

Rulemaking in Minnesota:

A Guide

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FOREWORD

This guide is intended to provide users with a reference to the law and rules governing each step to be taken in adopting permanent rules, with or without a public hearing; exempt rules; and expedited rules. While it is organized and written for agency staff engaged in rulemaking, it will also provide other users with a general overview of the four general procedures for adopting rules. It is not intended to be a comprehensive explanation of rulemaking under the Minnesota Administrative Procedure Act.

The guide is organized in four sections: rules adopted after public hearing, rules adopted without public hearing, exempt rules, and expedited rules. At the beginning of each section, in chronological order, is a list of steps to be followed in that type of rulemaking proceeding and any related time periods. The remainder of each section discusses each step listed. The relevant statutes and rules are either reproduced in the guide or citations to them are provided.

The guide will be revised and reissued periodically to reflect changes in the Minnesota Administrative Procedure Act or other relevant statutes or the rules of the office of administrative hearings.

The Revisor's office wants this guide to be useful to users. If you find errors in the guide, or if you have suggestions on how it could be made more useful, please contact Paul M. Marinac, 700 State Office Building, 100 Rev. Dr. Martin Luther King Jr. Blvd., Saint Paul, MN 55155, (651) 296-0948; paul.marinac@revisor.mn.gov.

The Interagency Rules Committee has also prepared a manual that is an invaluable resource for agency rulemaking staff. An electronic copy is available on the Minnesota Department of Health's Web site at: www.health.state.mn.us/rules/manual

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A. RULES ADOPTED AFTER PUBLIC HEARING

Steps	Time Periods
1) Publish request for comments on possible rule in State Register Give persons an opportunity to submit comments to the agency on the subject matter of the proposal	Notice published in State Register at least 60 days before publication of a notice of hearing or a dual notice, but no later than 60 days after the effective date of the grant of required rulemaking authority Notice published 6 days after State Register publication deadline
2) Prepare a statement of need and reasonableness available to the public and send to Legislative Reference Library	Prepared by the signature date of the notice of hearing or dual notice; sent to Legislative Reference Library by the date notice of hearing is mailed; available to public by the date the notice of hearing is published
3) Submit rules to Revisor for approval	No statutory deadline; 1 week average for review and approval
4) Submit request to Office of Administrative Hearings (OAH) to schedule a rule hearing	Administrative Law Judge (ALJ) appointed and notice of hearing approved within 5 working days of receipt of the notice
5) Publish notice of hearing, notify persons registered with agency for the purpose of receiving these notices, send out additional notice, and notify legislature	Notice published 6 days after State Register publication deadline. Must be published at least 30 days before date set for hearing and mailed to persons registered at least 33 days before hearing
6) Appear at hearing to establish the need for and reasonableness of the rules	No statutory deadline; hearing usually completed in 1 day - hearing record closed on the last day for receipt of written responses
7) ALJ completes report on the proposed adoption of the rules	ALJ report completed within 30 days of close of hearing record

**Findings of ALJ, agency response,
determine remaining steps in adopting rule**

- | | |
|---|--|
| 8) Submit rules as adopted to chief ALJ | No statutory deadline, but see note 7 |
| 9) OAH files approved rules with Secretary of State | No statutory deadline, but see note 7 |
| 10) Revisor prepares a notice of adoption | No statutory deadline; 2 day average for preparation and approval |
| 11) Submit notice of adoption to State Register | Notice published 6 days after State Register publication deadline |

Rules are effective five working days after notice of adoption published unless a later date is required by law or specified in rule.

1) **PUBLISH REQUEST FOR COMMENTS ON POSSIBLE RULE IN STATE REGISTER.**

Minnesota Statutes, section 14.101, requires you to solicit comments from the public on the subject matter of a possible rulemaking proposal actively being considered by your agency. Here is the text of this statutory provision:

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.¹

Subd. 2. **Advisory committees.** Each agency may also appoint committees to comment, before publication of a notice of intent to adopt or a notice of hearing, on the subject matter of a possible rulemaking under active consideration within the agency.

Subd. 3. **Effect of good faith compliance.** If an agency has made a good faith effort to comply with this section, a rule may not be invalidated on the grounds that the contents of this notice are insufficient or inaccurate.

Subd. 4. **Reduction of time period.** The chief administrative law judge shall reduce the time period before publication from 60 to 30 days for good cause.

This request for comments is required in all rulemaking proceedings to which it applies. You must publish the request for comments in the State Register at least 60 days before you publish a notice of hearing or a dual notice. The request for comments must be published within 60 days of the effective date of the grant of this rulemaking authority.²

Submit one copy of the request for comment to the State Register in Microsoft Word format and a State Register Printing Order form via e-mail to: sean.plemmons@state.mn.us. The notice will be published six days from the applicable publication deadline.³ The State Register is published every Monday. The publication schedule is sometimes affected by holidays.

This statute encourages you to seek information by other methods designed to reach "affected" persons or classes of persons. Make sure that any additional information-gathering efforts are adequately documented.

Before you publish a request for comments, contact the Revisor and request that a rule drafting file be opened for your intended rulemaking. When the rule file is opened by

¹ The notice applies to new grants of mandatory rulemaking effective on or after May 26, 1995, and amendatory grants of mandatory rulemaking authority for which a notice of hearing or notice of intent to adopt is published on or after August 1, 2001. See Laws 1995, chapter 233, article 2, section 11, and Laws 2001, chapter 106, sections 4 to 6.

² Executive Order 11-08 provides for state agency coordination of the Americans With Disabilities Act. You should make sure that the request for comments, and all notices given, written communications generated, and meetings held as part of the rulemaking process comply with the State of Minnesota Procedures for Providing Auxiliary Aids and Services, issued by Minnesota Management and Budget.

³ The notice must be received by the State Register by noon on Tuesday for publication on the following Monday.

the Revisor, an identification number is generated and assigned to this file. All documents produced by the Revisor for this rule file will use this number. You should also obtain this number from the Revisor and use it on all documents you produce for this rulemaking. The Governor's office and the Office of Administrative Hearings (OAH) will also be referencing this Revisor ID number in their documents. The use of a consistent document naming scheme allows the Revisor to more easily link public rulemaking documents to the correct rulemaking proceeding in the Revisor's public rules status system.

You may ask the Office of Administrative Hearings for prior approval of any plan for giving additional notice of your request for comments by complying with Minnesota Rules, part 1400.2060:

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.

A recommended form for this notice is contained in Minnesota Rules, part 1400.2510:

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 e-mail 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

The Governor has established rules review procedures that ask you to submit an Administrative Rule Preliminary Proposal Form to the Legislative Coordinator in the Governor’s office before the request for comments is published.⁴ You do not need to wait for a response from the Governor’s office.

The request for comments is one of many items required to be listed, for each rulemaking proceeding, in the agency's public rulemaking docket. This docket is required by Minnesota Statutes, section 14.366:

14.366 PUBLIC RULEMAKING DOCKET.

(a) Each agency shall maintain a current, public rulemaking docket.⁵

(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 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:

⁴ Administrative Rules Review Process, Office of the Governor, Revised 9/21/2012.

