for OAH review, you need to draft and finalize this notice before you continue further in this process. To document that you have done this, prepare both a Certificate of Mailing Notice [CRT-MLNG] and a Certificate of Accuracy of the Mailing List [CRT-LIST]. You could choose to submit these certificates when you submit your document or the ALJ might require them as "any other information required by law or rule" under OAH Rules, part 1400.2400, subpart 2, item C.

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.

(See form NTC-SBM(EX) in the Appendix) The notice must include 1) the proposed rules; 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 Discussions (***https://minnesotaoah.granicusideas.com/discussions***).

[Revised in 2016] In 2015, the Legislature amended Minnesota Statutes, section 14.05 by adding subdivision 7, which permits agencies to file rule-related documents electronically. This change is effective on January 1, 2016. *See* Minnesota Laws 2015, Chapter 63, sections 1 and 6. OAH asks agencies to eFile all rule-related documents wherever possible. See section 1.6. This means 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 eFiling (https://mn.gov/oah/forms-and-filing/efiling/) . (The page also includes a link to frequently asked questions.)

> **11.4.1** [New in 2019] Open an e-filing account with OAH. You will need to open an e-filing account with OAH to use the eComments site and submit your documents for OAH review (see 11.5 below). Opening the account will give you the necessary OAH docket number and ALJ assignment. First, complete a Notice of Appearance form. You may use either the form available the OAH website at OAH Forms (https://mn.gov/oah/forms-and-filing/forms/) or form OAH-NOA in the Appendix, which is customized for rulemaking use. Then use the online Contested Case Docket Request (also at OAH Forms (https://mn.gov/oah/forms-and-filing/forms/)); skip any not-applicable fields in the form. Identify the responsible agency unit as the Party Name. OAH staff will respond with an ALJ assignment and OAH docket number.
>
> **11.4.2 [Revised in 2019] Using OAH's eComment website.** Since Minnesota Statutes, section 14.388, subdivision 2 requires that public comment be directed to OAH, agencies must collect their public comments using OAH's eComment website

https://minnesotaoah.granicusideas.com/. (Public instructions for making comments can be found at Rulemaking eComments Website (https://mn.gov/oah/forms-and-filing/e-comments/).) [While agencies must use the eComments system, the public may also submit comments to OAH by regular mail, email, and fax. So you will need to check for and respond to such comments.] To set up your public eComment site, contact OAH Denise Collins, Legal Assistant at Denise.Collins@state.mn.us or (651) 361-7875 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 assigned to the rulemaking.
2) The dates the comment period will open and close.
3) If the agency maintains a rulemaking webpage, provide the link. OAH will link to the agency's rulemaking webpage on your public eComments webpage.
4) Optional: Finalized accessible copies of the documents you want to appear on the OAH eComments webpage, if any.

On or before the date you submit your rules to the OAH for review, you must give the notice that you have prepared. The notice must be electronic as per Minnesota Statutes, section 16E.07, subdivision 3. You must also send notice by United States mail or electronic mail to persons who have registered their names with your agency under Minnesota Statutes, section 14.14, subdivision 1a. Note: OAH has deemed that sending electronic notice to persons registered with your agency satisfies section 16E.07 subdivision 3. Section 16E.07, subdivision 3, also states that rulemaking information must be provided to the general public free of cost or at a nominal cost.

[Revised in 2016] You will need to reach 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 will need to 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 the OAH for review.

11.5 Submitting your good cause exempt rules to OAH. [Revised in 2019] OAH Rules, part 1400.2400, subpart 2, items A and B, list the documents you must file with the OAH for official review of your adopted rules. A form for the cover letter to the OAH submitting your adopted exempt rules for approval is in the appendix as EXEMPT-LTR. Submit the following two documents to OAH with the letter:

- the rules as approved by the Revisor (your scanned copy including the certification page if you are eFiling), and
- your proposed Order Adopting 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, have the finalized approved draft signed, and transmit a copy of the signed Order to OAH in a timely manner.

11.5.1 Best Practices for Working within OAH's e-filing system. **[Revised in 2019]** To accommodate e-filing, 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 1. 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. 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.

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 a prudent practice. In addition, save any correspondence or documents you receive from OAH for your own records since those items might not remain in the eFile.

14.5.2 Timing 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 the ALJ's legal assistant) 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 you have the file ready to submit. The key is to avoid keeping the ALJ waiting, anticipating a file will be arriving imminently for review.

11.5.3 OAH standards of review. As with any other rules, you must make certain that the proposed rules comply with certain standards of legality before you submit them for OAH review. OAH Rules, part 1400.2400, subpart 3, requires exempt rules to meet these standards for them to be approved. These standards require that the agency adopt the rules in compliance with procedural requirements stated for exempt rules; that the rules comply with and do not exceed, conflict with, or grant the agency more discretion than allowed by law; that the rules are not unconstitutional or illegal; that the rules do not improperly delegate the agency's powers to another; and that they fit the statutory definition of a "rule."

11.6 ALJ Review. [Revised in 2019] The ALJ has 14 days to review and approve or disapprove your rules. If the ALJ approves the rules, the OAH will send you a copy of the judge's decision and return your filing to you.

11.7 Adopting and filing your approved exempt rules. If the ALJ approves your rules, you are now ready to officially adopt the rules.

11.7.1 Finalize the Order Adopting Rules and have it signed. **[Revised in 2019]** You are now ready to finalize the Order Adopting Rules. Unless the ALJ has recommended any specific changes to your proposed Order Adopting Rules, use the proposed Order, omitting the word "Proposed" from the title. This omission should be the only difference between the proposed Order and your final Order Adopting Rules. The Commissioner or Director may now sign it. Notify OAH by e-filing the signed order. After doing this, you may submit your rules to the State Register for publication. Your final order should reflect any changes made between the proposed rules and the adopted ones. It can be a paragraph describing the changes.

11.7.2 Determine whether to notify the Governor's Office further. If you have 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 9/9/19 rules 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. . . . Exempt rules adopted under Minnesota Statutes, section 14.388 *are not* subject to veto. [emphasis supplied]"

11.7.3 [Revised in 2019] Filing your approved exempt rules. Under Minnesota Statutes, section 14.08(d) agencies must confirm that the Order Adopting Rules has been signed, so e-file the signed Order Adopting Rules with OAH. OAH, the Revisor's Office, and Secretary of State's Office now accomplish the final steps electronically as permitted in Minnesota Statutes, section 14.16. This is how it works. After 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 e-filed the scanned 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. The Secretary of State's Office serves the Final Rules on the Governor's Office via email to the Governor's Office, using a distribution list that includes the agency. **(Note: there is no veto period; see exception noted in 11.7.5 for good cause exempt rules)** The email to the Governor's

Office contains no explanation and is your notice that your rule has been served on the Governor's Office, so you must watch for it. Also, these steps can take place swiftly.

11.7.4 Publish in the State Register. [Revised in 2019]Before your rules can take effect, you must publish them in the State Register. See Minnesota Statutes, section 14.388, subdivision 1, where it requires following the procedures of section 14.386, which includes this requirement in paragraph (a), clause (4). The rules will take effect on the date of publication. The State Register publishes on Mondays. Publication deadlines depend on the length or complexity of your rules: Short proposed rules (10 or fewer pages) have a one-week deadline and are due by 12:00 noon on the Tuesday before publication. Rules 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. Submit a reference copy of your adopted rule with your printing order by email. The editor will then request the Revisor's Office to transmit the official draft directly to the State Register electronically.

11.7.5 Governor Veto. Minnesota Statutes, section 14.05, subdivision 6, does not apply to good cause exempt rules adopted under Minnesota Statutes, section 14.388. Therefore the rules are not subject to veto.

11.8 Procedure for resubmitting disapproved rules. If the ALJ does not approve your rules, you have the option to either resubmit the rules with any necessary changes or to challenge the disapproval. If you decide to do neither, please note that your rules cannot take effect unless they have been approved.

11.8.1 Resubmitting with corrections. [Revised in 2019] If the ALJ has disapproved your rules and the noted defects are ones that can be corrected, and your agency agrees to the corrections, you can resubmit the corrected rules to the OAH for a subsequent review. The Revisor's Office will send you a paper copy of the adopted rule with a certification page attached. Scan this copy of the rule, including the certification page and e-file it with OAH. The ALJ has 5 working days to review and approve or disapprove.

11.8.2 Procedure for appealing the ALJ decision. If the ALJ has disapproved your rules and the defects noted are ones that cannot be corrected or your agency is unwilling to make the corrections or changes, then you may ask the Chief ALJ to review the disapproved rules. To take advantage of this appeal avenue, the agency must make the request within five working days of receiving the ALJ's disapproval. The Chief ALJ then has 14 days to make a decision using the same standards of review as the ALJ.

11.8.3 Adopt the rules. Once the ALJ or Chief ALJ has approved your rules, go back to section 11.7 of this chapter for the remaining procedures.

11.9 Notice to affected parties. Although there is no formal requirement to notify affected parties when exempt rules are proposed or adopted, depending upon the type of rules in question, it might be a good idea to give direct notice to parties anyway to ensure compliance by these affected

parties. This is discretionary, as normal due process concerns have been met by your publication of 14.388 rules in the State Register.

11.10 Effective date and expiration of Good Cause Exempt rules. Rules adopted under clauses (1) and (2) of section 14.388 are effective for a period of 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 of the rule in the State Register.

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 to keep documents that show any 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.

[Revised in 2019] Editor's 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. (For example, a network drive, a document management system, a SharePoint library, etc. Work with your agency's records manager.) This eFile and any others not included will become your official record, which your agency must preserve as a permanent record. OAH does not keep these records indefinitely and will delete its files after it has sent the record to you. 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 Minnesota Statutes, section 14.365, after your rulemaking has concluded.

Checklist for Chapter 11- Good Cause Exempt Rules Under 14.388

Date Done **Item**

---------- **11 This entire chapter reviewed before proceeding.**

---------- **11.1 Determine whether your rules fall under the Good Cause Exemption.**

---------- **11.2 Draft your rules and obtain approval from your chain of command.**
- Draft Rules and submit to Revisor for preliminary draft.
- Tell the Revisor that rules are exempt under §14.388 and which clause applies.
- Seek advice from interested parties (discretionary).
- Have chain of command review *and approve* rules
- Have Director or Commissioner sign.
- If agency is a multi-member board, **BOARD-ADPT** is used.

---------- **11.3 Preparing your Good Cause Exempt rules for adoption. [Revised in 2019]**
- **11.3.1 Notify Governor's Office.**
  - Notify Governor's Office. You must notify the Governor's Office of your exempt rules
  - Preliminary Proposal Form **[GOV-PRLM]** signed.
  - Preliminary Proposal Form, copy of the draft rules, and any supporting argument sent to Gov's office (approval NOT needed to proceed).
- **11.3.2 Get approved draft from the Revisor.**
  - Revisor advised as to whether changes are needed.
  - Rules approved (certified) as to form from the Revisor requested14. Scan PDF copy of the approved rule, including the certification, for filing with OAH.
- **11.3.3 Draft Proposed Order Adopting Rules.**
  - Draft Proposed Order Adopting Rules. **ORD-ADPT(EX)**
  - Order must meet Minnesota Rules, part 1400.2400. (See **11.3.3** for details.)

---------- **11.4 Prepare and send your notice.**
- Choose date on which you will submit rules package to OAH and send Notice of Submission
- Prepare an agency webpage, if desired
- Make sure that documents to be posted online are accessible
- Notice of Submission **[NTC-SBM(EX)]** drafted.
- Interested parties have 5 business days to submit comments to OAH.
- Notice sent via email to interested parties per Minnesota Statutes, section 16E.07, subdivision and be posted on the agency website.
- Notice of Submission must sent to all parties registered with department.

Checklist for Chapter 11 (Continued)

Date Done **Item**

- Prepare Certificate of Mailing Notice **[CRT-MLNG**] and Certificate of Accuracy of the Mailing List **[CRT-LIST]**
  - **11.4.1 [New in 2019] Open an e-filing account with OAH.**
    - Complete a Notice of Appearance form. Use OAH's form (website) or customized form OAH-NOA (in Appendix).
    - Request docket number. Contested Case Docket Request used (skip not applicable fields; responsible agency unit name is the Party Name).
    - OAH will respond with an ALJ assignment and OAH docket number
    - Consider using best practices for working within OAH's e-filing system.
  - **11.4.2 [Revised in 2019] Using OAH's eComment website.**
    - Confirm with OAH staff the start and end dates when their eComments page will be ready to receive comments.
    - Make sure that your documents to be posted online meet accessibility standards

---------- **11.5 Submitting your good cause exempt rules to OAH.**
- **11.5.1 Best Practices for Working within OAH's e-filing system**.
- **11.5.2 Timing**
- **11.5.3 OAH standards of review.**
  - Check to make sure that OAH (and agency, if applicable) web postings are active
  - Submit rules package to OAH using **EXEMPT-LTR**. (Requirements outlined in OAH Rules, part 1400.2400, subpart 2)
  - Submit rules as approved by the Revisor; and unsigned Order Adopting Rules

---------- **11.6 ALJ Review.**
- ALJ has 14 days to review and approve or disapprove the rules
- ALJ issues decision
- If approved, OAH orders final rule from Revisor; files the rules with the Secretary of State; and returns the document package to agency

---------- **11.7 Adopting and filing your approved exempt rules**. **[Revised in 2019]**
- **11.7.1** Finalize the Order Adopting Rules and have it signed.
  - Finalize the Order Adopting Rules ORD-ADPT(EX)
  - Commissioner or Director signs order.

Checklist for Chapter 11 (Continued)

Date Done	Item

	- **11.7.2 Determine whether to notify the Governor's Office further.**
	  - Determine whether to notify the Governor's Office further using **GOV-FNL form.**
	- **11.7.3 [Revised in 2019] Filing your approved exempt rules.**
	  - Submit the signed order to OAH to start the final steps.
	  - OAH files the rules with the Secretary of State using the Revisor's draft already submitted to OAH;
	  - OAH and returns the document package to agency
	  - Secretary of State's Office serves Final Rules on Governor's Office (**no veto period)**
	- **11.7.4 Publish in the State Register.**
	  - Publish the adopted rules in the State Register.
	- **11.7.5 Governor Veto. (none)**

----------	**11.8 Procedure for resubmitting disapproved rules.**
	- **11.8.1 Resubmitting with corrections.**
	  - Resubmit the rules with any necessary changes; or
	- **11.8.2 Procedure for appealing the ALJ decision.**
	  - Challenge the disapproval; or
	  - Neither. (If you decide to do neither, rules cannot take effect unless they have been approved.)
	- **11.8.3 Adopt the rules.**
	  - Adopt the rules (after the ALJ or Chief ALJ has approved rules).

----------	**11.9 Notice to affected parties.** - *Notice* (Not required for to this process) might be wise
----------	**11.10 Effective date and 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 in the State Register. - Rules adopted under clauses (3) and (4) of section 14.388 are effective upon publication in the State Register.
----------	**11.11 Official Rulemaking Record.** - Prepare Official Rulemaking Record. - Carry out internal agency communications for completing rulemaking.

Chapter 12–Expedited Rules Under 14.389

[Revised in 2019]

In General. This chapter concerns rules that are adopted under the expedited rulemaking authority found in Minnesota Statutes, section 14.389. Agencies may adopt rules using these expedited procedures *only if* a law authorizing rules specifically allows using the procedures found in section 14.389.

12.1 Draft your rules and obtain approval from your chain of command. [Revised in 2019] Draft your rules as you would any rules. [See Chapter 3.] Your chain of command should review and approve your rules before you proceed. This is important for obvious reasons but also because you are required to submit any expedited rules to the Governor's Office before OAH review and this submission requires the signature of your director or commissioner.

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 policy memo, **GOV-PLCY**. By this time, you should have had your rules reviewed and approved by your chain of command. Some agencies also choose to have their legal counsel review the rules. Use the "Preliminary Proposal" form, which can be found in the appendix as **GOV-PRLM**. As mentioned earlier, this form must be signed by your Director or Commissioner to assure the Governor that your Director or Commissioner has actually reviewed *and* approved the proposed rules. You do not need to wait for Governor's Office approval to move forward.

12.2.2 Get approved draft from the Revisor. [Revised in 2017] Refer to REVISOR in the appendix for general information regarding the Revisor's role in assisting agencies in drafting rules and directory information about the Revisor's staff. Give your draft expedited rules to the Revisor to put them into proper form. The Revisor will enter your rules into the Revisor's system and edit them to produce an official version for you to adopt. Advise the Revisor that these rules are expedited rules under section 14.389, if you have not done so already. This will ensure that the title to the rules receives the expedited designation. When you have finished revising your rules draft, request a Revisor's draft of rules approved (certified) as to form. This is the version you will publish.

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 OAH Rules, part 1400.2085, subparts 2 and 3. A form for the Notice is in the appendix as **NTC-EXPEDITE**. To draft this form, the recommended form from OAH Rules, part 1400.2570, was used and practice tips were added. **NTC-EXPEDITE** is designed to be a checklist for meeting the requirements of part 1400.2085.

In drafting the Notice, consider that the description of the rules in the Notice might affect whether modifications to the rules will make the adopted rules "substantially different"

from the proposed rules. [To adopt rules that are substantially different from the proposed rules, you must go through additional rule proceedings under OAH Rules, part 1400.2110.] Furthermore, when you draft your Notice make certain that you include an easily readable and understandable summary of the overall nature and effect of the proposed rules. This summary is required in the Notice that is published in the State Register.

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.

12.3 Giving Notice.

12.3.1 Mailings to agency mailing list. You must mail the Notice to persons who have registered with your agency to receive mailed notices. You must do this mailing at least 33 days before the end of the comment period. If you elect not to send a copy of the proposed rules with your Notice, your Notice must include a description of the nature and effect of the proposed rules and a statement that a free copy is available from the agency upon request.

At the time you mail your Notice, prepare a Certificate of Mailing Notice to Persons on Mailing List and a Certificate of Accuracy of the Mailing List. Forms for these certificates are in the appendix as **CRT-MLNG** and **CRT-LIST**.

12.3.2 Additional Notice—discretionary under part 1400.2410, subpart 2, item D. Although providing additional notice beyond what is required in section 14.389 (publication in the State Register) is not a prerequisite to adopting expedited rules, you might want to consider its benefits in your expedited rulemaking. Notice of your new rules might not reach the affected parties if you rely solely on the State Register publication. Since rules are always subject to due process considerations, you will want to give notice to these parties in some other way to avoid possible litigation. Include your plans to give notice to these parties in the documents 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. **[New in 2016]** For information on developing and using an additional notice plan, see Chapter 5, 6, or 7.

12.3.3 Publication in State Register. [Revised in 2019] You must publish your Notice and proposed rules in the State Register at least 30 days before the end of your comment period. Minnesota Statutes, section 14.389, subdivision 2. See **ST-REG** in the appendix for information on how to publish in the State Register.

NOTE: [Revised in 2019] The State Register publishes on Mondays. Publication deadlines depend on the length or complexity of your rules: Short proposed rules (10 or fewer pages) have a one-week deadline and are due by 12:00 noon on the Tuesday before publication. Rules 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. You will also need to inform the editor of the Revisor's draft number, which will be "RD" plus four digits. He will request the Revisor's Office to transmit the draft directly to the State Register electronically.

12.3.4 30-day comment period (after publication). Minnesota Statutes, section 14.389, subdivision 2, requires you to allow at least 30 days after publication in the State Register for comment on the proposed rules. Keep copies of any comments and submissions you receive as these will need to be included with the rest of the documents you file with OAH. OAH Rules, part 1400.2085, subpart 2, item E.

[Revised in 2019] Consider using OAH's eComment website for collecting your public comments. If agencies request it, OAH will collect public comments on its eComments website (https://minnesotaoah.granicusideas.com/) (as well as regular U.S. mail) (Public instructions for making comments can be found at Rulemaking eComments Website (https://mn.gov/oah/forms-and-filing/e-comments/).) To set up your public e-comment site, contact OAH Denise Collins, Legal Assistant at Denise.Collins@state.mn.us or (651) 361-7875 at least a week before you publish your notice in the State Register or e-file your case. Provide the following information:

1) OAH docket number assigned to the rulemaking.
2) The dates the comment period will open and close.
3) If the agency maintains a rulemaking webpage, provide the link. OAH will link to the agency's rulemaking webpage on your public eComments webpage.
4) If applicable, the date 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: a Request for Comments, proposed rules, a Notice, SONAR, etc.

12.4 Modifications to your expedited rules. During the 30-day comment period, you might receive comments on the proposed rules that call for changes, or you may find errors that need correcting. For your decision to modify the rules, consider whether your modifications will result in substantially different rules from the ones that you proposed. If modifications do not result in substantially different rules, make note of why they do not as you will need to explain this in your Order Adopting Rules. If they do result in substantially different rules, you should seriously consider whether the modification is necessary, since you will not be able to adopt the substantially different portion of your rules via expedited rulemaking without also following the procedures set out in OAH rules, part 1400.2110.

If you decide to modify the rules, make sure that you have the approval from all persons in your agency's chain of command for the rules. Finally, remember to obtain a certified copy of the modified rules from the Revisor.

Note: depending upon the complexity of the proposed modifications or the subject matter involved or if the changes may be controversial, you might want to advise the Governor's Office of the planned changes before taking action.

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, your rules will require a hearing if you receive 100 or more requests for a hearing during the 30-day comment period. If you do not receive 100 requests, you may proceed with your rulemaking following the procedures for expedited rules. If you receive the 100 requests, and the requests are valid under section 14.25, you must hold a hearing and must comply with all the normal requirements for adopting rules after a public hearing found in Chapter 14. These include: preparing a Statement of Need and Reasonableness (SONAR); publishing and mailing a Notice of Hearing under Minnesota Statutes, section 14.14, subdivision 1a; and send Notice of Hearing to those persons who requested a public hearing. OAH Rules, part 1400.2085, subpart 6. 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 100 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 100; and
> 2) You must notify all persons who requested a hearing must in writing if enough requests are withdrawn to reduce the number of requests below 100 and if the agency has taken any actions to obtain the withdrawals. Section 14.25, subdivision 2, sets out the requirements for this Notice. A form for this notice is in the appendix as **NTC-HRWD**. This 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**.

12.6 Get Governor's Office Approval. [Revised in 2019] After you decide on the final rules, you need to get approval from the Governor's Office. Per the Governor's Office 9/19/19 rules review policy, **GOV-PLCY**:

> **When the agency is adopting expedited rules:** the agency must submit the completed Final Rule Form 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 expedited rules.* [emphasis supplied]
>
> "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."

12.7 [Revised in 2019] Draft your *proposed* Order Adopting Rules. OAH must approve the Order Adopting Rules that the commissioner or director will sign. The requirements for the Order are contained in OAH Rules, part 1400.2090. A form for the Order is in the appendix as ORD-ADPT. See section 12.9 about not signing the order until after the OAH review.

12.8 If requested, give Notice of Submission of Rules to OAH. On the same day that you submit your rules to OAH for review, you must also give this notice. Although not specifically mentioned in section 14.389, OAH Rules, parts 1400.2410 and 1400.2570, both refer to giving notice that an agency 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**.

12.9 Preparing expedited rules for OAH review and approval. OAH Rules, part 1400.2410, subpart 2, items A to K, lists the documents you must file with OAH for official review of your adopted rules. A form for the cover letter submitting your expedited rules to OAH for approval is in the appendix as **EXPEDITE-LTR**. This letter is designed to serve as a checklist for meeting the requirements set out in OAH Rules, part 1400.2410. Submit an *unsigned draft* Order Adopting Rules for OAH review and here's why. For rules expedited rules adopted without a hearing, part 1400.2410, item I requires that agencies file "the order adopting the rule that complies with the requirements in part 1400.2090." But until the ALJ has issued his or her 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*.

[Revised in 2016] Rulemaking Manual Editor's Note: In 2015, the Legislature amended Minnesota Statutes, section 14.05 by adding subdivision 7, which permits agencies to file rule-related documents electronically. This change is effective on January 1, 2016. *See* Minnesota Laws 2015, Chapter 63, sections 1 and 6.

[Revised in 2019] E-filing rule-related documents. OAH asks agencies to e-file all rule-related documents wherever possible. See section 1.6. This means all documents submitted for ALJ review should be e-filed. 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/) . (The page also includes a link to frequently asked questions.)

12.10 [New in 2019] Open an e-filing account with OAH. Opening the account will give you the necessary OAH docket number and ALJ assignment. First, complete a Notice of Appearance form. You may use either the form available the OAH website at OAH Forms

(https://mn.gov/oah/forms-and-filing/forms/) or form OAH-NOA in the Appendix, which is customized for rulemaking use. Then use the online Contested Case Docket Request (also at OAH Forms (https://mn.gov/oah/forms-and-filing/forms/)); skip any not-applicable fields in the form. Identify the responsible agency unit as the Party Name. OAH staff will respond with an ALJ assignment and OAH docket number.

[Revised in 2019] Best practices for working within OAH's e-filing system. To accommodate e-filing, 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 the ALJ's review. 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 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. 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.

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 a prudent practice. In addition, save any correspondence or documents you receive from OAH for your own records since those items might not remain in the e-file.

Also, consider your timing when e-filing. After you request OAH to assign an ALJ to your rulemaking, it's a good idea to communicate with the assigned ALJ (through the ALJ's legal assistant) 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 you have the file ready to submit. The key is to avoid keeping the ALJ waiting, anticipating a file will be arriving imminently for review.

12. 11 Filing your rules with OAH for review as to legality. If you are e-filing, OAH staff will have sent you an email link to open a folder for uploading documents. As soon as you are ready,

upload your submission package. After the upload is complete, right-click on the page to print the screen for your records. If you are not e-filing, deliver your hard copy submission to OAH office.

12.12 If requested, give Notice of Submission of Rules to OAH. On the same day that you submit your rules to OAH for review, you must also give this notice. Although not specifically mentioned in section 14.389, OAH 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**.

12.13 ALJ review of expedited rules.

12.13.1 OAH standards of review. As with any other rules, you must make certain that the rules proposed comply with certain standards of legality before you submit them for OAH review. OAH Rules, part 1400.2410, subpart 3, requires expedited rules to meet standards in OAH Rules, part 1400.2100, items A and C to H, for the rules to be approved. You should review these standards directly.

As a summary, these standards require that the agency comply with procedural requirements for expedited rules, the rules are not substantially different from the proposed rules, the rules do not exceed or conflict with the authority in the enabling law, that the rules are not unconstitutional or illegal, that the rules do not improperly delegate the agency's powers to another, and that they fit the definition of a "rule" as defined in statute.

Note: Rules, part 1400.2100, items A and C to H do not include need and reasonableness. You do not, therefore, need to provide argument for the need and reasonableness of these rules. Some people, however, believe that including some sort of argument or justification for your rules to keep a record of how and why these rules were developed is particularly helpful if your rules are later challenged. You should consider the nature of your rules when deciding whether or not including an explanation is advantageous. Nevertheless, because the standards do not include need and reasonableness, the OAH review will focus on whether the agency has the statutory authority to do what it proposes to do. Therefore, you should tie your justification, if you choose to do one, back to the statute.

12.13.2 Withdrawal of your 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, as long as whatever 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.

12.13.3 ALJ review – 14 days from date received. 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.

12.14 Rule adoption and filing. [Revised in 2019]

12.14.1 Signing the Order. After your rules receive ALJ approval, the Commissioner or Director may sign the Order Adopting Rules.

12.14.2 [Revised in 2019] Filing your approved expedited rules. E-file your signed Order with OAH. OAH requests the Final Rules from the Revisor's Office per Minnesota Statutes, section 14.08(d). OAH files the Final Rules with the Secretary of State's Office via email as permitted by Minnesota Statutes, section 14.16. The Secretary of State's Office serves the Final Rules on the Governor's Office to start the 14-day veto period via email to the Governor's Office, using a distribution list that includes the agency. The email contains no explanation and this is how you will know your rule has been served on the Governor's Office, so you must watch for it. Also, these steps can take place swiftly**.**

12.14.3 Governor Veto. Per Minnesota Statutes, section 14.05, subdivision 6, the Governor may veto rules adopted under the expedited procedures of section 14.389. The Secretary of State serves the rules on the Governor. The Governor then has 14 days to veto the rules. If your agency feels it is urgent to have 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 Publish your approved and adopted expedited rules. Before your rules can take effect, you must publish them in the State Register. They will then take effect ***on the day*** they are published. The Revisor will provide the agency with an approved Notice of Adoption for publication, which will include any changes approved after the original publication.

12.16 Procedure for resubmitting disapproved rules. If the ALJ does not approve your rules, you have the option of either resubmitting the rules with any necessary changes or challenging the disapproval. The rules cannot be published or take effect until the rules have been approved. Note: resubmitting disapproved expedited rules is a rare situation, so you might want to contact OAH by sending an electronic mail message to the Administrative Law Judge who has been assigned to the matter to find out what documents you need to submit.

12.16.1 Resubmitting with corrections. If the ALJ has disapproved your rules and your agency agrees to correct the defects noted, you may resubmit the corrected rules to OAH for a subsequent review. You will need a Revisor's certified copy for doing this. The judge has 5 working days to review and approve or disapprove. After the ALJ approves the resubmitted rules, OAH will send them to the Secretary of State, who will stamp each copy and automatically send them to OAH, the Governor's office, the State Register, and the agency. If the agency prefers, the agency may instead pick up all four stamped copies from the Secretary of State and deliver the rules to the Governor and the other offices itself.

12.16.2 Procedure for appealing the ALJ decision. If the ALJ has disapproved your rules and your agency will not correct the defects noted, you may ask the Chief ALJ to review the disapproved rules. The agency requests the reviews within five working days of

receiving the ALJ's disapproval. The Chief ALJ then has 14 days to make a decision using the same standards of review as the original ALJ.

12.17 180-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. Failing this, your rules are automatically withdrawn and you must start over.

12.18 Official Rulemaking Record. After expedited rules are adopted, you can complete the last official step, which is to prepare and store the 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.

[Revised in 2019] Editor's Note: With e-filing, 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. (For example, a network drive, a document management system, a SharePoint library, etc. Work with your agency's records manager.) This e-file and any others not included will become your official record, which your agency must preserve as a permanent record. OAH does not keep these records indefinitely and will delete its files after it has sent the record to you. 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 Minnesota Statutes, section 14.365, after your rulemaking has concluded.

Checklist for Chapter 12 - Expedited Rules Under 14.389

[Revised in 2019]

Date Done **Item**

---------- **12 This entire chapter reviewed before proceeding.**

---------- **12.1 Draft your rules and obtain approval from your chain of command.**
- Draft Rules and submit to Revisor for preliminary draft.
- Seek advice from interested parties (discretionary).
- Chain of command review *and approve* rules
- Director or Commissioner signs.
- If agency is a multi-member board, **BOARD-ADPT** is used.

---------- **12.2 Preparing your expedited rules for comment. [Revised in 2019]**
- **12.2.1 Notify Governor's Office. GOV-PRLM** form used and signed.
- Signed *Preliminary Proposal Form,* copy of draft rules, and any supporting argument sent to Governor's Office (*approval NOT needed to proceed*).
- **12.2.2 Get approved draft from the Revisor.**
- Tell the Revisor that rules are expedited under §14.389.
- Revisor advised about any changes to rules needed.
- Request rules approved **(certified)** as to form from Revisor.
- **12.2.3** Draft Proposed Notice of Intent to Adopt Expedited Rules Without a Hearing. **NTC-EXPEDITE** used.
- Order must meet Minnesota Rules, part 1400. 2085, subparts 2 and 3
- Mention possible hearing (only if the law authorizing the expedited rules specifically refers to section 14.389, subdivision 5)

---------- **12.3 Giving Notice.**
- **12.3.1 Mailings to agency mailing list.**
  - Mail *Notice of Intent* to all parties registered with department at least 33 days before end of comment period.
  - Note whether hearing is possible.
  - Draft *Certificate of Mailing Notice* **CRT-MLNG**
  - Draft *Certificate of Accuracy of the Mailing List*. **CRT-LIST**.
- **12.3.2 Additional Notice—discretionary under part 1400.2410, subpart 2, item D** Draft *Additional Notice Plan*.
- **12.3.3 Publication in State Register.** Submit *Notice of Intent* and copy of rules to State Register, must be published at least 30 days before end of comment period. **ST-REG** used.
- **12.3.4 30-day comment period (after publication).** Allow at least 30 days after publication in the State Register for comment
- Keep copies of comments and submissions you receive to include with documents filed with OAH.

Checklist for Chapter 12 (Continued)

Date Done	Item
----------	**12.4 Modifications to your expedited rules.** - Review comments and decide on any modifications. - Get approval from chain of command. - Obtain certified copy of modified rules from Revisor's office, if necessary. - Advise the Governor's Office of the planned changes before taking action (discretionary).
----------	**12.5 Expedited Rules Subject to Hearing (if § 14.389, subd. 5 applies).** - Hold hearing if you receive 100 or more requests during the 30-day comment period. (See Chapter 7, Giving Notice of Hearing, and Chapter 9, Adopting Rules with a Hearing). - **12.5.1 Withdrawal of Hearing Requests.** Negotiate withdrawal of hearing requests. **NTC-HRWD** and **CRT- HRWD** used.
----------	**12.6 Get Governor's Office Approval.** - Notify Governor's Office. **GOV-FNL** used. *See* **GOV-PLCY.**
----------	**12.7 Draft your *proposed* Order Adopting Rules. [Revised in 2019]** - Draft proposed Order Adopting Rules. **ORD-ADPT used**.
----------	**12.8 If requested, give Notice of Submission of Rules to OAH.** - Give notice on same day that rules submitted to OAH. - **NTC-SBM** and **CRT-SBM** used.
----------	**12.9 Preparing expedited rules for OAH review and approval. [Revised in 2017]** - Prepare to submit rules package to OAH via e-filing per OAH Rules, part 1400.2410, subpart 2, items A to K). Cover letter **EXPEDITE-LTR** used, which also serves as a checklist. - Submit *unsigned draft* Order adopting rules. - Include any argument supporting rules.
----------	**12.10 Open an e-filing account with OAH.** [New in 2019] - **Complete a Notice of Appearance form. Use OAH's form (website) or customized form OAH-NOA (in Appendix).** - **Request docket number. Contested Case Docket Request used (skip not-applicable fields; responsible agency unit name is the Party Name).** - **OAH will respond with an ALJ assignment and OAH docket number** - **Consider using best practices for working within OAH's e-filing system.**
----------	**12.11 Filing your rules with OAH for review as to legality. [Revised in 2019]**

Checklist for Chapter 12 (Continued)

Date Done	Item
	- For e-filing, upload open folder OAH sent you and upload your submission package. - After the upload is complete, right click on the page to print the screen for your records. - If not e-filing, deliver hard copy submission package to OAH office.
----------	**12.12 If requested, give Notice of Submission of Rules to OAH. [Revised in 2019] NTC-SBM and CRT-SBM used.**
----------	**12.13 ALJ review of expedited rules. [Revised in 2019]** - 12.13.1 OAH standards of review. - Make certain proposed rules comply with OAH Rules, part 1400.2100, items A and C to H; review these standards directly. - 12.13.2 Withdrawal of your rules. (discretionary) - Submit a signed Notice of Withdrawal - Publish notice in the State Register that you have withdrawn the rules. - 12.13.3 ALJ review – ALJ has 14 days from date received.

----------	**12.14 Rule adoption and filing. [Revised in 2019]**
	- **12.14.1 Signing the Order.**
	  - **After the ALJ approves the rules, the Commissioner or Director may sign the Order Adopting Rules.**
	- **12.14.2 [Revised in 2019] Filing your approved expedited rules.**
	  - E-file your signed Order with OAH.
	  - OAH requests Final Rules from Revisor's Office
	  - OAH files Final Rules with Secretary of State's Office
	  - Secretary of State's Office serves the Final Rules on the Governor's Office to start the 14-day veto period (watch for email to the Governor's Office)
	- **12.14.3 Governor Veto**
	  - Governor has 14 days to veto the rules.
	  - If urgent to have the rules become effective ASAP, contact the Governor's Office to relay concerns and discuss moving forward before end of 14 days.

----------	**12.15 Publish your approved and adopted expedited rules. [Revised in 2019]** - Publish the Notice of Adoption that the Revisor will prepare, which will include any changes approved after the original publication. - Rules are effective upon publication.
----------	**12.16 Procedure for resubmitting disapproved rules.** - Contact OAH about procedure for challenging

Checklist for Chapter 12 (Continued)

Date Done	Item

	- **12.16.1 Resubmitting with corrections.**
	  - Resubmit the rules with any necessary changes; or
	- **12.16.2 Procedure for appealing the ALJ decision.**
	  - Challenge the disapproval; (Contact OAH about procedure) or
	  - Neither. (If you decide to do neither, rules cannot take effect unless they have been approved.)
	  - Adopt the rules (after the ALJ or Chief ALJ has approved rules).

----------	**12.17 180-day deadline.** - Must submit Notice of Adoption to the State Register within 180 days after ALJ decision is issued.
----------	**12.18 Official Rulemaking Record.** - Prepare Official Rulemaking Record. - Carry out internal agency communications for completing rulemaking.

Chapter 13–Repeal of Obsolete Rules Under 14.3895

[Revised in 2019]

In General. This chapter addresses the repeal of obsolete rules under the rulemaking authority in Minnesota Statutes, section 14.3895. An agency may repeal obsolete rules using these procedures if it has identified the specific rules in question as obsolete, unnecessary, or duplicative in the agency's annual obsolete rules report under Minnesota Statutes, section 14.05, subdivision 5. This authority does not apply if another law specifically requires another process or 25 or more people submit a written request. If either of the latter is the case, 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 [Revised in 2014] 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 under Minnesota Statutes, section 14.05, subdivision 5. If not, and you wish to go forward before your next report, you may issue an amended report. You will, however, have to 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 9/19/2019 administrative rule review policy, **GOV-PLCY**, states:

> 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.

[Editor's note: The policy asks only for an "informational memo," and does not mention using the usual form **GOV-PRLM.** The Editor recommends you consider using the **GOV-PRLM** form anyway. The forms alert Governor's Office staff that your submission is rule-related and to handle your document accordingly, which lessens the chances 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 [Revised in 2019] Draft your rules. 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. Refer to REVISOR in the appendix for general information regarding the Revisor's role in assisting agencies in drafting rules and directory information about the Revisor's staff. 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. Advise the Revisor that these rules are obsolete rules repeals under section 14.3895 This will ensure that the title to the rules receives the obsolete rules repeal designation. 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.

13.3 [Revised in 2017] Preparing your Notice Plan, Drafting your Notice of Intent to Repeal Obsolete Rules, Getting your Notice Plan approved by Chief ALJ. After you get your Revisor's draft of the proposed obsolete rule to be repealed with Revisor's certification; your next steps are to draft three items: a notice plan; an explanation as to why the agency believes the Notice Plan complies with Minnesota Statutes section 14.3895, and your proposed notice of intent to repeal obsolete rules. The following sections address each of these steps, respectively:

[Text from previous 13.3.1 regarding getting an approved draft from the Revisor is incorporated into 13.2 above.]

13.3.1 [Revised in 2017] Preparing your Notice Plan—mandatory. Minnesota Statutes, section 14.3895, subdivision 2 requires that you draft a notice plan, gain approval from the Chief ALJ, and follow the notice plan. In the Notice Plan you must make reasonable efforts to notify persons or classes of persons who might be significantly affected by the rule repeal by giving notice of your intention to repeal obsolete rules by such means of communication as newsletters, newspapers, other publications, or through other means of communication.

13.3.2 Draft Notice of Intent to Repeal Obsolete Rules. A Notice of Intent to Repeal Obsolete Rules should contain the information in OAH Rules, part 1400.2085, subparts 2 and 3, items B to E. (Although OAH rules part 1400.2085 does not specifically cover Minnesota Statutes, section 14.3895–Repeal of Obsolete Rules, OAH would likely use the criteria found in 1400.2085 to evaluate the Notice of Intent to Repeal Obsolete Rule.) A form for the Notice is in the appendix as **NTC-OBS**. To draft this form, the editor used the recommended form and added practice tips from OAH Rules, part 1400.2570, which was designed to be a checklist for meeting the requirements of part 1400.2085.

In drafting the Notice, include an explanation of why the specific rules are obsolete, unnecessary, or duplicative under Minnesota Statutes, section 14.05, subdivision 5. 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.

13.3.3 Get Notice Plan approved by Chief ALJ. **[Revised in 2017]** 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: the proposed obsolete rule to be repealed with Revisor's certification; your proposed notice of intent to repeal obsolete rules; and an explanation as to why the Department 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. See 13.3.4 for instructions about e-filing your request to the Chief ALJ.

13.3.4 [New in 2018] E-filing rule-related documents. OAH asks agencies to e-file all rule-related documents wherever possible. See section 1.6. This means all documents submitted for ALJ review should be e-filed. 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/) . (The page also includes a link to frequently

asked questions.)

13.3.5 [New in 2019] Open an e-filing account with OAH. Opening the account will give you the necessary OAH docket number and ALJ assignment. First, complete a Notice of Appearance form. You may use either the form available the OAH website at OAH Forms (https://mn.gov/oah/forms-and-filing/forms/) or form OAH-NOA in the Appendix, which is customized for rulemaking use. Then use the online Contested Case Docket Request (also at OAH Forms (https://mn.gov/oah/forms-and-filing/forms/)); skip any not-applicable fields in the form. Identify the responsible agency unit as the Party Name. OAH staff will respond with an ALJ assignment and OAH docket number.

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 a prudent practice. In addition, save any correspondence or documents you receive from OAH for your own records since those items might not remain in the e-file.

13.4 Giving Notice.

13.4.1 Mailing. [Revised in 2017] You must mail, either electronically or by U.S. Mail, the Notice to persons who have registered with your agency to receive mailed notices 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. In addition, you must give notice according to the Notice Plan approved by the Chief ALJ as described in 13.3.3 above. This mailing must be done at least 63 days before the end of the comment period. If you elect not to send a copy of the proposed rules with your Notice, your Notice must include a description of the nature and effect of the proposed rules and a statement that a free copy is available from the agency upon request. 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)**.

At the time you mail your Notice, prepare a Certificate of Mailing Notice to Persons on Mailing List, a Certificate of Accuracy of the Mailing List, a Certificate of Sending Notice to Legislators, 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, CRT-LEG,** and **CRT-GNRC**.