⁵ By January 15 each year, the rulemaking docket for each rule adopted during the preceding calendar year must be submitted to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule. See Minnesota Statutes, section 14.116.

- (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.

As you begin to develop your rules, make sure they are consistent with the regulatory policy of the state. Here is the text of this statutory policy:

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.

You will be required to describe in the statement of need and reasonableness how you considered and implemented this policy. See step 2.

2) PREPARE A STATEMENT OF NEED AND REASONABLENESS AVAILABLE TO THE PUBLIC.

Minnesota Statutes, section 14.131, requires you to prepare a statement of need and reasonableness (SONAR) and make it available to the public by the date the notice of hearing is published. When the notice of hearing is mailed as required under Minnesota Statutes, section 14.14, subdivision 1a, you must also send a copy to the Legislative Reference Library. Here is the text of this statutory provision:

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;

(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.⁶

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.

The rules of the OAH provide a form for various certificates, including a certificate of mailing the statement of need and reasonableness to the Legislative Reference Library. See Minnesota Rules, part 1400.2550.

The pertinent rule of the OAH governing SONARs is Minnesota Rules, part 1400.2070. Here is the text of this rule:

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;

⁶ You may ask the Office of Administrative Hearings for prior approval of your notice plan. See Minnesota Rules, part 1400.2060 (printed on p. 4).

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;⁷ 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.⁸ Examples include: Minnesota Statutes, section 16A.1285, subdivision 5; 115.43, subdivision 1; 116.07, subdivision 6;⁹ 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.

Minnesota Statutes, section 16A.1283, prevents you from imposing a new fee or increasing an existing fee by rule unless the new fee or the increase is approved by law. The section reads as follows:

16A.1283 LEGISLATIVE APPROVAL REQUIRED FOR FEES.

(a) Notwithstanding any law to the contrary, an executive branch state agency may not impose a new fee or increase an existing fee unless the new fee or increase is approved by law. For purposes of this section, a fee is any charge for goods, services, regulation, or licensure, and, notwithstanding paragraph (b), clause (3), includes charges for admission to or for use of public facilities owned by the state.

(b) This section does not apply to:

(1) charges billed within or between state agencies, or billed to federal agencies;

(2) the Minnesota State Colleges and Universities system;

(3) charges for goods and services provided for the direct and primary use of a private individual, business, or other entity;

(4) charges that authorize use of state-owned lands and minerals administered by the commissioner of natural resources by the issuance of leases, easements, cooperative farming agreements, and land and water crossing licenses and charges for sales of state-owned lands administered by the commissioner of natural resources; or

(5) state park fees and charges established by commissioner's order.

(c) An executive branch agency may reduce a fee that was set by rule before July 1, 2001, without legislative approval. Chapter 14 does not apply to fee reductions under this paragraph.

⁷ Minnesota Statutes, section 14.125, requires you to publish a notice of hearing within 18 months of the effective date of the law authorizing or requiring rules to be adopted, amended, or repealed or the authority for the rules expires.

⁸ Minnesota Statutes, section 14.045, requires an agency to consider certain factors when determining the amount of a fine if the authorizing statute or rule gives the agency discretion over the amount.

⁹ See also Minnesota Statutes, section 116.07, subdivision 2, paragraph (f).

Remember, all materials submitted to the ALJ or chief ALJ must be on 8-1/2" x 11" paper. Filings must be made in one of the three ways authorized by Minnesota Rules, part 1400.5550: delivery, first class mail, or facsimile transmission.

3) SUBMIT RULES TO REVISOR FOR APPROVAL.

No proposed rule may be published in the State Register unless it has been approved as to form by the Revisor. See Minnesota Statutes, sections 14.07 and 14.14, subdivision 1a.

The Revisor will also provide any assistance you need in drafting your rules, but is prohibited by Minnesota Statutes, section 14.47, subdivision 2, from helping you prepare a statement of need and reasonableness (SONAR) and acting as your legal counsel before an Administrative Law Judge (ALJ). If you would like to ask the Revisor for drafting assistance, you should consider doing so at an early stage of the drafting process and certainly before the SONAR is finished. The Revisor will help draft the rule so that it is in the correct form and may suggest changes in the substance or organization of the rules. The Revisor publishes a comprehensive manual setting out the form and method for drafting rules. A PDF of the manual is available for viewing and downloading at:<https://www.revisor.mn.gov/office/publications.php>. Paper copies of the Minnesota Rules Drafting Manual may be obtained without charge from the office.

If you have prepared a draft of the rule, submit one copy to the Revisor. The exact time it takes for the Revisor's approval depends on the length and complexity of the rules, the type of assistance requested, and other demands on the office. Generally speaking, the review and approval of rules takes approximately one week. You will be given six copies of your rule, approved as to form by the Revisor.

4) SUBMIT REQUEST TO OAH TO SCHEDULE A RULE HEARING.

If you are adopting a rule after a public hearing or if you intend to publish a dual notice,¹⁰ you must request the assignment of an ALJ by submitting a request to schedule a rule hearing to the chief ALJ. The chief ALJ has designated the docket clerk at the OAH as the person to receive rule hearing requests. You may call the docket clerk before requesting a rule hearing to make sure that an ALJ is available on the hearing date(s) you propose.

Minnesota Rules, part 1400.2020, subpart 1, provides that the chief ALJ must promptly assign a judge to a rule proceeding after the chief judge receives a request to schedule a rule hearing. Your request must include the documents listed in Minnesota Rules, part 1400.2080, subpart 5. Here is the text of this rule provision:

¹⁰ A dual notice is used if an agency is unsure whether 25 or more persons will request a public hearing. It announces the agency's intention to hold a public hearing on the rules should 25 or more persons request it, but it also allows the agency to cancel the scheduled hearing and adopt the rule without a public hearing if the required number of hearing requests are not received. If you decide to use a dual notice, you should follow Steps 4 and 5 before the notice is published. Minnesota Rules, part 1400.2540, contains a recommended form for a dual notice. See part B, RULES ADOPTED WITHOUT PUBLIC HEARING for more information about dual notices.

1400.2080 NOTICE OF PROPOSED RULE.

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.

The OAH docket clerk will give you the name of the ALJ assigned to the rule proceeding. The ALJ assigned to the proceeding will contact you to confirm the time and place of the hearing and will issue an order approving or disapproving the notice. See Minnesota Rules, part 1400.2080, subpart 5. You should then insert the ALJ's name, address, and telephone number into the notice. The ALJ must review the proposed notice within five working days of receiving the required documents.

5) PUBLISH NOTICE OF HEARING, NOTIFY PERSONS REGISTERED WITH AGENCY FOR THE PURPOSE OF RECEIVING THESE NOTICES, AND NOTIFY LEGISLATURE.

The rules review procedures of the Governor's office require you to submit to that office two copies of the proposed rules and SONAR, and two copies of the Proposed Rule and SONAR form, and obtain approval before you can proceed to publish the notice. See note 4.

You should submit the following documents electronically to the State Register for publication: one copy in Microsoft Word format of the notice of hearing, or dual notice containing a notice of hearing, approved by the ALJ as required by Minnesota Statutes, section 14.50, a State Register Printing Order form, and the Revisor ID number from the upper right corner of the rules as proposed and approved as to form by the Revisor. Send them via e-mail to: sean.plemmons@state.mn.us.

The notice and proposed rules will appear in the State Register six days after the applicable publication deadline.¹¹ They must be published at least 30 days before the date set by the ALJ for the hearing and must include the name, office address, and telephone number of the ALJ assigned to the hearing.^{12, 13} Also, at least 33 days before the date set for the hearing, you must give notice of your intention to adopt rules, by United States mail, to all persons registered with you for the purpose of receiving these notices.¹⁴ The notice must include either a copy of the proposed rule or a description of it and a statement that a free copy will be provided upon

¹¹ The notice and proposed rules must be received by the State Register by noon on Tuesday for publication six days later.

¹² If you are proposing to adopt or repeal rules that affect farming operations, you must provide a copy of the proposed rules to the commissioner of agriculture no later than 30 days before the proposed rules are published in the State Register. See Minnesota Statutes, section 14.111. You must also conduct at least one public hearing in an agricultural area of the state. See Minnesota Statutes, section 14.14, subdivision 1b.

¹³ If your rules will have their primary effect on Chicano/Latino people, Minnesota Statutes, section 3.9223, subdivision 4, requires you to submit them to the Council on Affairs of Chicano Latino People at least 15 days before they are published in the State Register.

¹⁴ Minnesota Rules, part 1400.2080, subpart 6, establishes this 33-day requirement. Minnesota Statutes, section 14.14, subdivision 1a, provides a 30-day notice requirement.

request. Minnesota Statutes, section 14.14, subdivision 1a, and Minnesota Rules, parts 1400.2080 and 1400.2530, both shown below, govern the form, content, and manner of providing the notices:

14.14 HEARING ON RULE.

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:

- (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.

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 e-mail address if the agency will accept e-mail 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.

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 e-mail 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

Minnesota Statutes, section 14.14, subdivision 1, requires you to make reasonable efforts to notify persons or classes of persons who may be significantly affected by the proposed rule by giving notice of your intention to adopt the rule in newsletters, newspapers, or other publications, or through other means of communication. This provision also encourages you to notify persons not on your mailing list who may be affected by the rule. Make sure that any additional information gathering efforts are adequately documented.¹⁵

Please keep in mind that the notice of hearing may not be published until at least 60 days after your request for comment was published.¹⁶

¹⁵ You may ask the Office of Administrative Hearings for prior approval of your proposed notice plans. See Minnesota Rules, part 1400.2060 (printed on p. 4).

¹⁶ See Minnesota Statutes, section 14.101 (printed on p. 3).

Minnesota Statutes, section 14.116, requires you to make reasonable efforts to send a copy of the notice of hearing and a copy of the statement of need and reasonableness to certain legislators. The specific statutory requirements are as follows:

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.

(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.

6) APPEAR AT HEARING TO ESTABLISH THE NEED FOR AND REASONABLENESS OF THE RULES.

You must appear at the hearing and present facts establishing the need for and reasonableness of the proposed rules and other requirements imposed by law or rule. An agency may rely on its statement of need and reasonableness as its presentation and may introduce it as an exhibit at the hearing as if read. See Minnesota Rules, part 1400.2220, subpart 3. The OAH usually advises agencies to attempt to limit any oral presentation by the agency to less than an hour. The hearing is usually completed in one day. If you have decided to modify the proposed rule based upon prehearing comments, it is advisable to have a sheet listing the modifications available to the public at the registration desk. Minnesota Rules, part 1400.2230, subpart 1, provides time limits governing the submission of written comments by the agency and interested persons and the submission of written responses to any new information submitted. The hearing record, upon which the ALJ bases his or her report, is closed on the last day set for receipt of written responses.

Here is the text of the relevant statutory provisions:

14.14 HEARING ON RULE.

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, 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.

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.

Here are the relevant rule provisions:

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 record keeping.

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 15.0145 (Minnesota Council on Latino Affairs), 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.

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.

Minnesota Statutes, section 14.127, requires you to determine, before the close of the hearing record, if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for certain businesses and cities. This statute may require you to obtain legislative approval. Here is the text of this statute:

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.

Minnesota Statutes, section 14.128, requires you to determine, before the close of the hearing record, if a local government will be required to adopt or amend an ordinance or other regulation to comply with your rule unless one of the exceptions in subdivision 3, clauses (2) to (4), applies. Here is the text of this statute:

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.

7) ALJ COMPLETES REPORT ON THE PROPOSED ADOPTION OF THE RULES.

Minnesota Statutes, section 14.50, requires the ALJ 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.

Minnesota Statutes, section 14.15, subdivisions 1 and 2, also regulate the timing and preparation of the report. Here is the text of these statutory provisions:

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.

The OAH has adopted specific standards of review that are used by the ALJ or the chief ALJ in determining whether or not to disapprove a rule. Here is the text of the relevant rule provision:

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 law¹⁷ 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;

¹⁷ For example, Minnesota Statutes, sections 3.986 to 3.989, require the commissioner of management and budget to coordinate the development of local impact notes for rules proposed after June 30, 1998, that have a fiscal impact on political subdivisions if requested by the chair or ranking minority member of either legislative tax committee. These notes must be made available to the public upon request. The law does not specify the point in the rulemaking process at which these notes must be available.

- 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).

If the ALJ finds no defects in the rules, you may proceed to adopt the rules. This is done by adopting an order adopting the rules.¹⁸ If you are a multimember agency, take note of the special requirements of Minnesota Rules, parts 1400.2090 and 1400.2560, that apply to you. You may then proceed as indicated in Step 9.

If you wish to modify the rules in a way not recommended by the ALJ, Minnesota Rules, part 1400.2240, subpart 5, shown below, determines how you should proceed.

1400.2240 ADMINISTRATIVE LAW JUDGE'S REPORT.

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.

The chief ALJ will review these modifications to determine if they involve substantial differences to the rules as proposed. Here are the relevant statutory and rule provisions on the issue of substantial difference:

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;

¹⁸ See Minnesota Rules, parts 1400.2090 and 1400.2560 (printed on pp. 24 and 25).

(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.

14.15 ADMINISTRATIVE LAW JUDGE'S REPORT.

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 applicable, that the agency has satisfied the rule requirements for the adoption of a substantially different rule.

1400.2240 ADMINISTRATIVE LAW JUDGE'S REPORT.

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.

You may, however, adopt a substantially different rule after satisfying the requirements of Minnesota Rules, part 1400.2110:

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.