13.4.2 [New in 2017] Give notice according to your Notice Plan. Document what you do. For any mailed notice, whether using regular mail or email, do a certificate of mailing with a copy of the notice and the mailing list attached. [Editor's 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 Editor's note in section 1.7.3 for Data Practices considerations to take into account.] Detail any efforts you made to develop

your mailing list. For more traditional paper-based notice, get copies of any newsletters or newspapers in which a notice is published. Get tapes or transcripts of any 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. Create a similar document for electronic mailings.

13.4.3 Publication in 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. Minnesota Statutes, section 14.3895, subdivision 3. See **ST-REG** in the appendix for information on how to publish in the State Register.

NOTE: [Revised in 2019] The State Register publishes on Mondays. Publication deadlines depend on the length or complexity of your rules: Short proposed rules (10 or fewer pages) have a one-week deadline and are due by 12:00 noon on the Tuesday before publication. Rules 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.

13.4.4 60-day comment period (after publication). Minnesota Statutes, section 14.3895, subdivision 3, requires you to allow at least 60 days after publication in the State Register for comment on the proposed rules. Keep copies of any comments and submissions you receive as these will need to be included with the rest of the documents that the editor suggests you file with the OAH in keeping with OAH Rules, part 1400.2085, subpart 2, item E.

[Revised in 2019] Public Comments Using OAH's eComment website. [See section 1.6.2.] Consider using OAH's eComment website for collecting your public comments. If agencies request it, OAH will collect public comments on its eComments website (https://minnesotaoah.granicusideas.com/) (as well as regular U.S. mail) (Public instructions for making comments can be found at Rulemaking eComments Website (https://mn.gov/oah/forms-and-filing/e-comments/).) To set up your public e-comment site, contact OAH Denise Collins, Legal Assistant at Denise.Collins@state.mn.us or (651) 361-7875 at least a week before you publish your notice in the State Register or e-file your case. Provide the following information:

1. OAH docket number assigned to the rulemaking.
2. The dates the comment period will open and close.
3. If the agency maintains a rulemaking webpage, provide the link. OAH will link to the agency's rulemaking webpage on your public eComments webpage.

13.5 Modifications to your repeal of obsolete rules. During the 60-day comment period, you might receive comments on the proposed rules that call for changes, or you might find errors that need correcting. If you decide to modify the rules, make sure that you have the approval from all persons in your agency's chain of command. Finally, remember to obtain a copy of the modified rules from the Revisor.

13.6 Repeal of Obsolete Rules Subject to Hearing. If 25 or more people submit a written request during the 60-day comment period, 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 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.

13.7 Repeal the Rules. The commissioner or director must sign an Order Adopting Rules, which in this case repeals the rules. The requirements for the Order are contained in OAH Rules, part 1400.2090. A form for the Order is in the appendix as **ORD-ADPT**. **[New in 2017]** But see section 13.9.1 about not signing the order until after the OAH review. You do not need to provide any argument for the need and reasonableness of these rules. However, consider that including some sort of justification for your repeal to keep a record of how and why these rules were repealed might be particularly helpful and wise. You should consider the nature of your rules when deciding whether or not including an explanation is advantageous.

13.8 If requested, give Notice of Submission of Rules to OAH. On the same day that you submit your rules to the OAH for review, you must also give this notice. Although not specifically mentioned in section 14.3895, OAH Rules, parts 1400.2410 and 1400.2570, both make reference to giving notice that a Department has submitted its rules to the 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**.

13.9 OAH review and approval.

13.9.1 Submitting your obsolete rules for repeal to the OAH for approval. To review the legality of the repeal of obsolete rules, OAH needs the documents specified in OAH Rules, part 1400.2410, subpart 2, items A to K. A form for the cover letter to the OAH submitting your repeal of obsolete rules for approval is in the appendix as**: REVW(O)-LTR**. This letter is designed to serve as a checklist for meeting the requirements set out in OAH Rules, part 1400.2410. **[New in 2017]** Submit an *unsigned draft* Order Adopting Rules for OAH review and here's why. For obsolete rules repeals adopted without a hearing, part 1400.2410, item I requires that agencies file "the order adopting the rule that complies with the requirements in part 1400.2090." But until the ALJ has issued his or her 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*.

To save everyone time, OAH requests that agencies also submit a copy of the obsolete rules report that lists the rules to be repealed.

[Revised in 2017] [Explanation of e-filing rule-related documents moved to 13.3.4 above]

[Revised in 2019] [Editor's note: Best Practices for Working Within OAH's E-filing System. To accommodate e-filing, 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 (REVW(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 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. 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 e-filing. After you request OAH to assign an ALJ to your rulemaking, it is a good idea to communicate with the assigned ALJ (through the ALJ's legal assistant) 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 you have the file ready to submit. The key is to avoid keeping the ALJ waiting, anticipating a file will be arriving imminently for review.

13.9.2 OAH standards of review. As with any other rules, you must make certain that the rules proposed comply with certain standards of legality before you submit them for OAH review. OAH would most likely use the standards set forth in OAH Rules, part 1400.2100, items A and C to H, for the rules to be approved. You should review these standards directly.

As a summary, these standards require that the agency comply with procedural requirements for the repeal of obsolete rules, the rules are not substantially different from the proposed rules, the rules do not exceed or conflict with the authority in the enabling law, that the rules are not unconstitutional or illegal, that the rules do not improperly delegate the agency's powers to another, and that they fit the definition of a "rule" as defined in statute.

13.9.3 Withdrawal of your 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, as long as whatever 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.

13.9.4 ALJ review – 14 days from date received. [Revised in 2017] 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. The Commissioner or Director may then sign the Order Adopting Rules.

13.9.5 [Revised in 2019] Filing your approved obsolete rules repeal. Filing your approved expedited rules. E-file your signed Order with OAH. OAH requests the Final Rules from the Revisor's Office per Minnesota Statutes, section 14.08(d). OAH files the Final Rules with the Secretary of State's Office via email as permitted by Minnesota Statutes, section 14.16. The Secretary of State's Office serves the Final Rules on the Governor's Office to start the 14-day veto period via email to the Governor's Office, using a distribution list that includes the agency. The email contains no explanation and this is how you will know your rule has been served on the Governor's Office, so you must watch for it. Also, these steps can take place swiftly.

13.9.6 Determine whether to notify the Governor's Office further. 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.

13.9.7 Governor Veto. Per Minnesota Statutes, section 14.05, subdivision 6, the Governor may veto the repeal of obsolete rules adopted under the procedures of section 14.3895. OAH will file the rules with the Secretary of State. The Secretary of State will serve a copy of the rules on the Governor. After the Governor has received the rules from the Secretary of State, he has 14 days to 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.

13.10 Publish your approved and adopted repeal of obsolete rules. Before the repeal of your rules can take effect, you must publish the Notice of Repealer in the State Register. 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 rules are identical to the rules as originally published, publication will simply be in the form of a Notice of Repealers. Otherwise, the agency must publish a copy of the changes in the State Register as well. Request the Notice of Repealers from the Office of the Revisor of Statutes, who will send the notice directly to the State Register. When you are ready to publish in the State Register, you will need to inform the editor of the Revisor's draft number, which will be "RD" plus four digits. He will request the Revisor's Office to transmit the draft directly to the State Register electronically. You might also wish to publish the rule repealed rather than just the notice, especially if the rule in question is lengthy or complicated.

13.11 Procedure for resubmitting disapproved rules. [Revised in 2017] If the ALJ does not approve your rules, you have the option of resubmitting the rules with any necessary changes. The

rules cannot be published or take effect until the rules have been approved. Note: resubmitting disapproved obsolete rules is a rare situation, so you might want to check with OAH to find out what documents you need to submit **by contacting Legal Assistant Denise Collins at (651) 361-7875 or denise.collins@state.mn.us.**

> **13.11.1 Resubmitting with corrections.** If the ALJ has disapproved your rules and your agency agrees to correct the defects noted, you may resubmit the corrected rules to the OAH for a subsequent review. The judge has 5 working days to review and approve or disapprove. Note: Unlike the expedited rulemaking process, there is no procedure for appeal since the obsolete rule repeal is initially submitted to the Chief ALJ.

[Revised in 2019] 13.12 180-day deadlines. There are two 180-day deadlines that apply to the repeal of obsolete rules. 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. 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. Failing either of these deadlines, your rules are automatically withdrawn and you must start over.

13.13 Official Rulemaking Record. After obsolete rules are repealed, you may complete the last official step, which is to prepare and store the 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.

[Revised in 2019] Editor's Note: With e-filing, 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. (For example, a network drive, a document management system, a SharePoint library, etc. Work with your agency's records manager.) This e-file and any others not included will become your official record, which your agency must preserve as a permanent record. OAH does not keep these records indefinitely and will delete its files after it has sent the record to you. 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 Minnesota Statutes, section 14.365, after your rulemaking has concluded.

Checklist for Chapter 13 - Repeal of Obsolete Rules Under 14.3895

[Revised in 2017]

Date Done **Item**

---------- **13. Review this entire chapter before proceeding.**

---------- **13.1 Identify obsolete rules in your agency's annual obsolete rules report.**
- Notify Governor's Office by informational memo or using **GOV-PRLM.**

---------- **[Revised in 2017] 13.2 Draft your rules.**
- Draft Rules and submit to Revisor for preliminary draft.
- Tell the Revisor that these are an obsolete rules repeal under §14.3895.
- Get a Revisor's rules draft *with a Revisor's signed certificate*
- Have chain of command review *and approve* rules
- If agency is a multi-member board, BD-NTC form used.

---------- **13.3 Preparing your Notice Plan, Drafting Notice of Intent to Repeal Obsolete Rules, Getting Notice Plan approved by Chief ALJ**
- **13.3.1 Prepare your Notice Plan—mandatory [Revised in 2017]**
  - Draft Notice Plan
- **13.3.2 Draft Notice of Intent to Repeal Obsolete Rules.**
  - Use form **NTC-OBS**.
- **13.3.3 Get Notice Plan approved by Chief ALJ**. **[Revised in 2017]** Submit to the Chief ALJ via e-filing:
  - the proposed obsolete rule to be repealed with Revisor's certification
  - proposed notice of intent to repeal obsolete rules
  - an explanation as to why the proposed the Notice Plan complies with section 14.3895 subdivision 2. Form **NP(O)-RQST**.
- **13.3.4 [New in 2018] E-filing rule-related documents.**
  - Submit your request and documents to OAH using e-filing.
- **13.3.5 [New in 2019] Open an e-filing account with OAH.**
  - Complete a Notice of Appearance form. Use OAH's form (website) or customized form OAH-NOA (in Appendix).
  - Request docket number. Contested Case Docket Request used (skip not-applicable fields; responsible agency unit name is the Party Name).
  - OAH will respond with an ALJ assignment and OAH docket number.

---------- **13.4 Giving Notice**
- **13.4.1 Mailing**
  - persons who have registered to receive mailed notices
  - chairs and ranking minority party members of the legislative policy and budget committees **LEG(O).**
  - prepare Certificates **CRT-MLNG**, **CRT-LIST, CRT-LEG,** and **CRT-GNRC**.
- **13.4.2 [New in 2017] Give notice according to Notice Plan**

Checklist for Chapter 13 (Continued)

Date Done	Item

	- **13.4.3 Publish in State Register.** see **ST-REG**
	- **13.4.4 60-day comment period (after publication).**
	  - Consider using OAH's eComment website for collecting public comments
	  - Keep copies of any comments and submissions received.

----------	**13.5 Modifications to your repeal of obsolete rules.**
----------	**13.6 Repeal of Obsolete Rules Subject to Hearing.** - If 25 or more people submit a written request during the 60-day comment period, revert to sections 14.131 to 14.20 (rules adopted after a hearing) or sections 14.22to 14.28 (rules adopted without hearing).
----------	**13.7 Repeal the Rules. [Revised in 2019]** - **ORD-ADPT** used but see 13.9.1 about leaving it unsigned pending approval**.** - Order Adopting Rules signed by _____. - Consider creating a justification for your repeal to record of how and why these rules were repealed.
----------	**13.8 If requested, give Notice of Submission of Rules to OAH.** - Forms **NTC-SBM** and **CRT-SBM**.

----------	**13.9 OAH review and approval.**
	- **13.9.1 Submitting your obsolete rules for repeal to the OAH for approval.**
	  - Use **REVW(O)-LTR**
	  - Also submit a copy of the obsolete rules report that lists the rules to be repealed.
	  - **Best Practices for Working Within OAH's E-filing System**.
	  - **[New in 2017]** Also submit an unsigned draft Order Adopting Rules
	  - Submit via e-filing per 13.3.4
	- **13.9.2 OAH standards of review.**
	- **13.9.3 Withdrawal of your rules.**
	  - Submit a Notice of Withdrawal, signed by a person authorized to do so.
	- **13.9.4 ALJ review – 14 days from date received.**
	  - OAH will send you a copy of the ALJ's decision and return your file to you.
	  - The Commissioner or Director may then sign the Order Adopting Rules.
	- **13.9.5 [Revised in 2019] E-file your signed order with OAH.**
	  - E-file your signed Order with OAH.
	  - OAH requests Final Rules from Revisor's Office
	  - OAH files Final Rules with Secretary of State's Office
	  - Secretary of State's Office serves the Final Rules on Governor's Office to start 14-day veto period (watch for email to Governor's Office)
	- **13.9.6 Determine whether to notify the Governor's Office further.**

Checklist for Chapter 13 (Continued)

Date Done	Item
	- If controversies arise, communicate with Governor's Office. - Use **GOV-FNL.** - **13.9.7 Governor Veto.** - Governor has 14 days to veto the rules.
----------	**13.10 Publish your approved and adopted repeal of obsolete rules.** - **ST-REG** used.
----------	**13.11 Procedure for resubmitting disapproved rules.** - **13.11.1 Resubmitting with corrections.**
----------	**13.12 180-day deadlines. [Revised in 2019]**
----------	**13.13 Official Rulemaking Record.** - **RECORD** used.

Rulemaking Provisions of
2017 Minnesota Statutes, Chapter 14, and other Sections

Rule Manual Editor's Notes:

- This excerpt of Minnesota Statutes contains only the rulemaking provisions of Minnesota Statutes, chapter 14, the Administrative Procedure Act. The Rulemaking Manual Editor produced this unofficial 2017 restatement. We started with chapter 14's basic text from 2013, added changes through 2020, and reformatted the text to resemble the printed statutes.
- **2020 changes:** In 2020, the Legislature updated technical provisions in section 14.46, subdivisions 3 and 4 about the State Register.
- **2016 changes:** In 2016, the Legislature removed paragraph (e) from section 14.03, subdivision 1, eliminating a reference to the Tax Court from the list of government entities not subject to the Administrative Procedure Act.
- **2015 changes:** The Legislature made two procedural changes *effective January 1, 2016*, that affect various sections of Chapter 14. First, it authorized electronic filing with the Office of Administrative Hearings, and second, it codified the practice for final steps of adopting and filing rules that OAH and the agencies have already been using. See sections 14.05, subdivision 7; 14.08(d); 14.16, subdivision 3; 14.26, subdivisions 3 and 3(a); and 14.386(a)(3) below. See *Other Rulemaking Sections* below for effective date application.
- **2014 changes:** As part of Governor Dayton's Unsession initiatives, the Legislature repealed section 14.04.
- **Disclaimer:** As with any information from the Revisor's website, this information is not intended to replace an official source. While the editor has made every attempt to ensure that the information in this document is accurate and timely, the information is presented "as is" and without warranties, either express or implied, including warranties regarding the content of this information. Having said that, this version of Minnesota Statutes, chapter 14, can be used as a handy reference.

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State Agencies
2017 MINNESOTA STATUTES – CHAPTER 14
ADMINISTRATIVE PROCEDURE

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GENERAL PROVISIONS

14.001 STATEMENT OF PURPOSE.

The purposes of the Administrative Procedure Act are:

(1) to provide oversight of powers and duties delegated to administrative agencies;

(2) to increase public accountability of administrative agencies;

(3) to ensure a uniform minimum procedure;

(4) to increase public access to governmental information;

(5) to increase public participation in the formulation of administrative rules;

(6) to increase the fairness of agencies in their conduct of contested case proceedings; and

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(7) to simplify the process of judicial review of agency action as well as increase its ease and availability.

In accomplishing its objectives, the intention of this chapter is to strike a fair balance between these purposes and the need for efficient, economical, and effective government administration. The chapter is not meant to alter the substantive rights of any person or agency. Its impact is limited to procedural rights with the expectation that better substantive results will be achieved in the everyday conduct of state government by improving the process by which those results are attained.

History: *1990 c 422 s 1*

14.002 STATE REGULATORY POLICY.

The legislature recognizes the important and sensitive role for administrative rules in implementing policies and programs created by the legislature. However, the legislature finds 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. Therefore, whenever feasible, state agencies must develop rules and regulatory programs 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.

History: *1998 c 303 s 1*

14.01 CITATION.

Sections 14.001 to 14.69 may be cited as the Administrative Procedure Act.

History: *1957 c 806 s 1; 1961 c 136 s 1; 1963 c 633 s 1; 1969 c 9 s 6; 1969 c 599 s 1; 1975 c 380 s 1; 1976 c 2 s 1; 1977 c 430 s 1; 1977 c 443 s 1,8; 1978 c 674 s 2; 1979 c 50 s 2; 1979 c 332 art 1 s 8; 1980 c 615 s 2; 1981 c 253 s 3,47; 1982 c 424 s 130; 1987 c 384 art 2 s 1; 1990 c 422 s 10*

14.02 DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of sections 14.001 to 14.69 the terms defined in this section have the meanings ascribed to them.

Subd. 2. **Agency**. "Agency" means any state officer, board, commission, bureau, division, department, or tribunal, other than a judicial branch court and the Tax Court, having a statewide jurisdiction and authorized by law to make rules or to adjudicate contested cases. "Agency" also means the Capitol Area Architectural and Planning Board.

Subd. 3. **Contested case**. "Contested case" means a proceeding before an agency in which the legal rights, duties, or privileges of specific parties are required by law or constitutional right to be determined after an agency hearing. "Contested case" does not include hearings held by the Department of Corrections involving the discipline or transfer of inmates or other hearings relating solely to inmate management.

Subd. 4. **Rule**. "Rule" means every agency statement of general applicability and future effect, including amendments, suspensions, and repeals of rules, adopted to implement or make

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specific the law enforced or administered by that agency or to govern its organization or procedure.

History: *1957 c 806 s 1; 1959 c 263 s 3; 1961 c 136 s 1; 1963 c 633 s 1; Ex1967 c 1 s 6; 1969 c 9 s 6; 1969 c 567 s 3; 1969 c 1129 art 2 s 1; art 3 s 1; 1973 c 254 s 3; 1973 c 654 s 15; 1975 c 271 s 6; 1975 c 359 s 23; 1975 c 380 s 1; 1976 c 2 s 1; 1976 c 68 s 1,2; 1976 c 134 s 78; 1977 c 430 s 7; 1977 c 443 s 1; 1978 c 674 s 2,3; 1979 c 50 s 2; 1979 c 332 art 1 s 8; 1980 c 615 s 2; 1981 c 253 s 3,4,47; 1982 c 424 s 130; 1985 c 285 s 2; 1Sp1985 c 4 s 1; 1986 c 386 art 4 s 2; 1987 c 384 art 2 s 1,3; 1989 c 290 art 2 s 1; 1990 c 422 s 2,10*

14.03 NONAPPLICABILITY.

Subdivision 1.**Generally.** The Administrative Procedure Act in sections 14.001 to 14.69 does not apply to (a) agencies directly in the legislative or judicial branches, (b) emergency powers in sections 12.31 to 12.37, (c) the Department of Military Affairs, (d) the Comprehensive Health Association provided in section 62E.10, or (e) the regents of the University of Minnesota.

Subd. 2. **Contested case procedures.** The contested case procedures of the Administrative Procedure Act provided in sections 14.57 to 14.69 do not apply to (a) proceedings under chapter 414, except as specified in that chapter, (b) the commissioner of corrections, (c) the unemployment insurance program and the Social Security disability determination program in the Department of Employment and Economic Development, (d) the commissioner of mediation services, (e) the Workers' Compensation Division in the Department of Labor and Industry, (f) the Workers' Compensation Court of Appeals, or (g) the Board of Pardons.

Subd. 3. **Rulemaking procedures.** (a) The definition of a rule in section 14.02, subdivision 4, does not include:

(1) rules concerning only the internal management of the agency or other agencies that do not directly affect the rights of or procedures available to the public;

(2) an application deadline on a form; and the remainder of a form and instructions for use of the form to the extent that they do not impose substantive requirements other than requirements contained in statute or rule;

(3) the curriculum adopted by an agency to implement a statute or rule permitting or mandating minimum educational requirements for persons regulated by an agency, provided the topic areas to be covered by the minimum educational requirements are specified in statute or rule;

(4) procedures for sharing data among government agencies, provided these procedures are consistent with chapter 13 and other law governing data practices.

(b) The definition of a rule in section 14.02, subdivision 4, does not include:

(1) rules of the commissioner of corrections relating to the release, placement, term, and supervision of inmates serving a supervised release or conditional release term, the internal management of institutions under the commissioner's control, and rules adopted under section 609.105 governing the inmates of those institutions;

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(2) rules relating to weight limitations on the use of highways when the substance of the rules is indicated to the public by means of signs;

(3) opinions of the attorney general;

(4) the data element dictionary and the annual data acquisition calendar of the Department of Education to the extent provided by section 125B.07;

(5) the occupational safety and health standards provided in section 182.655;

(6) revenue notices and tax information bulletins of the commissioner of revenue;

(7) uniform conveyancing forms adopted by the commissioner of commerce under section 507.09

(8) standards adopted by the Electronic Real Estate Recording Commission established under section 507.0945; or

(9) the interpretive guidelines developed by the commissioner of human services to the extent provided in chapter 245A.

Subd. 3a. **Policy for future rulemaking exemptions.** The legislature will consider granting further exemptions from the rulemaking requirements of this chapter for rules that are necessary to comply with a requirement in federal law or that are necessary to avoid a denial of funds or services from the federal government that would otherwise be available to the state.

History: *1957 c 806 s 1; 1961 c 136 s 1; 1963 c 633 s 1; 1969 c 9 s 6; 1975 c 380 s 1; 1976 c 2 s 1; 1977 c 430 s 7; 1978 c 674 s 2; 1979 c 50 s 2; 1979 c 332 art 1 s 8; 1980 c 615 s 2; 1981 c 253 s 3,47; 1982 c 424 s 130; 1983 c 274 s 18; 1984 c 640 s 1; 1Sp1985 c 14 art 9 s 75; 1987 c 384 art 2 s 1; 1990 c 422 s 3; 1991 c 259 s 3; 1991 c 291 art 21 s 1; 1992 c 582 s 1; 1994 c 388 art 1 s 1; 1994 c 483 s 1; 1995 c 207 art 2 s 1; 1Sp1995 c 3 art 16 s 13; 1997 c 66 s 80; 1997 c 187 art 5 s 2,3; 1998 c 397 art 11 s 3; 1999 c 107 s 66; 2000 c 343 s 4; 2003 c 2 art 5 s 2; 2003 c 130 s 12; 1Sp2003 c 3 art 2 s 20; 2004 c 206 s 52; 2005 c 136 art 4 s 2; 2008 c 238 art 3 s 1; 2016 c 158 art 1 s 8*

14.04 [Repealed, 2014 c 248 s 19]

14.045 AGENCIES; LIMITS ON PENALTIES AND FINES.

Subdivision 1. **Limit on penalties.** An agency may not, under authority of rule, levy a total fine or penalty of more than $700 for a single violation unless the agency has specific statutory authority to levy a fine in excess of that amount.

Subd. 2. **Criminal penalty.** An agency may not, by rule, establish a criminal penalty unless the agency has specific statutory authority to do so.

Subd. 3. **Factors.** (a) If a statute or rule gives an agency discretion over the amount of a fine, the agency must take the following factors into account in determining the amount of the fine:

(1) the willfulness of the violation;

(2) the gravity of the violation, including damage to humans, animals, and the natural resources of the state;

(3) the history of past violations;

(4) the number of violations;

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(5) the economic benefit gained by the person by allowing or committing the violation; and

(6) other factors that justice may require.

(b) For a violation after an initial violation, the following factors must be considered in addition to the factors in paragraph (a):

(1) similarity of previous violations to the current violation to be penalized;

(2) time elapsed since the last violation;

(3) number of previous violations; and

(4) response of the person to the most recent previous violation identified.

Subd. 4. **Effect on other law.** This section does not affect the right of an agency to deny a permit, revoke a license, or take similar action, other than the imposition of a fine, even if the cost of the denial, revocation, or other action to the affected party exceeds $700.

Subd. 5. **Application.** Subdivisions 1, 2, and 4 apply only to fines and penalties imposed under rules for which notice of intent to adopt rules is published after July 1, 1996.

History: *1996 c 390 s 11*

PROVISIONS APPLICABLE TO ALL RULES

14.05 GENERAL AUTHORITY.

Subdivision 1. **Authority to adopt original rules restricted.** Each agency shall adopt, amend, suspend, or repeal its rules in accordance with the procedures specified in sections 14.001 to 14.69, and only pursuant to authority delegated by law and in full compliance with its duties and obligations. If a law authorizing rules is repealed, the rules adopted pursuant to that law are automatically repealed on the effective date of the law's repeal unless there is another law authorizing the rules. Except as provided in section 14.06, sections 14.001 to 14.69 shall not be authority for an agency to adopt, amend, suspend, or repeal rules.

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;

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(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.

Subd. 3. **Authority to withdraw proposed rule.** An agency may withdraw a rule any time before filing it with the secretary of state. An agency may withdraw a portion of a rule unless the remaining rule is substantially different from the rule as published. It shall publish notice that the rule has been withdrawn in the State Register. If a rule is withdrawn, the agency may again propose it for adoption, either in the original or modified form, but the agency shall comply with all procedures of sections 14.05 to 14.28, with the exception of section 14.101, if the noncompliance is approved by the chief administrative law judge.

Subd. 4. [Expired]

Subd. 5. **Review and repeal of rules.** By December 1 of each year, an agency must submit to the governor, the Legislative Coordinating Commission, the policy and funding committees and divisions with jurisdiction over the agency, and the revisor of statutes, a list of any rules or portions of rules that are obsolete, unnecessary, or duplicative of other state or federal statutes or rules. The list must also include an explanation of why the rule or portion of the rule is obsolete, unnecessary, or duplicative of other state or federal statutes or rules. By December 1, the agency must either report a timetable for repeal of the rule or portion of the rule, or must develop a bill for submission to the appropriate policy committee to repeal the obsolete, unnecessary, or duplicative rule. Such a bill must include proposed authorization to use the expedited procedures of section 14.389 to repeal or amend the obsolete, unnecessary, or duplicative rule. A report submitted under this subdivision must be signed by the person in the agency who is responsible for identifying and initiating repeal of obsolete rules. The report also must identify the status of any rules identified in the prior year's report as obsolete, unnecessary, or duplicative. If none of an agency's rules are obsolete, unnecessary, or duplicative, an agency's December 1 report must state that conclusion.

Subd. 6. **Veto of adopted rules.** The governor may veto all or a severable portion of a rule of an agency as defined in section 14.02, subdivisions 2 and 4, by submitting notice of the veto to the State Register within 14 days of receiving a copy of the rule from the secretary of state under section 14.16, subdivision 3, 14.26, subdivision 3, or 14.386 or the agency under section 14.389, subdivision 3, or section 14.3895. The veto is effective when the veto notice is submitted to the State Register. This authority applies only to the extent that the agency itself would have authority, through rulemaking, to take such action. If the governor vetoes a rule or portion of a rule under this section, the governor shall notify the chairs of the legislative committees having jurisdiction over the agency whose rule was vetoed.

Subd. 7. **Electronic documents permitted.** An agency may file rule-related documents with the Office of Administrative Hearings by electronic transmission in the manner approved by that office and the Office of the Revisor of Statutes by electronic transmission in the manner approved by that office.

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History: *1957 c 806 s 2; 1975 c 380 s 2; 1977 c 443 s 2; 1980 c 615 s 3; 1981 c 253 s 5,6; 1982 c 424 s 130; 1987 c 384 art 2 s 1; 1990 c 422 s 10; 1995 c 233 art 2 s 6,7,56; 1997 c 98 s 5; 1998 c 303 s 2; 1999 c 129 s 1,6; 2001 c 106 s 1; 2001 c 179 s 1,10,11; 2015 c 63 s 1*

14.055 RULE VARIANCES; STANDARDS.

Subdivision 1. **Authority.** A person or entity may petition an agency for a variance from a rule adopted by the agency, as it applies to the circumstances of the petitioner.

Subd. 2. **General terms.** The following general terms apply to variances granted pursuant to this section:

(1) the agency may attach any conditions to the granting of a variance that the agency determines are needed to protect public health, safety, or the environment;

(2) a variance has prospective effect only;

(3) conditions attached to the granting of a variance are an enforceable part of the rule to which the variance applies; and

(4) the agency may not grant a variance from a statute or court order.

Subd. 3. **Mandatory variances.** An agency shall grant a variance from a rule as applied to the particular circumstances of the petitioner, if the agency finds that the application of the rule, as applied to the circumstances of that petitioner, would not serve any of the purposes of the rule.

Subd. 4. **Discretionary variances.** An agency may grant a variance if the agency finds that:

(1) application of the rule to the petitioner would result in hardship or injustice;

(2) variance from the rule would be consistent with the public interest; and

(3) variance from the rule would not prejudice the substantial legal or economic rights of any person or entity.

Subd. 5. **Rules.** An agency may adopt rules under section 14.389 establishing general standards for granting mandatory or discretionary variances from its rules. Section 14.389, subdivision 5, applies to these rules. An agency also may grant variances based on standards specified in other law.

Subd. 6. **When not applicable.** This section and section 14.056 do not apply if another state or federal law or rule authorizes or requires the granting of variances by an agency or in certain circumstances.

History: *2001 c 179 s 2*

14.06 REQUIRED RULES.

(a) Each agency shall adopt rules, in the form prescribed by the revisor of statutes, 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.

(b) Upon the request of any person, and as soon as feasible and to the extent practicable, each agency shall adopt rules to supersede those principles of law or policy lawfully declared by the agency as the basis for its decisions in particular cases it intends to rely on as precedents in future cases. This paragraph does not apply to the Public Utilities Commission.

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History: *1957 c 806 s 2; 1975 c 380 s 2; 1977 c 443 s 2; 1980 c 615 s 41; 1982 c 424 s 130; 1995 c 233 art 2 s 8*

14.07 FORM OF RULE.

Subdivision 1.**Rule drafting assistance provided.** (a) The revisor of statutes shall:

(1) maintain an agency rules drafting department to draft or aid in the drafting of rules or amendments to rules for any agency in accordance with subdivision 3 and the objective or other instructions which the agency shall give the revisor; and,

(2) prepare and publish an agency rules drafting guide which shall set out the form and method for drafting rules and amendments to rules, and to which all rules shall comply.

(b) An agency may not contract with an attorney, consultant, or other person either to provide rule drafting services to the agency or to advise on drafting unless the revisor determines that special expertise is required for the drafting and the expertise is not available from the revisor or the revisor's staff.

Subd. 2. **Approval of form.** No agency decision to adopt a rule or an emergency, exempt, or expedited rule, including a decision to amend or modify a proposed rule or proposed emergency, exempt, or expedited rule, is effective unless the agency has presented the rule to the revisor of statutes and the revisor has certified that its form is approved.

Subd. 3. **Standards for form.** In determining the drafting form of rules the revisor shall:

(1) minimize duplication of statutory language;

(2) not permit incorporations into the rules by reference of publications or other documents which are not conveniently available to the public;

(3) to the extent practicable, use plain language in rules and avoid technical language; and

(4) amend rules by showing the portion of the rule being amended as necessary to provide adequate notice of the nature of the proposed amendment, as it is shown in the latest compilation or supplement, or, if not yet published in a compilation or supplement, then as the text is shown in the files of the secretary of state, with changes shown by striking and underlining words.

Subd. 4. **Incorporations by reference.** (a) An agency may incorporate by reference into its rules the text from Minnesota Statutes, Minnesota Rules, United States Statutes at Large, United States Code, Laws of Minnesota, Code of Federal Regulations, the Federal Register, and other publications and documents which are determined by the revisor of statutes, to be conveniently available to the public. If the rule incorporates by reference other publications and documents, the rule must contain a statement of incorporation. The statement of incorporation by reference 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. When presented with a rule for certification pursuant to subdivision 2 and this subdivision, the revisor of statutes should indicate in the certification that the rule incorporates by reference text from other publications or documents. If the revisor certifies that the form of a rule is approved, that approval constitutes the revisor's finding that the publication or other document other than one listed by name in this subdivision, and which is incorporated by reference into the rules, is conveniently available to the public.

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(b) For the purposes of paragraph (a), "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.

Subd. 5. [Repealed, 1984 c 640 s 33]

Subd. 6. **Style and form revisions.** The revisor of statutes may periodically prepare style and form revisions of rules to clarify, modernize, or simplify the text without material change to the rules' substance or effect. Before beginning any revision, the revisor shall consult the agency whose rules will be subject to the revision. After the revision is prepared, the revisor shall present it to the agency and receive its consent to proceed to seek adoption of the revision. Upon receiving consent, the revisor shall seek adoption of the rules in accordance with sections 14.05 to 14.28. However, the need and reasonableness statement and any hearing shall be restricted to the issue of whether any material change in the substance and effect of the rule is proposed by the revisor. The revisor shall mail notice by United States mail or electronic mail of any hearing to the persons registered with the agency whose rules are the subject of the revision. The revisor shall pay all costs to publish notices in the State Register and to replenish the agency's stock of rules which exist at the time the revisor adopts the revised rules.

Subd. 7. **Technical changes**. The revisor may approve the form of a rule amendment which does not meet the requirements of subdivision 3, clause (4), if, in the revisor's judgment, the amendment does not change the substance of the rule and the amendment is:

(a) a re-lettering or renumbering instruction;

(b) the substitution of one name for another when an organization or position is renamed;

(c) the substitution of a reference to Minnesota Statutes for a corresponding reference to Laws of Minnesota;

(d) the correction of a citation to rules or laws which has become inaccurate since the rule was adopted because of repealing or renumbering of the rule or law cited; or

(e) the correction of a similar formal defect.

This subdivision does not limit the revisor's authority to make the changes described in clauses (a) to (e) during the publication process under section 14.47.

History: *1977 c 443 s 2; 1980 c 615 s 5,39,40,57; 1981 c 253 s 5,7,37,38,46; 1982 c 424 s 130; 1983 c 210 s 1; 1984 c 640 s 2,3; 1Sp1985 c 13 s 79,80; 1988 c 686 art 5 s 4,5; 1991 c 345 art 1 s 45,46; 1995 c 233 art 2 s 56; 2001 c 106 s 2; 2009 c 71 s 1*

14.08 APPROVAL OF RULE AND RULE FORM; COSTS.

(a) One copy of a rule adopted under section 14.26 must be submitted by the agency to the chief administrative law judge. The chief administrative law judge shall request from the revisor certified copies of the rule when it is submitted by the agency under section 14.26. Within five days after the request for certification of the rule is received by the revisor, excluding weekends and holidays, the revisor shall either return the rule with a certificate of approval of the form of the rule to the chief administrative law judge or notify the chief administrative law judge and the agency that the form of the rule will not be approved.

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If the chief administrative law judge disapproves a rule, the agency may modify it and the agency shall submit one copy of the modified rule, approved as to form by the revisor, to the chief administrative law judge.

(b) One copy of a rule adopted after a public hearing must be submitted by the agency to the chief administrative law judge. The chief administrative law judge shall request from the revisor certified copies of the rule when it is submitted by the agency. Within five working days after receipt of the request, the revisor shall either return the rule with a certificate of approval to the chief administrative law judge or notify the chief administrative law judge and the agency that the form of the rule will not be approved.

(c) If the revisor refuses to approve the form of the rule, the revisor's notice must revise the rule so it is in the correct form.

(d) After the agency has notified the chief administrative law judge that it has adopted the rule, the chief administrative law judge shall promptly file four paper copies or an electronic copy of the adopted rule in the Office of the Secretary of State. The secretary of state shall forward one copy of each rule filed to the agency, to the revisor of statutes, and to the governor.

(e) The chief administrative law judge shall assess an agency for the actual cost of processing rules under this section. Each agency shall include in its budget money to pay the assessments. Receipts from the assessment must be deposited in the administrative hearings account established in section 14.54.

History: *1980 c 615 s 50; 1981 c 253 s 19; 1982 c 424 s 130; 1983 c 210 s 2; 1984 c 640 s 4; 1Sp1985 c 13 s 81; 1987 c 404 s 70; 1988 c 686 art 5 s 6; 1991 c 345 art 1 s 47; 1995 c 233 art 2 s 9; 2001 c 106 s 3; 2015 c 63 s 2*

14.09 PETITION FOR ADOPTION OF RULE.

Any person may petition an agency requesting the adoption, amendment, or repeal of any rule. The petition shall be specific as to what action is requested and the need for the action. Upon receiving a petition an agency shall have 60 days in which to make a specific and detailed reply in writing as to its planned disposition of the request and the reasons for its planned disposition of the request. If the agency states its intention to hold a public hearing on the subject of the request, it shall proceed according to sections 14.05 to 14.28. The chief administrative law judge shall prescribe by rule the form for all petitions under this section and may prescribe further procedures for their submission, consideration, and disposition.

History: *1945 c 452 s 3; 1957 c 806 s 5; 1975 c 380 s 6; 1981 c 253 s 21; 1982 c 424 s 130; 1995 c 233 art 2 s 10*

14.091 PETITION; UNIT OF LOCAL GOVERNMENT.

(a) The elected governing body of a statutory or home rule city, a county, or a sanitary district may petition for amendment or repeal of a rule or a specified portion of a rule. The petition must be adopted by resolution of the elected governing body and must be submitted in writing to the agency and to the Office of Administrative Hearings, must specify what amendment or repeal is requested, and must demonstrate that one of the following has become available since the adoption of the rule in question:

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(1) significant new evidence relating to the need for or reasonableness of the rule; or

(2) less costly or intrusive methods of achieving the purpose of the rule.

(b) Within 30 days of receiving a petition, an agency shall reply to the petitioner in writing stating either that the agency, within 90 days of the date of the reply, will give notice under section 14.389 of intent to adopt the amendment or repeal requested by the petitioner or that the agency does not intend to amend or repeal the rule and has requested the Office of Administrative Hearings to review the petition. If the agency intends to amend or repeal the rule in the manner requested by the petitioner, the agency must use the process under section 14.389 to amend or repeal the rule. Section 14.389, subdivision 5, applies.

(c) Upon receipt of an agency request under paragraph (b), the chief administrative law judge shall assign an administrative law judge, who was not involved when the rule or portion of a rule that is the subject of the petition was adopted or amended, to review the petition to determine whether the petitioner has complied with the requirements of paragraph (a). The petitioner, the agency, or any interested person, at the option of any of them, may submit written material for the assigned administrative law judge's consideration within ten days of the chief administrative law judge's receipt of the agency request. The administrative law judge shall dismiss the petition if the judge determines that:

(1) the petitioner has not complied with the requirements of paragraph (a);

(2) the rule is required to comply with a court order; or

(3) the rule is required by federal law or is required to maintain authority to administer a federal program.

(d) If the administrative law judge assigned by the chief administrative law judge determines that the petitioner has complied with the requirements of paragraph (a), the administrative law judge shall conduct a hearing and issue a decision on the petition within 120 days of its receipt by the Office of Administrative Hearings. The agency shall give notice of the hearing in the same manner required for notice of a proposed rule hearing under section 14.14, subdivision 1a. At the public hearing, the agency shall make an affirmative presentation of facts establishing the need for and reasonableness of the rule or portion of the rule in question. If the administrative law judge determines that the agency has not established the continued need for and reasonableness of the rule or portion of the rule, the rule or portion of the rule does not have the force of law, effective 90 days after the administrative law judge's decision, unless the agency has before then published notice in the State Register of intent to amend or repeal the rule in accordance with paragraph (e).

(e) The agency may amend or repeal the rule in the manner requested by the petitioner, or in another manner that the administrative law judge has determined is needed and reasonable. Amendments under this paragraph may be adopted under the expedited process in section 14.389. Section 14.389, subdivision 5, applies to this adoption. If the agency uses the expedited process and no public hearing is required, the agency must complete the amendment or repeal of the rule within 90 days of the administrative law judge's decision under paragraph (d). If a public hearing is required, the agency must complete the amendment or repeal of the rule within 180 days of the administrative law judge's decision under paragraph (d). A rule or portion of a rule that is not amended or repealed in the time prescribed by this paragraph does

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not have the force of law upon expiration of the deadline. A rule that is amended within the time prescribed in this paragraph has the force of law, as amended.

(f) The chief administrative law judge shall report the decision under paragraph (d) within 30 days to the chairs of the house of representatives and senate committees having jurisdiction over governmental operations and the chairs of the house of representatives and senate committees having jurisdiction over the agency whose rule or portion of a rule was the subject of the petition.

(g) The chief administrative law judge shall assess a petitioner half the cost of processing a petition and conducting a public hearing under paragraph (d).

History: *1999 c 193 s 1; 2000 c 335 s 1; 1Sp2003 c 1 art 2 s 29*

14.10 [Repealed, 1995 c 233 art 2 s 57]

14.101 ADVICE ON POSSIBLE RULES.

Subdivision 1**. Required notice.** In addition to seeking information by other methods designed to reach persons or classes of persons who might be affected by the proposal, an agency, at least 60 days before publication of a notice of intent to adopt or a notice of hearing, 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 notice must include a description of the subject matter of the proposal and the types of groups and individuals likely to be affected, and must indicate where, when, and how persons may comment on the proposal and whether and how drafts of any proposal may be obtained from the agency.

This notice must be published within 60 days of the effective date of any new or amendatory law requiring rules to be adopted, amended, or repealed.

14.111 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.

A rule may not be invalidated for failure to comply with this section if an agency has made a good faith effort to comply.

History: *1995 c 233 art 1 s 1*

14.115 [Repealed, 1995 c 233 art 2 s 57]

14.116 NOTICE TO LEGISLATURE.

(a) By January 15 each year, each agency must submit its rulemaking docket maintained under section 14.366, and the official rulemaking record required under 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.

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(b) When an agency mails notice of intent to adopt rules under section 14.14 or 14.22, the agency must send a copy of the same notice and a copy of the statement of need and reasonableness to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules and to the Legislative Coordinating Commission.

(c) In addition, if the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency shall 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 the bill was amended to include this rulemaking authority, the agency shall make reasonable efforts to send the notice and the statement to the chief house of representatives and senate authors of the amendment granting rulemaking authority, rather than to the chief authors of the bill.