If the ALJ finds that you did not establish the need for and reasonableness of a particular rule and the chief ALJ affirms that finding, **you have an additional option for relief. Under Minnesota Statutes, section 14.15, you may seek approval of the rule, without changes, by submitting it to the relevant legislative committees and the Legislative Coordinating Commission.** The exact requirements contained in Minnesota Statutes, section 14.15, subdivision 4, are shown below:

14.15 ADMINISTRATIVE LAW JUDGE'S REPORT.

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.

After meeting the requirements of this section, you may proceed as indicated in Step 8.

If the ALJ finds defects in the rules that are not harmless errors,¹⁹ other than those relating to the issue of need and reasonableness (for example, statutory authority, legality, or procedural defects), the report must be submitted by the ALJ to the chief ALJ for approval of those findings. If the ALJ report finds that one of your rules has been modified in a way that makes it substantially different from the rule as proposed, the report will again be submitted to the chief ALJ for review based on the criteria in Minnesota Statutes, section 14.05, subdivision 2. The chief ALJ has ten calendar days to complete this review. **You may not adopt rules containing defects identified by the ALJ in findings which findings are then approved by the chief ALJ.** You may, however, request the chief ALJ to reconsider the disapproval. Minnesota Rules, part 1400.2240, subpart 4, requires the chief ALJ to review and approve or disapprove the request within five working days after the office receives it. If you do not request reconsideration, or if such a request is denied, you must either withdraw those portions of the rules that contain the defects or take the actions prescribed by the chief ALJ to correct the defects. However, if the defect relates to a modification that has been found to be a substantial difference, you may adopt the rule after satisfying the requirements of Minnesota Rules, part 1400.2110.

¹⁹ Minnesota Statutes, section 14.15, subdivision 5, requires the ALJ to disregard procedural errors or defects if the ALJ finds that the error or defect did not deprive any person or entity of an opportunity to participate meaningfully in the process; or that the agency has taken corrective action to cure the error or defect so that the failure did not deprive the person or entity of the opportunity to participate meaningfully in the process.

If you choose to correct the defects, you must resubmit the rule to the chief ALJ for a determination of whether or not the defects have in fact been corrected. Here are the relevant statutory and rule provisions:

14.16 ADOPTION OF RULE; CHIEF ADMINISTRATIVE LAW JUDGE; FILING OF RULE.

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.

1400.2240 ADMINISTRATIVE LAW JUDGE'S REPORT.

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.

If you are proposing any modifications to your rules as proposed either before, during, or after the hearing, you should submit one copy of them to the Revisor for review and approval as to form. See Minnesota Statutes, section 14.07, subdivision 2.

Minnesota Statutes, section 14.05, subdivision 3, authorizes you to withdraw a proposed rule any time before it is filed with the Secretary of State. You must publish a notice of withdrawal in the State Register. The OAH has interpreted this as a qualified right. A portion of a rule may not be withdrawn if the withdrawal makes the remaining rules substantially different. See Minnesota Rules, part 1400.2240.

Remember, rules are not properly adopted unless the requirements discussed in this step have been met and you have an order adopting the rules that satisfies the requirements of Minnesota Rules, part 1400.2090. **The Governor's Administrative Rules Review process requires you to submit a Final Review Form to the Legislative Coordinator before you submit an Order Adopting Rules to OAH.** See note 4. A recommended order adopting rules is contained in Minnesota Rules, part 1400.2560. Here is the text of these rule provisions:

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.

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.

DATE: _____

Name
Title

8) SUBMIT RULES AS ADOPTED TO CHIEF ADMINISTRATIVE LAW JUDGE.

If you are adopting your rules as you had proposed them, or as modified on your own initiative or to correct defects found or approved by the chief ALJ, you must submit one copy of these rules to the chief ALJ as required by Minnesota Statutes, section 14.08, paragraph (b).

On the same day the rules are submitted to the chief ALJ, the OAH will request from the Revisor certified copies of the rule. The Revisor has five days, excluding weekends and holidays, to approve or disapprove a rule. See Minnesota Statutes, section 14.08, paragraph (b).

After the Revisor approves the rules as to form, the Revisor will send an electronic copy of the rule approved as to form to the OAH and will send one paper copy to you.

Minnesota Statutes, section 14.16, subdivision 1, requires you to give notice to all persons who requested to be informed that the rule has been adopted and filed. The notice must be given on the same day the rule is filed.

9) OFFICE OF ADMINISTRATIVE HEARINGS FILES APPROVED RULES WITH SECRETARY OF STATE.

If the OAH approves your rules, the office will file an electronic copy with the Secretary of State.

The Secretary of State will forward one copy of the rule to the Revisor and one copy to the Governor as required under Minnesota Statutes, section 14.05, subdivision 6. Here is this statutory provision relating to the Governor's rule veto power:

14.05 GENERAL AUTHORITY.

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.

10) REVISOR PREPARES A NOTICE OF ADOPTION.

After the Revisor is notified by the Secretary of State that your adopted rules have been filed with the Secretary of State, the Revisor will prepare a notice of adoption in compliance with the requirements of Minnesota Statutes, section 14.18. You will be given one copy of this document, approved as to form.

The notice of adoption will only list those portions of your rules that have been modified since the proposed rules were published in the State Register. Consequently, it must be read together with the proposed rules previously published for a complete understanding of the adopted rule.

There is no statutory time limit that applies to the Revisor's preparation and approval of your notice of adoption. The average time taken to prepare and approve a notice of adoption is two days.

11) SUBMIT NOTICE OF ADOPTION TO STATE REGISTER.

After you receive the notice of adoption from the Revisor and approval from the Governor, you should submit the Revisor ID number from the upper right corner of the notice of adoption approved as to form by the Revisor as well as a State Register Printing Order form to the State Register for publication of the notice. Submit these documents electronically via e-mail to: sean.plemmons@state.mn.us. The notice will appear in the State Register six days after the applicable publication deadline.²⁰

Your rules will become effective five working days after the notice of adoption is published, unless a later date is required by law or specified in the rules. See Minnesota Statutes, section 14.18. For rules requiring local implementation, see the effective date provision of Minnesota Statutes, section 14.128.

You must submit the notice of adoption to the State Register within 180 days after the ALJ's report or the chief ALJ's report is issued or the rules are withdrawn automatically. See Minnesota Statutes, section 14.19.

You are responsible for maintaining the official rulemaking record for all rules adopted under Minnesota Statutes, chapter 14. For the specific statutory requirements, see Minnesota Statutes, section 14.365. By January 15 each year, the rulemaking record for each rule adopted during the preceding calendar year must be submitted to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule. See Minnesota Statutes, section 14.116.

²⁰ The notice of adoption must be received by the State Register by noon on Tuesday for publication six days later.