History: *1998 c 303 s 3*; *2001 c 179 s 4*; *2012 c 238 s 1*

14.125 TIME LIMIT ON AUTHORITY TO ADOPT, AMEND, OR REPEAL RULES.

An agency shall 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 rules to be adopted, amended, or repealed. If the notice is not published within the time limit imposed by this section, the authority for the rules expires. The agency shall not use other law in existence at the time of the expiration of rulemaking authority under this section as authority to adopt, amend, or repeal these rules.

An agency that publishes a notice of intent to adopt rules or a notice of hearing within the time limit specified in this section may subsequently amend or repeal the rules without additional legislative authorization.

History: *1995 c 233 art 2 s 12*

14.126 COMMITTEE AUTHORITY OVER RULE ADOPTION.

Subdivision 1. **Delay action.** If the standing committee of the house of representatives and the standing committee of the senate with jurisdiction over the subject matter of a proposed rule both vote to advise an agency that a proposed rule should not be adopted as proposed, the agency may not adopt the rule until the legislature adjourns the annual legislative session that began after the vote of the committees. The speaker of the house and the president of the senate shall determine if a standing committee has jurisdiction over a rule before a committee may act under this section.

Subd. 2. **Vote.** A committee vote under this section must be by a majority of the committee. The vote may occur any time after the publication of the rulemaking notice under section 14.14, subdivision 1a, 14.22, 14.389, subdivision 2, or 14.3895, subdivision 3, and before notice of adoption is published in the State Register under section 14.18, 14.27, 14.389, subdivision 3, or 14.3895, subdivision 3. A committee voting under this section shall notify the agency, the revisor of statutes, and the chief administrative law judge of the vote as soon as possible. The committee shall publish notice of the vote in the State Register as soon as possible.

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History: *2001 c 179 s 5*

14.127 LEGISLATIVE APPROVAL REQUIRED.

Subdivision 1. **Cost thresholds.** An agency must determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed $25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees. For purposes of this section, "business" means a business entity organized for profit or as a nonprofit, and includes an individual, partnership, corporation, joint venture, association, or cooperative.

Subd. 2. **Agency determination.** An agency must make the determination required by subdivision 1 before the close of the hearing record, or before the agency submits the record to the administrative law judge if there is no hearing. The administrative law judge must review and approve or disapprove the agency determination under this section.

Subd. 3. **Legislative approval required.** If the agency determines that the cost exceeds the threshold in subdivision 1, or if the administrative law judge disapproves the agency's determination that the cost does not exceed the threshold in subdivision 1, any business that has less than 50 full-time employees or any statutory or home rule charter city that has less than ten full-time employees may file a written statement with the agency claiming a temporary exemption from the rules. Upon filing of such a statement with the agency, the rules do not apply to that business or that city until the rules are approved by a law enacted after the agency determination or administrative law judge disapproval.

Subd. 4. **Exceptions.** (a) Subdivision 3 does not apply if the administrative law judge approves an agency's determination that the legislature has appropriated money to sufficiently fund the expected cost of the rule upon the business or city proposed to be regulated by the rule.

(b) Subdivision 3 does not apply if the administrative law judge approves an agency's determination that the rule has been proposed pursuant to a specific federal statutory or regulatory mandate.

(c) This section does not apply if the rule is adopted under section 14.388 or under another law specifying that the rulemaking procedures of this chapter do not apply.

(d) This section does not apply to a rule adopted by the Public Utilities Commission.

(e) Subdivision 3 does not apply if the governor waives application of subdivision 3. The governor may issue a waiver at any time, either before or after the rule would take effect, but for the requirement of legislative approval. As soon as possible after issuing a waiver under this paragraph, the governor must send notice of the waiver to the speaker of the house and the president of the senate and must publish notice of this determination in the State Register.

Subd. 5. **Severability.** If an administrative law judge determines that part of a proposed rule exceeds the threshold specified in subdivision 1, but that a severable portion of a proposed rule does not exceed the threshold in subdivision 1, the administrative law judge may provide that the severable portion of the rule that does not exceed the threshold may take effect without legislative approval.

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History: *2005 c 156 art 2 s 9*

14.128 EFFECTIVE DATE FOR RULES REQUIRING LOCAL IMPLEMENTATION.

Subdivision 1. **Determination.** An agency must determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. 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. The administrative law judge must review and approve or disapprove the agency's determination. "Local government" means a town, county, or home rule charter or statutory city.

Subd. 2. **Effective dates.** If the agency determines that the proposed rule requires adoption or amendment of 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 may not become effective until:

(1) the next July 1 or January 1 after notice of final adoption is published in the State Register; or

(2) a later date provided by law or specified in the proposed rule.

Subd. 3. **Exceptions.** Subdivision 2 does not apply:

(1) to a rule adopted under section 14.388, 14.389, or 14.3895, or under another law specifying that the rulemaking procedures of this chapter do not apply;

(2) if the agency has been directed by law to adopt the rule or to commence the rulemaking process;

(3) if the administrative law judge approves an agency's determination that the rule has been proposed pursuant to a specific federal statutory or regulatory mandate that requires the rule to take effect before the date specified in subdivision 1; or

(4) if the governor waives application of subdivision 2.

History: *2009 c 152 s 1*

RULES ADOPTED AFTER PUBLIC HEARING

14.13 [Repealed, 1984 c 640 s 33]

14.131 STATEMENT OF NEED AND REASONABLENESS.

By the date of the section 14.14, subdivision 1a, notice, the agency must prepare, review, and make available for public review a statement of the need for and reasonableness of the rule. The statement of need and reasonableness must be prepared under rules adopted by the chief administrative law judge and 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;

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(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.

The statement must describe how the agency, in developing the rules, considered and implemented the legislative policy supporting performance-based regulatory systems set forth in section 14.002.

For purposes of clause (8), "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.

The statement must also describe the agency's efforts to provide additional notification under section 14.14, subdivision 1a, to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

The agency must consult with the commissioner of management and budget to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government. The agency must send a copy of the statement of need and reasonableness to the Legislative Reference Library when the notice of hearing is mailed under section 14.14, subdivision 1a.

History: *1984 c 640 s 7,32; 1Sp1985 c 10 s 38; 1990 c 422 s 4; 1995 c 233 art 2 s 13; 1997 c 98 s 6; 1998 c 303 s 4; 1999 c 250 art 3 s 1; 2001 c 106 s 7; 2003 c 3 s 1; 2004 c 274 s 1; 2009 c 101 art 2 s 109; 2012 c 238 s 2*

14.1311 [Repealed, 1995 c 233 art 2 s 57]

14.14 HEARING ON RULE.

Subdivision 1. **Required hearing.** When a public hearing is required under section 14.25 or when an agency decides to proceed directly to a public hearing, the agency shall proceed under the provisions of sections 14.14 to 14.20 and hold a public hearing affording all affected interests an opportunity to participate.

Subd. 1a. **Notice of rule hearing.** (a) Each agency shall maintain a list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings. Persons may register to receive notice of rule proceedings by submitting to the agency:

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(1) their electronic mail address; or (2) their name and United States mail address.
The agency may inquire as to whether those persons on the list wish to remain on it and may remove persons for whom there is a negative reply or no reply within 60 days. The agency shall, at least 30 days before the date set for the hearing, give notice of its intention to adopt rules by United States mail or electronic mail to all persons on its list, and by publication in the State Register. The mailed notice must include either a copy of the proposed rule or an easily readable and understandable description of its nature and effect and an announcement that a free copy of the proposed rule is available on request from the agency. In addition, each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication. The notice in the State Register must include the proposed rule or an amended rule in the form required by the revisor under section 14.07, together with an easily readable and understandable summary of the overall nature and effect of the proposed rule, a citation to the most specific statutory authority for the proposed rule, a statement of the place, date, and time of the public hearing, a statement that persons may register with the agency for the purpose of receiving notice of rule proceedings and notice that the agency intends to adopt a rule and other information required by law or rule. When an entire rule is proposed to be repealed, the agency need only publish that fact, along with an easily readable and understandable summary of the overall nature of the rules proposed for repeal, and a citation to the rule to be repealed.

(b) The chief administrative law judge may authorize an agency to omit from the notice of rule hearing the text of any proposed rule, the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient if:

(1) knowledge of the rule is likely to be important to only a small class of persons;

(2) the notice of rule hearing states that a free copy of the entire rule is available upon request to the agency; and

(3) the notice of rule hearing states in detail the specific subject matter of the omitted rule, cites the statutory authority for the proposed rule, and details the proposed rule's purpose and motivation.

Subd. 1b. **Farming operations.** 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.

Subd. 2. **Establishment of need and reasonableness of rule.** At the public hearing the agency shall make an affirmative presentation of facts establishing the need for and reasonableness of the proposed rule and fulfilling any relevant substantive or procedural requirements imposed on the agency by law or rule. The agency may, in addition to its affirmative presentation, rely upon facts presented by others on the record during the rule proceeding to support the rule adopted.

Subd. 2a**. Hearing procedure.** When a hearing is held on a proposed rule, it shall be conducted by an administrative law judge assigned by the chief administrative law judge. The administrative law judge shall ensure that all persons involved in the rule hearing are treated fairly and impartially. The agency shall submit into the record the jurisdictional documents,

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including the statement of need and reasonableness, and any written exhibits in support of the proposed rule. The agency may also present additional oral evidence. Interested persons may present written and oral evidence. The administrative law judge shall allow questioning of agency representatives or witnesses, or of interested persons making oral statements, in order to explain the purpose or intended operation of a proposed rule, or a suggested modification, or for other purposes if material to the evaluation or formulation of the proposed rule. The administrative law judge may limit repetitive or immaterial oral statements and questioning.

Subd. 3. **Hearing transcript.** If the agency, the chief administrative law judge, or the attorney general requests, the administrative law judge shall cause a transcript to be prepared of the hearing.

History: *1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1983 c 210 s 4; 1983 c 301 s 64; 1984 c 640 s 8,9,32; 1995 c 233 art 1 s 2; art 2 s 14; 1997 c 98 s 7; 2001 c 106 s 8; 2009 c 71 s 2; 2010 c 280 s 1*

14.15 ADMINISTRATIVE LAW JUDGE'S REPORT.

Subdivision 1.**Time of preparation.** After allowing a comment period during which written material may be submitted and recorded in the hearing record for five working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the administrative law judge, the administrative law judge assigned to the hearing shall write a report as provided for in section 14.50. Before writing the report, the administrative law judge shall allow the agency and interested persons a rebuttal period of five working days after the comment period ends to respond in writing to any new information submitted. During the comment period and five-day rebuttal period, the agency may indicate in writing whether there are amendments suggested by other persons which the agency is willing to adopt. Additional evidence may not be submitted during this five-day rebuttal period. The written responses must be added to the rulemaking record.

Subd. 2. **Deadline to complete report; extensions.** The report shall be completed within 30 days after the close of the hearing record unless the chief administrative law judge, upon written request of the agency or the administrative law judge, orders an extension. An extension shall not be granted if the chief administrative law judge determines that an extension would prohibit a rule from being adopted or becoming effective until after a date for adoption or effectiveness as required by statute. The report shall be available to all affected persons upon request for at least five working days before the agency takes any further action on the rule.

Subd. 3. **Finding of substantial difference.** If the report contains a finding that a rule has been modified in a way which makes it substantially different, as determined under section 14.05, subdivision 2, from that which was originally proposed, or that the agency has not met the requirements of sections 14.131 to 14.18, it shall be submitted to the chief administrative law judge for approval. If the chief administrative law judge approves the finding of the administrative law judge, the chief administrative law judge shall advise the agency and the revisor of statutes of actions which will correct the defects. The agency shall not adopt the rule until the chief administrative law judge determines that the defects have been corrected or, if

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applicable, that the agency has satisfied the rule requirements for the adoption of a substantially different rule.

Subd. 4. **Need or reasonableness not established.** If the chief administrative law judge determines that the need for or reasonableness of the rule has not been established pursuant to section 14.14, subdivision 2, and if the agency does not elect to follow the suggested actions of the chief administrative law judge to correct that defect, then the agency shall submit the proposed rule to the legislative coordinating commission and to the house of representatives and senate policy committees with primary jurisdiction over state governmental operations for advice and comment. The agency may not adopt the rule until it has received and considered the advice of the commission and committees. However, the agency is not required to wait for advice for more than 60 days after the commission and committees have received the agency's submission.

Subd. 5. **Harmless errors.** The administrative law judge shall disregard any error or defect in the proceeding due to the agency's failure to satisfy any procedural requirement imposed by law or rule if the administrative law judge finds:

(1) that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process; or

(2) that the agency has taken corrective action to cure the error or defect so that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process.

History: *1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1983 c 210 s 5-7; 1984 c 640 s 10,32; 1987 c 384 art 2 s 1; 1992 c 494 s 3,4; 1995 c 233 art 2 s 15,16; 1997 c 98 s 8; 2000 c 469 s 2; 2001 c 106 s 9*

14.16 ADOPTION OF RULE; CHIEF ADMINISTRATIVE LAW JUDGE; FILING OF RULE.

Subdivision 1. **Review of modifications.** If the report of the administrative law judge finds no defects, the agency may proceed to adopt the rule. After receipt of the administrative law judge's report, if the agency makes any modifications to the rule, it must return the rule, approved as to form by the revisor, to the chief administrative law judge for a review of legality, including the issue of whether the rule as modified is substantially different, as determined under section 14.05, subdivision 2, from the rule as originally proposed. If the chief administrative law judge determines that the modified rule is substantially different from the rule that was originally proposed, the chief administrative law judge shall advise the agency of actions that will correct the defects. The agency may not adopt the modified rule until the chief administrative law judge determines that the defects have been corrected or, if applicable, that the agency has satisfied the rule requirements for the adoption of a substantially different rule.

The agency shall give notice to all persons who requested to be informed that the rule has been adopted and filed with the secretary of state. This notice must be given on the same day that the rule is filed.

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Subd. 2. **Correction of defects.** If the chief administrative law judge approves the administrative law judge's finding of a defect and advises the agency of actions which will correct the defect pursuant to subdivision 3 of section 14.15, the agency must either withdraw the rule or make the modifications required. The agency shall then resubmit the rule to the chief administrative law judge for a determination as to whether the defects have been corrected.

Subd. 3. **Filing.** After the agency has provided the chief administrative law judge with a signed order adopting the rule, the chief administrative law judge shall promptly file four paper copies or an electronic copy of the adopted rule in the Office of the Secretary of State. The secretary of state shall forward one copy of each rule filed to the agency, to the revisor of statutes, and to the governor.

History: *1975 c 380 s 2; 1977 c 443 s 2; 1980 c 615 s 6,44; 1981 c 253 s 11; 1982 c 424 s 130; 1984 c 640 s 11,32; 1995 c 233 art 2 s 17; 1999 c 129 s 2; 2001 c 106 s 10; 2015 c 63 s 3*

14.17 [Repealed, 1984 c 640 s 33]

14.18 PUBLICATION OF ADOPTED RULE; EFFECTIVE DATE.

Subdivision 1. **Generally.** A rule is effective after it has been subjected to all requirements described in sections 14.131 to 14.20 and five working days after the notice of adoption is published in the State Register unless a later date is required by section 14.126 or other law or specified in the rule. If the rule adopted is the same as the proposed rule, publication may be made by publishing notice in the State Register that the rule has been adopted as proposed and by citing the prior publication. If the rule adopted differs from the proposed rule, the portions of the adopted rule that differ from the proposed rule must be included in the notice of adoption together with a citation to the prior State Register publication of the remainder of the proposed rule. The nature of the modifications must be clear to a reasonable person when the notice of adoption is considered together with the State Register publication of the proposed rule, except that modifications may also be made that comply with the form requirements of section 14.07, subdivision 7.

If the agency omitted from the notice of proposed rule adoption the text of the proposed rule, as permitted by section 14.14, subdivision 1a, paragraph (b), the chief administrative law judge may provide that the notice of the adopted rule need not include the text of any changes from the proposed rule. However, the notice of adoption must state in detail the substance of the changes made from the proposed rule, and must state that a free copy of the portion of the adopted rule that was the subject of the rulemaking proceeding, not including any material adopted by reference as permitted by section 14.07, is available upon request to the agency.

Subd. 2. **Pollution Control Agency fees.** A new fee or fee increase adopted by the Pollution Control Agency is subject to legislative approval during the next biennial budget session following adoption. The commissioner shall submit a report of fee adjustments to the legislature as a supplement to the biennial budget. Any new fee or fee increase remains in effect unless the legislature passes a bill disapproving the new fee or fee increase. A fee or fee

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increase disapproved by the legislature becomes null and void on July 1 following adjournment.

History: *1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1983 c 210 s 9; 1987 c 384 art 2 s 1; 1991 c 254 art 2 s 1; 1995 c 233 art 2 s 18; 1997 c 98 s 9; 2001 c 179 s 6*

14.19 DEADLINE TO COMPLETE RULEMAKING.

Within 180 days after issuance of the administrative law judge's report or that of the chief administrative law judge, the agency shall submit its notice of adoption, amendment, or repeal to the State Register for publication. If the agency has not submitted its notice to the State Register within 180 days, the rule is automatically withdrawn. The agency may not adopt the withdrawn rules without again following the procedures of sections 14.05 to 14.28, with the exception of section 14.101, if the noncompliance is approved by the chief administrative law judge. The agency shall report to the Legislative Coordinating Commission, other appropriate committees of the legislature, and the governor its failure to adopt rules and the reasons for that failure. The 180-day time limit of this section does not include:

(1) any days used for review by the chief administrative law judge or the commission if the review is required by law;

(2) days during which the rule cannot be adopted, because of votes by legislative committees under section 14.126; or

(3) days during which the rule cannot be adopted because approval of the legislature is required under section 14.127.

History: *1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1983 c 210 s 10; 1984 c 640 s 32; 1995 c 233 art 2 s 19,56; 1997 c 98 s 10; 2001 c 106 s 11; 2001 c 179 s 7; 2005 c 156 art 2 s 10*

14.20 APPROVAL OF FORM.

No rule shall be filed with the secretary of state or published in the State Register unless the revisor of statutes has certified that the rule's form is approved.

History: *1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130*

RULES ADOPTED WITHOUT PUBLIC HEARING

14.21 [Repealed, 1984 c 640 s 33]

14.22 NOTICE OF PROPOSED ADOPTION OF RULES.

Subdivision 1. **Contents.** (a) Unless an agency proceeds directly to a public hearing on a proposed rule and gives the notice prescribed in section 14.14, subdivision 1a, the agency shall give notice of its intention to adopt a rule without public hearing. The notice must be given by

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publication in the State Register and by United States mail or electronic mail to persons who have registered their names with the agency under section 14.14, subdivision 1a. The mailed notice must include either a copy of the proposed rule or an easily readable and understandable description of its nature and effect and an announcement that a free copy of the proposed rule is available on request from the agency. In addition, each agency shall make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication. The notice in the State Register must include the proposed rule or the amended rule in the form required by the revisor under section 14.07, an easily readable and understandable summary of the overall nature and effect of the proposed rule, a citation to the most specific statutory authority for the proposed rule, a statement that persons may register with the agency for the purpose of receiving notice of rule proceedings and notice that a rule has been submitted to the chief administrative law judge, and other information required by law or rule. When an entire rule is proposed to be repealed, the notice need only state that fact, along with an easily readable and understandable summary of the overall nature of the rules proposed for repeal, and a citation to the rule to be repealed. The notice must include a statement advising the public:

(1) that the public has 30 days in which to submit comment in support of or in opposition to the proposed rule and that comment is encouraged;

(2) that each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed;

(3) that if 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held;

(4) of the manner in which persons must request a public hearing on the proposed rule;

(5) of the requirements contained in section 14.25 relating to a written request for a public hearing, and that the requester is encouraged to propose any change desired;

(6) that the proposed rule may be modified if the modifications are supported by the data and views submitted; and

(7) that if a hearing is not required, notice of the date of submission of the proposed rule to the chief administrative law judge for review will be mailed to any person requesting to receive the notice.

In connection with the statements required in clauses (1) and (3), the notice must also include the date on which the 30-day comment period ends.

(b) The chief administrative law judge may authorize an agency to omit from the notice of intent to adopt the text of any proposed rule, the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient if:

(1) knowledge of the rule is likely to be important to only a small class of persons;

(2) the notice of intent to adopt states that a free copy of the entire rule is available upon request to the agency; and

(3) the notice of intent to adopt states in detail the specific subject matter of the omitted rule, cites the statutory authority for the proposed rule, and details the proposed rule's purpose and motivation.

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Subd. 2. **Dual notices.** The agency may, at the same time notice is given under subdivision 1, give notice of a public hearing and of its intention to proceed under sections 14.14 to 14.20, if one is required under section 14.25. The notice must include a statement advising the public of its intention to cancel the public hearing if 25 or more persons do not request one. If a hearing is required, there must be at least ten calendar days between the last day for requesting a hearing and the day of the hearing.

History: *1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1983 c 210 s 12; 1984 c 640 s 12; 1992 c 494 s 5; 1995 c 233 art 2 s 20; 1997 c 98 s 11; 2001 c 106 s 12; 2009 c 71 s 3*

14.225 DUAL NOTICE RULES.

The chief administrative law judge shall adopt rules prescribing the form and content of the notice authorized by section 14.22, subdivision 2. The rules may provide for a consolidated notice that satisfies the requirements of sections 14.14, 14.22, and 14.50, and the requirements of the rules of the Office of Administrative Hearings.

History: *1992 c 494 s 9; 1997 c 98 s 12*

14.23 STATEMENT OF NEED AND REASONABLENESS.

By the date of the section 14.22 notice, the agency shall prepare a statement of need and reasonableness, which must be available to the public. The statement of need and reasonableness must include the analysis required in section 14.131. The statement must also describe the agency's efforts to provide additional notification under section 14.22 to persons or classes of persons who may be affected by the proposed rules or must explain why these efforts were not made. For at least 30 days following the notice, the agency shall afford the public an opportunity to request a public hearing and to submit data and views on the proposed rule in writing.

The agency shall send a copy of the statement of need and reasonableness to the Legislative Reference Library when the notice of intent to adopt is mailed.

History: *1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1984 c 640 s 13; 1990 c 422 s 6; 1995 c 233 art 2 s 21; 1997 c 98 s 13; 1999 c 250 art 3 s 2; 2001 c 106 s 13*

14.235 [Repealed, 1995 c 233 art 2 s 57]

14.24 MODIFICATIONS OF PROPOSED RULE.

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 rule as originally proposed. An agency may adopt a substantially different rule after satisfying the rule requirements for the adoption of a substantially different rule.

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History: *1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1995 c 233 art 2 s 22*

14.25 PUBLIC HEARING.

Subdivision 1. **Requests for hearing.** If, during the 30-day period allowed for comment, 25 or more persons submit to the agency a written request for a public hearing of the proposed rule, the agency shall proceed under the provisions of sections 14.14 to 14.20. The written request must include: (1) the name and address of the person requesting the public hearing; and (2) the portion or portions of the rule to which the person objects or a statement that the person opposes the entire rule. If not previously published under section 14.22, subdivision 2, a notice of the public hearing must be published in the State Register and mailed to those persons who submitted a written request for the public hearing. Unless the agency has modified the proposed rule, the notice need not include the text of the proposed rule but only a citation to the State Register pages where the text appears.

A written request for a public hearing that does not comply with the requirements of this section is invalid and may not be counted by the agency for purposes of determining whether a public hearing must be held.

Subd. 2. **Withdrawal of hearing requests.** If a request for a public hearing has been withdrawn so as to reduce the number of requests below 25, the agency must give written notice of that fact to all persons who have requested the public hearing. No public hearing may be canceled by an agency within three working days of the hearing. The notice must explain why the request is being withdrawn, and must include a description of any action the agency has taken or will take that affected or may have affected the decision to withdraw the requests. The notice must also invite persons to submit written comments within five working days to the agency relating to the withdrawal. The notice and any written comments received by the agency is part of the rulemaking record submitted to the administrative law judge under section 14.14 or 14.26. The administrative law judge shall review the notice and any comments received and determine whether the withdrawal is consistent with section 14.001, clauses (2), (4), and (5).

This subdivision applies only to a withdrawal of a hearing request that affects whether a public hearing must be held and only if the agency has taken any action to obtain the withdrawal of the hearing request.

History: *1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1984 c 640 s 14; 1990 c 422 s 8; 1995 c 233 art 2 s 23; 2001 c 106 s 14*

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14.26 ADOPTION OF PROPOSED RULE; SUBMISSION TO ADMINISTRATIVE LAW JUDGE.

Subdivision 1. **Submission.** If no hearing is required, the agency shall submit to an administrative law judge assigned by the chief administrative law judge the proposed rule and notice as published, the rule as adopted, any written comments received by the agency, and a statement of need and reasonableness for the rule. The agency shall give notice to all persons who requested to be informed that these materials have been submitted to the administrative law judge. This notice must be given on the same day that the record is submitted. If the proposed rule has been modified, the notice must state that fact, and must also state that a free copy of the proposed rule, as modified, is available upon request from the agency. The rule and these materials must be submitted to the administrative law judge within 180 days of the day that the comment period for the rule is over or the rule is automatically withdrawn. The agency may not adopt the withdrawn rules without again following the procedures of sections 14.05 to 14.28, with the exception of section 14.101, if the noncompliance is approved by the chief administrative law judge. The agency shall report its failure to adopt the rules and the reasons for that failure to the Legislative Coordinating Commission, other appropriate legislative committees, and the governor.

Subd. 2. **Resubmission.** Even if the 180-day period expires while the administrative law judge reviews the rule, if the administrative law judge rejects the rule, the agency may resubmit it after taking corrective action. The resubmission must occur within 30 days of when the agency receives written notice of the disapproval. If the rule is again disapproved, the rule is withdrawn. An agency may resubmit at any time before the expiration of the 180-day period. If the agency withholds some of the proposed rule, it may not adopt the withheld portion without again following the procedures of sections 14.14 to 14.28.

Subd. 3. **Review.** (a) Within 14 days, the administrative law judge shall approve or disapprove the rule as to its legality and its form to the extent that the form relates to legality, including the issues of whether the rule if modified is substantially different, as determined under section 14.05, subdivision 2, from the rule as originally proposed, whether the agency has the authority to adopt the rule, and whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rule. If the rule is approved, the administrative law judge shall promptly file four copies of it in the Office of the Secretary of State. The secretary of state shall forward one copy of each rule to the revisor of statutes, ~~one~~ to the agency, and ~~one~~ to the governor. If the rule is disapproved, the administrative law judge shall state in writing the reasons for the disapproval and make recommendations to overcome the defects.

(b) The written disapproval must be submitted to the chief administrative law judge for approval. If the chief administrative law judge approves of the findings of the administrative law judge, the chief administrative law judge shall send the statement of the reasons for disapproval of the rule to the agency, the Legislative Coordinating Commission, the house of representatives and senate policy committees with primary jurisdiction over state governmental operations, and the revisor of statutes and advise the agency and the revisor of statutes of actions that will correct the defects. The rule may not be filed in the Office of the Secretary of

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State, nor be published, until the chief administrative law judge determines that the defects have been corrected or, if applicable, that the agency has satisfied the rule requirements for the adoption of a substantially different rule.

(c) If the chief administrative law judge determines that the need for or reasonableness of the rule has not been established, and if the agency does not elect to follow the suggested actions of the chief administrative law judge to correct that defect, then the agency shall submit the proposed rule to the Legislative Coordinating Commission and to the house of representatives and senate policy committees with primary jurisdiction over state governmental operations for advice and comment. The agency may not adopt the rule until it has received and considered the advice of the commission and committees. However, the agency need not wait for advice for more than 60 days after the commission and committees have received the agency's submission.

(d) The administrative law judge shall disregard any error or defect in the proceeding due to the agency's failure to satisfy any procedural requirements imposed by law or rule if the administrative law judge finds:

(1) that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process; or

(2) that the agency has taken corrective action to cure the error or defect so that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process.

Subd. 3a. **Filing.** If the rule is approved, the administrative law judge shall promptly file four paper copies or an electronic copy of the adopted rule in the Office of the Secretary of State. The secretary of state shall forward one copy of each rule to the revisor of statutes, to the agency, and to the governor.

Subd. 4. **Costs.** The Office of Administrative Hearings shall assess an agency for the actual cost of processing rules under this section. Each agency shall include in its budget money to pay the assessment. Receipts from the assessment must be deposited in the administrative hearings account created in section 14.54.

History: *1980 c 615 s 7,47; 1981 c 253 s 14; 1982 c 424 s 130; 1983 c 210 s 13; 1984 c 640 s 15,32; 1Sp1985 c 13 s 82; 1987 c 404 s 71; 1992 c 494 s 6; 1995 c 233 art 2 s 24; 1997 c 98 s 14,15; 1999 c 129 s 3; 2000 c 469 s 3; 2001 c 106 s 15,16; 2015 c 63 s 4,5*

14.27 PUBLICATION OF ADOPTED RULE; EFFECTIVE DATE.

The rule is effective upon publication of the notice of adoption in the State Register in the same manner as provided for adopted rules in section 14.18.

History: *1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130*

14.28 APPROVAL OF FORM.

No rule shall be filed with the secretary of state or published in the State Register unless the revisor of statutes has certified that the rule is approved as to form.

History: *1980 c 615 s 46; 1981 c 253 s 14,15; 1982 c 424 s 130*

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14.29 [Repealed, 1995 c 233 art 2 s 57]
14.30 [Repealed, 1995 c 233 art 2 s 57]
14.305 [Repealed, 1995 c 233 art 2 s 57]
14.31 [Repealed, 1995 c 233 art 2 s 57]
14.32 [Repealed, 1995 c 233 art 2 s 57]
14.33 [Repealed, 1995 c 233 art 2 s 57]
14.34 [Repealed, 1995 c 233 art 2 s 57]
14.35 [Repealed, 1995 c 233 art 2 s 57]
14.36 [Repealed, 1995 c 233 art 2 s 57]

RECORD-KEEPING REQUIREMENTS

14.365 OFFICIAL RULEMAKING RECORD.

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. The record must contain:

(1) copies of all publications in the State Register pertaining to the rule;

(2) all written petitions, and all requests, submissions, or comments received by the agency or the administrative law judge after publication of the notice of intent to adopt or the notice of hearing in the State Register pertaining to the rule;

(3) the statement of need and reasonableness for the rule;

(4) the official transcript of the hearing if one was held, or the tape recording of the hearing if a transcript was not prepared;

(5) the report of the administrative law judge, if any;

(6) the rule in the form last submitted to the administrative law judge under sections 14.14 to 14.20 or first submitted to the administrative law judge under sections 14.22 to 14.28;

(7) the administrative law judge's written statement of required modifications and of approval or disapproval by the chief administrative law judge, if any;

(8) any documents required by applicable rules of the Office of Administrative Hearings;

(9) the agency's order adopting the rule;

(10) the revisor's certificate approving the form of the rule; and

(11) a copy of the adopted rule as filed with the secretary of state.

History: *1984 c 640 s 23,32; 1995 c 233 art 2 s 25; 2001 c 106 s 17*

14.366 PUBLIC RULEMAKING DOCKET.

(a) Each agency shall maintain a current, public rulemaking docket.

(b) The rulemaking docket must contain a listing of the precise subject matter of each possible proposed rule currently under active consideration within the agency for proposal, the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of its present status within the agency.

(c) The rulemaking docket must list each pending rulemaking proceeding. A rulemaking proceeding is pending from the time it is begun, by publication of the notice of solicitation, the

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notice of intent to adopt, or notice of hearing, to the time it is terminated, by publication of a notice of withdrawal or the rule becoming effective. For each rulemaking proceeding, the docket must indicate:

(1) the subject matter of the proposed rule;

(2) a citation to all published notices relating to the proceeding;

(3) where written comments on the proposed rule may be inspected;

(4) the time during which written comments may be made;

(5) the names of persons who have made written requests for a public hearing, where those requests may be inspected, and where and when the hearing will be held;

(6) the current status of the proposed rule and any agency determinations with respect to the rule;

(7) any known timetable for agency decisions or other action in the proceeding;

(8) the date of the rule's adoption;

(9) the date the rule was filed with the secretary of state; and

(10) when the rule will become effective.

History: *1995 c 233 art 2 s 26*

14.3691 MS 2004 [Expired, 2000 c 469 s 4]

LEGAL STATUS OF RULES

14.37 EFFECT OF PUBLICATION.

Subdivision 1**. State Register publication**. The publication or citation of a rule or order in the State Register in a manner as required by sections 14.001 to 14.69 raises a rebuttable presumption that:

(1) the rule or order was duly adopted, issued, or promulgated;

(2) the rule or order was duly filed with the secretary of state and available for public inspection at the day and hour endorsed thereon; and

(3) the copy of the rule or order published in the State Register is a true copy of the original.

Judicial notice shall be taken of material published in the State Register.

Subd. 2. **Compiled rules**. The text of the rules in the first compilation published by the revisor is prima facie evidence of the text of the rules as against any previous documents. However, the previous documents may be used to construe the text of a rule. Except as provided in section 14.47, subdivision 6, the compilation shall not be construed as repealing any unpublished rule. The rules published in the compilation shall be construed as continuations of prior rules and not as new rules.

Any subsequent compilation or supplement published by the revisor and containing the revisor's certificate is prima facie evidence of the administrative rules in all courts and proceedings. Except as provided in section 14.47, subdivision 6, a compilation or supplement shall not be construed as repealing an unpublished rule. If there is any material inconsistency through omission or otherwise between the first compilation, a subsequent compilation or supplement, the State Register, and a rule filed with the secretary of state, and the omission or

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change was not due to the provisions of section 14.47, subdivision 6 or the correction of an obvious error or unintentional omission as required by subdivision 3, the rule filed with the secretary shall prevail.

History: *1945 c 590 s 4,5; 1975 c 380 s 10,11; 1977 c 443 s 6; 1980 c 615 s 57; 1981 c 253 s 37-46; 1982 c 424 s 130; 1986 c 444; 1987 c 384 art 2 s 1; 1990 c 422 s 10*

14.38 EFFECT OF ADOPTION OF RULES.

Subdivision 1. **Original rules.** Every rule, regardless of whether it might be known as a substantive, procedural, or interpretive rule, which is filed in the Office of the Secretary of State as provided in sections 14.05 to 14.28 shall have the force and effect of law five working days after its notice of adoption is published in the State Register unless a different date is required by statute or a later date is specified in the rule. The secretary of state shall keep a permanent record of rules filed with that office open to public inspection.

Subd. 2. **Retroactive application.** Every existing rule, regardless of whether it might be known as a substantive, procedural, or interpretive rule, has the force and effect of law retroactive to the date on which the rule became effective if:

(1) the rule was adopted in compliance with the provisions of the Administrative Procedure Act in effect at the time the rule was adopted;

(2) the rule was approved by the attorney general or Office of Administrative Hearings before becoming effective; and

(3) the adopting agency had statutory authority to adopt the rule.

Subd. 3. **Limitation.** Subdivisions 1 and 2 do not apply to any rule specifically held not to have the force and effect of law by the state Supreme Court before May 8, 1981.

Subd. 4. **Amendments; repealers; suspended rules.** Each rule hereafter amended, suspended, or repealed is amended, suspended, or repealed five working days after the appropriate notice is published in the State Register unless a later date is required by law or specified in the rule.

Subd. 5. [Repealed, 1997 c 187 art 5 s 36]

Subd. 6. [Repealed, 1997 c 187 art 5 s 36]

Subd. 7. [Repealed, 1997 c 187 art 5 s 36]

Subd. 8. [Repealed, 1997 c 187 art 5 s 36]

Subd. 9. [Repealed, 1997 c 187 art 5 s 36]

Subd. 10. **Previously filed rules; previously exempt agencies.** Rules excluded from the Administrative Procedure Act in Minnesota Statutes 1978, section 15.0411, subdivision 2, but included in the rulemaking provisions of the act in Minnesota Statutes 1980, section 15.0411, subdivision 2, have the force and effect of law and shall be published by the revisor of statutes pursuant to section 14.47, to the extent the rules are still in effect, if the rules were:

(1) adopted by an agency; and,

(2) filed with the secretary of state before April 25, 1980.

Subd. 11. **Unfiled rules; previously exempt agencies.** Rules excluded from the Administrative Procedure Act in Minnesota Statutes 1978, section 15.0411, subdivision 2, but included in the rulemaking provisions of the act in Minnesota Statutes 1980, section 15.0411,

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subdivision 2, shall have the force and effect of law and be published by the revisor of statutes pursuant to section 14.47, to the extent the rules are still in effect, if:

(1) the rules were adopted by an agency;

(2) the rules were not filed with the secretary of state before April 25, 1980; and,

(3) a copy of the rules which were effective on April 25, 1980, but unfiled with the secretary of state are filed with both the secretary of state and the revisor of statutes before September 1, 1981.

History: *1957 c 806 s 3; 1963 c 822 s 1; 1974 c 344 s 4-7; 1975 c 380 s 3-5; 1977 c 443 s 3; 1980 c 615 s 12,13,51; 1981 c 109 s 1-3; 1981 c 253 s 20; 1Sp1981 c 4 art 4 s 9; 1982 c 424 s 130; 1983 c 138 s 1; 1984 c 640 s 24; 1986 c 386 art 4 s 3; 1987 c 384 art 2 s 1; 1990 c 422 s 10; 1991 c 259 s 6; 1995 c 233 art 2 s 56; 2001 c 106 s 18*

14.381 UNADOPTED RULES.

Subdivision 1. **Petition.** (a) A person may petition the Office of Administrative Hearings seeking an order of an administrative law judge determining that an agency is enforcing or attempting to enforce a policy, guideline, bulletin, criterion, manual standard, or similar pronouncement as though it were a duly adopted rule. The petition must be supported by affidavit and must be served upon the agency. The agency shall respond in writing to the petition within ten working days. The administrative law judge may order oral argument on the petition, but only if necessary to a decision.

(b) An agency determination is not considered an unadopted rule when the agency enforces a law or rule by applying the law or rule to specific facts on a case-by-case basis.

Subd. 2. **Order.** The order of the administrative law judge must direct the agency to cease enforcement of the unadopted rule that is the subject of the petition. The order must be served upon the parties and the legislative coordinating commission by first class mail and must be published by the agency in the State Register. The decision of the administrative law judge may be appealed under sections 14.44 and 14.45.

Subd. 3**. Costs.** The agency is liable for all Office of Administrative Hearings costs associated with review of the petition. If the administrative law judge rules in favor of the agency, the agency may recover all or a portion of the costs from the petitioner unless the petitioner is entitled to proceed in forma pauperis under section 563.01 or the administrative law judge determines that the petition was brought in good faith and that an assessment of the costs would constitute an undue hardship for the petitioner. If an agency has reason to believe it will prevail in the consideration of a petition, and that an effort to recover costs from the petitioner will be unsuccessful, it may request the chief administrative law judge to require the petitioner to provide bond or a deposit to the agency in an amount the chief administrative law judge estimates will be the cost to the Office of Administrative Hearings to review the petition.

History: *2001 c 179 s 8*

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EXEMPT RULES

14.385 EFFECT OF NONPUBLICATION OF EXEMPT RULES.

No rule, as defined in section 14.02, subdivision 4, which is exempt from the rulemaking provisions of this chapter has the force and effect of law as of January 1, 1985, unless prior to that date it has been submitted to the revisor for publication in Minnesota Rules.

The revisor has the same editorial powers over these rules as the revisor has over nonexempt rules.

History: *1984 c 640 s 25*

14.386 PROCEDURE FOR ADOPTING EXEMPT RULES; DURATION.

(a) A rule adopted, amended, or repealed by an agency, under 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, has the force and effect of law only if:

(1) the revisor of statutes approves the form of the rule by certificate;

(2) the person authorized to adopt the rule on behalf of the agency signs an order adopting the rule;

(3) the Office of Administrative Hearings approves the rule as to its legality within 14 days after the agency submits it for approval and files four paper copies or an electronic copy of the adopted rule with the revisor's certificate in the Office of the Secretary of State; and

(4) a copy is published by the agency in the State Register.

The secretary of state shall forward one copy of the rule to the governor.

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.

(b) A rule adopted under this section is effective for a period of two years from the date of publication of the rule in the State Register. The authority for the rule expires at the end of this two-year period.

(c) The chief administrative law judge shall adopt rules relating to the rule approval duties imposed by this section and section 14.388, including rules establishing standards for review.

(d) This section does not apply to:

(1) any group or rule listed in section 14.03, subdivisions 1 and 3, except as otherwise provided by law;

(2) game and fish rules of the commissioner of natural resources adopted under section 84.027, subdivision 13, or sections 97A.0451 to 97A.0459;

(3) experimental and special management waters designated by the commissioner of natural resources under sections 97C.001 and 97C.005;

(4) game refuges designated by the commissioner of natural resources under section 97A.085; or

(5) transaction fees established by the commissioner of natural resources for electronic or telephone sales of licenses, stamps, permits, registrations, or transfers under section 84.027, subdivision 15, paragraph (a), clause (3).

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(e) If a statute provides that a rule is exempt from chapter 14, and section 14.386 does not apply to the rule, the rule has the force of law unless the context of the statute delegating the rulemaking authority makes clear that the rule does not have force of law.

History: *1995 c 233 art 2 s 27; 1Sp1995 c 3 art 16 s 13; 1996 c 410 s 1; 1997 c 187 art 5 s 4; 1999 c 129 s 4; 1999 c 231 s 19; 2001 c 106 s 19; 2015 c 63 s 6*

14.387 [Repealed, 1997 c 187 art 5 s 36]

14.388 GOOD CAUSE EXEMPTION.

Subdivision 1. **Requirements.** If an agency for good cause finds that the rulemaking provisions of this chapter are unnecessary, impracticable, or contrary to the public interest when adopting, amending, or repealing a rule to:

(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 in a manner that does not allow for compliance with sections 14.14 to 14.28;

(3) incorporate specific changes set forth in applicable statutes when no interpretation of law is required; or

(4) make changes that do not alter the sense, meaning, or effect of a rule,

the agency may adopt, amend, or repeal the rule after satisfying the requirements of subdivision 2 and section 14.386, paragraph (a), clauses (1) to (4). The agency shall incorporate its findings and a brief statement of its supporting reasons in its order adopting, amending, or repealing the rule.

After considering the agency's statement and any comments received, the Office of Administrative Hearings shall determine whether the agency has provided adequate justification for its use of this section.

Rules adopted, amended, or repealed under clauses (1) and (2) are effective for a period of two years from the date of publication of the rule in the State Register.