B. RULES ADOPTED WITHOUT PUBLIC HEARING

Steps	Time Periods
<p>1) Publish request for comments on possible rule in State Register</p> <p>Give persons an opportunity to submit comments to the agency on the subject matter of the proposal</p>	<p>Notice published in State Register at least 60 days before publication of a notice of intent to adopt a rule without a public hearing, but no later than 60 days after the effective date of the grant of required rulemaking authority</p> <p>Notice published 6 days after State Register publication deadline</p>
<p>2) Prepare a statement of need and reasonableness available to the public and send to Legislative Reference Library</p>	<p>Prepared by the signature date of the notice of intent to adopt; sent to Legislative Reference Library by the date notice of intent is mailed; available to public by the date the notice of intent is published</p>
<p>3) Submit rules to Revisor for approval</p>	<p>No statutory deadline; 1 week average for review and approval</p>
<p>4) Publish notice of intent to adopt rule without a public hearing, notify persons registered with agency for the purpose of receiving these notices, send out additional notice, and notify legislature</p>	<p>Notice published 6 days after State Register publication deadline. Must be published at least 30 days before agency submits rule to Office of Administrative Hearings (OAH) and mailed to persons registered at least 33 days before the submission</p>

Wait at least 30 days after publication and notice to interested persons

If 25 or more written requests for a hearing are received during this time, you must publish a notice of hearing under Minnesota Statutes, section 14.14, and proceed under Minnesota Statutes, sections 14.14 to 14.20. See part A, steps 4 to 11. If not,

<p>5) Submit any modifications to Revisor for approval</p>	<p>No statutory deadline; 3 day average for review and approval</p>
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|--|---|
| 6) Submit rule as adopted to OAH for review, and notify on the same day all persons who have requested to be informed of this fact | Approved or disapproved within 14 days after OAH receives it |
| 7) OAH files approved rules with Secretary of State | Statute requires the filing "promptly" after approval of rules, but see note 27 |
| 8) Revisor prepares a notice of adoption | No statutory deadline; 2 day average for preparation and approval |
| 9) Submit notice of adoption to State Register | Notice published 6 days from State Register publication deadline |

Rules are effective five working days after notice of adoption published unless a later date is required by law or specified in rules.

1) **PUBLISH REQUEST FOR COMMENTS ON POSSIBLE RULE IN STATE REGISTER.**

Minnesota Statutes, section 14.101, requires you to solicit comments from the public on the subject matter of a possible rulemaking proposal actively being considered by your agency. Here is the text of this statutory provision:

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.²¹

Subd. 2. **Advisory committees.** Each agency may also appoint committees to comment, before publication of a notice of intent to adopt or a notice of hearing, on the subject matter of a possible rulemaking under active consideration within the agency.

Subd. 3. **Effect of good faith compliance.** If an agency has made a good faith effort to comply with this section, a rule may not be invalidated on the grounds that the contents of this notice are insufficient or inaccurate.

Subd. 4. **Reduction of time period.** The chief administrative law judge shall reduce the time period before publication from 60 to 30 days for good cause.

This request for comments is required in all rulemaking proceedings to which it applies. You must publish the request for comments in the State Register at least 60 days before you publish a notice of intent to adopt a rule without a public hearing. The request for comments must be published within 60 days of the effective date of the grant of this rulemaking authority.²²

Submit one copy of the request for comment to the State Register in Microsoft Word format and a State Register Printing Order form via e-mail to: sean.plemmons@state.mn.us. The notice will be published six days from the applicable publication deadline.²³ The State Register is published every Monday. The publication schedule is sometimes affected by holidays.

This statute encourages you to seek information by other methods designed to reach "affected" persons or classes of persons. Make sure that any additional information-gathering efforts are adequately documented.

Before you publish a request for comments, contact the Revisor and request that a rule drafting file be opened for your intended rulemaking. When the rule file is opened by

²¹ The notice applies to new grants of mandatory rulemaking effective on or after May 26, 1995, and amendatory grants of mandatory rulemaking authority for which a notice of hearing or notice of intent to adopt is published on or after August 1, 2001. See Laws 1995, chapter 233, article 2, section 11, and Laws 2001, chapter 106, sections 4 to 6.

²² Executive Order 11-08 provides for state agency coordination of the Americans With Disabilities Act. You should make sure that the request for comments, and all notices given, written communications generated, and meetings held as part of the rulemaking process comply with the State of Minnesota Procedures for Providing Auxiliary Aids and Services, issued by Minnesota Management and Budget.

²³ The notice must be received by the State Register by noon on Tuesday for publication on the following Monday.

the Revisor, an identification number is generated and assigned to this file. All documents produced by the Revisor for this rule file will use this number. You should also obtain this number from the Revisor and use it on all documents you produce for this rulemaking. The Governor's office and the Office of Administrative Hearings (OAH) will also be referencing this Revisor ID number in their documents. The use of a consistent document naming scheme allows the Revisor to more easily link public rulemaking documents to the correct rulemaking proceeding in the Revisor's public rules status system.

You may ask the Office of Administrative Hearings for prior approval of any plan for giving additional notice of your request for comments by complying with Minnesota Rules, part 1400.2060:

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.

A recommended form for this notice is contained in Minnesota Rules, part 1400.2510:

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 e-mail 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

The Governor has established rules review procedures that ask you to submit an Administrative Rule Preliminary Proposal Form to the Legislative Coordinator in the Governor's office before the request for comments is published.²⁴ You do not need to wait for a response from the Governor's office.

The request for comments is one of many items required to be listed, for each rulemaking proceeding, in the agency's public rulemaking docket. This docket is required by Minnesota Statutes, section 14.366:

14.366 PUBLIC RULEMAKING DOCKET.

(a) Each agency shall maintain a current, public rulemaking docket.²⁵

(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 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;

²⁴ Administrative Rules Review Process, Office of the Governor, Revised 9/21/2012.

²⁵ By January 15 each year, the rulemaking docket for each rule adopted during the preceding calendar year must be submitted to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule. See Minnesota Statutes, section 14.116.

- (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.

As you begin to develop your rules, make sure they are consistent with the regulatory policy of the state. Here is the text of this statutory policy:

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.

You will be required to describe in the statement of need and reasonableness how you considered and implemented this policy. See step 2.

2) PREPARE A STATEMENT OF NEED AND REASONABLENESS AVAILABLE TO THE PUBLIC.

Minnesota Statutes, section 14.23, requires you to prepare a statement of need and reasonableness (SONAR) and make it available to the public by the date the notice of intent is published. When the notice of intent is mailed as required under Minnesota Statutes, section 14.22, you must also send a copy to the Legislative Reference Library. Here is the text of this statutory provision:

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.²⁶ 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.

²⁶ You may ask the Office of Administrative Hearings for prior approval of your notice plan. See Minnesota Rules, part 1400.2060 (printed on p. 31).

The rules of the OAH provide a form for various certificates, including a certificate of mailing the statement of need and reasonableness to the Legislative Reference Library. See Minnesota Rules, part 1400.2550.

The pertinent rule of the OAH governing SONARs is Minnesota Rules, part 1400.2070. Here is the text of this rule:

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;²⁷ 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.²⁸ Examples include: Minnesota Statutes, section 16A.1285, subdivision 5; 115.43, subdivision 1; 116.07, subdivision 6;²⁹ 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.

²⁷ Minnesota Statutes, section 14.125, requires you to publish a notice of intent to adopt rules without a public hearing within 18 months of the effective date of the law authorizing or requiring rules to be adopted, amended, or repealed or the authority for the rules expires.

²⁸ Minnesota Statutes, section 14.045, requires an agency to consider certain factors when determining the amount of a fine if the authorizing statute or rule gives the agency discretion over the amount.

²⁹ See also Minnesota Statutes, section 116.07, subdivision 2, paragraph (f).

Minnesota Statutes, section 16A.1283, prevents you from imposing a new fee or increasing an existing fee by rule unless the new fee or the increase is approved by law. The section reads as follows:

16A.1283 LEGISLATIVE APPROVAL REQUIRED FOR FEES.

(a) Notwithstanding any law to the contrary, an executive branch state agency may not impose a new fee or increase an existing fee unless the new fee or increase is approved by law. For purposes of this section, a fee is any charge for goods, services, regulation, or licensure, and, notwithstanding paragraph (b), clause (3), includes charges for admission to or for use of public facilities owned by the state.

(b) This section does not apply to:

(1) charges billed within or between state agencies, or billed to federal agencies;

(2) the Minnesota State Colleges and Universities system;

(3) charges for goods and services provided for the direct and primary use of a private individual, business, or other entity;

(4) charges that authorize use of state-owned lands and minerals administered by the commissioner of natural resources by the issuance of leases, easements, cooperative farming agreements, and land and water crossing licenses and charges for sales of state-owned lands administered by the commissioner of natural resources; or

(5) state park fees and charges established by commissioner's order.

(c) An executive branch agency may reduce a fee that was set by rule before July 1, 2001, without legislative approval. Chapter 14 does not apply to fee reductions under this paragraph.

Remember, all materials submitted to the ALJ or chief ALJ must be on 8-1/2" x 11" paper.

3) SUBMIT RULES TO REVISOR FOR APPROVAL.

No proposed rule may be published in the State Register unless it has been approved as to form by the Revisor. See Minnesota Statutes, sections 14.07 and 14.22.

The Revisor will also provide any assistance you need in drafting your rules, but is prohibited by Minnesota Statutes, section 14.47, subdivision 2, from helping you prepare a statement of need and reasonableness (SONAR) and acting as your legal counsel before an Administrative Law Judge (ALJ). If you would like to ask the Revisor for drafting assistance, you should consider doing so at an early stage of the drafting process and certainly before the SONAR is finished. The Revisor will help draft the rule so that it is in the correct form and may suggest changes in the substance or organization of the rules. The Revisor publishes a comprehensive manual setting out the form and method for drafting rules. A PDF of the manual is available for viewing and downloading at: <https://www.revisor.mn.gov/office/publications.php>. Paper copies of the Minnesota Rules Drafting Manual may be obtained without charge from the office.

If you have prepared a draft of the rule, submit one copy to the Revisor. The exact time it takes for the Revisor's approval depends on the length and complexity of the rules, the type of assistance requested, and other demands on the office. Generally speaking, the review and approval of rules takes approximately one week. You will be given four copies of your rule, approved as to form by the Revisor.

4) PUBLISH NOTICE OF INTENT TO ADOPT RULE WITHOUT A PUBLIC HEARING, NOTIFY PERSONS REGISTERED WITH AGENCY FOR THE PURPOSE OF RECEIVING THESE NOTICES, AND NOTIFY LEGISLATORS.

The rules review procedures of the Governor's office require you to submit to that office two copies of the proposed rules and SONAR, and two copies of the Proposed Rule and SONAR Form, and obtain approval before you can proceed to publish the notice of intent to adopt. See note 24.

You should submit one copy in Microsoft Word format of your notice of intent and the Revisor ID number from the upper right corner of the rules as proposed and approved as to form by the Revisor, and a State Register Printing Order form to the State Register for publication. Send them via e-mail to: sean.plemmons@state.mn.us.

The notice and the proposed rules will appear in the State Register six days after the applicable publication deadline.³⁰ They must be published at least 30 days before the date the comment period ends.^{31, 32} Also, at least 33 days before the comment period ends, you must give this notice by United States mail to all persons who have registered with you under Minnesota Statutes, section 14.14, subdivision 1a.³³ The notice must include either a copy of the proposed rule or a description of it and a statement that a free copy will be provided upon request.

Please keep in mind that the notice of intent may not be published until at least 60 days after your request for comment was published.³⁴

Minnesota Statutes, section 14.14, subdivision 1, requires you to make reasonable efforts to notify persons or classes of persons who may be significantly affected by the proposed rule by giving notice of your intention to adopt the rule in newsletters, newspapers, or other publications, or through other means of communication. This provision also encourages you to notify persons not on your mailing list who may be affected by the rule. Make sure that any additional information gathering efforts are adequately documented.³⁵

Minnesota Statutes, section 14.116, requires you to make reasonable efforts to send a copy of the notice of intent to adopt and a copy of the statement of need and reasonableness to certain specified legislators. The specific statutory requirements are as follows:

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.

(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

³⁰ The notice and proposed rules must be received by the State Register by noon on Tuesday for publication six days later.

³¹ If you are proposing to adopt or repeal rules that affect farming operations, you must provide a copy of the proposed rules to the commissioner of agriculture no later than 30 days before the proposed rules are published in the State Register. See Minnesota Statutes, section 14.111.

³² If your rules will have their primary effect on Chicano/Latino people, Minnesota Statutes, section 3.9223, subdivision 4, requires you to submit them to the Council on Affairs of Chicano Latino People at least 15 days before they are published in the State Register.

³³ Minnesota Rules, part 1400.2080, subpart 6, establishes this 33-day requirement. Minnesota Statutes, section 14.14, subdivision 1a, provides a 30-day notice requirement.

³⁴ See Minnesota Statutes, section 14.101 (printed on p. 30).

³⁵ You may ask the Office of Administrative Hearings for prior approval of your proposed notice plans. See Minnesota Rules, part 1400.2060 (printed on p. 31).

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.

Minnesota Statutes, section 14.22, and Minnesota Rules, parts 1400.2080 and 1400.2520, shown below, govern the form, content, and manner of providing the notice of intent to adopt a rule without a public hearing:

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 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.

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.

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 e-mail address if the agency will accept e-mail 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.

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 e-mail comments, questions, or requests for a public hearing to: _____(e-mail 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

You must wait 30 days after publication and 33 days after the mailing of the notice to interested persons on the mailing list before proceeding to adopt the rules.³⁶ This waiting period allows the public to submit any comments on the rules to you. It also provides a period of time during which 25 or more persons may submit written requests to you for a hearing.

Minnesota Statutes, section 14.25, requires you to hold a public hearing and follow the procedures outlined under part A, RULES ADOPTED AFTER PUBLIC HEARING, if, during the comment period, 25 or more persons submit a written request for a public hearing to you and you are unable to obtain a sufficient number of withdrawals of those requests so that the total number of requests drops below the 25-request hearing threshold.