Rules adopted, amended, or repealed under clause (3) or (4) are effective upon publication in the State Register.

Subd. 2. **Notice.** An agency proposing to adopt, amend, or repeal a rule under this section must give electronic notice of its intent in accordance with section 16E.07, subdivision 3, and notice by United States mail or electronic mail to persons who have registered their names with the agency under section 14.14, subdivision 1a. The notice must be given no later than the date the agency submits the proposed rule to the Office of Administrative Hearings for review of its legality and must include:

(1) the proposed rule, amendment, or repeal;

(2) an explanation of why the rule meets the requirements of the good cause exemption under subdivision 1; and

(3) a statement that interested parties have five business days after the date of the notice to submit comments to the Office of Administrative Hearings.

Subd. 3. **Review by chief judge.** If a rule has been disapproved by an administrative law judge, the agency may ask the chief administrative law judge to review the rule. The agency must give notice of its request for review in accordance with subdivision 2. The notice must be

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given no later than the date the agency requests review by the chief judge and must include a summary of any information or arguments the agency intends to submit to the chief judge that were not submitted to the judge who disapproved the rule.

Subd. 4. **Costs**. The costs of any proceeding conducted by the Office of Administrative Hearings in accordance with this section must be paid by the agency seeking to adopt, amend, or repeal a rule under this section.

History: *1995 c 233 art 2 s 29*; *2001 c 106 s 20*; *2003 c 2 art 1 s 4*; *1Sp2003 c 6 s 1*

14.389 EXPEDITED PROCESS.

Subdivision 1. **Application**. This section applies when a law requiring or authorizing rules to be adopted states that this section must or may be used to adopt the rules. When a law refers to this section, the process in this section is the only process an agency must follow for its rules to have the force and effect of law. Sections 14.19 and 14.366 apply to rules adopted under this section.

Subd. 2. **Notice and comment.** The agency must publish notice of the proposed rule in the State Register and must mail the notice by United States mail or electronic mail to persons who have registered with the agency to receive mailed notices. The mailed notice must include either a copy of the proposed rule or a description of the nature and effect of the proposed rule and a statement that a free copy is available from the agency upon request. The notice in the State Register must include the proposed rule or the amended rule in the form required by the revisor under section 14.07, 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 authority for the rule to be adopted under the process in this section. The agency must allow 30 days after publication in the State Register for comment on the rule.

Subd. 3. **Adoption.** The agency may modify a proposed rule if the modifications do not result in a substantially different rule, as defined in section 14.05, subdivision 2, paragraphs (b) and (c). If the final rule is identical to the rule originally published in the State Register, the agency must publish a notice of adoption in the State Register. If the final rule is different from the rule originally published in the State Register, the agency must publish a copy of the changes in the State Register. The agency must also file a copy of the rule with the governor. The rule is effective upon publication in the State Register.

Subd. 4**. Legal review.** Before publication of the final rule in the State Register, the agency must submit the rule to an administrative law judge in the Office of Administrative Hearings. The administrative law judge shall within 14 days approve or disapprove the rule as to its legality and its form to the extent the form relates to legality.

Subd. 5. **Option.** A law authorizing or requiring rules to be adopted under this section may refer specifically to this subdivision. If the law contains a specific reference to this subdivision, as opposed to a general reference to this section:

(1) the notice required in subdivision 2 must include a statement that a public hearing will be held if 100 or more people request a hearing. The request must be in the manner specified in section 14.25; and

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(2) if 100 or more people submit a written request for a public hearing, the agency may adopt the rule only after complying with all of the requirements of chapter 14 for rules adopted after a public hearing.

History: *1997 c 187 art 5 s 5*; *1999 c 129 s 5*; *2001 c 106 s 21*; *2009 c 71 s 4*

14.3895 PROCESS FOR REPEALING OBSOLETE RULES.

Subdivision 1. **Application.** An agency may use this section to repeal rules identified in the agency's annual obsolete rules report under section 14.05, subdivision 5, unless a law specifically requires another process or unless 25 requests are received under subdivision 4. Sections 14.19, 14.20, 14.365, and 14.366 apply to rules repealed under this section.

Subd. 2. **Notice plan; prior approval**. The agency shall draft a notice plan under which the agency will make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule repeal by giving notice of its intention in newsletters, newspapers, or other publications, or through other means of communication. Before publishing the notice in the State Register and implementing the notice plan, the agency shall obtain prior approval of the notice plan by the chief administrative law judge.

Subd. 3. **Notice and comment**. The agency shall publish notice of the proposed rule repeal in the State Register. The agency shall also mail the notice by United States mail or electronic mail to persons who have registered with the agency to receive mailed notices and to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule repeal. The agency shall also give notice according to the notice plan approved under subdivision 2. The mailed notice must include either a copy of the rule proposed for repeal or a description of the nature and effect of the proposed rule repeal and a statement that a free copy is available from the agency upon request. The notice must include 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 after a hearing or the requirements of 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. The agency shall allow 60 days after publication in the State Register for comment on the proposed rule repeal.

Subd. 4**. Requests.** If 25 or more people submit a written request, the agency may repeal the rule only after complying with sections 14.131 to 14.20 or the requirements of sections 14.22 to 14.28. The requests must be in the manner specified in section 14.25.

Subd. 5**. Adoption.** If the final repeal is identical to the action originally published in the State Register, the agency shall publish a notice of repealers in the State Register. If the final action is different from the action originally published in the State Register, the agency shall publish a copy of the changes in the State Register. The agency shall also file a copy of the repealed rule with the governor. The repeal is effective after it has been subjected to all requirements described in this section or sections 14.131 to 14.20 or 14.22 to 14.28 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.

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Subd. 6**. Legal review.** Before publication of the final rule in the State Register, the agency shall submit the rule to the chief administrative law judge in the Office of Administrative Hearings. The chief administrative law judge shall within 14 days approve or disapprove the rule as to its legality and its form to the extent the form relates to legality.

History: *2001 c 179 s 9; 2009 c 71 s 5*

14.39 [Renumbered 3.841]
14.40 [Renumbered 3.842]
14.41 [Renumbered 3.843]
14.42 [Renumbered 3.844]
14.43 [Renumbered 3.845]
14.431 [Repealed, 1998 c 389 art 16 s 36]

JUDICIAL REVIEW

14.44 DETERMINATION OF VALIDITY OF RULE.

The validity of any rule may be determined upon the petition for a declaratory judgment thereon, addressed to the Court of Appeals, when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule in question, and whether or not the agency has commenced an action against the petitioner to enforce the rule.

History: *1957 c 806 s 6; 1982 c 424 s 130; 1984 c 640 s 26*

14.45 RULE DECLARED INVALID.

In proceedings under section 14.44, the court shall declare the rule invalid if it finds that it violates constitutional provisions or exceeds the statutory authority of the agency or was adopted without compliance with statutory rulemaking procedures. Any party to proceedings under section 14.44, including the agency, may appeal an adverse decision of the Court of Appeals to the Supreme Court as in other civil cases.

History: *1957 c 806 s 7; 1977 c 443 s 4; 1982 c 424 s 130; 1983 c 247 s 7; 1984 c 640 s 27*

PUBLIC ACCESS

14.46 PUBLICATION IN STATE REGISTER.

Subdivision 1**. Contents.** The commissioner of administration shall publish a State Register containing all notices for hearings concerning rules, giving time, place and purpose of the hearing and the full text of the action being proposed. Further, the register shall contain all rules, amendments, suspensions, or repeals thereof, pursuant to the provisions of this chapter. The commissioner shall further publish any executive order issued by the governor which shall become effective 15 days after publication except as provided in section 4.035, subdivision 2. The commissioner shall further publish any official notice in the register which a state agency

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requests to be published. Such notices shall include, but shall not be limited to, the date on which a new agency becomes operational, the assumption of a new function by an existing state agency, or the appointment of commissioners. The commissioner may prescribe the form, excluding the form of the rules, and manner in which agencies submit any material for publication in the State Register and may withhold publication of any material not submitted according to the form or procedures prescribed.

The commissioner of administration may organize and distribute the contents of the register according to such categories as will provide economic publication and distribution and will offer easy access to information by any interested party.

Subd. 2. **Form and manner.** The commissioner of administration shall publish the State Register whenever necessary, except that no material properly submitted for publication shall remain unpublished for more than ten working days.

The State Register shall have a distinct and permanent masthead with the title "State Register" and the words "state of Minnesota" prominently displayed. All issues of the State Register shall be numbered and dated.

To the extent that editing, composition, printing, distribution or other work on the State Register cannot be performed in the Department of Administration, or it is uneconomical to do so, the commissioner shall obtain competitive bids and enter into contracts to have the services performed by the lowest responsible bidder. The duration of any contracts shall not exceed the end of the state's fiscal biennium.

Subd. 3**. Submission of items for publication. [Revised in 2020]** Any state agency which desires to publish a notice of hearing, rule or change thereof shall submit a copy of the entire document, including dates when adopted, and filed with the secretary of state, to the commissioner of administration in addition to any other copies which may be required to be filed with the commissioner by other law.

The revisor of statutes shall provide assistance to the commissioner if requested. Alternatively, the commissioner may designate a contract compositor to whom the assistance is to be supplied. **The assistance, in either case, shall consist of furnishing a ~~machine readable computer tape~~, <u>readable digital file</u> or similar services,** for rules which are available in the revisor's computer database and for which a written copy has been submitted by an agency to the commissioner for publication in the State Register.

Subd. 4. **Cost; distribution. [Revised in 2020]** When an agency properly submits a rule, proposed rule, notice, or other material to the commissioner of administration, the commissioner must then be accountable for the publication of the same in the State Register. The commissioner of administration must require each agency which requests the publication of rules, proposed rules, notices, or other material in the State Register to pay its proportionate cost of the State Register unless other funds are provided and are sufficient to cover the cost of the State Register.

The State Register must be offered for public sale at a location centrally located as determined by the commissioner of administration and at a price as the commissioner of administration determines. The commissioner of administration must further provide for the mailing of the State Register to any person, agency, or organization if so requested, provided

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that reasonable costs are borne by the requesting party. The supply and expense appropriation to any state agency is deemed to include funds to purchase the State Register. ~~**Ten copies**~~ **One copy of each issue of the State Register, however, must be provided without cost to the Legislative Reference Library and** ~~**ten copies**~~ **one copy to the State Law Library.** ~~**One copy must be provided without cost to a public library in each county seat in the state or, if there is no public library in a county seat, to a public library in the county as designated by the county board. The commissioner must advise the recipient libraries of the significance and content of the State Register and encourage efforts to promote its usage.**~~

The commissioner must make an electronic version of the State Register available on the Internet free of charge through the ~~**North Star information service**~~ **State of Minnesota main website.**

Subd. 5**. Publication account.** A State Register publication account is created in the state treasury. All receipts from the sale of the State Register shall be deposited in the account. All funds in the State Register publication account in the state treasury are appropriated annually to the commissioner of administration to carry out the provisions of subdivisions 1 to 4.

History: *1974 c 344 s 8; 1975 c 380 s 12-15; 1977 c 305 s 3,4; 1977 c 323 s 1; 1977 c 443 s 7; 1980 c 615 s 25,52-54; 1982 c 424 s 130; 1985 c 248 s 70; 1986 c 444; 1998 c 366 s 18*

14.47 PUBLICATION IN COMPILED FORM.

Subdivision 1. **Plan of publication and supplementation.** The revisor of statutes shall:

(1) formulate a plan for the compilation of all permanent agency rules and, to the extent practicable, other rules, adopted pursuant to the Administrative Procedure Act or filed pursuant to the provisions of section 14.38, subdivisions 5 to 9 or section 14.386 which were in effect at the time the rules were filed or subdivision 11, including their order, classification, arrangement, form, and indexing, and any appropriate tables, annotations, cross-references, citations to applicable statutes, explanatory notes, and other appropriate material to facilitate use of the rules by the public, and for the compilation's composition, printing, binding, and distribution;

(2) publish the compilation of permanent agency rules and, if practicable, other rules, adopted pursuant to the Administrative Procedure Act or filed pursuant to the provisions of section 14.38, subdivisions 5 to 9 or section 14.386 which were in effect at the time the rules were filed or subdivision 11, which shall be called "Minnesota Rules";

(3) periodically either publish a supplement or a new compilation, which includes all rules adopted since the last supplement or compilation was published and removes rules incorporated in prior compilations or supplements which are no longer effective;

(4) include in Minnesota Rules a consolidated list of publications and other documents incorporated by reference into the rules after June 30, 1981, and found conveniently available by the revisor under section 14.07, subdivision 4, indicating where the publications or documents are conveniently available to the public; and

(5) copyright any compilations and or supplements in the name of the state of Minnesota.

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Subd. 2. **Restrictions on compilation.** The revisor of statutes shall not:

(1) alter the sense, meaning, or effect of any rule in the course of compiling or publishing it;

(2) aid an agency in the preparation of any statement concerning the need for or reasonableness of a rule except as provided by section 14.07, subdivision 6;

(3) act as legal counsel for an agency before an administrative law judge except as provided by section 14.07, subdivision 6.

Subd. 3**. Source of text of first compilation.** In order to ensure that the complete text of rules is included in the first compilation published pursuant to subdivision 1, clause (2), and containing the revisor's certificate, the revisor may use the Minnesota Code of Agency Rules, the State Register, the rule files of the secretary of state, the files of individual agencies, the records of the administrative law judge's office, and the records of the attorney general. The revisor is not required to compare the text of a rule as shown by the other possible source documents with the text of the rule in the secretary of state's file.

If any comparison of documents shows there is a material discrepancy in the text of the rule, the revisor shall include in Minnesota Rules the text in the secretary of state's files unless the discrepancy between the secretary of state's files and any of the other documents is the result of an obvious unintentional omission or clerical error. The text published by the revisor shall correct those omissions and errors. The revisor shall add an appropriate footnote describing the apparent discrepancy in text. Before publication of Minnesota Rules, the revisor shall also notify the agency whose rules are affected, the attorney general, the chief administrative law judge, and the Legislative Coordinating Commission about the omission or error.

If any comparison of documents shows that a rule has been filed with the secretary of state but apparently has not been published in the State Register as required by law the revisor may, unless the attorney general objects, include the rule in Minnesota Rules or omit the rule if the rule was a repeal but shall add an appropriate footnote describing the apparent fault. Before publication of Minnesota Rules, the revisor shall notify the agency whose rules are affected, the attorney general, the chief administrative law judge, and the Legislative Commission to Review Administrative Rules about the apparent lack of publication.

If a comparison of documents shows that a rule as adopted in the State Register has apparently not been filed with the secretary of state, the revisor may not publish the rule in Minnesota Rules unless the attorney general approves the publication. Before publication of Minnesota Rules the revisor shall notify the agency affected, the attorney general, the chief administrative law judge and the Legislative Commission to Review Administrative Rules of the apparent lack of filing of the rule. If the revisor publishes the rule, the revisor shall add an appropriate footnote describing the apparent lack of filing.

Subd. 4. **Certification and filing of compilation.** The revisor of statutes shall file with the secretary of state one copy of each compilation or supplement which is published. The first compilation shall contain the revisor's certificate that the rules contained in it have been incorporated into the compilation in the manner required by law and that the incorporation is correct. Each copy thereafter shall contain the revisor's certificate that the rules added to the

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compilation or supplement have been compared to the original rules filed with the secretary of state and are correctly incorporated into the compilation.

Subd. 5. **Powers of revisor.** (a) In preparing a compilation or supplement, the revisor may:

(1) renumber rules, paragraphs, clauses or other parts of a rule;

(2) combine or divide rules, paragraphs, clauses or other parts of a rule;

(3) rearrange the order of rules, paragraphs, clauses, or other parts of a rule;

(4) move paragraphs, clauses, or other parts of a rule to another rule;

(5) remove redundant language;

(6) make minor punctuation and grammatical changes to facilitate the renumbering, combining, dividing, and rearranging of rules or parts of rules;

(7) change reference numbers to agree with renumbered rules, paragraphs, clauses or other parts of a rule;

(8) change reference numbers to agree with renumbered statutes or parts of statutes;

(9) substitute the proper rule, paragraph, clause, or other part of a rule for the term "this rule," "the preceding rule" and the like;

(10) substitute numbers for written words and written words for numbers;

(11) substitute the term "rule" for the term "regulation" when "regulation" refers to a Minnesota rule;

(12) substitute the date on which the rule becomes effective for the words "the effective date of this rule," and the like;

(13) change capitalization, punctuation, and forms of citation for the purpose of uniformity;

(14) convert citations of Laws of Minnesota to citations of Minnesota Statutes;

(15) correct manifest clerical or typographical errors;

(16) correct all misspelled words;

(17) correct manifest grammatical and punctuation errors;

(18) replace gender specific words with gender neutral words and, if necessary, recast sentences containing gender specific words; and

(19) make other editorial changes to ensure the accuracy and utility of the compilation or supplement.

(b) The revisor shall provide headnotes as catch words to rules and, if appropriate, to paragraphs, clauses, or other parts of a rule. The headnotes are not part of the rule even if included with the rule when adopted. The revisor shall change headnotes to clearly indicate the subject matter of the rules. "Headnote" means any text functioning as catch words to the substance of text and not itself communicating the substantive content of the rule.

Subd. 6. **Omission of text**. (a) For purposes of any compilation or publication of the rules, the revisor, unless the attorney general objects, may omit any extraneous descriptive or informative text that is not an operative portion of the rule. The revisor may also omit effective date provisions, statements that a rule is repealed, prefaces, appendices, guidelines, organizational descriptions, explanations of federal or state law, and similar material. The

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revisor shall consult with the agency, the attorney general, the Legislative Coordinating Commission, and the chief administrative law judge before omitting text from publication.

(b) For the purposes of any compilation or publication of the rules, the revisor, unless the attorney general objects, may omit any rules that, by their own terms, are no longer effective or have been repealed directly by the agency, repealed by the legislature, or declared unconstitutional or otherwise void by a court of last resort. The revisor shall consult the agency involved, the attorney general, the chief administrative law judge, and the legislative coordinating commission before omitting a rule from publication.

Subd. 7. **Equipment used by revisor.** Insofar as economically feasible, the revisor shall utilize the same equipment, computer assistance and procedures for drafting agency rules and publishing compilations and supplements as for preparing bill drafts and statutory publications.

Subd. 8. **Sales and distribution of compilation.** Any compilation, reissue, or supplement published by the revisor shall be sold by the revisor for a reasonable fee and its proceeds deposited in the general fund. An agency shall purchase from the revisor the number of copies of the compilation or supplement needed by the agency. The revisor shall provide without charge copies of each edition of any compilation, reissue, or supplement to the persons or bodies listed in this subdivision. Those copies must be marked with the words "State Copy" and kept for the use of the office. The revisor shall distribute:

(a) 25 copies to the Office of the Attorney General;

(b) two copies to the leader of each caucus in the house of representatives and the senate, two copies to the Legislative Reference Library, and one copy each to the House of Representatives Research Department and the Office of Senate Counsel and Research;

(c) three copies to the revisor of statutes for transmission to the Library of Congress for copyright and depository purposes;

(d) 150 copies to the State Law Library;

(e) ten copies to the law school of the University of Minnesota;

(f) one copy of any compilation or supplement to each county library maintained pursuant to section 134.12 upon its request, except in counties containing cities of the first class. If a county has not established a county library pursuant to section 134.12, the copy will be provided to any public library in the county upon its request; and

(g) three copies to the Office of Administrative Hearings.

Subd. 9. **Contracting for publication of Minnesota Rules.**

Notwithstanding any provision of law to the contrary, the revisor of statutes may obtain competitive bids from and enter into contracts with the lowest responsible bidder for compiling, editing, indexing, composition, printing, binding, distribution, or other services, if the work either cannot be performed by the revisor or it is uneconomical for the revisor to do so.

History: *1980 c 615 s 57,58; 1981 c 253 s 37-46; 1982 c 424 s 130; 1983 c 210 s 15-17; 1984 c 640 s 32; 1985 c 248 s 5; 1985 c 265 art 13 s 1; 1Sp1985 c 13 s 85; 1988 c 686 art 5 s 7; 1991 c 199 art 1 s 2; 1996 c 305 art 2 s 1; 1997 c 98 s 16; 1997 c 187 art 5 s 6; 1997 c 202 art 2 s 8; 1998 c 254 art 1 s 4; 2005 c 16 s 1*

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14.48 OFFICE OF ADMINISTRATIVE HEARINGS.

Subdivision 1. **Creation.** A state Office of Administrative Hearings is created.

Subd. 2. **Chief administrative law judge.** The office shall be under the direction of a chief administrative law judge who shall be learned in the law and appointed by the governor, with the advice and consent of the senate, for a term ending on June 30 of the sixth calendar year after appointment. Senate confirmation of the chief administrative law judge shall be as provided by section 15.066. The chief administrative law judge may hear cases and shall appoint additional administrative law judges and compensation judges to serve in the office as necessary to fulfill the duties of the Office of Administrative Hearings. The chief administrative law judge may delegate to a subordinate employee the exercise of a specified statutory power or duty as deemed advisable, subject to the control of the chief administrative law judge. Every delegation must be by written order filed with the secretary of state. The chief administrative law judge is subject to the provisions of the Minnesota Constitution, article VI, section 6, the jurisdiction of the Board on Judicial Standards, and the provisions of the Code of Judicial Conduct.

Subd. 3. **Administrative law judges and compensation judges.** (a) All administrative law judges and compensation judges shall be in the classified service except that the chief administrative law judge shall be in the unclassified service, but may be removed only for cause.

(b) All administrative law judges and workers' compensation judges must be learned in the law and must be free of any political or economic association that would impair their ability to function in a fair and impartial manner. Administrative law judges shall have demonstrated knowledge of administrative procedures and workers' compensation judges shall have demonstrated knowledge of workers' compensation laws.

(c) Only compensation judges shall conduct administrative conferences, hearings, or other workers' compensation proceedings within the jurisdiction of the Office of Administrative Hearings under chapter 176, unless the proceeding is required to be conducted under chapter 14. Conducting hearings in the administrative law area does not affect a workers' compensation judge's job class established pursuant to section 43A.07 or seniority within that job class. The chief administrative law judge shall annually notify the Department of Management and Budget of the amount of credit payable to the workers' compensation special fund for time spent by workers' compensation judges on non-compensation proceedings.

(d) Administrative law judges and compensation judges are subject to the provisions of the Code of Judicial Conduct. Administrative law and compensation judges may, however, serve as a member of a governmental board when so directed by the legislature. The chief administrative law judge shall provide training to administrative law and compensation judges about the requirements of the code and shall apply the provisions of the code to their actions. Only administrative law judges serving as temporary judges under a written contract are considered to be part-time judges for purposes of the code. Reports required to be filed by the code must be filed with the chief administrative law judge. The chief administrative law judge shall apply the provisions of the Code of Judicial Conduct, to the extent applicable, to the other

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administrative law and compensation judges in a manner consistent with interpretations made by the Board on Judicial Standards. The chief administrative law judge shall follow the procedural requirements of the commissioner's plan for state employees if any adverse personnel action is taken based in whole or in part as a violation of the Code of Judicial Conduct.

(e) In addition to other duties provided by law, workers' compensation and administrative law judges may mediate, arbitrate, or take other appropriate action on matters referred to the Office of Administrative Hearings by any member of the federal or state judicial branch or by the Workers' Compensation Court of Appeals.

Subd. 4. **Retired judges.** The chief administrative law judge may appoint a retired administrative law judge or compensation judge to hear any proceeding that is properly assignable to an administrative law judge or compensation judge. When a retired administrative law judge or compensation judge undertakes this service, the retired judge shall receive pay and expenses in the amount payable to temporary administrative law judges or compensation judges serving under section 14.49.

History: *1975 c 380 s 16; 1977 c 443 s 9,10; 1980 c 509 s 2; 1980 c 615 s 26-33; 1981 c 346 s 2-6; 1Sp1981 c 4 art 4 s 40; 1982 c 424 s 130; 1983 c 305 s 5; 1984 c 640 s 32; 1Sp1985 c 13 s 86; 1986 c 444; 1987 c 332 s 1; 1995 c 233 art 2 s 30; 2000 c 355 s 1; 1Sp2003 c 1 art 2 s 30; 2009 c 101 art 2 s 109; 2011 c 89 s 1,2; 2012 c 224 s 1*

14.49 TEMPORARY ADMINISTRATIVE LAW JUDGES.

When regularly appointed administrative law judges are not available, the chief administrative law judge may contract with qualified individuals to serve as administrative law judges. Such temporary administrative law judges shall not be employees of the state. Compensation judges must be employees of the state, except in the following instances: (1) when all available regularly appointed compensation judges are disqualified from a specific case under the Code of Judicial Conduct, the chief administrative law judge may contract with a workers' compensation attorney or former workers' compensation judge to serve as a compensation judge for that case; and (2) when regularly appointed workers' compensation judges are not available to hear pending cases on a timely basis, the chief administrative law judge may contract with a retired workers' compensation judge, formerly an employee of the state, to serve as a workers' compensation judge.

History: *1975 c 380 s 16; 1977 c 443 s 9,10; 1980 c 509 s 2; 1980 c 615 s 26-33; 1981 c 346 s 2-6; 1Sp1981 c 4 art 4 s 40; 1982 c 424 s 130; 1984 c 640 s 32; 2011 c 89 s 3; 2015 c 26 s 1*

14.50 HEARINGS BEFORE ADMINISTRATIVE LAW JUDGE.

All hearings of state agencies required to be conducted under this chapter shall be conducted by an administrative law judge assigned by the chief administrative law judge or by a workers' compensation judge assigned by the chief administrative law judge as provided in section 14.48. All hearings required to be conducted under chapter 176 shall be conducted by a compensation judge assigned by the chief administrative law judge. In assigning administrative law judges or compensation judges to conduct hearings under this chapter, the chief

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administrative law judge shall attempt to utilize personnel having expertise in the subject to be dealt with in the hearing. It shall be the duty of the judge to: (1) advise an agency as to the location at which and time during which a hearing should be held so as to allow for participation by all affected interests; (2) conduct only hearings for which proper notice has been given; (3) see to it that all hearings are conducted in a fair and impartial manner. Except in the case of workers' compensation hearings involving claims for compensation it shall also be the duty of the judge to make a report on each proposed agency action in which the administrative law judge functioned in an official capacity, stating findings of fact and conclusions and recommendations, taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action, (ii) fulfilled all relevant procedural requirements of law or rule, and (iii) in rulemaking proceedings, demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts.

History: *1975 c 380 s 16; 1977 c 443 s 9,10; 1980 c 509 s 2; 1980 c 615 s 26-33; 1981 c 346 s 2-6; 1Sp1981 c 4 art 4 s 40; 1982 c 424 s 130; 1984 c 640 s 32; 1986 c 444; 2000 c 355 s 2; 2005 c 16 s 2; 2011 c 89 s 4*

14.51 PROCEDURAL RULES.

The chief administrative law judge shall adopt rules to govern: (1) the procedural conduct of all hearings, relating to both rule adoption, amendment, suspension or repeal hearings, contested case hearings, and workers' compensation hearings, and to govern the conduct of voluntary mediation sessions for rulemaking and contested cases other than those within the jurisdiction of the Bureau of Mediation Services; and (2) the review of rules adopted without a public hearing. The chief administrative law judge may adopt rules to govern the procedural conduct of other hearings conducted by the Office of Administrative Hearings. The procedural rules shall be binding upon all agencies and shall supersede any other agency procedural rules with which they may be in conflict. The procedural rules shall include in addition to normal procedural matters provisions relating to the procedure to be followed when the proposed final rule of an agency is substantially different, as determined under section 14.05, subdivision 2, from that which was proposed. The procedural rules shall establish a procedure whereby the proposed final rule of an agency shall be reviewed by the chief administrative law judge on the issue of whether the proposed final rule of the agency is substantially different than that which was proposed or failure of the agency to meet the requirements of chapter 14. The rules must also provide: (1) an expedited procedure, consistent with section 14.001, clauses (1) to (5), for the adoption of substantially different rules by agencies; and (2) a procedure to allow an agency to receive prior binding approval of its plan regarding the additional notice contemplated under sections 14.101, 14.131, 14.14, 14.22, and 14.23. Upon the chief administrative law judge's own initiative or upon written request of an interested party, the chief administrative law judge may issue a subpoena for the attendance of a witness or the production of books, papers, records or other documents as are material to any matter being heard by the Office of Administrative Hearings. The subpoenas shall be enforceable through the district court in the district in which the subpoena is issued.

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History: *1975 c 380 s 16; 1977 c 443 s 9,10; 1980 c 509 s 2; 1980 c 615 s 26-33; 1981 c 346 s 2-6; 1Sp1981 c 4 art 4 s 40; 1982 c 424 s 130; 1984 c 640 s 32; 1Sp1985 c 13 s 87; 1986 c 444; 1987 c 384 art 2 s 1; 1995 c 233 art 2 s 31; 2005 c 16 s 3*

14.52 COURT REPORTERS; AUDIO RECORDINGS.

The Office of Administrative Hearings may maintain a court reporter system and in addition to or in lieu thereof may contract with nongovernmental sources for court reporter services. The court reporters may additionally be utilized as the chief administrative law judge directs. Unless the chief administrative law judge determines that the use of a court reporter is more appropriate, an audio magnetic recording device shall be used to keep a record at any hearing which takes place under this chapter. In all cases, the chief administrative law judge shall use audio magnetic recording devices to keep the record of hearings except when there are more than two primary parties in a case and the chief administrative law judge determines that the use of a court reporter is more appropriate. If the chief administrative law judge determines that the use of a court reporter is more appropriate, the cost of the court reporter shall be paid by the state. If the chief administrative law judge determines that the use of an audio magnetic recording device is more appropriate in a hearing, any party to that hearing may provide a court reporter at the party's expense. Court reporters provided by a party shall be selected from the chief administrative law judge's list of nongovernmental sources.

The fee charged by a court reporter to a party shall not exceed the fee which would be charged to the state pursuant to the court reporter's contract with the state.

Court reporters serving in the court reporter system of the Office of Administrative Hearings shall be in the classified service. Notwithstanding the provisions of section 15.17, subdivision 4, copies of transcriptions of hearings conducted pursuant to sections 14.48 to 14.56 may be obtained only through the Office of Administrative Hearings.

The departmental and classification seniority of an individual who was employed as a court reporter in state service prior to appointment as a court reporter in the Office of Administrative Hearings pursuant to Laws 1975, chapter 380, section 16, shall carry forward and be credited to the individual's employment with the Office of Administrative Hearings.

History: *1975 c 380 s 16; 1977 c 443 s 9,10; 1980 c 509 s 2; 1980 c 615 s 26-33; 1981 c 346 s 2-6; 1Sp1981 c 4 art 4 s 40; 3Sp1981 c 2 art 1 s 10; 1982 c 424 s 130; 1982 c 568 s 11; 1983 c 210 s 18; 1984 c 640 s 32; 1986 c 444*

14.53 COSTS ASSESSED.

Except as otherwise specifically provided by statute, the chief administrative law judge, in consultation with the commissioner of management and budget, shall assess agencies the cost of services rendered to them. All agencies shall include in their budgets provisions for such assessments.

History: *1975 c 380 s 16; 1977 c 443 s 9,10; 1980 c 509 s 2; 1980 c 615 s 26-33; 1981 c 346 s 2-6; 1Sp1981 c 4 art 4 s 40; 1982 c 424 s 130; 1984 c 640 s 32; 2005 c 16 s 4; 2009 c 101 art 2 s 109*

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Other Rulemaking Related Statutes and Laws

Minnesota Laws 2015, Chapter 63

Sec. 8. [EFFECTIVE DATE; APPLICATION]

(a) Sections 1 to 6 are effective January 1, 2016, and apply to a rule for which a notice of intent to adopt a rule without a public hearing, a notice of hearing, a dual notice, or a notice of the proposed rule repeal is published in the State Register on or after that date.

Editor's note: Sections 1 to 6 of Chapter 63, cited above, amend the various sections of Chapter 14 to 1) authorize electronic rules filings with the Office of Administrative Hearings, and 2) codify the practice for final steps of adopting and filing rules that OAH and the agencies have already been using.

Minnesota Laws 1995, Chapter 233, Article 2

Sec. 12. [14.125] [TIME LIMIT ON AUTHORITY TO ADOPT, AMEND, OR REPEAL RULES.]

An agency shall 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 rules to be adopted, amended, or repealed. If the notice is not published within the time limit imposed by this section, the authority for the rules expires. The agency shall not use other law in existence at the time of the expiration of rulemaking authority under this section as authority to adopt, amend, or repeal these rules. An agency that publishes a notice of intent to adopt rules or a notice of hearing within the time limit specified in this section may subsequently amend or repeal the rules without additional legislative authorization.

Sec. 58. [EFFECTIVE DATE.]

. . . Section 12 applies to laws authorizing or requiring rulemaking that are finally enacted after January 1, 1996. . . .

Editor's note: While this 1995 law is codified in Chapter 14, this section from the Session Law remains here for historical interest since the effective date of section 14.125 continues to govern rulemaking projects.

Minnesota Statutes, Chapter 43A

43A.04 GENERAL POWERS AND RESPONSIBILITIES OF COMMISSIONER.

. . .

Subd. 11. **Training for agency rulemaking staff.** The commissioner, in cooperation with the Office of Administrative Hearings, the attorney general, the revisor of statutes, and experienced agency rulemaking staff, shall provide training to agency staff involved in

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rulemaking, including information about the availability of mediators through the Office of Administrative Hearings.

The commissioner may charge agency staff a registration fee for attending this training. The fee must be set at a level that permits the commissioner to recover the costs, excluding costs of staff time for staff positions funded through general fund appropriations, of providing this training.

The Office of Administrative Hearings, the attorney general, agencies involved in providing this training, and the revisor of statutes shall not assess the commissioner for the cost of staff time to conduct the training provided under this subdivision.

Minnesota Statutes, Chapter 3

3.305 LEGISLATIVE COORDINATING COMMISSION; BICAMERAL LEGISLATIVE ADMINISTRATION.

. . .

Subd. 8. **Rule review.** Upon written request of two or more of its members or five or more members of the legislature, the Legislative Coordinating Commission shall review a state agency rule as defined in section 14.02, subdivision 4. The commission may perform this review by holding one or more commission meetings or by establishing a bicameral group as provided in subdivision 6 to hold these meetings.

3.841 LEGISLATIVE COORDINATING COMMISSION.

For purposes of sections 3.842 and 3.843, "commission" means the Legislative Coordinating Commission or a legislative commission or subcommittee established by the coordinating commission under section 3.305, subdivision 6, to exercise the powers and discharge the duties of the coordinating commission under sections 3.842 and 3.843 or other law requiring action by the coordinating commission on matters relating to administrative rules.

3.842 REVIEW OF RULES BY COMMISSION OR COMMITTEE.

Subdivision 1. **Purpose.** The commission shall promote adequate and proper rules by agencies and an understanding upon the part of the public respecting them.

Subd. 2. **Jurisdiction.** The jurisdiction of the commission includes all rules as defined in section 14.02, subdivision 4. The commission also has jurisdiction of rules filed with the secretary of state in accordance with sections 14.38, subdivisions 5, 6, 7, 8, 9, and 11; 14.386; and 14.388.

The commission may periodically review statutory exemptions to the rulemaking provisions of this chapter.

Subd. 3. **Hearings.** The commission may hold public hearings to investigate complaints with respect to rules if it considers the complaints meritorious and worthy of attention. If the rules that are the subject of the public hearing were adopted without a rulemaking hearing, it may request the Office of Administrative Hearings to hold the public hearing and prepare a

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report summarizing the testimony received at the hearing. The Office of Administrative Hearings shall assess the costs of the public hearing to the agency whose rules are the subject of the hearing.

Subd. 4a. **Objections to rules.** (a) For purposes of this subdivision, "committee" means the house of representatives policy committee or senate policy committee with primary jurisdiction over state governmental operations. The commission or a committee may object to a rule as provided in this subdivision. If the commission or a committee objects to all or some portion of a rule because the commission or committee considers it to be beyond the procedural or substantive authority delegated to the agency, including a proposed rule submitted under section 14.15, subdivision 4, or 14.26, subdivision 3, paragraph (c), the commission or committee may file that objection in the Office of the Secretary of State. The filed objection must contain a concise statement of the commission's or committee's reasons for its action. An objection to a proposed rule submitted by the commission or a committee under section 14.15, subdivision 4, or 14.26, subdivision 3, paragraph (c), may not be filed before the rule is adopted.

(b) The secretary of state shall affix to each objection a certification of the date and time of its filing and as soon after the objection is filed as practicable shall transmit a certified copy of it to the agency issuing the rule in question and to the revisor of statutes. The secretary of state shall also maintain a permanent register open to public inspection of all objections by the commission or committee.

(c) The commission or committee shall publish and index an objection filed under this section in the next issue of the State Register. The revisor of statutes shall indicate the existence of the objection adjacent to the rule in question when that rule is published in Minnesota Rules.

(d) Within 14 days after the filing of an objection by the commission or committee to a rule, the issuing agency shall respond in writing to the objecting entity. After receipt of the response, the commission or committee may withdraw or modify its objection.

(e) After the filing of an objection by the commission or committee that is not subsequently withdrawn, the burden is upon the agency in any proceeding for judicial review or for enforcement of the rule to establish that the whole or portion of the rule objected to is valid.

(f) The failure of the commission or a committee to object to a rule is not an implied legislative authorization of its validity.

(g) In accordance with sections 14.44 and 14.45, the commission or a committee may petition for a declaratory judgment to determine the validity of a rule objected to by the commission or committee. The action must be started within two years after an objection is filed in the Office of the Secretary of State.

(h) The commission or a committee may intervene in litigation arising from agency action. For purposes of this paragraph, agency action means the whole or part of a rule, or the failure to issue a rule.

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3.843 PUBLIC HEARINGS BY STATE AGENCIES.

By a vote of a majority of its members, the commission may request any agency issuing rules to hold a public hearing in respect to recommendations made under section 3.842, including recommendations made by the commission to promote adequate and proper rules by that agency and recommendations contained in the commission's biennial report. The agency shall give notice as provided in section 14.14, subdivision 1, of a hearing under this section, to be conducted in accordance with sections 14.05 to 14.28. The hearing must be held not more than 60 days after receipt of the request or within any other longer time period specified by the commission in the request.

[Repealed in 2015] **3.9223 COUNCIL ON AFFAIRS OF CHICANO/LATINO PEOPLE.**
Minn. Stat. § 3.9223 repealed by Minnesota Laws 2015, Chapter 77

3.985 RULE NOTES.

The governor or the chair of a standing committee to which a bill delegating rulemaking authority has been referred may require an agency to which the rulemaking authority is granted under a bill to prepare a rulemaking note on the proposed delegation of authority. The rulemaking note shall contain any of the following information requested by the governor or the chair of the standing committee: the reasons for the grant of authority; the person or groups the rules would impact; estimated cost of the rule for affected persons; estimated cost to the agency of adopting the rules; and any areas of controversy anticipated by the agency. The rulemaking note must be delivered to the governor and to the chair of the standing committee to which the bill delegating the rulemaking authority has been referred.

[New in 2018] Minnesota Statutes, Chapter 3C

3C.05 PROHIBITIONS AND LIMITATIONS.

Subdivision 1.General. The revisor, employees of the revisor's office, and persons assisting the office as part-time employees or independent contractors are subject to the following prohibitions and limitations:

(a) They may not reveal to any person not employed by the revisor's office the content or nature of a request for drafting services. The content of the request and documents and communications relating to the drafting service supplied is not public and is not subject to subpoena, search warrant, deposition, writ of mandamus, interrogatory, or other disclosure.

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Minnesota Statutes, Chapter 13

13.356 PERSONAL CONTACT AND ONLINE ACCOUNT INFORMATION.
(a) The following data on an individual collected, maintained, or received by a government entity for notification purposes or as part of a subscription list for an entity's electronic periodic publications as requested by the individual are private data on individuals:
(1) telephone number;
(2) email address; and
(3) Internet user name, password, Internet protocol address, and any other similar data related to the individual's online account or access procedures.
(b) Section 13.04, subdivision 2, does not apply to data classified under paragraph (a). Paragraph (a) does not apply to data submitted by an individual to the Campaign Finance Board to meet the legal requirements imposed by chapter 10A, to data submitted for purposes of making a public comment, or to data in a state agency's rulemaking email list.
(c) Data provided under paragraph (a) may only be used for the specific purpose for which the individual provided the data.

Minnesota Statutes, Chapter 16

16E.07 NORTH STAR.

...

Subd. 3. **Access to data.** The legislature determines that the greatest possible access to certain government information and data is essential to allow citizens to participate fully in a democratic system of government. Certain information and data, including, but not limited to the following, must be provided free of charge or for a nominal cost associated with reproducing the information or data:

(1) directories of government services and institutions, including an electronic version of the guidebook to state agency services published by the commissioner of administration;

(2) legislative and rulemaking information, including an electronic version of the State Register, public information newsletters, bill text and summaries, bill status information, rule status information, meeting schedules, and the text of statutes and rules;

(3) Supreme Court and Court of Appeals opinions and general judicial information;

(4) opinions of the attorney general;

(5) Campaign Finance and Public Disclosure Board and election information;

(6) public budget information;

(7) local government documents, such as codes, ordinances, minutes, meeting schedules, and other notices in the public interest;

(8) official documents, releases, speeches, and other public information issued by government agencies; and

(9) the text of other government documents and publications that government agencies determine are important to public understanding of government activities.

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Rulemaking Provisions of
2019 Minnesota Rules, Chapter 1400

Rule Manual Editor's Notes:

- This excerpt of Minnesota Rules includes only the rulemaking provisions of Minnesota Rules, chapter 1400, the Office of Administrative Hearings Rules governing rulemaking.
- The Editor produced this unofficial 2019 statement. We started with Chapter 1400's basic text from 2001 (pulled from the Revisor's website on 2/1/2002) and have rechecked each year since. The Editor confirmed on 8/15/2020 that no changes were made in the last year, so they remain identical to the 2001 version. Also, the Editor reformatted the text to resemble the printed rules.
- **Disclaimer:** While every attempt has been made to ensure that the information in this document is accurate and timely, this information is not intended to replace an official source. Having said that, this version of Minnesota Rules, chapter 1400, can be used as a handy reference.

MINNESOTA RULES - CHAPTER 1400
OFFICE OF ADMINISTRATIVE HEARINGS
APA PROCEEDINGS

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1400.0200 [Repealed, 20 SR 2058]
1400.0250 [Repealed, 20 SR 2058]
1400.0300 [Repealed, 20 SR 2058]
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1400.0850 [Repealed, 20 SR 2058]
1400.0900 [Repealed, 20 SR 2058]
1400.0950 [Repealed, 20 SR 2058]
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1400.1300 [Repealed, 15 SR 1595]
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GENERAL RULEMAKING PROVISIONS

1400.2000 SCOPE.

Parts 1400.2010 to 1400.2570 govern all proceedings by an agency for adopting any rule under Minnesota Statutes, chapter 14.

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474
HIST: 20 SR 2058; 26 SR 391

1400.2010 DEFINITIONS.

Subpart 1. **Scope.** The definitions in this part apply to parts 1400.2000 to 1400.2570.

Subp. 2. **Agency.** "Agency" has the meaning given in Minnesota Statutes, section 14.02, subdivision 2.

Subp. 3. **Chief administrative law judge or chief judge.** "Chief administrative law judge" or "chief judge" means the chief administrative law judge of the Office of Administrative Hearings.

Subp. 4. **Judge.** "Judge" means the administrative law judge assigned by the chief administrative law judge to conduct a rule hearing or review a rule.

Subp. 5. [Repealed, 26 SR 391]

Subp. 6. **Multimember agency.** "Multimember agency" means an agency described in Minnesota Statutes, section 15.0597, subdivision 1, paragraph (a), clause (1), and the Capitol Area Architectural and Planning Board.

Subp. 7. **Office.** "Office" means the Office of Administrative Hearings.

Subp. 8. **Revisor.** "Revisor" means the Revisor of Statutes.

Subp. 9. **Rule.** "Rule" has the meaning given in Minnesota Statutes, section 14.02, subdivision 4.

Subp. 10. **Substantially different.** "Substantially different" has the meaning given in Minnesota Statutes, section 14.05, subdivision 2, paragraph (b).

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474
HIST: 20 SR 2058; 26 SR 391

1400.2020 ASSIGNMENT AND DISQUALIFICATION OF JUDGE.

Subpart 1. **Assignment.** The chief judge must promptly assign a judge to a rule proceeding after the chief judge receives a request to schedule a rule hearing, or a filing from an agency under parts 1400.2060, 1400.2300, 1400.2400, 1400.2410, or 1400.2450. A request to schedule a rule hearing must include the documents listed in part 1400.2080, subpart 5.

Subp. 2. **Disqualification.** An assigned judge must withdraw from a rule proceeding at any time the judge decides that he or she is disqualified for any reason.

Subp. 3. **Disqualification by affidavit.** If an affected person files an affidavit of prejudice against a judge assigned to a rulemaking hearing, the chief judge must decide whether to disqualify the judge. The affidavit must be received by the chief judge at least five working days before the rulemaking hearing.

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474

HIST: 20 SR 2058; 26 SR 391

1400.2030 COUNTING TIME AND FILING DOCUMENTS.

Subpart 1. **Counting time.** To count a time period, the day of filing, mailing, publication, or other action is not counted and the last day of the time period is counted. Saturdays, Sundays, and legal holidays are included in calendar day time periods and are not included in working day time periods. If a calendar day time period ends on a Saturday, Sunday, or legal holiday, the time period ends on the next day which is not a Saturday, Sunday, or legal holiday. A time period is in calendar days unless it is stated as "working days."

Subp. 2. **Paper size.** All documents must be submitted to the office on standard size 8-1/2 inch by 11 inch paper, except:

A. handwritten comments from the public; and

B. exhibits.

Subp. 3. **Facsimile transmission.** A person may file any document with the office using facsimile transmission. Filing a facsimile is equivalent to filing the original document, and is effective when the office receives it. A transmission commenced before 4:30 p.m. on the last day of filing is timely filed. The person filing the document must mail or deliver the original signed document to the office within five days.

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474

HIST: 20 SR 2058; 26 SR 391

1400.2040 PETITION FOR RULEMAKING.

Subpart 1. **Content of petition.** A petition to an agency requesting rulemaking under Minnesota Statutes, section 14.09, must contain the following information:

A. the name and address of the petitioner;

B. the specific action (adoption, amendment, or repeal of an agency rule) requested by the petitioner; and

C. the need for the requested action.

Part 1400.2500 contains a recommended format for the petition.

Subp. 2. **Filing of petition with agency.** The petition must be filed with the executive director or head of the agency in person or by United States mail.

Subp. 3. **Agency response to petition.** The agency must reply in writing to the petition within 60 days after receiving it. The reply must meet the requirements of Minnesota Statutes, section 14.09, and be signed by a person authorized to adopt a rule or, for multimember agencies, by a member or officer.

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474

HIST: 20 SR 2058; 26 SR 391

1400.2050 REQUEST FOR COMMENTS ON POSSIBLE RULE.

An agency must comply with Minnesota Statutes, section 14.101, before publishing a notice of intent to adopt rules or notice of hearing. Part 1400.2510 is a recommended form for the published request for comments.

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474

HIST: 20 SR 2058; 26 SR 391

1400.2060 APPROVAL OF ADDITIONAL NOTICE PLAN.

Subpart 1. **Optional prior approval.** An agency may ask the office for approval of its plan for giving additional notice of its request for comments on possible rulemaking under Minnesota Statutes, section 14.101, or of its plan for giving additional notice of proposed rules under Minnesota Statutes, sections 14.131, 14.14, 14.22, and 14.23. If the agency requests approval of its additional notice plan, it must make the request and receive approval before it publishes the request for comments or the notice of proposed rules.

Subp. 2. **Filing.** An agency asking the office for approval of an additional notice plan must file with the office:

A. For additional notice plans under Minnesota Statutes, section 14.101:

(1) a description of its proposed additional notice plan;

(2) the agency's proposed request for comments on its possible rule; and

(3) an explanation of why the agency believes that its additional notice plan complies with Minnesota Statutes, section 14.101.

B. For additional notice plans under Minnesota Statutes, sections 14.131, 14.14, 14.22, and 14.23:

(1) a draft of the rules or a copy of the proposed rules certified as to form by the revisor;

(2) a draft or final copy of the statement of need and reasonableness under part 1400.2070, containing the agency's proposed notice plan;

(3) the agency's proposed notice of intent to adopt rules, notice of hearing, or dual notice under part 1400.2080; and

(4) an explanation of why the agency believes that its additional notice plan complies with Minnesota Statutes, section 14.14, subdivision 1a, or 14.22.

Subp. 3. **Review.** If a proposed additional notice plan is filed with the office, a judge must review, and approve or disapprove it within five working days after the office receives it. The judge must approve the notice plan if the judge finds that the notice plan meets the requirements of the applicable statute.

Subp. 4. **Approval or disapproval.** An approved additional notice plan is the office's final determination that the additional notice plan is adequate if the agency implements the additional notice plan. If the additional notice plan is disapproved, the judge must explain why and tell the agency what changes are necessary for approval. The agency may resubmit the additional notice plan for review after changing it. The judge must review and approve or disapprove the revised additional notice plan within five working days after the office receives it.

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474
HIST: 20 SR 2058; 26 SR 391

1400.2070 STATEMENT OF NEED AND REASONABLENESS.

Subpart 1. **General content.** The statement of need and reasonableness must summarize the evidence and argument that the agency is relying on to justify both the need for and the reasonableness of the proposed rules, and must state how the evidence rationally relates to the choice of action taken. The statement must explain the circumstances that created the need for the rulemaking and why the proposed rulemaking is a reasonable solution for meeting the need. The statement must be sufficiently specific so that interested persons will be able to fully prepare any testimony or evidence in favor of or in opposition to the proposed rules. A general description of the statute being implemented or restating the proposed rule is not sufficient. The statement must include:

A. citations to any economic, scientific, or other manuals or treatises the agency anticipates relying on;

B. citations to any statutes or case law the agency anticipates relying on;

C. if a hearing is scheduled, a list of any nonagency witnesses the agency anticipates asking to testify and a summary or description of their testimony;

D. a citation to the agency's grant of statutory authority to adopt the rule and, if the grant of authority was made after January 1, 1996, the effective date of the agency's statutory authority to adopt the rule; and

E. the date the statement is made available for public review.

The statement need not contain evidence and argument in rebuttal of evidence and argument presented by the public. If an agency is amending existing rules, the agency need not demonstrate the need for and reasonableness of the existing rules not affected by the proposed amendments.

Subp. 2. **Specific requirements.** The statement must also contain the following:

A. for rules to be adopted after a public hearing, the information required by Minnesota Statutes, section 14.131;

B. for rules to be adopted without a public hearing, the information required by Minnesota Statutes, section 14.23;

C. an explanation of what effort the agency made to obtain any information that it states could not be ascertained through reasonable effort; and

D. information required by any other law or rule to be included in the statement, or which the agency is required by law or rule to consider in adopting a rule. Examples include: Minnesota Statutes, section 16A.1285, subdivision 5 [Ed.'s note repealed in 1999]; 115.43, subdivision 1; 116.07, subdivision 6; or 144A.29, subdivision 4.

Subp. 3. **Timing.** The statement must be prepared on or before the signature date on the agency's notice of intent to adopt rules, notice of hearing, or dual notice. The agency must send a copy of the statement to the Legislative Reference Library when the notice is mailed.

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474
HIST: 20 SR 2058; 26 SR 391

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1400.2080 NOTICE OF PROPOSED RULE.

Subpart 1. **General content.** A notice of intent to adopt rules under Minnesota Statutes, section 14.22, must contain the information in subparts 2 and 3. A notice of hearing under Minnesota Statutes, section 14.14, must contain the information in subparts 2 and 4. A dual notice must contain the information in subparts 2, 3, and 4. Parts 1400.2520, 1400.2530, and 1400.2540 contain recommended forms for these notices.

Subp. 2. **Contents of all notices.** A notice of intent to adopt rules, notice of hearing, or dual notice must state:

A. that the agency intends to adopt a rule and identify the parts of Minnesota Statutes, chapter 14, and this chapter that the agency must follow;

B. a citation to the specific statutory authority for the rule;

C. that the proposed rule is attached to the notice or if the text of the proposed rule is not attached, a description of the nature and effect of the rule and how to obtain a free copy from the agency;

D. if applicable, that an entire rule is being repealed and a citation to the rule;

E. that the statement of need and reasonableness is available to the public, that the statement contains a summary of the justification for the proposed rule, including who will be affected by the proposed rule and an estimate of the probable cost of the proposed rule, and how to obtain a copy from the agency;

F. that the proposed rule can be modified if the modifications are supported by the information and comments submitted and do not make the rule substantially different;

G. that persons may request to be placed on the agency's mailing list to receive notice of future rule proceedings;

H. any other information required by law or rule to be included in the notice; and

I. the signature of the person authorized to give notice of intent to adopt rules, notice of hearing, or dual notice and the date the person signed the notice.

Subp. 3. **Additional contents for a notice of intent to adopt rules or dual notice.** A notice of intent to adopt rules without a public hearing or dual notice must state or include:

A. that the public may comment in support of or in opposition to the rule or any part of it, and that comment is encouraged;

B. the calendar date that the comment period ends, which must be at least 30 days after the date of publication;

C. that each comment should identify the part of the rule addressed, any change proposed, and the reason for the suggested change;

D. that if 25 or more persons submit a written request for hearing during the comment period, a public hearing must be held on the rule unless a sufficient number later withdraw their requests in writing;

E. that any person requesting a hearing must include his or her name and address, must identify the portion of the rule to which the person objects or a statement that the person objects to the entire rule, and that a request that does not provide this information is invalid and will not count when determining whether a public hearing must be held;

F. that any person requesting a hearing is encouraged to propose changes to the rule;

G. how persons must submit their comments or requests for hearing, including an email address if the agency will accept email comments or requests for hearing;

H. that if a public hearing is held the agency must proceed under Minnesota Statutes, sections 14.131 to 14.20;

I. that if no hearing is required the agency must, after adopting the rule, submit the rule and supporting documents to the office for review for legality;

J. that persons who wish to comment on the legality of the rule must do so during the 30-day comment period; and

K. that persons may request to be notified of the date that the rule is submitted to the office for review and how to make that request.

Subp. 4. **Additional contents for a notice of hearing or dual notice.** A notice of hearing or dual notice must state:

A. the time, date, and place of the hearing;

B. that all interested persons will have an opportunity to participate;

C. how interested persons may present their views at the hearing;

D. the procedure in part 1400.2230 for submitting written materials after the hearing;

E. that persons can ask the judge questions about the procedure, and the name, address, and telephone number of the judge;

F. that any person can ask to be notified of the date on which the judge's report will become available and that the request can be made at the hearing or in writing to the judge;

G. that any person can ask to be notified of the date on which the agency adopts the rule and files it with the secretary of state, and that the request can be made at the hearing or in writing to the agency;

H. that lobbyists must register with the Campaign Finance and Public Disclosure Board, that questions should be referred to the board, and the board's address and telephone number; and

I. that a hearing is ordered.

Subp. 5. **Scheduling of hearing, and approval of notice of hearing or dual notice.** The agency must request to schedule a rule hearing and obtain the judge's approval of any notice of hearing or dual notice prior to mailing it or publishing it in the State Register. The judge must also advise the agency as to when, where, and how many hearings should be held in order to allow for participation by all affected interests. A copy of the proposed rule with a certificate of approval as to form by the revisor of statutes attached, and a draft or final copy of the statement of need and reasonableness must be filed with a notice submitted for approval. The judge must review the proposed notice within five working days of receiving it and must either approve the notice or advise the agency how the notice must be revised.

Subp. 6. **Timing.** A notice of hearing or notice of intent to adopt rules must be mailed at least 33 days before the end of the comment period or the start of the hearing, and must be published in the State Register at least 30 days before the end of the comment period or the start of the hearing. A dual notice must be mailed at least 33 days before the end of the comment period and must be published in the State Register at least 30 days before the end of the comment period. If a hearing is required after using a dual notice, there must be at least ten days between the end of the comment period and the start of the hearing. Depositing a mailing in the state of Minnesota's central mail system for United States mail satisfies the mailing requirement of this subpart.

Subp. 7. **Certificates of mailing and accuracy of mailing list.** The agency must prepare a certificate of mailing the notice to the rulemaking mailing list and a certificate of accuracy of its rulemaking mailing list. Part 1400.2550 contains a recommended format for this document.

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474

HIST: 20 SR 2058; L 1997 c 202 art 2 s 63; 26 SR 391

1400.2085 NOTICE OF PROPOSED EXPEDITED RULE.

Subpart 1. **General content.** A notice of intent to adopt expedited rules under Minnesota Statutes, section 14.389, subdivisions 1 to 4, must contain the information in subpart 2. If an agency is accepting requests for a public hearing under Minnesota Statutes, section 14.389, subdivision 5, the notice must also contain the information in subpart 3. Part 1400.2570 contains recommended forms for these notices.

Subp. 2. **Contents of expedited rule notices.** All notices of intent to adopt expedited rules must state:

A. that the agency intends to adopt, amend, or repeal rules under the expedited process and identify the parts of this chapter and Minnesota Statutes, section 14.389;

B. a citation to the statutory authority for the rule and the statutory authority for the rule to be adopted under the expedited process;

C. that the proposed rule is attached to the notice or if the text of the proposed rule is not attached, a description of the nature and effect of the proposed rule and how to obtain a free copy from the agency;

D. if applicable, that an entire rule is being repealed and a citation to the rule;

E. that the public has 30 days to comment in support of or in opposition to the rule or any part of it, and that comment is encouraged;

F. how persons must submit their comments, including whether the agency will accept email comments;

G. the calendar date that the comment period ends;

H. that each comment should identify the part of the rule addressed, any change proposed, and the reason for the suggested change;

I. if no hearing is held, that the agency must, after adopting the rule, submit the rule to the office for review for legality;

J. that persons who wish to comment on the legality of the rule must do so during the 30-day comment period;

K. that persons may request to be notified of the date that the rule is submitted to the office for review and how to make that request;

L. that the proposed rule may be modified if the modifications do not make the rule substantially different as defined under Minnesota Statutes, section 14.05, subdivision 2, paragraphs (b) and (c);

M. that persons may request to be placed on the agency's mailing list to receive notice of future rule proceedings;

N. any other information required by law or rule to be included in the notice; and

O. the signature of the person authorized to give notice of intent to adopt rules.

Subp. 3. **Additional notice contents when agency accepts requests for public hearing.** If an agency publishes notice under Minnesota Statutes, section 14.389, subdivision 5, the notice must also state:

A. that if 100 or more persons submit a written request for hearing during the comment period, a public hearing must be held on the rules unless a sufficient number later withdraw their requests in writing;

B. that any person requesting a hearing must include that person's name and address, must identify the portion of the rule to which the person objects or a statement that the person objects to the entire rule, and that a request that does not provide this information is invalid and will not count when determining whether a public hearing must be held;

C. that any person requesting a hearing is encouraged to propose changes to the rule;

D. how persons must submit their request for hearing; and

E. that if a public hearing is held the agency must proceed under Minnesota Statutes, sections 14.131 to 14.20.

Subp. 4. **Timing.** All notices for expedited rules must be mailed at least 33 days before the end of the comment period, and must be published in the State Register at least 30 days before the end of the comment period. Depositing a mailing in the state of Minnesota's central mail system for United States mail satisfies the mailing requirement of this subpart.

Subp. 5. **Certificates of mailing and accuracy of mailing list.** The agency must prepare a certificate of mailing the notice to its rulemaking mailing list and a certificate of the accuracy of its mailing list.

Subp. 6. **Procedure when public hearing is required.** If a public hearing is required, the rule may be adopted by the agency only after complying with all of the requirements for rules adopted after a public hearing, Minnesota Statutes, sections 14.131 to 14.20. This includes preparing a statement of need and reasonableness and publishing and mailing a notice of rule hearing under Minnesota Statutes, section 14.14, subdivision 1a. In addition to the notice requirements in Minnesota Statutes, section 14.14, subdivision 1a, the agency must also send the notice of rule hearing to those persons who requested a public hearing.

STAT AUTH: MS s 14.51; 15.474

HIST: 26 SR 391

1400.2090 ORDER ADOPTING RULE.

An agency order adopting a rule must contain the following:

A. if any changes were made to the proposed rule in the adopted rule, a description of the changes, and an explanation of the reasons for the changes and why they do not make the rule substantially different, or, if the procedures in part 1400.2110 were followed, a statement that the agency followed the procedures in part 1400.2110 before adopting the changes;

B. a statement that the agency has complied with all notice and procedural requirements. For multimember agencies, the order must state that proposal of the rule was authorized by the agency and provide either:

(1) a copy of the authorization; or

(2) the date of the agency meeting where the person was authorized to do so, and state that a quorum was present and authorized proposal of the rule;

C. for rules adopted without a public hearing, the number of persons who requested a hearing, and the number of persons who withdrew their request;

D. the number of persons who requested notice that the rule has been submitted to the office;

E. a statement that the rule is needed and reasonable;

F. a statement that the rule is adopted by the agency; and

G. the signature of the person authorized to adopt the rule or sign the order and the date the person signed the order. For multimember agencies, the order must state that the person is authorized by the agency to sign the order and provide either:

(1) a copy of the authorization; or

(2) the date of the agency meeting where the rule was adopted, and state that a quorum was present and the agency authorized the person to sign the order adopting the rule.

Part 1400.2560 is a recommended form for an order adopting rules.

STAT AUTH: MS s 14.386; 14.388; 14.51

HIST: 20 SR 2058

1400.2100 STANDARDS OF REVIEW.

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

A. was not adopted in compliance with procedural requirements of this chapter, Minnesota Statutes, chapter 14, or other law or rule, unless the judge decides that the error must be disregarded under Minnesota Statutes, section 14.15, subdivision 5, or 14.26, subdivision 3, paragraph (d);

B. is not rationally related to the agency's objective or the record does not demonstrate the need for or reasonableness of the rule;

C. is substantially different than the proposed rule, and the agency did not follow the procedures of part 1400.2110;

D. exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by, its enabling statute or other applicable law;

E. is unconstitutional or illegal;

F. improperly delegates the agency's powers to another agency, person, or group;

G. is not a "rule" as defined in Minnesota Statutes, section 14.02, subdivision 4, or by its own terms cannot have the force and effect of law; or

H. is subject to Minnesota Statutes, section 14.25, subdivision 2, and the notice that hearing requests have been withdrawn and written responses to it show that the withdrawal is not consistent with Minnesota Statutes, section 14.001, clauses (2), (4), and (5).

STAT AUTH: MS s 14.386; 14.388; 14.51

HIST: 20 SR 2058

1400.2110 PROCEDURE TO ADOPT SUBSTANTIALLY DIFFERENT RULES.

Subpart 1. **Required procedure.** An agency may adopt a substantially different rule if it has complied with the procedures in this part.

Subp. 2. **Notice.** The agency must mail or deliver to each person or group that made a written or oral comment during the comment period or registered at the rule hearing, if the person's address is known to the agency:

A. a copy of the substantially different rule; and

B. a statement that tells the recipient that the chief judge found the rule to be substantially different, explains the agency's reasons for modifying the rule, tells the recipient that the agency must accept written comments for 15 days, and gives the date the comment period ends.

Subp. 3. **Filing.** After considering any comments received, the agency must submit the documents listed in subpart 2 and any written responses to the chief judge.

Subp. 4. **Review.** The chief judge must review the agency's filing to decide whether:

A. the agency has met the requirements of this part;

B. the substantially different modifications to the rule are based on comments or evidence in the record;

C. the substantially different rule complies with part 1400.2100; and

D. in light of the nature of the substantially different modification and the course of the rule proceeding, it would not be fair to affected persons to allow the agency to adopt the modification without initiating a new rule proceeding.

The chief judge must either approve or disapprove the substantially different rule within ten days after the office receives it, unless it is withdrawn by a person authorized to withdraw the rule.

Subp. 5. **Rule adoption.** The agency may adopt the substantially different rule five working days after it has received the chief judge's written approval.

Subp. 6. **Effect of disapproval.** If the chief judge decides that the substantially different modifications must be disapproved under subpart 4, the agency may not adopt them without initiating and completing a new rule proceeding.

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474

HIST: 20 SR 2058; 26 SR 391

RULEMAKING HEARINGS

1400.2200 APPLICABILITY.

Parts 1400.2200 to 1400.2240 apply to rule hearings and review of rules adopted by agencies under Minnesota Statutes, sections 14.131 to 14.20.

STAT AUTH: MS s 14.386; 14.388; 14.51

HIST: 20 SR 2058

1400.2210 CONDUCT OF HEARING.

Subpart 1. **Registration of participants.** All persons who present evidence or ask questions must register with the judge before presenting evidence or asking questions at the hearing. Any person may register whether or not they speak at the hearing. Those who register must legibly print their names, addresses, telephone numbers, and the names of any individuals or associations that the persons represent at the hearing on a register provided by the judge. Persons may request on the register to be informed when the judge's report is available. Persons may also request on the register that the agency inform them when the agency adopts the rules and files them with the secretary of state.

Subp. 2. **Introduction by judge.** The judge must start the hearing and must explain the purpose of the hearing and the procedure to be followed. The judge must explain how written materials can be submitted after the hearing under part 1400.2230. The judge must also explain the requirements for registration of lobbyists under Minnesota Statutes, chapter 10A.

Subp. 3. **Agency presentation.** The agency representatives and witnesses must identify themselves for the record. The agency must then make its presentation under part 1400.2220. Presentation by the agency of evidence not summarized in the statement of need and reasonableness, other than bona fide rebuttal, constitutes grounds for the judge, upon proper motion by any interested person, to recess the hearing to allow all interested persons an opportunity to prepare evidence in opposition to the newly presented evidence. The hearing recess must not exceed 25 days.

Subp. 4. **Opportunity for questions.** Interested persons may ask questions of the agency representatives or witnesses and other interested persons who speak. Agency representatives may question interested persons who speak. The questions may relate to the purpose or intended operation of the proposed rules, a suggested modification, or may be conducted for other purposes if material to the evaluation or formulation of the proposed rules.

Subp. 5. **Opportunity to present statements and evidence.** Interested persons may present oral and written statements and evidence regarding the proposed rules.

Subp. 6. **Questioning by judge.** The judge may question the agency representatives and witnesses and other interested persons who speak.

Subp. 7. **Further agency evidence.** The agency may present any further evidence that it considers appropriate in response to statements made by interested persons. Interested persons may respond to this evidence.

Subp. 8. **Powers of judge.** Consistent with law, the judge is authorized to do all things necessary and proper to conduct the hearing and to promote justice, fairness, and economy. This includes but is not limited to: presiding at the hearing; administering oaths or affirmations when appropriate; hearing and ruling on objections and motions; questioning witnesses where necessary to make a complete record; ruling on the admissibility of evidence and striking from the record objectionable evidence; limiting repetitive or immaterial oral statements and questioning; and determining the order of making statements and questions.

Subp. 9. **Court reporters.** Minnesota Statutes, section 14.52, governs the use of court reporters.

Subp. 10. **Transcript.** A transcript of the hearing must be made if requested by the agency, the attorney general, the chief judge, or any interested person. If a transcript is requested by an interested person, that person must pay for the original and one copy. Otherwise, the agency must pay for the original and any copies it requires. Any interested person may purchase a copy of a transcript once the original has been ordered by another person. The cost of an original or copy of a transcript must be determined by the office's contract with court reporters. When a transcript has been prepared, the original must be filed with the office. When a transcript has been prepared after the judge's report is issued, the original must be filed with the office and forwarded to the agency as soon as the office has completed its recordkeeping.

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474
HIST: 20 SR 2058; 26 SR 391

1400.2220 AGENCY PRESENTATION AT HEARING.

Subpart 1. **Rulemaking documents.** The agency must place into the hearing record the following documents:

A. the request for comments published in the State Register;

B. the petition for rulemaking, if the rule was proposed in response to it;

C. the proposed rule, 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 agency sent a copy of the statement of need and reasonableness to the Legislative Reference Library;

F. the notice of hearing or dual notice as mailed and as published in the State Register;

G. the certificate of mailing the notice of hearing and certificate of accuracy of its mailing list. Part 1400.2550 is a recommended certificate form;

H. a certificate of additional notice if given or a copy of the transmittal letter;

I. any written comments on the proposed rule received by the agency during the comment period;

J. if the chief judge has authorized the agency to omit from the notice of hearing published in the State Register the text of any proposed rule, 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 this rule. Examples include Minnesota Statutes, section 3.9223, subdivision 4 (council of Chicano/Latino people), 14.111 (farming operations), or 14.116 (notice to legislators).

Subp. 2. **Copies available.** The agency must have copies of the proposed rules and the statement of need and reasonableness available at the hearing.

Subp. 3. **Showing.** The agency must make its affirmative presentation of facts showing the need for and the reasonableness of the proposed rules and must present any other evidence necessary to fulfill all substantive and procedural requirements of law or rule. The agency may choose to rely on the statement of need and reasonableness as its presentation and the statement may be introduced as an exhibit into the record as though read.

Subp. 4. **Agency representatives present.** Agency representatives or other persons thoroughly familiar with the proposed rules and the statement of need and reasonableness must be available at the hearing for questioning by the judge and other interested persons or to briefly summarize all or a portion of the statement if requested by the judge.

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474
HIST: 20 SR 2058; 26 SR 391

1400.2230 WRITTEN COMMENTS AFTER HEARING AND CLOSE OF HEARING RECORD.

Subpart 1. **Written comments.** The judge must allow written comments to be submitted into the hearing record by the agency and all interested persons for five working days after the hearing ends, and may extend this time to no more than 20 days after the hearing ends. In its comment, the agency may state whether there are rule modifications that it intends to adopt. The office must receive the written comments no later than 4:30 p.m. on the last day for submission.

Subp. 2. **Written responses.** The office must allow the agency and all interested persons to review the submissions received under subpart 1 and must allow them a rebuttal period of five working days to respond in writing to any new information submitted. The office must receive the responses no later than 4:30 p.m. on the last day. In its response, the agency may state whether there are rule modifications that the agency intends to adopt. Additional evidence may not be submitted during this rebuttal period. The written responses are part of the hearing record.

Subp. 3. **Close of hearing record.** The hearing record closes on the last date for receipt of written responses filed under subpart 2.

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474

HIST: 20 SR 2058; 26 SR 391

1400.2240 ADMINISTRATIVE LAW JUDGE'S REPORT.

Subpart 1. **Report.** The judge must prepare a report on the rule within 30 days after the hearing record closes, unless an extension is granted by the chief judge under Minnesota Statutes, section 14.15, subdivision 2.

Subp. 2. **Standard of review.** The judge or chief judge must review the hearing record and must disapprove the rule if the judge makes any of the findings in part 1400.2100, items A to G.

Subp. 3. **Approval.** If the judge approves the rule, the judge must promptly send the original report and the hearing record to the agency. The agency and the office must make copies of the report available to any interested person at reasonable cost. The agency may not adopt the rule for at least five working days after receiving the report, so that interested persons may examine it.

Subp. 4. **Disapproval; review by chief judge.** If the judge disapproves the rule, the judge must submit the report and the hearing record to the chief judge for review. The chief judge must review the rule and the judge's report and prepare a report within ten days. If the chief judge disapproves the rule, the chief judge must explain why and tell the agency what changes or actions are necessary for approval. The chief judge must promptly send the chief judge's report, the judge's report, and the hearing record to the agency. The agency must resubmit the rule to the chief judge for review after changing it. The agency may also request that the chief judge reconsider the disapproval. The chief judge must review and approve or disapprove the changed rule or a request for reconsideration within five working days after the office receives it.

Subp. 5. **New changes to rule.** If the agency wants to adopt the rule with changes other than those recommended by the judge or chief judge, the agency must submit to the chief judge:

A. the rule initially proposed;

B. the agency's proposed order adopting rules; and

C. the rule, showing the agency's changes. The chief judge may request that the agency also return the hearing record. The chief judge must review the agency's changes to decide if they make the rule substantially different than the proposed rule. The chief judge must make a written decision within ten days after the office receives the rule.

Subp. 6. **Disapproval of need and reasonableness.** If the chief judge disapproves the rule because the agency has not shown it to be needed and reasonable, and if the agency chooses not to follow the chief judge's recommended corrections, the agency must submit the rule to the legislative coordinating commission and the house of representatives and senate policy committees with primary jurisdiction over state governmental operations, for review under Minnesota Statutes, section 14.15, subdivision 4.

Subp. 7. **Disapproval based on substantial difference.** If the chief judge disapproves the rule because it is substantially different than the proposed rule, the agency may end the rule proceeding, may start a new rule proceeding to adopt the substantially different rule, or may proceed under part 1400.2110. The agency may adopt the portions of the rules which are not substantially different.

Subp. 8. **Withdrawal of rule.** The agency may withdraw a rule by submitting a notice of withdrawal to the chief judge signed by a person authorized to withdraw the rule. Withdrawing a rule is appropriate unless the withdrawal of a rule or a portion of the rule makes the remaining rules substantially different. The notice must explain the person's authority to withdraw the rule. The office must return the agency's filing promptly after receiving this notice.

Subp. 9. **Effect of disapproval.** Disapproval of a rule or part of a rule is binding on the agency to the extent specified in Minnesota Statutes, sections 14.15, subdivisions 3 and 4, and 14.16.

Subp. 10. **Rule adoption.** Once the judge or chief judge approves the rule or the review period for the legislative coordinating commission and the house of representatives and senate policy committees with primary jurisdiction over state governmental operations has passed, the office must file three copies of the rule with the secretary of state. The agency may adopt the rule by executing an order adopting the rule. After the rule is adopted, the agency may publish a notice of rule adoption in the State Register.

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474

HIST: 20 SR 2058; 26 SR 391

RULES ADOPTED WITHOUT A PUBLIC HEARING

1400.2300 REVIEW OF RULES ADOPTED WITHOUT A PUBLIC HEARING.

Subpart 1. **Applicability.** Parts 1400.2300 and 1400.2310 apply to review of rules adopted by agencies under Minnesota Statutes, sections 14.22 to 14.28.

Subp. 2. **Filing.** The agency must file with the office the documents listed in part 1400.2310.

Subp. 3. **Review.** A judge must review the agency's filing and either approve or disapprove it within 14 days after the office receives it, unless it is withdrawn. In reviewing the filing, the judge must decide whether the rule meets the standards of part 1400.2100.

Subp. 4. **Withdrawal of rule.** The agency may withdraw a rule from review by submitting a notice of withdrawal to the chief judge signed by a person authorized to withdraw the rule. Withdrawing a rule is appropriate unless the withdrawal of a rule or a portion of the rule makes the

remaining rules substantially different. The notice must explain the person's authority to withdraw the rule. The office must return the agency's filing promptly after receiving this notice.

Subp. 5. **Approval.** If the rule is approved either on initial review or on resubmission, the agency may publish notice of adoption of the rule in the State Register. The office must file three copies of the rule with the secretary of state. The office must notify those persons who requested notification that the judge's decision is available. The office must also send a copy of the judge's decision to the legislative coordinating commission, the revisor, and the attorney general. The office must send the agency a copy of its decision and promptly return the agency's filing.

Subp. 6. **Disapproval.** If the rule is disapproved, the judge must state in writing the reasons for the disapproval and recommend what changes or actions are necessary for approval. The written reasons for disapproval must then be submitted to the chief judge for review. The chief judge shall approve or disapprove the judge's determination within five working days and shall state the reasons in writing and shall advise the agency what changes are required for approval. The office must notify those persons who requested notification that the chief judge's report is available. The office also must send a copy of the chief judge's decision to the office of the governor, the legislative coordinating commission, the revisor, the attorney general, and the house of representatives and senate policy committees with primary jurisdiction over state governmental operations. Minnesota Statutes, section 14.26, subdivision 3, governs the effect of any disapproval. The chief judge shall then promptly send the rule record to the agency.

Subp. 7. **Disapproval based on substantial difference.** If the chief judge disapproves a rule because it is substantially different than the proposed rule, the agency may end the rule proceeding, may start a new rule proceeding to adopt the substantially different rule, or may proceed under part 1400.2110. The agency may adopt the portions of the rules which are not substantially different.

Subp. 8. **Resubmission.** The agency must resubmit the rule to the chief judge for review after changing it. The agency may also request that the chief judge reconsider the disapproval. When the agency resubmits the rule for review, it must file with the office:

A. the rule as initially proposed;

B. the rule with the agency's proposed changes; and

C. the agency's amended order adopting rules. The order must include an explanation of the changes, why they solve the problems identified by the chief judge, and why they do not result in a substantially different rule.

The chief judge may request that the agency also return the rule record. The chief judge must review the resubmitted rule and decide whether it meets the standards of part 1400.2100 within five working days of receiving it. Minnesota Statutes, section 14.26, subdivision 3, governs the effect of any disapproval.

Subp. 8a. **New modifications to rule.** If the agency wants to adopt the rule with modifications other than those recommended by the judge or chief judge, the agency must submit to the chief judge the filings under subpart 8.

The chief judge must review the agency's modifications to decide if they make the rule substantially different than the proposed rule. The chief judge must make a written decision within five working days after the office receives the rule.

Subp. 9. **Disapproval of need and reasonableness.** If the chief judge disapproves the rule because the agency has not shown it to be needed and reasonable, and if the agency chooses not to

follow the chief judge's recommended corrections, the agency must submit the rule to the legislative coordinating commission, and to the house of representatives and senate policy committees with primary jurisdiction over state governmental operations for review under Minnesota Statutes, section 14.26, subdivision 3, paragraph (c).

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474

HIST: 20 SR 2058; 26 SR 391

1400.2310 DOCUMENTS TO BE FILED.

The agency must file the following documents with the office:

A. the request for comments published in the State Register;

B. the petition for rulemaking, if the rule was proposed in response to it;

C. the proposed rule, 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 judge authorized the agency to omit from the notice of intent to adopt rules published in the State Register the text of any proposed rule, a copy of the document authorizing the omission;

G. the certificate of mailing the notice of intent to adopt rules and certificate of accuracy of its mailing list;

H. a certificate of additional notice, if given, or a copy of the transmittal letter;

I. a copy of the transmittal letter or certificate showing that the agency sent a copy of the statement of need and reasonableness to the Legislative Reference Library;

J. all written comments and submissions on the proposed rule received during the comment period, requests for hearing, and withdrawals of requests for hearing received by the agency, 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 rule, showing any modifications to the proposed rule and the revisor's approval of them;

M. if the agency adopted a substantially different rule 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 rule that complies with the requirements in part 1400.2090;

O. the notice of submission of the rule to the office, if anyone requested this notice, and a copy of the transmittal letter or certificate showing that the agency 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 this rule. Examples include Minnesota Statutes, section 3.9223, subdivision 4 (council of Chicano/Latino people), 14.111 (farming operations), or 14.116 (notice to legislators).

Part 1400.2550 is a recommended certificate form. Part 1400.2560 is a recommended order adopting rules.

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474
HIST: 20 SR 2058; 26 SR 391

EXEMPT RULES

1400.2400 REVIEW OF EXEMPT RULES.

Subpart 1. **Applicability.** This part applies to review of rules adopted by agencies under Minnesota Statutes, sections 14.386 and 14.388.

Subp. 2. **Filing.** The agency must file with the office:

A. the rule, including the revisor's approval; and

B. a proposed order adopting the rule, which must include any explanation needed to support the legality of the rule, and:

(1) the citation to the rule's statutory exemption from the rulemaking procedures of Minnesota Statutes, chapter 14, and any argument needed to support the claim of exemption; or

(2) an explanation of why the rule meets the requirements of the good cause exemption under Minnesota Statutes, section 14.388; and

(3) any other information required by law or rule.

Subp. 3. **Review.** A judge must review the agency's filing and either approve or disapprove it within 14 days after the office receives it. In reviewing the filing, the judge must decide whether the rule meets the standards of part 1400.2100, items A and D to G, and whether the agency has established its exemption from rulemaking under Minnesota Statutes, section 14.386 or 14.388.

Subp. 4. **Approval.** If the rule is approved, the agency may publish it in the State Register. If the rule is approved either on initial review or on resubmission, the office must file three copies of the rule with the secretary of state. The office must also send a copy of the judge's decision to the legislative coordinating commission, the revisor, and the attorney general. The office must send the agency a copy of the judge's decision and promptly return the agency's filing.

Subp. 4a. **Disapproval.** If the rule is disapproved, the judge must tell the agency why and what changes are necessary for approval or why the rule is not exempt from rulemaking procedures. The agency must resubmit the rule to the judge for review after changing it. The judge must review and approve or disapprove the rule within five working days after receiving it. A rule does not take effect unless approved.

Subp. 5. **Review by chief judge.** An agency may ask the chief judge to review a rule that has been disapproved by a judge. The agency must make this request within five working days of receiving the judge's decision. The chief judge must review the agency's filing and, within 14 days of receiving it, either approve or disapprove it under the standards in subpart 3.

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474
HIST: 20 SR 2058; 26 SR 391

1400.2410 REVIEW OF EXPEDITED RULES ADOPTED WITHOUT A PUBLIC HEARING.

Subpart 1. **Applicability.** This part applies to review of expedited rules adopted by agencies under Minnesota Statutes, section 14.389, where no public hearing is held.

Subp. 2. **Filing.** The agency must file the following documents with the office:

A. the proposed rule, including the revisor's approval;

B. the notice of intent to adopt expedited rules as mailed and as published in the State Register;

C. the certificate of mailing the notice of intent to adopt expedited rules and certificate of the accuracy of its mailing list;

D. a certificate of additional notice, if given, or a copy of the transmittal letter;

E. all written comments and submissions on the proposed rule;

F. 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;

G. one copy of the adopted rule, showing any modifications to the proposed rule and the revisor's approval of them;

H. if the agency adopts a substantially different rule 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;

I. the order adopting the rule that complies with the requirements in part 1400.2090;

J. the notice of submission of the rule to the office, if anyone requested this notice, and a copy of the transmittal letter or certificate showing that the agency sent this notice; and

K. any other document or evidence to show compliance with any other law or rule that the agency is required to follow in adopting this rule.

Subp. 3. **Review.** A judge must review the agency's filing and either approve or disapprove it within 14 days after the office receives it, unless it is withdrawn. In reviewing the filing, the judge must decide whether the rule meets the standards of part 1400.2100, items A and C to H.

Subp. 4. **Withdrawal of rule.** The agency may withdraw an expedited rule from review by submitting a notice of withdrawal signed by a person authorized to withdraw the rule unless the withdrawal of the rule or a portion of the rule makes the remaining rules substantially different. The notice of withdrawal must explain the person's authority to withdraw the rule. The office must return the agency's filing promptly after receiving this request.

Subp. 5. **Approval.** If the expedited rule is approved, either on initial review or on resubmission, the agency may publish the notice of adoption in the State Register. If the final expedited rule is different from the rule originally published in the State Register, the agency must publish a copy of the changes in the State Register. The agency must file one copy of the rule with the governor. The office must file three copies of the rule with the secretary of state. A rule does not take effect unless approved.

Subp. 6. **Disapproval.** If the rule is disapproved, the judge must state in writing the reasons for the disapproval and what changes or actions are necessary for approval. The agency must resubmit the rule to the judge for review after changing it.

The judge must review and approve or disapprove the resubmitted rule within five working days after receiving it.

Subp. 7. **Administrative law judge's decision.** The office must notify those persons who requested notification that the judge's decision is available. The office must send a copy of the judge's decision to the legislative coordinating commission, the revisor, and the attorney general.

The office must also send the agency a copy of the judge's decision and promptly return the agency's filing.

Subp. 8. **Review by chief judge.** An agency may ask the chief judge to review an expedited rule that has been disapproved by a judge. The agency must make this request within five working days of receiving the judge's decision. The chief judge must review the agency's filing and, within 14 days of receiving it, either approve or disapprove it under the standards of subpart 3.

STAT AUTH: MS s 14.51; 15.474

HIST: 26 SR 391

MEDIATION

1400.2450 MEDIATION.

Subpart 1. **Request.** An agency may ask the chief judge to assign a judge to be a neutral party assisting in mediating or negotiating a resolution to disputes relating to proposed rules. The chief judge must assign a judge and notify the agency of the assignment within ten days after receiving the agency's written request.

Subp. 2. **Scheduling and notice.** The assigned judge must contact the agency to establish a date, time, and place for the first mediation session and to assist the agency in giving notice of the mediation. The agency must give notice of the mediation by publishing a notice in the State Register at least 15 days before the session and by mailing the notice to all persons registered with the agency to receive rulemaking notices.

Subp. 3. **Conduct of judge.** The judge assigned must not communicate, either directly or indirectly, about any facts or issues in the mediation with any person not participating in the mediation unless authorized to do so by all persons involved in the mediation.