Please pay special attention to the requirements of subdivision 2 if a hearing request is withdrawn. Here is the text of this statutory provision:

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.

³⁶ See note 33.

As an alternative to publishing a notice of hearing after receiving the 25 or more requests, especially in those situations in which agencies anticipate receiving written requests for a public hearing but are unable to gauge the number of requests likely, some agencies use a dual notice procedure to avoid the delay involved in publishing this notice and waiting 30 days as required by Minnesota Statutes, section 14.14, subdivision 1a.

Minnesota Statutes, section 14.22, subdivision 2, shown below, specifically authorizes this dual notice procedure:

14.22 NOTICE OF PROPOSED ADOPTION OF RULES.

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.

This procedure requires an agency to follow Steps 1 to 4 in this part at the same time it follows Steps 1 to 7 in part A, RULES ADOPTED AFTER PUBLIC HEARING. The dual notice form recommended by the OAH is shown below:

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 e-mail comments, questions, or requests for a public hearing to: _____ (e-mail 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

5) SUBMIT ANY MODIFICATIONS TO REVISOR FOR APPROVAL.

If you wish to modify a proposed rule, you must obtain the Revisor's form approval before submitting the modified rule to the OAH for review. See Minnesota Statutes, section 14.07, subdivision 2.

Submit one copy of your modifications to the Revisor. Although there is no statutory time limit on the Revisor's review, the review will normally be completed within three days. The Revisor will provide you with three copies of the modified rules, approved as to form.

A proposed rule may be modified if the modifications are supported by the data and views submitted to you, and if the modifications are not substantially different from the rules as proposed.

The ALJ will review your modifications to determine if they involve substantial differences to the rules as proposed. If the ALJ disapproves the modifications, the judge's determination must be reviewed by the chief ALJ. Step 6 describes this review and approval procedure in more detail. Here are the relevant statutory and rule provisions on the issue of substantial difference:

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.

1400.2300 REVIEW OF RULES ADOPTED WITHOUT A PUBLIC HEARING.

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.

You may, however, adopt a substantially different rule after satisfying the requirements of Minnesota Rules, part 1400.2110:

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.

6) SUBMIT RULES AS ADOPTED TO OFFICE OF ADMINISTRATIVE HEARINGS FOR REVIEW, AND NOTIFY ON THE SAME DAY ALL PERSONS WHO HAVE REQUESTED TO BE INFORMED OF THAT FACT.

Submit your rules to the OAH for review and approval at the end of the 30-day comment period. An order adopting the rules must be executed before the rules are submitted. See Minnesota Rules, parts 1400.2310, item N, and 1400.2560. **If your rules are not submitted to the OAH within 180 days of the day the comment period ends, the rules are automatically withdrawn.** See Minnesota Statutes, section 14.26.

Minnesota Statutes, section 14.127, requires you to determine, before the close of the hearing record, if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for certain businesses and cities. This statute may require you to obtain legislative approval. Here is the text of this statute:

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.

Minnesota Statutes, section 14.128, requires you to determine, before you submit the hearing record to the administrative law judge, if a local unit of government will be required to adopt or amend an ordinance or other regulation to comply with your rule unless one of the exceptions in subdivision 3, clauses (2) to (4), applies. Here is the text of this statute:

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.

Remember, all materials submitted to the ALJ or chief ALJ must be on 8-1/2" x 11" paper. Filings must be made in one of the three ways authorized by Minnesota Rules, part 1400.5550: delivery, first class mail, or facsimile transmission.

On the same day you submit rules to the OAH, you must give notice to all persons who requested to be informed of that fact. If the rules have been modified, the notice must state that fact. The notice must also state that a free copy of the modified rules is available on request. See Minnesota Statutes, section 14.26.

Minnesota Rules, part 1400.2300, subpart 2, requires you to file with OAH the documents listed in Minnesota Rules, part 1400.2310:

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 15.0145 (Minnesota Council on Latino Affairs), 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.

You may withdraw a rule that has been submitted to the OAH for review by complying with Minnesota Rules, part 1400.2300, subpart 4.

Minnesota Statutes, section 14.05, subdivision 3, authorizes you to withdraw a proposed rule any time before it is filed with the Secretary of State. You must publish a notice of withdrawal in the State Register. The OAH has interpreted this as a qualified right. A portion of a rule may not be withdrawn if it constitutes a substantial difference from the rules as proposed.

On the same day the rule is submitted to the OAH, the office will send one copy to the Revisor for approval. The Revisor has five days, excluding weekends and holidays, to approve or disapprove a rule. See Minnesota Statutes, section 14.08, paragraph (a).

After the Revisor approves the rules as to form, the Revisor will send an electronic copy of the approved rules to the OAH and send one paper copy to you.

An ALJ has 14 calendar days to approve or disapprove a rule. Minnesota Statutes, section 14.50, requires the ALJ 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.

The OAH has adopted specific standards of review that are used by the ALJ or the chief ALJ in determining whether or not to disapprove a rule. Here is the text of the relevant rule provision:

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 law³⁷ 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).

If the ALJ finds no defect in your rules, proceed to adopt the rules as indicated in Step 7.

If the ALJ finds a defect in the rules and the defect relates only to your failure to establish the need for and reasonableness of the rules and the chief ALJ affirms this finding, **you have an additional option for relief - under Minnesota Statutes, section 14.26, subdivision 3, paragraph (c), you make seek approval of the rule without changes by submitting it to the relevant legislative committees and the Legislative Coordinating Commission.** See also Minnesota Rules, part 1400.2300, subpart 9.

After meeting the requirements of these provisions, you may proceed as indicated in Step 7. If the ALJ finds defects in the rules that are not harmless errors,³⁸ other than those relating to the issue of need and reasonableness (for example, statutory authority, legality, or procedural defects), the report must be submitted by the ALJ to the chief ALJ for approval of those findings. If the ALJ report finds that one of your rules has been modified in a way that makes it substantially different from the rule as proposed, the report will again be submitted to the chief ALJ for review based on the criteria in Minnesota Statutes, section 14.05, subdivision 2. The chief ALJ has ten calendar days to complete this review. **You may not adopt rules containing defects identified by the ALJ in findings which are then approved by the chief ALJ.** You

³⁷ See note 17, for example.

³⁸ Minnesota Statutes, section 14.26, subdivision 3, paragraph (d), requires the ALJ to disregard procedural errors or defects if the ALJ finds that the error or defect did not deprive any person or entity of an opportunity to participate meaningfully in the process; or that the agency has taken corrective action to cure the error or defect so that the failure did not deprive the person or entity of the opportunity to participate meaningfully in the process.

may, however, request the chief ALJ to reconsider the disapproval. Minnesota Rules, part 1400.2300, subpart 6, requires the chief ALJ to review and approve or disapprove the request within five working days after the OAH receives it. If you do not request reconsideration, or if such a request is denied, you must either withdraw those portions of the rules that contain the defects or take the actions prescribed by the chief ALJ to correct the defects. However, if the defect relates to a modification that has been found to be a substantial difference, you may adopt the rule after satisfying the requirements of Minnesota Rules, part 1400.2110.