Subp. 4. **Procedures and guidelines.** Procedures and guidelines for the mediation sessions must be established at the first session by agreement of all participants.

Subp. 5. **Subsequent sessions.** If additional mediation sessions are needed, the date, time, and place must be determined by agreement of the participants or by the judge if the participants do not agree. The judge must give notice of future sessions orally to the participants present and by mail to any persons who have indicated a desire to participate but who are not present.

Subp. 6. **Termination.** The mediation terminates either when the agency decides to terminate it or when the agency and the participants sign an agreement resolving the disputed issues.

Subp. 7. **Involvement of mediation judge in subsequent proceedings.** The mediation judge shall not be assigned to any subsequent rule hearing or review that involves the rule that was the subject of the mediation.

Subp. 8. **Compliance with other requirements.** The agency must comply with all requirements of law or rule in subsequently adopting a rule on which agreement was reached through mediation under this part.

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474

HIST: 20 SR 2058; 26 SR 391

RULEMAKING FORMS

1400.2500 PETITION FOR RULEMAKING.

PETITION FOR RULEMAKING TO THE MINNESOTA DEPARTMENT OF _____

Name: _____
Group Represented or Title: _____
Address: _____
_____

I request that the agency named above (check one):
____ Adopt a new rule governing_____
____ Amend Minnesota Rules, part(s) _____
____ Repeal Minnesota Rules, part(s) _____

1. Explain the need or reason for the rulemaking you request. The agency will consider your reasons in making its decision, so your explanation must be detailed. You can use additional pages.

2. For a new rule, state the proposed new language of the rule. For rule amendments, repeat the text of the rule, striking through deletions and underlining new language. If you cannot provide new rule language, then write a detailed description of the rule that you are requesting. You can use additional pages.

You must file this petition with the executive director or head of the agency in person or by United States mail. The agency must reply in writing to your petition within 60 days after receiving it.

DATE:_____ _____
Signature of Petitioner

STAT AUTH: MS s 14.386; 14.388; 14.51
HIST: 20 SR 2058

1400.2510 RECOMMENDED REQUEST FOR COMMENTS ON POSSIBLE RULE.

Minnesota Department of _____

REQUEST FOR COMMENTS

Possible (Amendment to) (Repeal of) Rule Governing_____ , Minnesota Rules _____(citation to rule).

Subject of Rule. The _____ (name of department) requests comments on its possible (amendment to) (repeal of) rule governing _____. The department is considering (a rule) (rule amendments) (repealing its rule) that _____ (detailed description of subject matter of rule).

Persons Affected. The (amendment to) (repeal of) the rule would likely affect _____ (description of types of groups and individuals likely to be affected). (Optional): The department does (not) contemplate appointing an advisory committee to comment on the possible rule.

Statutory Authority. Minnesota Statutes, section _____ (section number), (authorizes) (requires) the department to adopt rules for _____ (brief description of statutory authority).

Public Comment. Interested persons or groups may submit comments or information on this possible rule in writing or orally until 4:30 p.m. on _____ (date). The department (insert either: (has) (has not yet) prepared a draft of the possible rule (amendment) (repeal) OR does not anticipate that a draft of the rule (amendment) (repeal) will be available before the publication of the proposed rule). Written or oral comments, questions (requests to receive a draft of the rule) (when it has been prepared), and requests for more information on this possible rule should be addressed to: _____ (name, address, telephone number, and email address [optional] of staff person).

Comments submitted in response to this notice may not be included in the formal rulemaking record when a proceeding to adopt a rule is started.

_____
Commissioner

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474
HIST: 20 SR 2058; 26 SR 391

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1400.2520 RECOMMENDED NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING.

Minnesota Department of _____

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Proposed (Amendment to) (Repeal of) Rule Governing _____ , Minnesota Rules _____ (citation to rule).

Introduction. The (department name) intends to adopt a rule without a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, parts 1400.2300 and 1400.2310, and the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. You may submit written comments on the proposed rule and may also submit a written request that a hearing be held on the rule until_____(date).

Agency Contact Person. Comments or questions on the rule and written requests for a public hearing on the rule must be submitted to: _____ (name, agency, address, telephone number, and fax number [optional]). (You may submit email comments, questions, or requests for a public hearing to: _____(email address)) [optional].

Subject of Rule and Statutory Authority. The proposed rule is about (subject of rule, and if applicable, that an entire rule is being repealed and a citation to the rule). The statutory authority to adopt this rule is (specific statutory citation). A copy of the proposed rule is published in the State Register and attached to this notice as mailed. (If the proposed rule is not attached to the mailed notice, then this notice must include an easily readable and understandable description of the rule's nature and effect and include the announcement that: A free copy of the rule is available upon request from the agency contact person listed above.)

Comments. You have until ____ p.m. on _____, ____, to submit written comment in support of or in opposition to the proposed rule and any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed rule addressed and the reason for the comment. You are encouraged to propose any change desired. Any comments that you would like to make on the legality of the proposed rule must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by ____ p.m. on _____, ____. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rule to which you object or state that you oppose the entire rule. Any request that does not comply with these requirements is not valid and cannot be counted by the agency for determining whether

a public hearing must be held. You are also encouraged to state the reason for the request and any changes you want made to the proposed rule.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, a public hearing will be held unless a sufficient number 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 effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

Modifications. The proposed rule may be modified as a result of public comment. The modifications must be supported by comments and information submitted to the agency, and the adopted rule may not be substantially different than this proposed rule unless the procedure under part 1400.2110 has been followed. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

Statement of Need and Reasonableness. A statement of need and reasonableness is now available from the agency contact person. This statement contains a summary of the justification for the proposed rule, including a description of who will be affected by the proposed rule and an estimate of the probable cost of the proposed rule.

Other notices required by law or chosen to be inserted in this notice.

Adoption and Review of Rule. If no hearing is required, the agency may adopt the rule after the end of the comment period. The rule and supporting documents will then be submitted to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rule is submitted to the office. If you want to be so notified, or want to receive a copy of the adopted rule, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Dated: _____

_____
Name
Title

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474
HIST: 20 SR 2058; L 1998 c 154 art 1 s 107; 26 SR 391

1400.2530 RECOMMENDED NOTICE OF HEARING.

Minnesota Department of _____

NOTICE OF HEARING

Proposed (Amendment to) (Repeal of) Rule Governing _____, Minnesota Rules _____ (citation to rule).

Public Hearing. The (department name) intends to adopt a rule after a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, parts 1400.2200 to 1400.2240, and the Administrative Procedure Act, Minnesota Statutes, sections 14.131 to 14.20. The agency will hold a public hearing on the above-entitled rule at (place), starting at (time hearing starts) on _____, ____, and continuing until the hearing is completed. Additional days of hearing will be scheduled if necessary. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements may be submitted without appearing at the hearing.

Administrative Law Judge. The hearing will be conducted by (name, address, telephone number, and fax number of judge). 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. Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge.

Subject of Rule, Statutory Authority, and Agency Contact Person. The proposed rule is about (subject of rule and, if applicable, that an entire rule is being repealed and a citation to the rule). The proposed rules are authorized by Minnesota Statutes, section (specific section number). A copy of the proposed rule is published in the State Register and attached to this notice as mailed. (If the proposed rule is not attached to the mailed notice, then this notice must include an easily readable and understandable description of the rule's nature and effect and include the announcement that: A free copy of the rule is available upon request from the agency contact person.) The agency contact person is: (name, address, telephone number, fax number [optional], and email address [optional]).

Statement of Need and Reasonableness. A Statement of Need and Reasonableness is now available for review at the agency offices and at the Office of Administrative Hearings. This statement contains a summary of the justification for the proposed rule, including a description of who will be affected by the proposed rule and an estimate of the probable cost of the proposed rule. The statement may be reviewed and copies obtained at the cost of reproduction from the agency.

Other notices required by law or chosen to be inserted in this notice.

Public Comment. You and all interested or affected persons, including representatives of associations and other interested groups, will have an opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the close of the hearing record. All evidence presented should relate to the proposed rule. 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. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. Following 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 additional evidence may be submitted during the five-day rebuttal period. All comments and responses submitted to the Administrative Law Judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings.

The agency requests that any person submitting written views or data to the Administrative Law Judge prior to the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

Accommodation. If you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

Modifications. The proposed rules may be modified as a result of the rule hearing process. Modifications must be supported by data and views presented during the rule hearing process, and the adopted rule may not be substantially different than this proposed rule unless the procedure under part 1400.2110 has been followed. If the proposed rule affects you in any way, you are encouraged to participate.

Adoption Procedure After Hearing. After the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rule. You may ask to be notified of the date when the 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 on which the agency adopts the rule and files it with the Secretary of State, or ask to register with the agency to receive notice of future rule proceedings, and can make this request at the hearing or in writing to the agency contact person stated above.

Lobbyist Registration. Minnesota Statutes, chapter 10A, requires each lobbyist to register with the Campaign Finance and Public Disclosure Board. Questions regarding this requirement may be directed to the Campaign Finance and Public Disclosure Board at: (address, telephone number).

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

Dated: _____ _____

Name

Title

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474

HIST: 20 SR 2058; L 1997 c 202 art 2 s 63; L 1998 c 254 art 1 s 107; 26 SR 391

1400.2540 RECOMMENDED DUAL NOTICE.

Minnesota Department of _____

DUAL NOTICE: NOTICE OF INTENT TO ADOPT A RULE 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

Proposed (Amendment to) (Repeal of) Rule Governing _____, Minnesota Rules _____ (citation to rule).

Introduction. The (department name) intends to adopt a rule without a public hearing following the procedures set forth in the rules of the Office of Administrative Hearings, parts 1400.2300 and 1400.2310, and the Administrative Procedure Act, Minnesota Statutes, sections 14.22 to 14.28. If, however, 25 or more persons submit a written request for a hearing on the rule by _____, ____, a public hearing will be held at (location), starting at (time) on _____, ____. (The date must be at least ten days after the end of the comment period.) To find out whether the rule will be adopted without a hearing or if the hearing will be held, you should contact the agency contact person after (date comment period ends) and before (date of hearing).

Agency Contact Person. Comments or questions on the rule and written requests for a public hearing on the rule must be submitted to: _____ (name, address, telephone number, and fax number [optional]). (You may submit email comments, questions, or requests for a public hearing to: _____ (email address)) [optional].

Subject of Rule and Statutory Authority. The proposed rule is about (subject of rule and, if applicable, that an entire rule is being repealed and a citation to the rule). The statutory authority to adopt the rule is (specific statutory citation). A copy of the proposed rule is published in the State Register and attached to this notice as mailed. (If the proposed rule is not attached to the mailed notice, then this notice must include an easily readable and understandable description of the rule's nature and effect and include the announcement that: A free copy of the rule is available upon request from the agency contact person listed above.)

Comments. You have until _____ p.m. on _____, ____, to submit written comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change desired. Any comments that you would like to make on the legality of the proposed rule must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by ____ p.m. on _____, ____. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rule to which you object or state that you oppose the entire rule. Any request that does not comply

with these requirements is not valid and cannot be counted by the agency for determining whether a public hearing must be held. You are also encouraged to state the reason for the request and any changes you want made to the proposed rule.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, a public hearing will be held unless a sufficient number 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 effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

Accommodation. If you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

Modifications. The proposed rule may be modified, either as a result of public comment or as a result of the rule hearing process. Modifications must be supported by data and views submitted to the agency or presented at the hearing and the adopted rule may not be substantially different than this proposed rule unless the procedure under part 1400.2110 has been followed. If the proposed rule affects you in any way, you are encouraged to participate in the rulemaking process.

Cancellation of Hearing. The hearing scheduled for _____, ____, will be canceled if the agency does not receive requests from 25 or more persons that a hearing be held on the rule. If you requested a public hearing, the agency will notify you before the scheduled hearing whether or not 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.

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rule, a hearing will be held following the procedures in Minnesota Statutes, sections 14.131 to 14.20. The hearing will be held on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. An Administrative Law Judge is assigned to conduct the hearing. The judge can be reached at: (name, address, telephone number, and fax number).

Hearing Procedure. If a hearing is held, 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 either orally at the hearing or in writing at any time before the close of the hearing record. All evidence presented should relate to the proposed rule. 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. This five-day comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. Following 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 additional evidence may be submitted during the five-day rebuttal period. All comments and responses submitted to the Administrative Law Judge must be received at the Office of Administrative Hearings no later than 4:30 p.m. on the due date. All comments or responses received will be available for review at the Office of Administrative Hearings. This rule hearing procedure is governed by Minnesota Rules, parts 1400.2000 to 1400.2240, and Minnesota Statutes, sections 14.131 to 14.20. Questions about procedure may be directed to the Administrative Law Judge.

The agency requests that any person submitting written views or data to the Administrative Law Judge prior to the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

Statement of Need and Reasonableness. A statement of need and reasonableness is now available from the agency contact person. This statement contains a summary of the justification for the proposed rule, including a description of who will be affected by the proposed rule and an estimate of the probable cost of the proposed rule. The statement may be reviewed and copies obtained at the cost of reproduction from the agency.

Other notices required by law or chosen to be inserted in this notice.

Lobbyist Registration. Minnesota Statutes, chapter 10A, requires each lobbyist to register with the Campaign Finance and Public Disclosure Board. Questions regarding this requirement may be directed to the Campaign Finance and Public Disclosure Board at (address and telephone number).

Adoption Procedure if No Hearing. If no hearing is required, the agency may adopt the rule after the end of the comment period. The rule and supporting documents will then be submitted to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rule is submitted to the office. If you want to be so notified, or want to receive a copy of the adopted rule, or want 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 the Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rule. You may ask to be notified of the date when the 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 on which the agency adopts the rule and it is filed with the Secretary of State, and can make this request at the hearing or in writing to the agency contact person stated above.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

Dated: _____

_____
Name
Title

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474
HIST: 20 SR 2058; L 1997 c 202 art 2 s 63; L 1998 c 254 art 1 s 107; 26 SR 391

1400.2550 RECOMMENDED CERTIFICATES.

NOTE: This part contains the format of a certificate and language that: certifies the accuracy of the rulemaking mailing list, certifies the mailing of a notice or proposed rule, certifies the mailing of the statement of need and reasonableness to the Legislative Reference Library, certifies the mailing of a notice of submission of a rule adopted without a public hearing to the office, and certifies the mailing of the notice and the statement to legislators. When making certificates using this part, use only the language that applies. If two or more people performed the various actions, create a separate certificate for each person that includes only the actions done by each individual. Proposed Rule Governing _____, Minnesota Rules _____ (citation to rule).

(Certificate of accuracy of the mailing list) I certify that 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 _____ rulemaking mailing list is accurate, complete, and current as of _____, ____.

(Certificate of mailing notice to rulemaking mailing list) I certify that on _____, ____, at least 33 days before the end of the comment period, at the City of _____, County of _____, State of Minnesota, I mailed the_____ (state what was mailed, for example: (1) Notice of Intent to Adopt Rules, Dual Notice, or Notice for Hearing, and (2) the proposed rule) by depositing a copy thereof in [the state of Minnesota's central mail system for] United States mail, with postage prepaid, to all persons and associations on the rulemaking mailing list established by Minnesota Statutes, section 14.14, subdivision 1a.

(Certificate of giving additional notice) I certify that on _____, ____, the following additional notice was given by the agency:

(Certificate of mailing the statement of need and reasonableness to the Legislative Reference Library - change the title on the upper right of document) I certify that on _____, ____, when the statement of need and reasonableness became available to the public, I mailed a copy of the statement to the Legislative Reference Library by depositing it in [the state of Minnesota's central mail system for] United States mail, with postage prepaid.

(Certificate of mailing notice of submission of rule adopted without a public hearing to the Office of Administrative Hearings - change the title on the upper right document) I certify that on _____, ____, when the adopted rule was submitted to the Office of Administrative Hearings, I mailed the notice of submission of the rule to the office by depositing it in [the state of Minnesota's central mail system for] United States mail, with postage prepaid, to all persons and groups who requested this notice.

(Certificate of mailing the notice and the statement of need and reasonableness to legislators) (An agency may submit a copy of the transmittal letter instead of this certificate.) I certify that on _____, ____, when the department mailed Notice of Intent to Adopt Rules under Minnesota Statutes, section 14.14 or 14.22, I mailed a copy of the Notice and the Statement of

Need and Reasonableness to certain legislators by depositing it in [the state of Minnesota's central mail system for] United States mail, with postage prepaid. The mailing was done to comply with Minnesota Statutes, section 14.116. (List the legislators contacted, or attach copy of cover letter sent to legislators.)

_____
Name
Title

STAT AUTH: MS s 14.386; 14.388; 14.51; 15.474
HIST: 20 SR 2058; L 1998 c 254 art 1 s 107; 26 SR 391

1400.2560 RECOMMENDED ORDER ADOPTING RULES.

Minnesota Department of _____

ORDER ADOPTING RULE

Adoption of Rule Governing _____, Minnesota Rules _____

WHEREAS:

1. All notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law have been complied with. (For multimember agencies, add the following: A copy of the authorization from the board to propose the rule is attached. **OR** Proposal of the rule was authorized by the board at its meeting on _____, ____, and a quorum was present.) (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 should find it to be harmless under Minnesota Statutes, section 14.26, subdivision 3, paragraph (d).)

2. (For rules adopted without a public hearing, state the following: The agency received [no] written comments and submissions on the rule._____persons requested a public hearing [, of which ___ were subsequently withdrawn.] Therefore, there are not 25 or more outstanding requests for a public hearing. The agency received ___ requests for notice of submission to the Office of Administrative Hearings.) **OR** (For rules adopted after a public hearing, state the following: The department adopts the Administrative Law Judge's Report dated _____, ____, and incorporates the Report into this order, except as described above.)

3. **If any changes were made between the proposed rule and the adopted rule, explain each change, why the change is reasonable, and why the change does not make the rule substantially different.** (This requirement does not apply to rules adopted after a public hearing if the judge's report approved the specific change.)

4. The rule is needed and reasonable.

5. (For multimember agencies, add the following: A copy of the authorization from the board to adopt the rule is attached. **OR** The rule was adopted by the board at its meeting on _____, ____, a quorum was present, and the undersigned was authorized to sign this order.)

IT IS ORDERED that the above-captioned rule is adopted.

Dated: _____

_____
Name
Title

STAT AUTH: MS s 14.386; 14.388; 14.51
HIST: 20 SR 2058; L 1998 c 254 art 1 s 107

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1400.2570 RECOMMENDED NOTICE OF INTENT TO ADOPT EXPEDITED RULE WITHOUT A PUBLIC HEARING.

Minnesota Department of _____

NOTICE OF INTENT TO ADOPT EXPEDITED RULES WITHOUT A PUBLIC HEARING

Proposed (Amendment to) (Repeal of) Rule Governing _____ (topic), Minnesota Rules _____ (citation to rules).

Introduction. The _____ (agency name) intends to adopt rules under the expedited rulemaking process set forth in the rules of the Office of Administrative Hearings, part 1400.2410, and the Administrative Procedure Act, Minnesota Statutes, section 14.389. You may submit written comments on the proposed expedited rules until _____ (date).

Agency Contact Person. Comments or questions on the rule must be submitted to: _____ (name, agency, address, telephone number, and fax number [optional]). (You may submit email comments, questions, or requests for a public hearing to: _____ (email address)) [optional].

Subject of Expedited Rule and Statutory Authority. The proposed expedited rule is about _____ (subject of rule and, if applicable, that an entire rule is being repealed and a citation to the repealed rule). The statutory authority to adopt this rule is (citation to specific statutory authority). The statutory authority to adopt this rule under the expedited rulemaking process is _____ (citation to statutory authority to adopt rules under Minnesota Statutes, section 14.389). A copy of the proposed rule is published in the State Register and attached to this notice as mailed. (If the proposed rule is not attached to the mailed notice, then this notice must include an easily readable and understandable description of the rule's nature and effect and include the announcement that a free copy of the rule is available upon request from the agency contact person listed above.) The proposed expedited rule may be viewed at: _____ (applicable Web site address) [optional].

Comments. You have until _____ (time) on _____ (date) to submit written comment in support of or in opposition to the proposed expedited rule and any part or subpart of the rule. Your comment must be in writing and received by the agency contact person by the due date. Comment is encouraged. Your comment should identify the portion of the proposed expedited rule addressed and the reason for the comment. You are encouraged to propose any change desired. Any comments that you would like to make on the legality of the proposed rule must also be made during this comment period.

(If the agency is accepting requests for a public hearing, the following paragraph must be included.)

Request for a Hearing. In addition to submitting comments, you may also request that a hearing be held on the rule. Your request for a public hearing must be in writing and must be received by the agency contact person by _____ (time) on _____ (date). Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rule to which you object or state that you oppose the entire rule. Any request that does

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not comply with these requirements is not valid and cannot be counted by the agency for determining whether a public hearing must be held. You are also encouraged to state the reason for the request and any changes you want made to the proposed rule.

(If the agency is accepting requests for a public hearing, the following paragraph must be included.)

Withdrawal of Requests. If 100 or more persons submit a valid written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 100, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in Minnesota Statutes, sections 14.131 to 14.20.

Modifications. The agency may modify the proposed expedited rule if the modifications do not make the rule substantially different as defined in Minnesota Statutes, section 14.05, subdivision 2, paragraphs (b) and (c), unless the procedure under part 1400.2110 has been followed. If the final rule is identical to the rule originally published in the State Register, the agency will publish a notice of adoption in the State Register. If the final rule is different from the rule originally published in the State Register, the agency must publish a copy of the changes in the State Register. If the proposed expedited rule affects you in any way, you are encouraged to participate in the rulemaking process.

Other notices required by law or chosen to be inserted in this notice.

Adoption and Review of Expedited Rule. (If no hearing is required, the) or (The) agency may adopt the rules at the end of the comment period. The rules and supporting documents will then be submitted to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the rules are submitted to the office. 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.

Dated: _____

_____
Name
Title

STAT AUTH: MS s 14.51; 15.474
HIST: 26 SR 391

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/).
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		

Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	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. . . * **Huge Hint**: The Preliminary Proposal Form to the Governor's Office is an excellent opportunity *at the beginning of your rules project* 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 *clearly in mind*, it became quickly apparent after doing one Governor's form that it was preferable and beneficial to have the need and the goals *clearly on paper*. The project goals and statutory authority will fit nicely into the SONAR. * ***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."			
3.	Begin saving documents for official rulemaking record. * If needed, establish a rules advisory committee. Consult with affected parties, such as trade associations and agency advisory councils.	RECORD		
4.	Develop an Additional Notice Plan, which must be included in SONAR (step 8b). MR 1400.2060.			
5.	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. Publish on the Monday 6 days after submission to the State Register.	REQUEST		
6.	Request for Comments - mail to people on mailing list; (optional) prepare Certificate of Mailing. At least 3 days before publication * Notify additional people, if this is part of the Additional Notice Plan for the Request for Comments	CRT-GNRC		

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		

Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	"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. . . . "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."			
10.	Draft Notice of Intent to Adopt Rules. Have commissioner or executive director sign Notice & SONAR. After Gov's Office approval and when rules & SONAR are final * 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. * Allow 30-day comment period; add day if last day is holiday.	NTC-HR or NTC-DL		

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-RQUST		
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 commend 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.			

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.			

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 SMPLFNDS BD-ADPT		

Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
29.	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. 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	CHNG-OTH CHNG-DIS		
30.	Order Adopting Rules signed by commissioner or by person authorized in Board Resolution. Commissioner's signature or Board action must be at least 5 working days after ALJ report * 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. * Secretary of State forwards rules to the Governor, who may veto within 14 days. MS 14.05,s6.			
31.	Mail Notice of Filing to all persons requesting this. (See sign-up sheet in hearing record for names.) Notice of Filing must be sent when the rules are filed with the Secy of State	NTC-SECY CRT-SECY		
32.	Revisor drafts Notice of Adoption and sends to agency.			
33.	**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. To ST-REG Tuesday or Wednesday at noon, 6 or 12 days before publication, depending on length; (Holidays may change deadlines).			
34.	State Register publishes Notice of Adoption. The Monday, 6 or 12 days after submission to State Register.			
35.	Rules take effect. Five working days after publication in State Register			
36.	Notify staff of rule change ASAP	CLOSURE		

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		

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/).

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		

Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	information contained in the Preliminary Proposal Form be of concern to the Policy Advisor he or she will contact the agency. * **Huge Hint:** The Preliminary Proposal Form to the Governor's Office is an excellent opportunity *at the beginning of your rules project* 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 *clearly in mind*, it became quickly apparent after doing one Governor's form that it was preferable and beneficial to have the need and the goals *clearly on paper*. The project goals and statutory authority will fit nicely into the SONAR. * ***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.			
3.	Begin saving documents for official rulemaking record. * If needed, establish a rules advisory committee. Consult with affected parties, such as trade associations and agency advisory councils.	RECORD		
4.	Develop an Additional Notice Plan, which must be included in SONAR (step 8b). MR 1400.2060.			
5.	Request for Comments - submit to State Register via electronic copy in Word format with Printing Order form using the Revisor's Office ID no. Published the Monday, 6 days after submission to the State Register.	REQUEST		
6.	Request for Comments - mail to people on mailing list; (optional); prepare Certificate of Mailing. At least 3 days before publication * Notify additional people, if this is part of the Additional Notice Plan for the Request for Comments	CRT-GNRC		
7.	Request for Comments – publish in State Register	ADV-COMM		

Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	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			
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.	Draft SONAR, including Additional Notice Plan Concurrent w/ rule development ***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.	SONAR		
8c.	Get rules & SONAR, including Additional Notice Plan, approved by commissioner or executive director. When rules & SONAR completed			
8d.	Send Additional Notice Plan to OAH for approval (optional, yet encouraged) After rules & SONAR approved at agency	NP-RLNTC		
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	GOV-PRPS		

Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	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. . . . "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."			
10.	Draft Notice of Intent to Adopt Rules. Have commissioner or executive director sign Notice & SONAR. After Gov's Office approval and when rules & SONAR are final * 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.	NTC-DL or NTC-NH		

Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	Refer to paragraph 5.1 in the Rulemaking Manual for the pros and cons of how to proceed. * 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.	Notice of Intent to Adopt – submit to State Register electronic copy, the Revisor's document number for the rules, Printing Order form. 6 or 12 days before publication (check State Register website for exact due date)	ST-REG		
12.	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 commend period.	CRT-MLNG CRT-LIST CRT-GNRC		
13.	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		
14.	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		
15.	Notice of Intent to Adopt - published in State Register. Make copy for RECORD.			

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		

Step	Timeline/Notes	Rulemaking Manual Reference	Target Date	Completion Date
	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. . . . . "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."			
20.	Order Adopting Rules signed by Commissioner or Board designee. For Boards, Board first passes resolution adopting rules. After end of comment period, or at next board meeting.	ORD-ADPT & BD-ADPT		
21.	Ask Revisor for official draft of rules as adopted. After agency approval to adopt the rule			
22.	Immediately before submitting rule documents to OAH, mail Notice of Submission to OAH to persons who requested to be notified. After getting approved rules from Revisor and before submitting file to OAH	NTC-SBM CRT-SBM		
23.	Submit rule documents to OAH. These documents are listed in NH-REVW. Within 180 days after comment period ends *You must submit the rules to OAH within 180 days after the comment period ends. MS14.26,s1. *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.	NH-REVW		

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		

Accessibility, Accommodation, and Alternative Format Information

1. Accessibility. Minnesota law requires all products produced by the State of Minnesota to be accessible to all individuals. A document or application is considered accessible if 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, hard of hearing, or who have cognitive impairments. We believe all documents that make up this manual now meet these state standards. See your agency's accessibility coordinator for further information or if you believe these documents require further modification for your use.

2. Accommodation. The Notice of Hearing and Dual Notice contain the following statement: "**Accommodation.** If you need an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above."

Under the Americans with Disabilities Act, agencies must make reasonable modifications in policies, practices, and procedures to enable access to individuals with disabilities. It is up to the individual to inform the agency what modification is necessary for the individual.

Any cost incurred for the modification is the responsibility of the agency providing the service. If your agency is producing material or holding meetings, your agency would pay. If for some reason 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 or not there is another modification that could work.

You have to review and deal with each situation on a case-by-case basis. Most of the situations you will deal with will be easy to accommodate.

The first thing to do regarding this, even before you get a request for accommodation, is to make sure your hearing room is wheelchair accessible. Accommodations that may be requested 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 all include a statement like this: "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:

> A. 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.

B. Use a larger typeface. If you have the computer file of the document, you may re-format it using a larger typeface.

C. 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 ssb.audioservices@state.mn.us to make arrangements directly for the desired format.

D. 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, e.g., 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 ssb.braille@state.mn.us.

Each agency is responsible for the costs of making information available in alternative formats.

Summary of Rulemaking Process and Advisory Committee Role
[Project Name] Rules Advisory Committee Meeting - [Date]
[Agency Name]

The Rulemaking Process, Documents, and Time Line. 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 time line 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.

- **Time Line.** 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.]

[date]

The Honorable [Name]
Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Proposed Rules of the Department of [Name] [about/Governing] [Topic]; Cancellation of Hearing; OAH Docket No. [Number]; Revisor's ID Number [number]

Dear Judge [Name]:

This letter confirms our telephone conversation of [date], in which I notified you that the Department of [Name] is canceling the public hearing for the rules scheduled for [hearing date].

The deadline for requests for a public hearing in this matter was [day], [date]. As of that date, the Department of [Name] had received [#] requests for a public hearing, [## of whom subsequently withdrew their requests]. The Department is canceling the hearing because there are fewer than 25 [outstanding] hearing requests.

The Department will, instead, adopt the rules without a hearing and then submit the necessary documents for review by your office. These documents, along with documents we have already filed to initiate giving the Dual Notice, will serve as the documents required for review of the rules under OAH Rules, part 1400.2310.

If there are any questions or concerns, please contact me at [phone number].

Yours very truly,

[Name]
[Title]

[For the letter author: Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the Paragraph tool. Do not forget to delete this information.]

Minnesota Board of [Name]

CERTIFICATE OF THE BOARD OF [NAME]; RESOLUTION ADOPTING RULES

Adopted [Amendment to] [Repeal of] Rules Governing [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 _____ , 20 ____ ; 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 [M/D/YR], identified as Minnesota Rules, parts[####.####] to[####.####], under the Board's authority under Minnesota Statutes, sections[###.##] and[###.##]. [Name], [the Executive Director][a member] of the Board of [Name], is authorized to do the following: 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]

Attest by one other Board Member

[If your board procedures do not require attestation, you should delete this from the form.]

_____
Signature of Attesting Board Member

_____
Printed Name of Attesting Board Member

Minnesota Board of [Name]

CERTIFICATE OF THE BOARD OF [NAME]; AUTHORIZING RESOLUTION

Proposed [Amendment to] [Repeal of] Rules Governing [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 _____ , 20___ ; 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. The [insert title, such as Executive Director or Chair] of the Board of [Name], is authorized and directed to sign and to give the Notice of the Board's Intent to Adopt [Rules Without a Public Hearing][Rules using Alternate Notices of whether a hearing will be held][Rules after holding a public hearing] in the Revisor of Statutes draft, file number [number], dated xx/xx/xx, identified as Minnesota rules, parts xxxx.xxxx to xxxx.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 for that purpose. 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.

[Note: this form's format that can be adapted for authorizing a Request for Comments, too.

_____ _____

[Date] [Name], Chair
Board Of [Name]

Attest by one other Board Member

[If your board procedures do not require attestation, you should delete this from the form.]

_____
Signature of Attesting Board Member

_____
Printed Name of Attesting Board Member

[New in 2018]

Board Worksheet for Choosing a Hearing Date

Prerequisites:

- Rules Draft Complete: _____
- SONAR Complete (except for Judge assignment): _____
- Board Authorization to publish Notice (bd-ntc): _____
- Governor's Office Approval (gov-prps): _____
- Revisor's Draft Approved for Publication: _____

Submit rules, SONAR, Draft Notice to ALJ for review: _____
(no later than)

OAH Review Deadline (5 working days after submittal): _____

State Register Deadline (12 days before publication): _____
(before noon)

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 and hearing): _____
(discuss comments received / approve changes to rules, if needed)

Obtain withdrawals of hearing requests, if appropriate / needed.

Last Day to Cancel Hearing (3 working days before hearing) _____

Hearing Date: _____

Board Meeting (After hearing and before response due): _____
(discuss comments received at hearing / approve changes to rules, if needed)

Post Hearing Response Due (20 days post-hearing): _____

Rebuttal Due (5 days after post-hearing comments due) _____

MINNESOTA

[date]

The Honorable Jenny Starr
Chief Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Proposed Rules of the Department of [Name] [about/Governing] [Topic]; Submission to the Chief Administrative Law Judge for Review of Changes Necessary for Approval; OAH Docket No. [Number]; Revisor's ID Number [Number]

Dear Chief Judge Starr:

Administrative Law Judge [name] heard this matter on [month] [date], [year]. Judge [name] and you disapproved the rules in your Reports dated [month] [date], [year], and [month] [date], [year], respectively.

The Department has [made the changes that you indicated were necessary for approval/withdrawn the portions of the rules that caused the disapproval]. With this letter, the Department requests that you please review and approve the changed rules under Minnesota Rules, part 1400.2240, subpart 4. Enclosed is a copy of the rules, as changed, for your approval.

[Or possibly: The Department requests that you reconsider the disapproval for the following reasons: (give reasons).]

If you have questions about the enclosed documents or if you wish to discuss these rules with me, please contact me at [phone number]. After you complete your review, please send any correspondence regarding the rules to me at the following address:

[Name]
Minnesota Department of [Name]
[Address]

Yours very truly,

[Name]
[Title]

[For the letter author: Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the Paragraph tool. Do not forget to delete this information.]

MINNESOTA

[Note: the procedures of OAH Rules, part 1400.2240, subpart 5, speak specifically to changes *other than those recommended* by the ALJ. The Manual Editor recommends that you use this letter also for making changes *that were recommended* by the ALJ. Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the Paragraph tool. Do not forget to delete this information.]

[Date]

The Honorable Jenny Starr
Chief Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Proposed Rules of the Department of [Name] [about/Governing] [Topic]; Submission to the Chief Administrative Law Judge of Changes Other Than Those Approved by the Administrative Law Judge; OAH Docket No. [Number]; Revisor's ID Number [Number]

Dear Chief Judge Starr:

Administrative Law Judge [name] heard this matter on [hearing date], [year]. Judge [name] approved the rules in a Report, dated [ALJ report date], [year].

The Department wants to make changes in the rules other than those approved by Judge [name]. By this letter the Department requests that you determine whether this is a substantial change under Minnesota Statutes, section 14.16, subdivision 1, and Minnesota Rules, part 1400.2240, subpart 5. Enclosed are the following documents necessary for your review:

1. The rules as initially proposed.
2. The Department's proposed Order Adopting Rules.
3. The rules as proposed for final adoption showing the Department's changes.
[4. Copies of all other documents referenced in the 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'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 proposed Order Adopting Rules.

Please call me at [phone number] if you would like the Department to return all or part of the hearing record or if you wish to discuss anything about the rules. After you complete your review, please send any correspondence regarding the rules to me at the following address:

[Name], Minnesota Department of [Name], [Address]
Yours very truly, [Name], [Title]

Minnesota Department of [Name]
MEMORANDUM

DATE: [date]

TO:

FROM: [Name], [Title]

PHONE: [phone number]

SUBJECT: [Topic] Rules; Revisor's ID Number [number]

The Notice of Adoption for the [Topic] Rules was published in the [date], State Register. Under Minnesota Statutes, section 14.27, these rules are effective on [day], [date], five (5) working days after the date of publication.

The Revisor's Office prepared a complete and current version of the [Topic] Rules, chapter [####], which incorporates all amendments made in this rulemaking. A copy of this version is [enclosed with this memo/available on the network as [document name]].

The only remaining work on this file is for me to prepare the Official Rulemaking Record for storage and then close the file. The Department will store the Official Record at [location].

[Add whatever discussion giving credit that you deem appropriate. *See* §§8.11 & 9.13.]

[REVISED IN 2020**] ESTIMATED COSTS FOR RULEMAKING*

	Major Rule	Medium Rule	Small Rule	Noncontroversial Procedural 1-2 page Amendment
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 General**				
Legal fees ($133/hour)	11,438	7,182	1,330	798
****Office of Administrative Hearings**				
Admin. Law Judge ($215/hour)	29,025	10,750	2,150	860
Filing Fee	50	50	50	50
****State Register ($135/page)**				
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
Miscellaneous				
Mailings	925	694	370	333
Duplicating	1,500	825	500	250
Transcripts	1,000	750	500	
Committee costs, outstate meetings	500	200		
TOTAL Estimated Costs	**$310,248**	**$133,376**	**$46,305**	**$10,816**

***THESE ROUGH ESTIMATES ARE ILLUSTRATIONS—A FRAMEWORK FOR BEGINNING AGENCY ANALYSIS. THEY DO NOT REFLECT ACTUAL COSTS. RULEMAKING AND AGENCY STAFF CAN PROJECT COSTS MORE CLOSELY AS RULEMAKING BEGINS (SEE COMMENTS BELOW).**

For simplicity, the cost chart above and description below use the terms “major rule,” “medium rule,” “small rule,” and “procedural rule.” As anyone with any length of rulemaking experience knows, the landscape includes many facets that defy such straightforward categories. The material in this appendix is designed to give you some rules of thumb to help you predict the costs unique to your agency and project. The following list suggests other factors to consider in your characterization and is by no means exhaustive:

- 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

You could certainly come up with more. But simply put, you will need to do your own analysis of whether there are factors that elevate your relatively short rule into a higher category due to the commensurate costs involved or reduce the expense of what might otherwise look like a long one. Are there factors that this chart does not contemplate?

Major rule

Extensive revision or start-from-scratch development of *long* (more than 50 pages of text), *controversial* (will almost certainly go to public hearing) rule. Typically requires many meetings with public advisory committee.

The estimated costs relating to the Office of Administrative Hearings presumes that there will be a hearing (possibly more than one), a filing fee, ALJ preparation time, telephone conferences or 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

Extensive revision or start-from-scratch development of rule between 15 and 49 pages of text, which could go to hearing or could be noncontroversial (no public hearing required). Involves advisory committee work but fewer meetings than major rule.

The estimated costs relating to the Office of Administrative Hearings presumes that there will be a hearing (possibly more than one), a filing fee, ALJ preparation time, and telephone conferences. 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 (such as the hourly rates for AG legal fees and the ALJ).

Small rule

Rewrite of or amendments to a noncontroversial rule between three and 14 pages of that may not require committee work because change responds to state or federal law.

The estimated costs relating to the Office of Administrative Hearings presumes that there will not be a hearing, but that there will be a filing fee and other fees such as ALJ preparation time. 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 (such as the hourly rates for AG legal fees and the ALJ).

Noncontroversial technical or procedural amendment

Minor changes to any rule that require mainly editing and notice in the State Register.

The estimated costs relating to the Office of Administrative Hearings presumes that there will not be a hearing, but that there will be a filing fee and other fees such as ALJ preparation time. 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 (such as the hourly rates for AG legal fees and the ALJ).

ESTIMATE OF HOURS SPENT ON RULE

	Major/Large rule (controversial or with hearing)	Medium rule (possible hearing or longer rule)	Small/Non-Hearing rule	Minor rule (ex. expedited process or short rule)
Program Staff	3120	1560	600	90
Rulemaker	3120	1040	300	60
Clerical	320	200	150	60
Legal Review	86	54	10	6
OAH Services	135	50	10	4

****[REVISED IN 2020] Rulemaking Editor's Notes:**

- **In Fiscal Year 2020, the Office of the Attorney General's billing rates are increased to $133 per hour for attorney time.**
- **In Fiscal Year 2021, OAH's billing rates are increased to: $215 per hour for judicial time; $105 per hour for staff attorney time.**
- **In Fiscal Year 2021, the State Register's estimated rate is $135 per page.**

Minnesota Department of [Name]

CERTIFICATE OF [MAILING THE REQUEST FOR COMMENTS] [MAILING THE NOTICE OF INTENT TO REPEAL OBSOLETE RULES] [GIVING [ADDITIONAL] NOTICE UNDER THE [ADDITIONAL] [NOTICE PLAN] [CONSULTING WITH COMMISSIONER OF MANAGEMENT AND BUDGET IN COMPLIANCE WITH MINNESOTA STATUTES, SECTION 14.131] [COMPLIANCE WITH (XX)]

Proposed Rules Governing [Topic], Minnesota Rules, [citation]

I certify that on [Month] [Date], [Year], at [City], [County] County, Minnesota, I [state what you did, for example:]

- 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:
  1. The Governor's Office Proposed Rule and SONAR Form.
  2. The [date] Revisor's draft of the proposed rule.
  3. The [date] draft of the SONAR.
- complied with [XX].
- I accomplished this mailing by [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.
- Submitted 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]

[For the certificate author: If you are sending these documents electronically only, you will want to adapt this certificate accordingly. Also, do not use returns to add spacing between paragraphs; use the Normal styles (above) or the paragraph tool. Do not forget to delete this information.]

Minnesota Department of [Name]

CERTIFICATE OF MAILING A NOTICE OF HEARING TO THOSE WHO REQUESTED A HEARING

Proposed Rules Governing [Topic], Minnesota Rules, [citation]; Revisor's ID Number [number]

I certify that on [Month] [Date], [Year], I mailed a Notice of Hearing by either depositing the Notice in the [State of Minnesota's central mail system for] United States mail with postage prepaid or 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. Copies of both the Notice and of the mailing list are attached to this Certificate.

_____
[Name]
[Title]

[For the certificate author: If you are sending these documents electronically only, you will want to adapt this certificate accordingly. Also, do not use returns to add spacing between paragraphs; use the Normal styles (above) or the paragraph tool. Do not forget to delete this information.]

Minnesota Department of [Name]

CERTIFICATE OF MAILING A NOTICE OF WITHDRAWAL OF HEARING REQUESTS

Proposed Rules Governing [Topic], Minnesota Rules, [citation]
Revisor's ID Number [number]

I certify that on [Month] [Date], [Year], I mailed a Notice of Withdrawal of Hearing Requests by either depositing the Notice in the [State of Minnesota's central mail system for] United States mail with postage prepaid or 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 the Notice and of the mailing list are attached to this Certificate.

_____
[Name]
[Title]

[For the certificate author: If you are sending these documents electronically only, you will want to adapt this certificate accordingly. Also, do not use returns to add spacing between paragraphs; use the Normal styles (above) or the paragraph tool. Do not forget to delete this information.]

Minnesota Department of [Name]

CERTIFICATE OF SENDING THE NOTICE AND THE STATEMENT OF NEED AND REASONABLENESS TO LEGISLATORS AND THE LEGISLATIVE COORDINATING COMMISSION

Proposed Rules Governing [Topic], Minnesota Rules, [citation]
Revisor's ID Number [number]

I certify that on [Month] [Date], [Year], when the Department mailed Notice of Intent to Adopt Rules under Minnesota Statutes, section 14.14 or 14.22, I sent a copy of the Notice and the Statement of Need and Reasonableness to certain Legislators and the Legislative Coordinating Commission by either depositing them in the [{State of Minnesota's central mail system for} United States mail with postage prepaid]/[interoffice mail of the State of Minnesota] or by sending an electronic copy via email. I mailed these documents to comply with Minnesota Statutes, section 14.116. 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]

[For the certificate author: If you are sending these documents electronically only, you will want to adapt this certificate accordingly. Also, do not use returns to add spacing between paragraphs; use the Normal styles (above) or the paragraph tool. Do not forget to delete this information.]

Minnesota Department of [Name]

CERTIFICATE OF SENDING NOTICE TO LEGISLATORS

Proposed Repeal of Obsolete Rules Governing [Topic], Minnesota Rules, [citation]
Revisor's ID Number [number]

I certify that on [Month] [Date], [Year], 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 [certain Legislators] [**OR**] [to the chairs and ranking minority members with jurisdiction over the subject matter of the proposed rule repeal (Practice Tip: You may wish to name the legislative policy and budget committees)] by either depositing them in the [{State of Minnesota's central mail system for} United States mail with postage prepaid]/[interoffice mail of the State of Minnesota] or by sending an electronic copy via email. I mailed these documents to comply with Minnesota Statutes, section 14.3895. 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]

[For the certificate author: If you are sending these documents electronically only, you will want to adapt this certificate accordingly. Also, do not use returns to add spacing between paragraphs; use the Normal styles (above) or the paragraph tool. Do not forget to delete this information.]

Minnesota Department of [Name]

CERTIFICATE OF ACCURACY OF THE MAILING LIST

Proposed Rules Governing [Topic], Minnesota Rules, [citation]; Revisor's ID Number [number]

I certify that the list of persons and associations who have requested that their names be placed on the Department of [Name] rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a, is accurate, complete, and current as of [Month] [Date], [Year]*. [A copy of the mailing list is attached to this Certificate. (Note: attaching a copy is optional.)]

_____
[Name]
[Title]

*Make sure this is NOT a field that changes automatically in case you have to print another copy For the certificate author: Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the paragraph tool.) Do not forget to delete this information.

Minnesota Department of [Name]

CERTIFICATE OF MAILING THE STATEMENT OF NEED AND REASONABLENESS TO THE LEGISLATIVE REFERENCE LIBRARY

Proposed Rules Governing [Topic], Minnesota Rules, [citation]; Revisor's ID Number [number]

[Note: the date of this certificate should be the same as or earlier than the date you mail the Notice of Intent to Adopt Rules.]

I certify that on [Month] [Date], [Year], when the [Notice of Hearing][Notice of Intent to Adopt Rule Without a Hearing] [Dual Notice] was mailed, I submitted an electronic copy of the Statement of Need and Reasonableness to the Legislative Reference Library via email to sonars@lrl.leg.mn. I mailed this copy to comply with Minnesota Statutes, sections 14.131 and 14.23. [A copy of the cover letter is attached to this Certificate. (Note: attaching a copy is optional.)]

_____
[Name]
[Title]

[For the certificate author: Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the paragraph tool. Do not forget to delete this information.]

Minnesota Department of [Name]

CERTIFICATE OF MAILING THE [DUAL] NOTICE [OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING] [OF HEARING] [OF INTENT TO REPEAL OBSOLETE RULES] TO THE RULEMAKING MAILING LIST

Proposed [Repeal of Obsolete] Rules Governing [Topic], Minnesota Rules, [citation]; Revisor's ID Number [number]

I certify that on [Month] [Date], [Year], at least 33 days before the end of the comment period [Note: 63 days if repealing obsolete rules], at [City], [County] County, Minnesota, I mailed the [state what was mailed, for example: (1) Notice of Intent to Adopt Rules, Dual Notice, Notice of Hearing, or Notice of Intent to Repeal Obsolete Rules, and (2) the proposed rules] by depositing a copy in the [State of Minnesota's central mail system for] [United States mail with postage prepaid,] [or sending an electronic copy via email] to all persons and associations on the rulemaking mailing list established by Minnesota Statutes, section 14.14, subdivision 1a. [Copies of the Notice and of the mailing list are attached to this Certificate. (Attaching copies is optional.)]

_____
[Name]
[Title]

[For the certificate author: If you are sending these documents electronically only, you will want to adapt this certificate accordingly. Also, do not use returns to add spacing between paragraphs; use the Normal styles (above) or the paragraph tool. Do not forget to delete this information.]

Minnesota Department of [Name]

CERTIFICATE OF MAILING THE NOTICE OF SUBMISSION OF RULES ADOPTED WITHOUT A PUBLIC HEARING TO THE OFFICE OF ADMINISTRATIVE HEARINGS

Adopted Rules Governing [Topic], Minnesota Rules, [citation]; Revisor's ID Number [number]

I certify that on [Month] [Date], [Year], when the Department submitted the adopted rules to the Office of Administrative Hearings, I mailed the Notice of Submission of Rules Adopted Without a Public Hearing to the Office of Administrative Hearings by either depositing the Notice in the [State of Minnesota's central mail system for] United States mail with postage prepaid or by sending an electronic copy via email, to all persons and groups who requested the Notice. I gave this Notice under Minnesota Statutes, section 14.26, subdivision 1. [Copies of the Notice and of the mailing list are attached to this Certificate. (Attaching copies is optional.)]

_____
[Name]
[Title]

[For the certificate author: If you are sending these documents electronically only, you will want to adapt this certificate accordingly. Also, do not use returns to add spacing between paragraphs; use the Normal styles (above) or the paragraph tool. Do not forget to delete this information.]

Minnesota Department of [Name]

CERTIFICATE OF MAILING THE NOTICE OF FILING RULES WITH THE SECRETARY OF STATE

Adopted Rules Governing [Topic], Minnesota Rules, [citation]; Revisor's ID Number [number], OAH docket number [number]

I certify that on [Month] [Date], [Year], when the adopted rules were filed with the Secretary of State, I mailed the Notice of Filing Rules with the Secretary of State by either depositing the Notice in the [State of Minnesota's central mail system for] United States mail, with postage prepaid or by sending an electronic copy via email, to all persons and groups who requested the Notice. The Notice is given under Minnesota Statutes, section 14.16, subdivision 1. Copies of the Notice and the mailing list are attached to this Certificate.

_____
[Name]
[Title]

[For the certificate author: If you are sending these documents electronically only, you will want to adapt this certificate accordingly. Also, do not use returns to add spacing between paragraphs; use the Normal styles (above) or the paragraph tool. Do not forget to delete this information.]

[Date]

The Honorable Jenny Starr
Chief Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Proposed Exempt Rules of the Department of [Name] [about/Governing] [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 Number [number]

Dear Chief Judge Starr:

The Minnesota Department of [Name] proposes to adopt the above-named exempt rules governing [topic]. The Department 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 OAH Rules, part 1400.2400, subpart 2:

(1) The rules with Revisor's approval.
(2) A proposed Order Adopting Rules.
(3) Certificate of Mailing and Certificate of Accuracy of the Mailing List [For the letter author: This is Optional-Not required by subpart 2, but the ALJ might require it as "any other information required by law or rule" as proof of giving notice.]

If you have questions about the enclosed documents or the proposed exempt rules, please contact me at [phone].

After completing your review, please send any correspondence to me at the following address:

[Name]
Minnesota Department of [Name]
[Address]

Yours very truly,

[Name]
[Title]

[For the letter author: Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the Paragraph tool. Do not forget to delete this information.]

[For the letter author: Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the Paragraph tool. Do not forget to delete this information.]

[date]

The Honorable Jenny Starr
Chief Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Proposed Expedited Rules of the Department of [Name] [about/Governing] [Topic], Request for Review and Approval of Expedited Rules; Revisor's ID Number [number]

Dear Chief Judge Starr:

The Minnesota Department of [Name] proposes to adopt the above-named expedited rules governing [topic]. The authority for these expedited rules is stated in Minnesota Statutes, [section]. 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 by the OAH 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. Each paragraph states whether the document is enclosed and, if the document is not enclosed, the reason why the document is not applicable to these rules.

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.
- [There is no need to state how many comments or submissions that you received. However, if you received no requests, submissions, or comments of any kind, perhaps put in:] Not Enclosed: written comments and submissions on the proposed rules because we received no written comments or submissions.

F. 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.

- [Or] Not Enclosed: the notice of withdrawal of hearing requests and related documents because no hearing requests were [received] [withdrawn] during this rulemaking.

G. Enclosed: a copy of the adopted rules dated [date].

- [You may need to include the following as well:] The modifications to the proposed rules are reflected in the rules as adopted and are approved by the Revisor of Statutes.
- [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 actually have the Revisor's approval indicated on it.]

H. Enclosed: a copy of the Notice of Adopting Substantially Different Rules that we sent to persons or groups who commented during the comment period and evidence that we sent the notice to these persons or groups.

- [Or, more likely:] Not Enclosed: a notice of adopting substantially different rules because the Department did not adopt substantially different rules.

I. Enclosed: the Order Adopting Rules that complies with the requirements in part 1400.2090.

J. 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.

- [Or, more likely:] 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.

K. Enclosed: any other document or evidence to show compliance with any other law or rule which the Department is required to follow in adopting these rules.

If you have questions about the enclosed documents or the proposed expedited rules, please contact me at [phone].

After completing your review, please send any correspondence to me at the following address:
[Name]
Minnesota Department of [Name]
[Address]

Yours very truly,
[Name]
[Title]

2020 Administrative Rule
Final Rule Form

Revisor's ID Number:_____

Submitting Agency: _____ Date: _____

Rule Contact: _____

Email Address: _____ Phone #:_____

Title: (Short descriptive title)	
Chapter number(s):	
Comments/controversies received since Notice of Intent to Adopt:	
If a hearing was requested explain why and attach ALJ Report:	
List changes from draft rules proposal:	

_____ _____
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

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.

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.

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.

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.

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).

Office of the Governor
Tim Walz, Governor
August 15, 2020

2020 Administrative Rule
Preliminary Proposal Form

Revisor's ID Number: _____

Submitting Agency: _____ Date: _____

Rule Contact: _____

Email Address: _____ Phone #: _____

Type of Rule (must be one of the following):

☐ Exempt ☐ Expedited ☐ Permanent

Title: (Short descriptive title)	
Chapter Number(s):	
Supporters, opponents and possible controversies:	
Agency impact:	
If Exempt or Expedited rule process is being used please explain why:	
Describe the need for the rule and provide background information:	
Rulemaking authority and other relevant statutes:	

Fiscal Impact: ☐ 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

2020 Administrative Rule
Proposed Rule and SONAR Form Revisor's ID Number: _____

Submitting Agency: _____ Date: _____

Rule Contact: _____

Email Address: _____ Phone #: _____

Title: (Short descriptive title)	
Chapter number(s):	
Comments received during Request for Comments:	
Statement of Need and Reasonableness (SONAR) Executive Summary:	
Supporters, opponents, and possible controversies:	
List significant changes from preliminary proposal:	
Other:	

Fiscal Impact: ☐ Yes ☐ No *If the Fiscal Impact determination has changed, please explain above.*

AGENCY: Attach draft rules and SONAR.

_____ _____
Commissioner's Signature Date

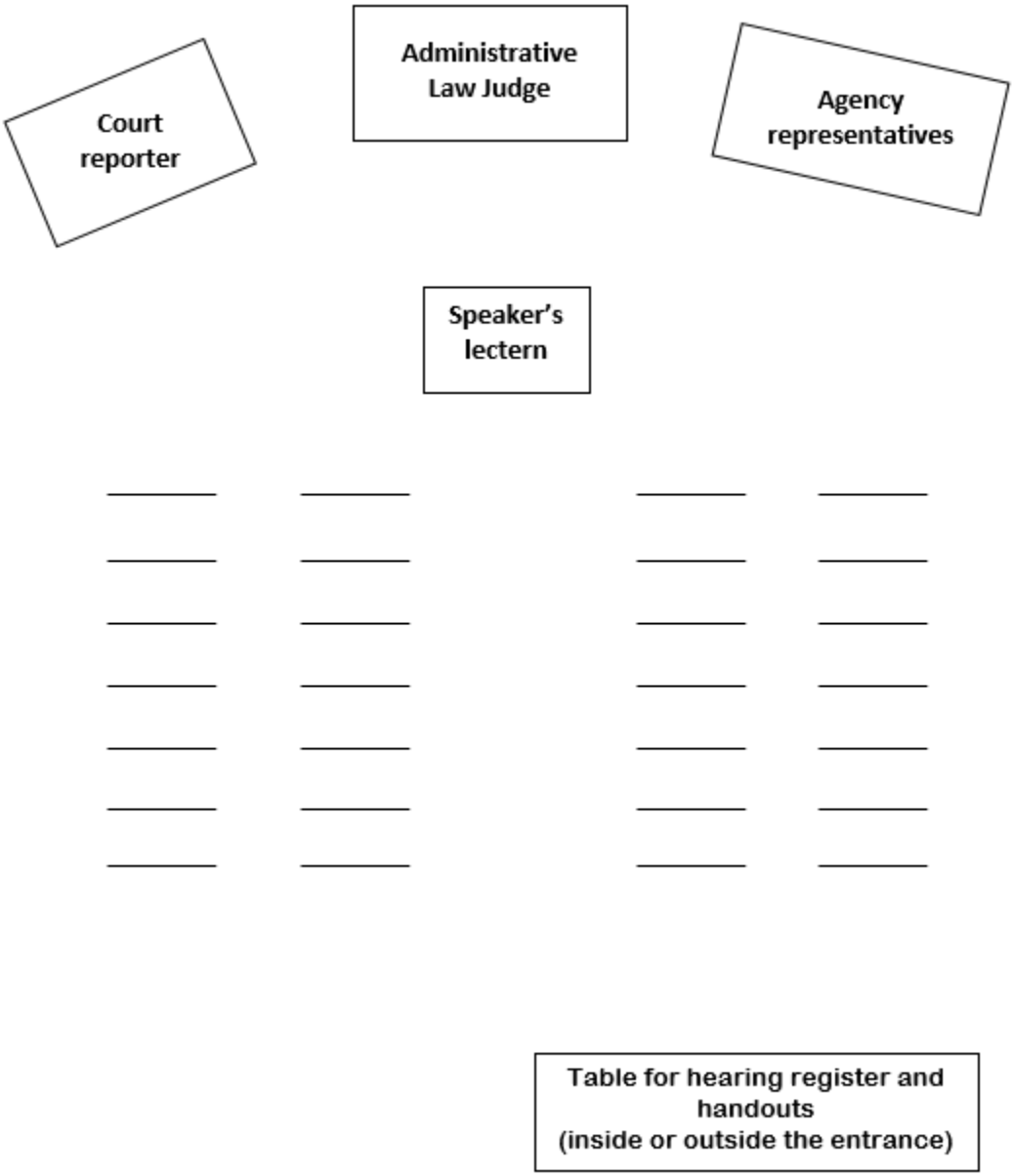
THIS SECTION TO BE COMPLETED BY THE GOVERNOR'S OFFICE

I have reviewed the above information and have approved this administrative rule. The respective Agency may formally publish a Notice of Intent to Adopt Proposed Rules.

_____ _____
Governor's Policy Advisor Date

Basic Room Setup for Administrative Hearing

Note: Provide microphones for judge, agency representatives, and speakers



Suggested Room set up for an Administrative Hearing: Facing the front of the room, the Court Reporter is to the left, the Administrative Law Judge is in the center, and the Agency representatives are to the right. The Speakers lectern is in front of the audience, lined up with the Administrative Law Judge. There is also a table for hearing registration and handouts at the back of the room. This can be inside or outside of the room.

MINNESOTA

[For the letter author: Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the Paragraph tool. Do not forget to delete this information.]

[date]
The Honorable Jenny Starr
Chief Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Proposed Rules of the Department of [Name] [about/Governing/for] [Topic]; Request to Schedule a Rules Hearing [and Request to Review Additional Notice Plan]; OAH Docket No. [Number]; Revisor's ID Number [Number]

Dear Chief Judge Starr:

The Minnesota Department of [Name] requests that you please schedule a rules hearing under Minnesota Statutes, sections 14.131 to 14.20, and assign an Administrative Law Judge. The hearing is for the Department's proposed rules about [description of the subject matter]. We request that the judge conduct the hearing on [day], [month] [date], [year], beginning at [time], in [room], [building], [address], [city], Minnesota [zip].

Enclosed are the documents for the Administrative Law Judge's review, as required by Minnesota Rules, part 1400.2080, subpart 5:

1) The [Dual] Notice [of Hearing] proposed to be issued. [If appropriate, add: If the Department receives fewer than 25 requests for a hearing in response to the Dual Notice, the hearing will be canceled. We will notify you if this occurs.]
2) A copy of the proposed rules, with a certificate of approval as to form by the Revisor of Statutes attached.
3) [A draft of] the Statement of Need and Reasonableness.

The Department also requests that you approve our Additional Notice Plan. The documents required for your review by Minnesota Rules, part 1400.2060, include the three documents listed above for requesting a rules hearing. We are also providing you below with our explanation of why we believe our Additional Notice Plan reflects reasonable efforts to notify persons or classes of persons who might be significantly affected by the rules in accordance with Minnesota Statutes, section 14.14, subdivision 1a.

Our Additional Notice Plan is described on page [#] of the Statement of Need and Reasonableness. We believe our Additional Notice Plan complies with the statute because [give reasons].

Please call me at [phone number] if you have any questions.

Yours very truly, [Name], [Title]

[For the letter author: 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. Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the Paragraph tool. Do not forget to delete this information.]

[date]

The Honorable [Name]
Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Proposed Rules of the Department of [Name] [Governing/about/for] [Topic]; OAH Docket No. [Number]; Governor's Revisor's ID Number [Number]

Dear Judge [Name]:

This letter contains the Department of [Name]'s responses to comments it has received.

1. The Department of [Name] has met its burden to show that the proposed rule is needed and reasonable.

Minnesota Statutes, section 14.14, subdivision 2, requires the Department of [Name] 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/. (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 of the Department of [Name] are needed and reasonable.

2. The Department of [Name] has responded to the comments made and issues raised during the hearing and comment period.

[For example: The proposed Department of [Name] rules governing [topic] 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.)]

[Rules Cite] 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.

[Rules Cite] 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.

[Rules Cite] 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], Commissioner
Department of [Name]

[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.

"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."

[For the letter author: Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the Paragraph tool. Do not forget to delete this information.]

[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
72 State Office Building
100 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155
~or~
lcc@lcc.leg.mn

[If rulemaking authority effective within last two years, include also:]
Senator [Name]
Representative [Name]
Chief Authors of Minnesota Statutes, section [section]

Re: In The Matter of the Proposed Rules of the Department of [Name] [about/Governing] [Topic]; Revisor's ID Number [number]

Dear Legislators:

Executive Summary: the Department of [name] intends to adopt [rules] [rule amendments] that [describe what the rules are meant to accomplish]. [Note: an executive summary is optional. You might, however, want to give a two- or three-paragraph executive summary of your rules and the main problems or issues that the rules address. In Minnesota Laws 2001, chapter 106 added another notice requirement that requires "an easily readable and understandable description of the nature and effect of the rules." Representative Fran Bradley, the legislative author of this

phrase, has said he wants a plain-language summary or executive summary of the rules before he reviews the notice, rules, and SONAR.]

Minnesota Statutes, section 14.116, states:

> **"14.116 NOTICE TO LEGISLATURE.**
> When an agency mails notice of intent to adopt rules under section 14.14 or 14.22, the agency must send a copy of the same notice and a copy of the statement of need and reasonableness to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules and to the Legislative Coordinating Commission.
> In addition, if the mailing of the notice is within two years of the effective date of the law granting the agency authority to adopt the proposed rules, the agency shall make reasonable efforts to send a copy of the notice and the statement to all sitting legislators who were chief house and senate authors of the bill granting the rulemaking authority. If the bill was amended to include this rulemaking authority, the agency shall make reasonable efforts to send the notice and the statement to the chief house and senate authors of the amendment granting rulemaking authority, rather than to the chief authors of the bill."

We plan to publish a Notice of Intent to Adopt Rules in the [Date] State Register and are now mailing the Notice under section 14.14 or 14.22.

As required by section 14.116, the Department is sending you a copy of the notice and the Statement of Need and Reasonableness. [For your information, we are also enclosing a copy of the proposed rules.]

If you have any questions about these rules, please contact me at [phone].

Yours very truly,

[Name]
[Title]

Enclosures: Notice of Intent to Adopt Rules
Statement of Need and Reasonableness
[Proposed Rules]

CC: Legislative Coordinating Commission

MINNESOTA

[For the letter author: Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the Paragraph tool. Do not forget to delete this information.]

[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 [section]

Re: In The Matter of the Proposed Repeal of Obsolete Rules of the Department of [Name] [about/Governing] [Topic]; Revisor's ID Number [number]

Dear Legislators:

Executive Summary: the Department of [name] intends to adopt [rules] [rule amendments] that [describe what the rules regulate and why they are obsolete. [Practice tip: Copy the description used in the obsolete rules report and insert it here.]]. 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 after a hearing or the requirements of 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. [Either enclose a copy of the rule proposed for repeal or provide an easily readable and understandable description of the nature and effect of the proposed rule repeal and a statement that a free copy is available from the agency upon request.] [Note: In the executive summary 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. In Minnesota Laws 2001, chapter 106 added another notice requirement that requires "an easily readable and understandable description of the

nature and effect of the rules." Representative Fran Bradley, the legislative author of this phrase, has said he wants a plain-language summary or executive summary of the rules before he reviews the notice, rules, and SONAR.]

Minnesota Statutes, section 14.3895 subdivision 3, states:

> The agency shall also mail the notice to persons who have registered with the agency to receive mailed notices and to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule to be repealed.

We plan to publish a Notice of Intent to Repeal Obsolete Rules in the [Date] State Register and are now mailing the Notice under Minnesota Statutes, section 14.3895, subdivision. 3.

As required by section 14.3895, subdivision 3, the Department is sending you a copy of the notice. [For your information, we are also enclosing a copy of the proposed rules.] [Practice tip: Check with each individual legislator as to whether he or she wishes to be contacted by postal mail or email.]

If you have any questions about these rules, please contact me at [phone].

Yours very truly,

[Name]
[Title]

Enclosures: Notice of Intent to Repeal Obsolete Rules
[Proposed Obsolete Rules to be repealed]

[For the letter author: This letter should be dated the same as or earlier than the date that you mailed the Notice. Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the Paragraph tool. Do not forget to delete this information.]

[Date]

Legislative Reference Library
645 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155

Re: In The Matter of the Proposed Rules of the Department of [Name] [about/Governing] [Topic]; Revisor's ID Number [number]

Dear Librarian:

The Minnesota Department of [Name] intends to adopt rules [about/relating to/governing] [topic]. We plan to publish a [Dual] Notice [of Hearing] [of Intent to Adopt Rules without a Public Hearing] in the [Date] State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library an electronic copy of the Statement of Need and Reasonableness at the same time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at [phone number].

Yours very truly,

[Name]
[Title]

Enclosure: Statement of Need and Reasonableness

[For the letter author: This letter should be dated the same as or earlier than the date that you sent the **GOV-PRPS** form to the Governor's Office. Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the Paragraph tool. Do not forget to delete this information.]

[Date]

[EBO Name]
Executive Budget Officer
Minnesota Management and Budget
658 Cedar St., Suite 400
St. Paul, MN 55155

Re: In The Matter of the Proposed Rules of the Department of [Name] [about/Governing] [Topic]; Revisor's ID Number [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/governing] [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] draft of the SONAR.

I am also delivering copies of these documents to the Governor's Office today.

If you or any other representative of the Commissioner of Minnesota Management & Budget has questions about the proposed rule, please call me at [phone]. Please send any correspondence about this matter to me at the following address: [Name], Minnesota Department of [Name], [Address].

Yours very truly,

[Name]
[Title]

[For the letter author: The State Register publishes primarily electronic editions and prints only a very small number of paper copies. To get a paper copy of your notice for scanning to submit to OAH (or any other reason), print a copy from the State Register website:
http://www.comm.media.state.mn.us/bookstore/mnbookstore.asp?page=archives
Please do not use returns to add spacing between paragraphs: use the Normal styles (above) or the Paragraph tool. Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the Paragraph tool. Do not forget to delete this information.]

[date]

[Address this to Chief ALJ Starr only when you publish a Notice of Intent to Adopt Rules Without a Hearing. When you have published a Dual Notice, address the letter to the ALJ assigned to the rules.]

The Honorable [Jenny Starr] or [Name]
[Chief] Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Proposed Rules of the Department of [Name] [Governing/about/for] [Topic]; OAH Docket No. [Number]; Governor's Revisor's ID Number [Number]

Dear [Chief Judge Starr] [Judge Name]:

[The Minnesota Department of [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. Upon receipt of OAH approval, the Department will adopt the rules.] [OR] [On [date], the Minnesota Department of [Name] adopted the above-named rules governing [topic]. The Department now requests that the Office of Administrative Hearings review and approve the rules under Minnesota Statutes, section 14.26.] Enclosed for your review are the documents required by Office of Administrative Hearings 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. Each paragraph states whether the document is enclosed and, if the document is not enclosed, the reason that the document is not applicable.

A. Enclosed: the Request for Comments as published in the State Register on [date].

B. Enclosed: the petition for rulemaking filed with the Department.

- [It is likely that paragraph B will be replaced by the following: Not enclosed: a petition for rulemaking. This is not enclosed because no petition was filed regarding these rules.]

C. Enclosed: the proposed rules dated ##/##/##, with the Revisor's certificate of approval.

D. Enclosed: the Statement of Need and Reasonableness.

- [Or, possibly:] Not enclosed: the Statement of Need and Reasonableness. This document is not enclosed because we have already submitted it to your office with our request to schedule a rules hearing dated [date].

E. Enclosed: the Notice of Intent to Adopt Rules, as mailed, and the Notice of Intent to Adopt Rules, as published in the State Register on [date].

F. Enclosed: the 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.

- [Or, more likely:] 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 included the text of the proposed rules with 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.

- [Or, possibly:] Not enclosed: a Certificate of Additional Notice. This is not enclosed because no additional notice was given.

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 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 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, except those that only requested copies of documents. The Department 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.]
- [**New in 2015**][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 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 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 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 of Statutes.
- [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. (This amended copy will be initialed by the Revisor indicating his or her approval.)]

M. Enclosed: a copy of the Notice of Adopting Substantially Different Rules that the Department sent to persons or groups who commented during the comment period and evidence that the notice was sent to those persons or groups.

- [Or, more likely:] Not enclosed: a notice of adopting substantially different rules 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. This is not enclosed because the Department did not adopt substantially different rules.

N. [**New in 2015**] Enclosed: the unsigned Order Adopting Rules that complies with the requirements in part 1400.2090.

O. 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.

- [Or, more likely:] 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 persons requested notification of the submission of the 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 is required to follow in adopting these rules. These are:

- 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 the Department of MMB] [OR] [The Certificate of Consulting with the 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 3.9223, subdivision 4, regarding the Council of Chicano/Latino people.**~~
- 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.]
- [**New in 2015**] P.7. [If you have not included responses to comments in Paragraph J above, this is another place to submit them.]

If you have questions or wish to discuss anything with me, please contact me at [phone number]. After you complete your review, please send any correspondence to me at the following address:

[Name]
Minnesota Department of [Name]
[Address]

Sincerely,

[Name]
[Title]

*[New in 2018] Editor's note: Requirement repealed by Minnesota Laws 2015, chapter 77.

[Date]

The Honorable Jenny Starr
Chief Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Proposed Repeal of Obsolete Rules of the Department of [Name] [about/Governing/for] [Topic]; Request for Review and Approval of Notice Plan; Revisor's ID Number [Number]

Dear Chief Judge Starr:

The Department of [Name] requests that you review and approve our Notice Plan for giving notice of the repeal of obsolete rule(s) [Rule] under Minnesota Statutes 14.3895 subd. 2. This obsolete rule pertains to [description of the subject matter].

Enclosed are the following:

(1) The proposed obsolete rule(s) 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 the Department believes the Notice Plan complies with Minnesota Statutes, section 14.3895, subdivision 2. [For obsolete rules explain as part of letter].
(5) Our Obsolete Rules Report dated [date] that identified the rules as obsolete, unnecessary or duplicative.

We believe our Additional Notice Plan complies with the statute because [give reasons].

Please call me at [phone number] if you have any questions.

Yours very truly,

[Name]
[Title]

[For the letter author: Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the Paragraph tool. Do not forget to delete this information.]

[For the letter author: Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the Paragraph tool. Do not forget to delete this information.]

[Date]

The Honorable Jenny Starr
Chief Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In The Matter of the Proposed Rules of the Department of [Name] [about/Governing] [Topic]; Request for Review and Approval of Additional Notice Plan; Revisor's ID Number [Number]

Dear Chief Judge Starr:

The Department of [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 regarding the Department's proposed rules relating to [description of the subject matter].

Enclosed with this letter are the documents for the Office of Administrative Hearings' 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 complies with Minnesota Statutes, section 14.22, i.e., why our Additional Notice Plan constitutes reasonable efforts to notify persons or classes of persons who might be significantly affected by the rules. We believe our Additional Notice Plan complies with the statute because [give reasons].

Please call me at [phone number] if you have any questions.

Yours very truly,

[Name]
[Title]

[Date]

The Honorable Jenny Starr
Chief Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Request for Comments of the Department of [Name] [about/Governing] [Topic]; Request for Review and Approval of Additional Notice Plan; Revisor's ID Number [Number]

Dear Chief Judge Starr:

The Department of [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'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 (2) and explain why we believe our Additional Notice Plan complies with Minnesota Statutes, section 14.101, i.e., why 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 our Additional Notice Plan complies with the statute because [give reasons].

Please call me at [phone number] if you have any questions.

Yours very truly,

[Name]
[Title]

[For the letter author: See section 2.6 of the Manual for suggestions about additional notice plans. Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the Paragraph tool. Do not forget to delete this information.]

Minnesota Department of [Name]

NOTICE OF CANCELLATION OF HEARING TO PERSONS WHO REQUESTED A HEARING

Proposed [Amendment to] [Repeal of] Rules Governing [Topic], Minnesota Rules, [citation]

To persons who requested a hearing. The Department is sending this Notice to all persons who requested a hearing.

The hearing is canceled. In the [month] [date], [year], State Register, on pages [page] to [page], the Department of [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 persons submitted written requests for a hearing. In response, the Department received [#] requests for a hearing. Consequently, the Department is canceling the hearing. The Department 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 will consider all written comments when it adopts the rules.

Agency Contact Person. The agency contact person is: [name] at [agency, address, and phone]. Questions or comments concerning the cancellation of the hearing or about the rule adoption process should be directed to the agency contact person.

_____ _____

Date [Name]
[Title]

- [This may be signed by the Commissioner, the Division Director, or the Rule Writer.]

Revisor's ID Number [number]

[When you prepare your Notice for review by OAH, leave blanks for the name and phone number of the ALJ. After OAH gives approval and the name of the ALJ, fill in the blanks. You may adjust the margins so that the notice fits on two or four pages for mailing purposes.]

[Revised in 2019] Editor's note: To alert you to changes, 2019 additions appear in bold typeface. Remember to remove the bracketed notations and to restore text before submitting it to the ALJ for review.]

Minnesota Department of [Name]

Division of [Name, or Unit, Bureau, etc.] [Optional]

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; Revisor's ID Number [number]

Proposed [Amendment to] [Repeal of] Rules Governing [Topic], *Minnesota Rules*, [citation]

- [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.]

[Revised in 2019] Introduction. The Department of [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. If, however, 25 or more persons submit a written request for a hearing on the rules by 4:30 p.m. on [date comment period ends], the Department will hold will hold a public hearing in [room], [building], [address], [city], Minnesota [zip]. **An Administrative Law Judge will conduct the hearing** starting at [time hearing starts] on [day of week], [date of hearing] [optional: and continuing until the hearing is completed **OR optional: until everyone who wants to comment has had the chance to do so, if possible, but no later than [time hearing must end]]**. To find out whether the Department will adopt the rules without a hearing or if it will hold the hearing, you should contact the agency contact person after [date comment period ends] and before [date of hearing].

- [The hearing date must be at least ten days after the end of the comment period.]
- [See section 6.7 of the Manual on choosing a hearing date and location.]

Agency Contact Person. Submit any comments or questions on the rules or written requests for a public hearing to the agency contact person. The agency contact person is: [name] at [agency, address, phone, fax, and *email*].

- [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 separately identify that person in the Notice.]

[New in 2016: OPTIONAL If you choose to use OAH's new comment system for accepting pre-hearing comments electronically, you need to adapt this paragraph accordingly. The editor suggests you add:
You may also review the proposed rule and submit written comments via the Office of Administrative Hearings Rulemaking eComments website *https://minnesotaoah.granicusideas.com/discussions* .]

Subject of Rules and Statutory Authority. The proposed rules are about [subject of rules and, if applicable, that an entire rule is being repealed and a citation to the rule]. The statutory authority to adopt the rules is *Minnesota Statutes*, section [specific section number]. A copy of the proposed rules is published in the *State Register* [and attached to this notice as mailed]. [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.]

- [See section 6.8 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 so that it 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.]
- [When specifying the statutory citation for authorization to adopt the rules, you should use the most recent *Minnesota Statutes* citation, or *Minnesota Laws* if the statute has not yet been codified.]

Comments. 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 agency contact person by the due date. Comment is encouraged. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed. You are encouraged to propose any change that you desire. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the Department hold a hearing on the rules. You must make your request for a public hearing in writing, which the agency contact person must receive by 4:30 p.m. on [day], [month] [date], [year]. You must include your name and address in your written request. In addition, you must identify the portion of the proposed rules that you object to or state that you oppose the entire set of 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. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Department 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 effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

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.]

Modifications. The Department might 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 to the agency or presented at the hearing. The adopted rules may not be substantially different than these proposed rules unless the Department follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Department encourages you to participate in the rulemaking process.

Cancellation of Hearing. The Department 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 on-line at {web address}.]

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, the Department will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The Department will hold the hearing on the date and at the time and place listed above. The hearing will continue until all interested persons have been heard. Administrative Law Judge [judge's name] is assigned to conduct the hearing. Judge [name] can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone (651) 361-7875, and fax (651) 539-0310.

Hearing Procedure. [Revised in 2016] If the Department 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 either 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 that this five-day comment period is extended for a longer period but not more than 20 calendar days. Following 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.

All post-hearing comments and responses must be submitted to the Administrative Law Judge no later than 4:30 p.m. on the due date. The Office of Administrative Hearings strongly encourages all persons submitting comments and responses to do so using the Administrative Hearings' Rulemaking eComments website *https://minnesotaoah.granicusideas.com/discussions*. If using the eComments website is not possible, you may submit post-hearing comments in person, via United States mail, or by facsimile addressed to Judge [ALJ's last name] at the address or facsimile number listed in the Notice of Hearing section above.

All comments or responses received will be available for review at the [agency] or on the agency's website at [url]. 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.

Statement of Need and Reasonableness. The statement of need and reasonableness summarizes the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person. You may review or obtain copies for the cost of reproduction by contacting the agency contact person. [If you post the SONAR on your agency's website, you might wish to put a link to it here.]

[Include here other notices required by law or chosen to be inserted in this notice.]

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. Ask any questions about this requirement of 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.

Adoption Procedure if No Hearing. If no hearing is required, the agency may adopt the rules after the end of the comment period. The Department 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 by requesting this at the hearing or by writing to the agency contact person stated above.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

_____ _____

Date [Name]
[Title]

[Date and signature are required on the Notice. OAH Rules, part 1400.2080, subpart 2, item I.]

[Revised in 2016: Editor's note: To alert you to changes, 2016 additions appear in bold typeface. Remember to remove the bracketed notations and to restore text before submitting it to the ALJ for review.]

Minnesota Department of [Name]

Division of [Name, or Unit, Bureau, etc.] [Optional]

NOTICE OF INTENT TO ADOPT EXPEDITED RULES WITHOUT A PUBLIC HEARING

Proposed [Amendment to] [Repeal of] Rules Governing [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 2080, subpart 2, item D.]

Introduction. The Department of [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 [date].

Agency Contact Person. Submit comments or questions on the rules to: [name] at [agency, address, phone, fax, and *email*].

- [The agency contact person should be a person who is available throughout the comment period.]

or

You may also review the proposed rule and submit written comments via the Office of Administrative Hearings Rulemaking eComments website at *https://minnesotaoah.granicusideas.com/discussions*.

Subject of the Expedited Rules and Statutory Authority. 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]. The statutory authority to adopt the rules is [citation to specific statutory authority.] 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]. A copy of the proposed rules is published in the State Register [and attached to this notice as mailed]. [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.] [The proposed expedited rules may be viewed at: [applicable website address (optional).]

- [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.]
- [When specifying the statutory citation for authorization to adopt the rules, you should use the most recent *Minnesota Statutes* citation, or *Minnesota Laws* if the statute has not yet been codified.]

Comments. 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. The Department encourages comment. 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 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 a hearing be held on the rules. You must make your request in writing and the agency contact person must receive it by 4:30 p.m. on [month] [date], [year]. Your written request must include your name and address. You must identify the portion of the proposed rules to which you object or state that you oppose the entire set of 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. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 100 or more persons submit a valid written request for a hearing, a public hearing will be held unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 100, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect 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. If the proposed expedited rules affect you in any way, the agency encourages you to participate in the rulemaking process.

[Include here other notices required by law or chosen to be inserted in this notice]

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.]

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You may direct questions regarding 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.

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.

_____ _____

Date [Name]
[Title]

[Signature is required on the Notice. OAH Rules, part 1400.2085, subpart 2, item O.]

[When you first prepare your Notice for review by OAH, leave blanks for the name and phone number of the ALJ. After OAH gives approval and the name of the ALJ, fill in the blanks. You may adjust the margins to get it on two or four pages for mailing purposes.]

[Revised in 2016 Editor's note: To alert you to changes, 2016 additions appear in bold typeface. Remember to remove the bracketed notations and to restore text before submitting it to the ALJ for review.]

Minnesota Department of [Name]

Division of [Name, or Unit, Bureau, etc.] [Optional]

NOTICE OF HEARING

Proposed [Amendment to] [Repeal of] Rules Governing [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.]

[Revised in 2018] Public Hearing. The Department of [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. The agency will hold a public hearing on the above-named rules in [room], [building], [address], [city], Minnesota [zip], starting at [time hearing starts] on [day], [month] [date], [year], and **[**continuing until the hearing is completed**] OR [until [time hearing ends]]** . 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 data, statements, or arguments. Statements may be submitted without appearing at the hearing.

- [See section 7.7 of the Manual on choosing a hearing date and location.]

Administrative Law Judge. Administrative Law Judge [judge's name] will conduct the hearing. The judge can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone (651) 361-7875, and fax (651) 539-0310. 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.

- [Leave the judge's name blank in the version that you submit to OAH for review and approval. When OAH approves your Notice, OAH will give you this information for you to insert in the State Register and Mailing versions.]

Subject of Rules, Statutory Authority, and Agency Contact Person. 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]}]. The proposed rules are authorized by *Minnesota Statutes*, section [specific section number]. A copy of the proposed rules is published in the *State Register* [and attached to this notice as mailed] [and is available at the agency's website at {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.] The agency contact person is: [name] at [agency, address, phone, fax, and *email*)].

- [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 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.]
- [When specifying the statutory citation for authorization to adopt the rules, you should use the most recent *Minnesota Statutes* citation, or *Minnesota Laws* if the statute has not yet been codified.]
- [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 separately identify that person in the Notice.]

Statement of Need and Reasonableness. The statement of need and reasonableness contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person. You may review or obtain copies for the cost of reproduction by contacting the agency contact person.

[Include here other notices required by law or chosen to be inserted in this notice.]

Public Comment. [Revised in 2016] 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* either 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 at the address above or* **via the Office of Administrative Hearings Rulemaking eComments website *https://minnesotaoah.granicusideas.com/discussions*** . All evidence that you present 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. Following 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 no later than 4:30 p.m. on the due date. All comments or responses received are public and will be available for review at the Office of Administrative Hearings.

The agency requests that any person submitting written views or data to the administrative law judge before the hearing or during the comment or rebuttal period also submit a copy of the written views or data to the agency contact person at the address stated above.

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.]

Modifications. The agency may modify the proposed rules as a result of the rule hearing process. It must support modifications by data and views presented during the 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 proposed rules affect you in any way, the agency encourages you to participate.

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 when the 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 files them with the Secretary of State, or ask to register with the agency to receive notice of future rule proceedings. You may make these requests at the hearing or in 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 should direct questions regarding 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.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

_____ _____

Date [Name]
[Title]

[Date and signature are required on the Notice. OAH Rules, part 1400.2080, subpart 2, item I.]

[Revised in 2018]

Minnesota Department of [Name]

NOTICE OF HEARING TO THOSE WHO REQUESTED A HEARING

Proposed [Amendment to] [Repeal of] Rules Governing [Topic], Minnesota Rules, [citation]; Revisor's ID Number [number], OAH docket number [number]

To persons who requested a hearing. In accordance with Minnesota Statutes, section 14.25, subdivision 1, the Department is sending this Notice to all persons who requested a hearing.

There will be a hearing. [Revised in 2018] In the [month] [date], [year], State Register, on pages [page] to [page], the Department of [Name] published a Notice of Intent to Adopt Rules relating to [topic]. The Notice stated that the Department would hold a hearing on the proposed rules if 25 or more persons submitted written requests. We have received a sufficient number of requests for a hearing. The hearing will be conducted as stated in the State Register in [room] of the [building] located at [address] in [city], starting at [time] on [day], [month] [date], [year] [continuing until the hearing is completed] OR [until [time hearing ends]].

Administrative Law Judge. Administrative Law Judge [judge's name] will conduct the hearing. The judge can be reached at the Office of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, by telephone by calling Legal Assistant Ian Lewenstein at **(**651) 361-7857, or by email to ian.lewenstein@state.mn.us**,** and FAX (651) 361-7936.You should direct questions concerning the rule hearing procedure to the administrative law judge.

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 rules to the agency contact person. A copy of the Notice of Intent to Adopt Rules, as published in the State Register on [month] [date], [year], is available upon request from the agency contact person.

_____	_____
Date	[Name] [Title]

- [This may be signed by the Commissioner, the Division Director, or even the Rule Writer.]

Minnesota Department of [Name]

NOTICE OF WITHDRAWAL OF HEARING REQUESTS
Proposed [Amendment to] [Repeal of] Rules Governing [Topic], Minnesota Rules, [citation]; Revisor's ID Number [number], OAH docket number [number]

To persons who requested a hearing. In accordance with Minnesota Statutes, section 14.25, subdivision 2, the Department is sending this Notice to all persons who requested a hearing.

- [Section 14.25, subdivision 2, requires that this Notice be given to all persons who requested a hearing, IF: (1) there were withdrawals of hearing requests, (2) the withdrawals reduced the number of hearing requests below 25, and (3) the Department has taken any actions to obtain the withdrawals.]

There will be no hearing. In the [month] [date], [year], State Register, on pages [page] to [page], the Department of [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 persons submitted written requests for a hearing UNLESS a sufficient number withdrew their requests in writing. In response to the Notice, the Department received [#] hearing requests, however, [#] hearing requests were subsequently withdrawn. Consequently, there will be no hearing because there are fewer than 25 outstanding hearing requests. The Department 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 will consider all written comments when it adopts the rules.

Withdrawal of hearing requests. The hearing requests were withdrawn because [explain why].

- [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.]

Comments relating to the withdrawals. If you have comments or questions relating to the withdrawals, please contact [name] at the Department of [Name], [address, phone, fax, and email (fax # and email address are optional)] *within five working days*. This Notice and all written comments that the Department receives become part of the rulemaking record, which an Administrative Law Judge will review.

- [Section 14.25, subdivision 2, requires that this Notice invite persons to submit written comments relating to the withdrawals. The Notice and any written comments become part of the rulemaking record reviewed by the ALJ to determine whether the withdrawals are consistent with Minnesota Statutes, section 14.001, clauses (2), (4), and (5).]

_____ _____
Date [Name]
[Title]

- [This may be signed by the Commissioner, the Division Director, or the Rule Writer.]

Minnesota Department of [Name]

Division of [Name, or Unit, Bureau, etc.] [Optional]

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

Proposed [Amendment to] [Repeal of] Rules Governing [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 Department of [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 on the proposed rules and may also submit a written request that a hearing be held on the rules until [date].

Agency Contact Person. You must submit comments or questions on the rules and written requests for a public hearing to the agency contact person. The agency contact person is: [name] at [agency, address, phone, fax, and *email*].

- [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 separately identify that person in the Notice.]

[New in 2016: OPTIONAL If you choose to use OAH's new comment system for accepting comments electronically, you need to adapt this paragraph accordingly. The editor suggests you add:
You may also review the proposed rule and submit written comments via the Office of Administrative Hearings Rulemaking eComments website ***https://minnesotaoah.granicusideas.com/discussions*** **.]**

Subject of Rules and Statutory Authority. The proposed rules are about [subject of rules and if applicable, that an entire rule is being repealed and a citation to the rule]. The statutory authority to adopt the rules is *Minnesota Statutes*, section [specific section number]. A copy of the proposed rules is published in the *State Register* [and attached to this notice as mailed]. [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.]

- [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.]

- [When specifying the statutory citation for authorization to adopt the rules, you should use the most recent *Minnesota Statutes* citation, or *Minnesota Laws* if the statute has not yet been codified.]

Comments. 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 and any part or subpart of the rules. Your comment must be in writing and the agency contact person must receive it by the due date. The Department encourages comment. Your comment should identify the portion of the proposed rules addressed and the reason for the comment. You are encouraged to propose any change desired. Any comments that you have about the legality of the proposed rules must also be made during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the Department hold a hearing on the rules. Your request must be in writing and the agency contact person must receive it by 4:30 p.m. on [month] [date], [year]. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rules that you object to or state that you oppose the entire set of 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. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Department will hold a public hearing unless a sufficient number 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 effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

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.]

Modifications. The Department may modify the proposed rules as a result of public comment. The modifications must be supported by comments and information submitted to the agency, and 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 proposed rules affect you in any way, the Department encourages you to participate in the rulemaking process.

Statement of Need and Reasonableness. The statement of need and reasonableness statement contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person. You may review it or obtain copies for the cost of reproduction by contacting the agency contact person.

[Include here other notices required by law or chosen to be inserted in this notice.]

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You should 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.

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 then submit the rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the Department submits the rules to the office. 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.

_____	_____
Date	[Name] [Title]

[Date and signature are required on the Notice. OAH Rules, part 1400.2080, subpart 2, item I.]

Minnesota Department of [Name]

NOTICE THAT THERE WILL BE NO HEARING TO PERSONS WHO REQUESTED A HEARING

Proposed [Amendment to] [Repeal of] Rules Governing [Topic], Minnesota Rules, [citation]; Revisor's ID Number [number]

To persons who requested a hearing. The Department is sending this to all persons who requested a hearing.

There will be no hearing. In the [month] [date], [year], State Register, on pages [page] to [page], the Department of [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 received [#] requests for a hearing. Because the Department received fewer than 25 hearing requests, it will not hold a hearing. The Department 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 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.

_____	_____
Date	[Name] [Title]

[This may be signed by the Commissioner, the Division Director, or the Rule Writer.]

[Revised in 2016]

Minnesota Department of [Name]

Division of [Name, or Unit, Bureau, etc.] [Optional]

NOTICE OF INTENT TO REPEAL OBSOLETE RULES

Proposed Repeal of Obsolete Rules Governing [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 Department of [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 [date].

Agency Contact Person. You must submit comments or questions on the rules to: [name] at [agency, address, phone, FAX, and *email*].

- [The agency contact person should be a person who is available throughout the comment period.]

or

You may also review the proposed rule and submit written comments via the Office of Administrative Hearings Rulemaking eComments website at *https://minnesotaoah.granicusideas.com/discussions*.

Subject of the Repeal of Obsolete Rules and Statutory Authority. 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]. 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. A copy of the proposed obsolete rules to be repealed is published in the State Register [and attached to this notice as mailed]. [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.] [The proposed obsolete rules to be repealed may be viewed at: [applicable website address (optional).]

- [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.]
- [When specifying the statutory citation for authorization to adopt the rules, you should use the most recent *Minnesota Statutes* citation, or *Minnesota Laws* if the statute has not yet been codified.]

Comments. 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. [Editor's note: Make sure that your comment period is at least 60 days as required by Minnesota Statutes, section 14.3895, subdivision 3.] Your comment must be in writing and received by the agency contact person by the due date. The Department encourages comment. 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 on the legality of the proposed rules during this comment period.

Request for Hearing. In addition to submitting comments, you may also request that a hearing be held on the rules. You must make your request in writing and the agency contact person must receive it by 4:30 p.m. on [month] [date], [year]. [Editor's note: This too requires 60 days.] Your written request must include your name and address. You must identify the portion of the proposed repealed rules to which you object or state that you oppose the entire set of 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. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

- **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 (e.g. 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 repealers 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. If the proposed repeal of obsolete rules affects you in any way, the agency encourages you to participate in the rulemaking process.

[Include here other notices required by law or chosen to be inserted in this notice]

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.]

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You may direct questions regarding 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.

Repeal and Review of Obsolete Rules. [If no hearing is required, the] (or) [The] agency may repeal the obsolete 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 repealed obsolete 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.

_____ _____

Date [Name]
[Title]

[Signature is required on the Notice. OAH Rules, part 1400.2085, subpart 2, item O.]

Minnesota Department of [Name]

NOTICE OF SUBMISSION OF [RULES PROPOSED FOR ADOPTION WITHOUT A PUBLIC HEARING] [REPEAL OF OBSOLETE RULES] TO THE OFFICE OF ADMINISTRATIVE HEARINGS

[Amendment to] [Repeal of] [Obsolete] Rules Governing [Topic], Minnesota Rules, [citation]; Revisor's ID Number [number]

TO: ALL INTERESTED PERSONS

As you requested under Minnesota Statutes, section 14.26, subdivision 1:

PLEASE NOTE that the Department will submit the above-named proposed rules to the Office of Administrative Hearings on the date of this notice, [Month] [Date], [Year].

The Department 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, [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 by contacting [Name] at [Address] and [Phone]. [OR] A copy of the rules as modified is enclosed with this Notice.

_____

[Name]
[Title]

Date: [date] [Make sure this date is the same as the date in the "PLEASE NOTE" paragraph, above.]

[New in 2016]
Minnesota Department of [Name]
[Division]

NOTICE OF SUBMISSION OF RULES PROPOSED FOR ADOPTION WITHOUT A PUBLIC HEARING TO THE OFFICE OF ADMINISTRATIVE HEARINGS

Amendments to Rules Governing [Topic], Minnesota Rules, [citation(s)]

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 agency under Minnesota Statutes, section 14.14, subdivision 1a. This notice is also posted on the website of the [Name of Agency].

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, MONTH DAY, YEAR. 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 via its eComments website at ***https://minnesotaoah.granicusideas.com/discussions*** or 600 North Robert Street, P.O. Box #####, St. Paul, Minnesota 55164-####.

[Cite and describe authorizing law(s):]
By Laws of Minnesota YEAR, Special Session, chapter #, article #, section #, the Minnesota Legislature requires the commissioner of [agency name] to adopt or amend rules governing [topic]. [etc. additional paragraphs for additional applicable law]

The Department 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] at [agency name], [address], St. Paul, Minnesota 55155-####, telephone (651) ###-####, email [email address] For special accommodation you may contact agency contact person named above. Questions concerning the rules should be directed to the agency contact person.

Date: _____, [year] _____
[agency contact person]
[agency division]

[Revised in 2018] Minnesota Department of [Name]

NOTICE OF FILING RULES WITH THE SECRETARY OF STATE

Adopted [Amendment to] [Repeal of] Rules Governing [Topic], Minnesota Rules, [citation]; Revisor's ID Number [number] OAH docket number [number]

TO: ALL INTERESTED PERSONS

As you requested under Minnesota Statutes, section 14.16, subdivision 1:

On [HearingDate], at the hearing for the [topic] rules, you requested that the Department 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 [AdoptDate]. The Office of Administrative Hearings is filing the rules with the Secretary of State today, [FileDate].

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 Department of [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 will arrange to publish the Notice of Adoption in the State Register. The Notice of Adoption will appear in the State Register approximately two weeks after the Department submits it.

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]

Date: [date] [Make sure this date is the same as the "FileDate" above.]

[New in 2015] Note that Minnesota Statutes, section 14.05, subdivision 3 requires that you publish notice in the State Register that you have withdrawn the rules.

Minnesota Department of [Name]

[Name] Division

NOTICE OF WITHDRAWN RULES

Proposed Rules Governing [Title], *Minnesota Rules,* Parts [####.####s], Revisor's ID Number [number]

The Minnesota Department of [Name] is withdrawing its possible amendments to rules governing [explanation of what rules would do] that were published in the Dual Notice of Intent to Adopt Rules on [publication date]. (## SR ####) [Give reason such as Administrative Law Judge [Name] determined that Department lacks the statutory authority] to adopt the proposed amendments to *Minnesota Rules*, Chapter ####. [OR the Department'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 is withdrawing the following proposed amendments: *Minnesota Rules*, parts [parts #s].

Date: _____ _____
Commissioner

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. [Revised in 2020] 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. Some people are unsure about using forms that differ from the forms set out in Minnesota Rules 1400.2510–.2570. For these people's peace of mind, the Editor assures them the content of all forms originated from the forms that appear in Minnesota Rules 1400.2510–.2570, and have been edited for clarity. The Manual's 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 have to 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. (He did this by renewing Governor Dayton's March 4, 2014 Executive Order 14-07),** So, you should draft with this in mind. [Practice hint: Remember to remove this Manual's footer when printing your final document.]

[Revised in 2017] eFiling Rule-Related Documents. OAH strongly encourages agencies to eFile all rule-related documents. This means that agencies should eFile all documents submitted for ALJ review. 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/). (The page also includes a link to frequently asked questions.)

OAH-Received Comments. When you are seeking comments from the public that they will be submitting to OAH, keep the following in mind:

> **[Revised in 2019]** OAH collects public comments on its user-friendly and centralized rulemaking eComments website (https://minnesotaoah.granicusideas.com/). This system enables the public to better participate in an efficient and open rulemaking process. (Public instructions

for making comments can be found at OAH Rulemaking eComments Website (https://mn.gov/oah/forms-and-filing/ecomments/)) 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 a public eComments page for your rule, contact **Denise Collins, Court Administrator at denisecollins@state.mn.us or (651) 361-7875** at least a week before your notice is published in the State Register.

When requesting to set up a public eComments page for your rule, please provide the following:

1. The OAH docket number assigned to the rulemaking.
2. A finalized **accessible** copy of the Request for Comments or Notice and any additional documents (proposed rules, SONAR, etc.) you would like to appear on your public eComments page.
3. The date the Request for Comments or Notice will appear in the State Register.
4. The dates the comment period will open and close.
5. If the agency maintains a rulemaking webpage, please provide a link. OAH will link to the agency's rulemaking webpage on your public eComments webpage.

[Revised in 2017] For giving instructions to the public:

1. Announce OAH's eComments website for accepting electronic comments OAH eComments website (https://minnesotaoah.granicusideas.com/) 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.

[Revised in 2019] 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 Denise Collins at **denise.collins@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.

[Revised in 2019] 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 the judge's legal assistant**.** Refer to OAH Staff Directory (https://mn.gov/oah/about-us/staffdirectory/) for help identifying the judge's assistant and the assistant's contact information**.**

Requesting an OAH docket number or schedule a hearing date. [Revised in 2018] To request an OAH docket number or schedule a hearing date, complete the **Contested Case Docket Request (https://mn.gov/oah/lawyers-and-litigants/administrative-law/docket-request.jsp)** on OAH's website. Provide the subject of the rules, your proposed hearing dates, and the Revisor's ID number, if available.

If you have difficulties using the Contested Case Docket Request form, then email or call Becky Howell at OAH at Rebekah.Howell@state.mn.us or (651) 361-7864. Provide Ms. Howell with the information listed above. She will let you know whether an ALJ is available on one of your dates.

Frequently Asked Questions from Agencies:

[Revised in 2019] 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 go to OAH's website Administrative Law Judges (https://mn.gov/oah/about-us/judge-profiles/administrative-law-judges/) and click on the judge's profile. 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 Denise Collins at denise.collins@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 PDF to Denise Collins at denise.collins@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 Denise Collins at denise.collins@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.

MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

OAH Docket Number: _____

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

[Insert rules title] **NOTICE OF APPEARANCE**

PLEASE TAKE NOTICE that:

1. The agency named below (Agency) will appear at all proceedings in the above-entitled matter.

2. By providing its email address below, the Agency acknowledges that it has read and agrees to the terms of the Office of Administrative Hearings' e-Filing policy and chooses to opt into receiving electronic notice from the Office of Administrative Hearings in this matter. **Note: Provision of an email address DOES NOT constitute consent to electronic service from any opposing party or agency in this proceeding.**[1]

3. The Agency agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel.

Agency's Name: [Minnesota [Department or Board] of [name]
Agency's Attorney: [Counsel]
Email: [Counsel@state.mn.us] Telephone: (651) XXX-XXXX
Mailing Address: [street address] [office mail box], St. Paul, MN 55155-XXXX

Legal Assistant/eFiler Name: [Legal Assistant]
Email: [legal.assistant@state.mn.us] Telephone: (651) XXX-XXXX
Mailing Address: [street address] [office mail box], St. Paul, MN 55155-XXXX

Rules Coordinator/eFiler Name: [Name]
Email: [rules.coordinator] Telephone: (651) XXX-XXXX
Mailing Address: [street address] [office mail box], St. Paul, MN 55155-XXXX

[Note: We compressed this form to make it fit on one page. You will need to expand it to add your information. Remember to remove this instruction and the footer before e-filing your document.]

Dated: _____ _____
Signature of Agency or Attorney

[1] In order to opt in to electronic notice, this form must be emailed to OAH.efiling.support@state.mn.us. If the party does not wish to opt in to electronic notice, this form may be filed with the Office of Administrative Hearings via facsimile, U.S. Mail, or personal service. *See* 2015 Minn. Laws Ch. 63, Minn. R. 1400.5550, subps. 2-5 (2017).
Note: This form must be served upon the opposing party/agency. Counsel may not withdraw from representation without written notice.

Minnesota Department of [Name]

[AMENDED] ORDER ADOPTING RULES

[Adoption of][Repeal of Obsolete] Rules Governing [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 [Name of Agency]'s annual obsolete rules report dated [date] under Minnesota Statutes section 14.05 subd. 5.]

2. The [Name of Agency] 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 agency 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 agency 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 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 agency 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 Department of [Name]

[New in 2016]

Minnesota Department of [Name]

[PROPOSED] ORDER ADOPTING RULES

Adoption of Rules Governing [Topic], Minnesota Rules, [citation]; Revisor's ID Number [number]

BACKGROUND INFORMATION

1. The [Name of Agency] 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 [agency] 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

Rules of the [Name of Agency] 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 or Director] [Name of Agency]

[At the bottom of each page, put a footer in the general form:
"[Year] [Topic] Rules, Chapter #### - Page #"]

OFFICIAL RULEMAKING RECORD

DEPARTMENT OF [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 Statues, §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 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 the rules as proposed, dated [date], the Notice of Adoption, dated [date], [and] a stripped version of the rules, dated [date][, and a complete version of Minnesota Rules, chapter [chapter], which incorporates all revisions from this rulemaking].

- [It is possible that the following sentences will need to be inserted after the first sentence in this paragraph:] There are two copies of the adopted rules, dated [date], in the file. One contains the Revisor's approval for filing with the Secretary of State and the other contains both the Office of Administrative Hearing's stamp and Administrative Law Judge's signature indicating approval of the rules and the Secretary of State's stamp indicating filing with that office.

(7) The Administrative Law Judge's written statement of required modifications and of approval or disapproval by the Chief Administrative Law Judge.

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:
  - 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.]
  - part 1400.2310 for rules adopted without a hearing (These documents are itemized in NH-REVW):
    - 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. three copies 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 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.]
- Correspondence regarding the Governor's Office review of the rules.
- The Department's [Date] letter transmitting the file to the Office of Administrative Hearings for the official review.
- A fiscal note.

[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

Minnesota Department of [Name]

Division of [Name, or Unit, Bureau, etc.] [Optional]

REQUEST FOR COMMENTS

Possible [Amendment to] [Repeal of] Rules Governing [Topic], *Minnesota Rules*, [citation]; Revisor's ID Number [number]

Subject of Rules. The Minnesota Department of [Name] requests comments on its possible [amendment to] [repeal of] rules governing [topic]. The Department is considering [rules] [rule amendments] [repealing its rules] that [give a detailed description of the subject matter of the possible rules. [As part of this, you might want to include a summary of the issues to be considered. If you wish 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 [description of types of groups and individuals likely to be affected].

Statutory Authority. *Minnesota Statutes*, section [section #], [authorizes / requires] the Department to adopt rules for [briefly describe or quote your statutory authority].

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 intends to adopt or to withdraw the rules. The Department 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 [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 time line 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. **[New in 2016]** For example, you might say:

The [agency] 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).]

Rules Drafts. The Department [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].

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 **[New in 2016]** [submit written comments via the Office of Administrative Hearings Rulemaking eComments website at *https://minnesotaoah.granicusideas.com/discussions*.]

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 Request for Comments available in an alternative format, see **ACCMMDTN** in the appendix.]

NOTE: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Dated: [Date]

[Name], Commissioner
Department of [Name]

- [Note: There is no statutory requirement for the Request to be signed. Your agency, however, might have internal requirements for approval before taking this first formal rulemaking step. And having management review and sign off on the Request to get their buy-in is a good idea.]

OFFICE OF THE REVISOR OF STATUTES
700 STATE OFFICE BUILDING

ASSIGNING REVISOR'S ID NUMBER

NOTE: Both the Revisor's Office and Governor's Office track rule proceedings using a unique project identifier called the "Revisor's ID number." This is the same number assigned to rule drafts using "RD" or "AR" followed by "0" and four digits. The Revisor's Office will open a rule file and assign an ID number any time an agency requests the Revisor's Office to do so, even if this request does not also include a request to review or produce a rulemaking document for the agency. If your project does not go forward, simply notify the Revisor's Office and the Revisor's Office will cancel the number.

RULE DRAFTING TELEPHONE NUMBERS

Ryan Inman, Revisor of Statutes ..... (651) 296-3908
John McCullough, Chief Deputy Revisor ..... (651) 296-7147
General Information ..... (651) 296-2868
Computer Help Desk ..... (651) 297-7500
Fax ..... (651) 296-0569
TDD Use State Relay ..... Metro MN: (651) 297-5353
..... Greater MN: 1-800-627-3529

RULE DRAFTING DIVISION
Jeff Kase, Deputy ..... (651) 296-4752
Cindy Maxwell, Assistant Deputy ..... (651) 296-0955
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MINNESOTA

[For the letter author: Do not use returns to add spacing between paragraphs; use the Normal styles (above) or the Paragraph tool. Do not forget to delete this information.

[Date]

The Honorable Jenny Starr
Chief Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Proposed Repeal of Obsolete Rules of the Department of [Name] [about/Governing] [Topic], Request for Review and Approval of Repeal of Obsolete Rules; Revisor's ID Number [number]

Dear Chief Judge Starr:

The Minnesota Department of [Name] proposes to repeal the above-named obsolete rules governing [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 by the OAH 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. Each paragraph states whether the document is enclosed and, if the document is not enclosed, the reason why the document is not applicable to these rules.

A. Enclosed: the proposed repealers 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 Notice Plan, or a copy of the transmittal letter.

E. Enclosed: all written comments and submissions on the proposed rules.

- [There is no need to state how many comments or submissions that you received. However, if you received no requests, submissions, or comments of any kind, perhaps put in:]
- Not Enclosed: written comments and submissions on the proposed rules because we received no written comments or submissions.

F. 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.

- [Or] Not Enclosed: the notice of withdrawal of hearing requests and related documents because no hearing requests were [received] [withdrawn] during this rulemaking.

G. Enclosed: a copy of the adopted rules dated ##/##/##.

- [You may need to include the following as well:] The modifications to the proposed rules are reflected in the rules as adopted and are approved by the Revisor of Statutes.
- [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 actually have the Revisor's approval indicated on it.]

H. Enclosed: a copy of the Notice of Adopting Substantially Different Rules that we sent to persons or groups who commented during the comment period and evidence that we sent the notice to these persons or groups.

- [Or, more likely:] Not Enclosed: a notice of adopting substantially different rules because the Department did not adopt substantially different rules.

I. Enclosed: the Order Adopting Rules that complies with the requirements in part 1400.2090.

J. 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.

- [Or, more likely:] 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.

K. Enclosed: any other document or evidence to show compliance with any other law or rule which the Department is required to follow in adopting these rules:

- The obsolete rules report dated [date] identifying [this/these] rules as obsolete.

If you have questions about the enclosed documents or the proposed expedited rules, please contact me at [phone].

After completing your review, please send any correspondence to me at the following address:

[Name]
Minnesota Department of [Name]
[Address]

Yours very truly,
[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 are 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 noon-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 that 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.

[New in 2019] You will find two SONAR forms in this year's Manual. You will need to read them together. This one (SONAR) remains the traditional annotated explanation of how to develop your SONAR using the SONAR form. The second version is the newly added, fully accessible SONAR–TEMPLATE. The Annotated form contains the usual advice and tips you rely on. SONAR–TEMPLATE is a bare-bones outline designed for you to insert your own content, sparing you from having to delete the instructions and reformat it. It also uses a different typeface, which you are free to adopt or revert to the customary Times New Roman, if you prefer. As usual, this addition will evolve over time so please let us know how this works.

[**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.]

Minnesota Department of [Name]

STATEMENT OF NEED AND REASONABLENESS

Proposed [Amendment to] [Repeal of] Rules Governing [Topic], Minnesota Rules, [citation]; Revisor's ID Number [number]

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.]

ALTERNATIVE FORMAT

Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact [name] at [agency, address, phone, and fax].

- [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.]

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 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 has the necessary statutory authority to adopt the proposed rules.

REGULATORY ANALYSIS

[Note: 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.]

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the agency's response. [Note: 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.] [Note: 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.]

"(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"
[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.]

"(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"
[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.]

"(3) 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.]

"(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"
[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.]

"(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"
[Estimate:

- the probable costs of complying with the proposed rule; and
- the portion of costs to be borne by identifiable categories of affected parties.]

"(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"
[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.]

"(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"
[Describe:
- any differences between the proposed rule and existing federal regulations; and
- 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. . . . '[C]umulative 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.]

Editor's note: At the time of this edit, the agencies do not have enough experience with this provision to know what works for sure.

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 child care 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."]

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.]

[Describe how you did this.]

ADDITIONAL NOTICE

[Minnesota Statutes, sections 14.131 and 14.23, require that the SONAR contain a description of the Department's efforts to provide additional notice to persons who might be affected by the proposed rules or explain why these efforts were not made.]

[If applicable:] This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a [date] letter by Administrative Law Judge [name].

[Describe your Additional Notice Plan. Put this in bullet points or 1, 2, 3 format so that it will work as a checklist for you here and in your Certificate of Giving Additional Notice.]

Our Notice Plan also includes giving notice required by statute. We will mail the [rules and] Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Legislature per Minnesota Statutes, section 14.116. [If applicable:] We will also [describe what you will do], as required by [statutory requirement].

[Our Notice Plan did not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111.]

[We will submit the rules to the state Council on Affairs of Chicano/Latino People at least 15 days before their initial publication in the State Register per Minnesota Statutes, section 3.9223 because the rules will have their primary effect on Chicano/Latino people.] **[New in 2015] Note: You no longer need to do this. The Legislature repealed Minnesota Statutes, section 3.9223 Minnesota Laws 2015, Chapter 77, thus eliminating this council. Chapter 77 (codified at Minnesota Statutes, section 15.0145) created three new ethnic councils and does not require that the rules be submitted for review.]**

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 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's publishing the Notice of Intent to Adopt. The documents will include: the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Department 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.]

DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION

[New in 2009:] Minnesota Statutes, section 14.128 requires the 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. **[New in 2018]** 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 agency 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 agency 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.]

COST 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 Commission. See Minnesota Statutes, section 14.127, subdivision 4(d).

[***If your proposed rules are NOT PUC rules, include the following***:]

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed $25,000 for any small business or small city. The Department 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 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 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 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 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 rules. *See* Minnesota Statutes, section 14.127, subdivision 4, paragraph (e). 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 or to this rulemaking.]

LIST OF WITNESSES

[Revised in 2015] [You only need to list witnesses if a hearing is scheduled. Also, you only need to list *non-agency* witnesses. OAH Rules, part 1400.2070, subpart 1. 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 anticipates having the following witnesses testify in support of the need for and reasonableness of the rules:

1. Mr./Ms. [Name] will testify about [Briefly describe the anticipated testimony].
2. [Repeat format of number 1 for each witness anticipated to testify at the hearing].
3. [Name], [Title], Department of [Name] will testify about [describe].

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.

LIST OF 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

Based on the foregoing, the proposed rules are both needed and reasonable.

_____	_____
[Date]	[Name] [Title]

[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.]

[Agency Logo Here]

STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Revisions of Minnesota [Rule Chapters]; [Revisor ID No.]

[Division Name]

[Month], [Year]

Note to drafter: Replace the Manual footer from this title page with your own.

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/

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.

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 Adminitrative Hearings
SONAR	Statement of Need and Reasonableness
[More as needed]	[Additional definitions]

Introduction and overview

Introduction

[Introduction text here]

Statement of General Need

[Statement of General Need text here]

The agency needs these amendments to:

[Reason for amendments]

Scope of the proposed amendments:

The following chapters of Minnesota rules are being affected by the proposed changes:

Minnesota Rules, chapter 9999, establishes [text here].

[Add more information as needed.]

Background

[Background text here]

[This is for quoted statutory text.]

[More information as needed.]

Public participation and stakeholder involvement

[Public participation and stakeholder involvement text here.]

[Additional information]

Statutory authority

[Statutory authority information here.]

[Additional information]

Reasonableness of the amendments

General Reasonableness

[Statement of general reasonableness here]

1) [List of statements – statement 1
2) [List of statements – statement 2]

Rule-by-Rule Analysis

[Statement of specific reasonableness]

Proposed change to Minnesota Rules:

Part [Part of Rule]

Justification for Minnesota Rules, part [number]

[Text here].

Part [part number]

Justification for Minnesota Rules, 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.

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.

[Description of classes of persons affected by the rule text here]

B. 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.

[Probable costs to the agency and other any other agency text here]

C. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

[Less costly or less instrusive methods text here]

D. 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.

[Alternative methods for achieving the purposed of the proposed rule text here]

E. 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.

[Probable costs of complying with the proposed rule text here]

F. 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.

[Probable costs or consequences of not adopting the proposed rule text here]

G. 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.

[Assessment of differences between the proposed rule and existing federal regulations text here]

H. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

[Assessment of the cumulative effect of the rule with other federal and state regulations.]

[Other statements, such as Environmental Justice Policy, Health Equity Policy, etc., as needed]

[Text here on environmental justice, health equity or other policies as needed]

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.

[General overview of what the agency is doing for the Additional Notice plan.]

Notice

[Details about specific actions taken to ensure appropriate parties have been notified about the rule proposed rule.]

Additional notice plan

The [AGENCY] intends to send an electronic notice with a hyperlink to electronic copies of the Notice, SONAR and the proposed rule amendments to:

[List generic descriptions of classes of persons]		
[Names of stakeholder groups]	[addresses]	[additional information, if applicable]

Under Minnesota Statutes, section 14.14, subdivision 1a, the[agency] believes its regular means of notice, including publication in the *State Register* and [other publications] will adequately provide notice of this rulemaking to persons interested in or regulated by these rules.[[any additional justification available]

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 [agency's] regulatory objectives while allowing maximum flexibility to regulated parties and to the [agency] in meeting those objectives.

[Text about performance-based rules]

Consideration of [other factors that your statutes require that you take into account] **[Note to drafter: Delete this section if it does not apply to your rulemaking. Remember to delete this instruction.]**

In exercising its powers, the [agency] is required by Minnesota Statutes, section 999.80, subdivision 9] and [other statutes?] to consider:

[Description of what the agency must consider.]

[text here]

[Description of how the agency is addressing the considerations.]

Consult with MMB on local government impact

As required by Minnesota Statutes, section 14.131, the [agency] will consult with Minnesota Management and Budget (MMB).

[Description of how the agency will consult with MMB.]

Impact on local government ordinances and rules

Minnesota Statutes, section 14.128, subdivision 1, requires an agency to make a determination of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. The [agency] has determined that the proposed amendments [will/will not] have any effect on local ordinances or regulations.

Costs of complying for small business or city

Minnesota Statutes, section 14.127, subdivisions 1 and 2, require an agency to "determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed $25,000 for any one business that has less than 50 full-time employees, or any one statutory or home rule charter city that has less than ten full-time employees."

[Description of cost of complying for a small business or city]

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 SONAR exhibits

1) [Name, title, [] Division, Agency. [] is the [briefly describe expertise].
2) [Name, title, [] Division, Agency. [] is the [briefly describe expertise].
3)

Witnesses and other staff

1) The agency expects that the proposed amendments will be noncontroversial. In the event that a hearing is necessary, the agency anticipates having the listed authors testify as witnesses in support of the need for and reasonableness of the rules.
2) [Name], [Agency]. [Name] is a staff attorney to the agency and will introduce the required jurisdictional documents into the record.
3) [Name], [Agency[. [Name] is the project rule coordinator and will testify on any Minnesota Administrative Procedures Act process questions.

SONAR exhibits

1) [List exhibits here]
2) [List 2 of exibits here]

Conclusion

In this SONAR, the agency has established the need for and the reasonableness of each of the proposed amendments to Minnesota Rules, chapters 9999 and [others]. The agency has provided the necessary notifice and in this SONAR 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]
[Agency]

_____
Date

Minnesota Department of [Name]
MEMORANDUM

DATE: [date]

TO: [Name]

FROM: [Name], [Title]

PHONE: [phone number]

SUBJECT: [Topic] Rule Hearing

Here 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)

[Revised in 2020] Editor's Note: In Fiscal Year 2021, the State Register will continue billing agencies for rule related publications.

State Register publication deadlines. [Revised in 2019] 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. Check the attached publication schedule.
- 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. **[Revised in 2020]** 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. **[Revised in 2020] Estimate the Dollar Amount. The estimated rate for FY21 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. **[Revised in 2020]** 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 scanning them and attaching them to an email**. An electronic signature will be accepted on the Printing Order Form if a scanner is not available.**
   - 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. **[Revised in 2020]** 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. **[Revised in 2020] Please bold and italicize all email addresses and urls:** ***joe.rulewriter@agency.state.mn.us***; ***http://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. Have your liaison officer sign and date the form before submitting it. 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.

An important note about printing: Please use the printer icon in Adobe Acrobat Reader to print your PDF. Using the File, Print option from your browser menu may result in a printing error.

STATE REGISTER PRODUCTION SCHEDULE FOR THE 2021 FISCAL YEAR: JULY 1, 2020 – JUNE 30, 2021

The State Register publishes every Monday (Tuesday when Monday is a holiday).

CONTACT INFORMATION: Email *State Register Editor* Sean Plemmons with questions at sean.plemmons@state.mn.us or 651-201-3204

BILLING RATES: Rates for the State Register are estimated at $135.00 per page pending Minnesota Management and Budget approval. Rates are subject to change with MMB approval. Space is billed by each tenth of a page used, at $13.50 per tenth. 1-typeset page in the State Register = 1.5 pages typed, double-spaced on 8½" x 11" paper. Ask for a quote of the price with a sample of your submission. Inside front cover of State Register is the schedule for next four issues.

SUBMISSIONS: E-mail submission in Microsoft Word format and the State Register Printing Order form (or letter) giving date to publish, copies desired, and/or Affidavit of Publication (both Affidavit and Copy are extra charges), and the email to send an electronic invoice. State agency contracts need Contract Certification form approved prior to submitting notice, but does not need to be included with submission.

DEADLINES: Unless noted otherwise below, deadlines are always TUESDAY AT NOON the week prior to publication or six days beforehand. Example: Publication date: Monday, June 8, 2020. Deadline: NOON on Tuesday, June 2, 2020.

For LONG (more than 10 pages) and complicated rules (tables, charts, pictures, etc.) contact the editor to negotiate an earlier deadline.

PUBLICATION DATES:

JULY 2020:

July 6
July 13
July 20
July 27

AUGUST 2020:

August 3
August 10
August 17
August 24
August 31

SEPTEMBER 2020:

September 8
September 14
September 21
September 28

OCTOBER 2020:

October 5
October 12
October 19
October 26

NOVEMBER 2020:

November 2
November 9
November 16
November 23
November 30 - **Early Deadline MONDAY November 23**

DECEMBER 2020:

December 7
December 14
December 21
December 28

JANUARY 2021:

January 4
January 11
January 19
January 25

FEBRUARY 2021:

February 1
February 8
February 16
February 22

MARCH 2021:

March 1
March 8
March 15
March 22
March 29

APRIL 2021:

April 5
April 12
April 19
April 26

MAY 2021:

May 3
May 10
May 17
May 24

JUNE 2021:

June 1
June 7
June 14
June 21
June 28

DEPARTMENT OF ADMINISTRATION

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INSTRUCTIONS

1. Complete all applicable blocks, including your department/division, billing address and email, and name and phone of contact person.
2. Submittal instructions and deadline schedule available from editor, or see inside front cover of the State Register, or web site: ***https://mn.gov/admin/bookstore/register.jsp***
3. Your actual submission (notice) should be emailed in Microsoft Word format to ***sean.plemmons@state.mn.us***, along with the completed print order form which will be in PDF format.
4. State agencies must have your agency's State Register "Liaison Officer" sign this form. Email the State Register Office to obtain more detailed instructions, and to add or change "Liaison Officers." To add or change liaison officers, just contact the editor and they will add/change the necessary person.
5. Retain a copy of this form for your records or for future submissions.

CHECK ALL THAT APPLY:

☐ **Request for publication**

Desired date(s) of publication: _____

☐ **Request for individual copy (PDF) of the State Register after publication (indicate email where PDF should be sent)**

Email: _____

☐ **Request of "Affidavit of Publication" includes notarized affidavit (additional charge)**

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Agency Purchase Order Information
Agency Purchase Order #:
Vendor information: Minnesota's Bookstore Swift Vendor ID: G020000000, Address 11 Category #: 82101800 Account #: 411104

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VIDEOCONFERENCE INFORMATION

[Revised in 2017] This document contains basic background information—in the form of a general information flier and a sample letter to videoconference site hosts—for conducting videoconferences for rule advisory committee meetings and rule hearings. For information about videoconference sites, costs, and other information, please contact your agency's videoconference coordinator. If you want information about how to make your videoconference plans work with OAH, contact Katie Lin at (651) 361-7911 or katie.lin@state.mn.us. Please note this information is subject to change.

Videoconference Information Flyer

What is a videoconference?

A videoconference is a two-way interactive communication between people at two or more sites, making use of video images, voice and audio.

What activities may be conducted through videoconferences?

A video conference may be used for meetings, training events, or a hearing or appeal. The Attorney General's office and the Department of Economic Security use videoconferencing for various hearings.

How does the video equipment work?

The equipment includes cameras and microphones which capture the video and audio signals. A special computer, a **codec**, converts the pictures and sounds to digital signals. These signals are transmitted through telephone lines to another site with a **similar codec** which converts them back to sound and pictures.

What sites are available?

MNet, defined by state law, may be used by public organizations and private colleges and schools. This network has over 200 sites available statewide. The services of another partner network ONVOY® may also be used. This network was developed by a consortium of Minnesota telephone companies and includes sites throughout Minnesota.

Videoconference Sample Letter

[This letter can be used by the ALJ or the agency to provide information for those involved. The letter includes information as to how the room is to be set up and possible times and procedures that can be followed for the videoconference.]

Dear Videoconference Host,

Thank you for being willing to help with the Wednesday videoconference. Having you there will make a difference for those who attend. It will increase their comfort level, and enable them to make better presentations.

This is a new process for most of us (including myself!), so the overriding guideline is to use common sense. If something said below doesn't seem to make sense for your particular site, you can just use your best judgment about the best way to proceed.

Here are the details of what you should do:

1. Arrive at the site about 45 minutes before start time. The hearing starts at 3:30 p.m., so it would be good if you arrived by 2:45 p.m. You should locate the Room Coordinator, who is the person in charge of the room. That person should know how to operate the cameras and other equipment. That person will show you what you need to know, about where to seat people, etc.

2. Consider the best room layout, and help the Site Coordinator rearrange the room if needed. The rooms are all different. The ideal layout would be a podium or a small table close to the camera, for the person who will be speaking. The rest of the room could be either rows of chairs or rows of chairs with tables for the audience. There will probably only be twenty people at the most in the audience, so don't waste a lot of time rearranging the room. The Site Coordinators have had lots of experience with all kinds of groups, and they will know what has worked well in the past.

3. Set up a small table or chairs or some surface near the door where you can put the handouts. These were mailed to the Site Coordinator earlier this week. If they have been misplaced or are locked up and unavailable don't panic. Just make up a sign-in sheet, with columns for name and address. See if someone can lend you some blank envelopes that people can self-address if they want a copy of my report. Call me (number below) and have me fax you the "Rulemaking Procedures Handout," and then ask someone there to make a few copies.

4. As people arrive, greet them, introduce yourself, and tell them you are helping to organize the meeting. Point out the sign-in sheet, the handouts, and generally make them feel comfortable. Probably just as they are arriving, we will be doing various technical checks for lighting, sound quality, etc., so that should let them see how the equipment works before we even get started.

5. When we do get going, I will begin with a general welcome and explanation of how we will proceed. Then, when that's done, we will have brief statements from the agency. Then we will be ready for public statements. In a traditional setting, when I am physically present, I just call on people at random. It does take time to ask for a show of hands of those who want to speak, pick one

of them, and then wait for them to come forward. It will be quicker, and more productive, if you would get the next speaker at your site selected (at random) and get them ready to go while speakers at other sites are talking. We will go "around the horn" from site to site. We will begin with a speaker from Bemidji, then a speaker from Detroit Lakes, then Grand Rapids, International Falls, St. Paul, Thief River Falls and, finally Worthington. So, when the Bemidji speaker is talking, the facilitator in Detroit Lakes should select the next speaker (at random) from that site, so that they will be ready to go when we switch to Detroit Lakes.

6. When we do finish with each speaker, I'll say something like "Thank you very much. Now let's switch to Detroit Lakes." At that point, the Detroit Lakes speaker should be at the speaker's area. Before they begin speaking, I'll ask them to state their name, and spell their last name. Some people are so nervous that they forget to do this. It might help if you could remind them as they are waiting to speak.

7. We will just keep going from one site to another until we run out of people who want to speak. Generally, we will run out even though some of the people present have not yet spoken. What I may do is to announce a ten minute break, so that people can go to the restroom, get a drink, and generally mill around. This always has the effect of stimulating some new speakers, so that when we resume after the break, there will be some people who decide they'll give it a try. When we have run out of speakers a second time, we will see what time it is, and determine the likelihood of anyone else coming. I'll want to wait around until about 5:00 before we adjourn for good, because there will be some people who may not come until they leave work.

8. Written comments can be submitted to me. But they must be received no later than a date which I will announce at the start, and again at the end, of the hearing. If people ask you about this, please tell them to send them in soon, and be sure to get them to me by the announced date. The address is on the back of the "Rulemaking Procedures" handout.

9. It would be desirable if you could remain at the site until the end of the session, but if you have to go home, to work, or wherever, it's not the end of the world. The most important time for you to be there is before we begin, and also while we get the ball rolling with the first few speakers. Once people get the hang of how it works, you will have less and less to do and your attendance is less vital. But if you do leave early, please be sure someone will collect the sign-in sheet and the envelopes for you.

The last thing I want to mention is that it's important that you be neutral in any statements you make about the proposed rules or people's comments, and that you be absolutely fair in your selection of speakers.

If you have questions, the best way to reach me is at my office, at [contact's telephone number]. If I am not in, please leave a message on my voice mail. I do check it frequently. After that, I'll be at the videoconference site in St. Paul. The numbers there are [phone numbers]. It's OK to call those numbers anytime, even in the midst of the videoconference. There will be someone there who will answer the telephone.

Well, that's about all I can think of. Your willingness to help is really appreciated.