If you choose to correct the defects, you must resubmit the rule to the chief ALJ for a determination of whether or not the defects have in fact been corrected. Here are the relevant statutory and rule provisions:

14.26 ADOPTION OF PROPOSED RULE; SUBMISSION TO ADMINISTRATIVE LAW JUDGE.

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 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. 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 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.

1400.2300 REVIEW OF RULES ADOPTED WITHOUT A PUBLIC HEARING.

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.

Remember, rules are not properly adopted unless the requirements discussed in this step have been met and you have an order adopting the rules that satisfies the requirements of Minnesota Rules, part 1400.2090. **The Governor's Administrative Rules Review process requires you to submit a Final Review Form to the Legislative Coordinator before you submit an Order Adopting Rules to OAH. See note 4.** A recommended order adopting rules is contained in Minnesota Rules, part 1400.2560. Here is the text of those rule provisions:

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.

DATE: _____

Name
Title

7) OFFICE OF ADMINISTRATIVE HEARINGS FILES APPROVED RULES WITH SECRETARY OF STATE.

If the OAH approves your rules, the office will file an electronic copy with the Secretary of State. The statute directs the OAH to file the rule "promptly" after it is approved. See Minnesota Statutes, section 14.26, and Minnesota Rules, part 1400.2300, subpart 5.

The Secretary of State will forward one copy of the rule to the Revisor and one copy to the Governor as required under Minnesota Statutes, section 14.05, subdivision 6. Here is this statutory provision relating to the Governor's rule veto power:

14.05 GENERAL AUTHORITY.

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.

8) REVISOR PREPARES A NOTICE OF ADOPTION.

After the Revisor is notified by the Secretary of State that your adopted rules have been filed with the Secretary of State, the Revisor will prepare a notice of adoption in compliance with the requirements of Minnesota Statutes, section 14.18. See Minnesota Statutes, section 14.27. You will be given one copy of this document, approved as to form.

The notice of adoption will only list those portions of your rules that have been modified since the proposed rules were published in the State Register. Consequently, it must be read together with the proposed rules previously published for a complete understanding of the adopted rule.

There is no statutory time limit that applies to the Revisor's preparation and approval of your notice of adoption. The average time taken to prepare and approve a notice of adoption is two days.

9) SUBMIT NOTICE OF ADOPTION TO STATE REGISTER.

After you receive the notice of adoption from the Revisor and approval from the Governor, you should submit the Revisor ID number from the upper right corner of the notice of

adoption approved as to form by the Revisor as well as a State Register Printing Order form to the State Register for publication of the notice. Submit these documents electronically via e-mail to: sean.plemmons@state.mn.us. The notice will appear in the State Register six days after the applicable publication deadline.³⁹

Your rules will become effective five working days after the notice of adoption is published, unless a later date is required by law or specified in the rules. See Minnesota Statutes, section 14.27. For rules requiring local implementation, see the effective date provisions of Minnesota Statutes, section 14.128.

You are responsible for maintaining the official rulemaking record for all rules adopted under Minnesota Statutes, chapter 14. For the specific statutory requirements, see Minnesota Statutes, section 14.365. By January 15 each year, the rulemaking record for each rule adopted during the preceding calendar year must be submitted to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule. See Minnesota Statutes, section 14.116.

³⁹ The notice of adoption must be received by the State Register by noon on Tuesday for publication six days later.

C. EXEMPT RULES

Steps	Time Periods
1) Prepare draft of the exempt rule and an order adopting the rule	None
2) Submit rule to Revisor for approval	No statutory deadline; 1 week average for review and approval
3) Notify Governor of exempt rule adoption	Submit Final Review Form before step 4) is taken
4) File the rule and the order adopting the rule with Office of Administrative Hearings (OAH)	ALJ has 14 days to approve or disapprove rule after receiving it
5) OAH files approved adopted rule with Secretary of State	None
6) Submit approved adopted rule to the State Register for publication	Rule published 6 days after State Register publication deadline

**Rules are effective from the date of publication
in the State Register**

1) PREPARE DRAFT OF THE EXEMPT RULE AND AN ORDER ADOPTING THE RULE.

Minnesota Statutes, sections 14.386 and 14.388, require you to prepare a draft of your exempt rules and an order adopting the rules.⁴⁰ The Revisor will provide any drafting assistance you require. Step 2 has more to say about the Revisor's drafting assistance.

The Governor has established rules review procedures that ask you to submit an Administrative Rule Preliminary Proposal Form to the Legislative Coordinator in the Governor's office when you have developed a rule idea. See note 19. You do not need to wait for a response from the Governor's office.

Minnesota Statutes, section 14.388, is a standing grant of rulemaking authority that you may use as authority to adopt exempt rules. Your rulemaking must fit into one of the four statutory categories of permitted exempt rulemaking. The Office of Administrative Hearings traditionally has construed exemption provisions narrowly. You should carefully document how the rules fit within the requirements of the claimed exemption, especially exempt rules being adopted under section 14.388, subdivision 1, clauses (3) and (4). **Pay special attention to the period of effectiveness of rules adopted under the first two categories and the last two categories and the notice requirements in subdivision 2.** Here is the text of this statutory provision:

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;

⁴⁰ See pp. 61 to 70 for the specific requirements of Minnesota Statutes, section 14.389, which provides another special procedure for adopting rules that are not subject to the usual rulemaking requirements of Minnesota Statutes, chapter 14.

(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 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.

Minnesota Statutes, section 14.386, governs the procedure for adopting exempt rules authorized by a specific statute that does not otherwise provide an adoption procedure. Here is the text of this statutory provision:

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).

(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.

Minnesota Rules, part 1400.2400, governs the review of these exempt rules by the OAH. Here is the text of this provision:

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.

While you are not required to draft a SONAR on these exempt rules, you must draft an order adopting the rule, which includes any explanation needed to support the rule, any argument needed to support the claim of exemption, and any other information required by law or rule.⁴¹ If you are adopting a rule under the good cause exemption, the order must explain why the rule meets the requirements of good cause under Minnesota Statutes, section 14.388. The recommended order adopting rules in Minnesota Rules, part 1400.2560, can be used as a guide, but it must be substantially modified to satisfy the requirements of Minnesota Rules, part 1400.2400. **The Governor's Administrative Rules Review process requires you to submit a Final Review Form to the Legislative Coordinator before you submit an Order Adopting Rules to OAH. See note 24.**

⁴¹ Consider including information that shows that you considered and implemented the regulatory policy of the state. See Minnesota Statutes, section 14.002 (printed on p. 6). You should also carefully document how the rules fit within the requirements of the claimed exemption. See discussion on p. 55.

Minnesota Statutes, section 14.366, requires you to maintain a public rulemaking docket of all pending rulemaking proceedings.⁴² You should consider including exempt rulemaking in your list of pending rulemaking proceedings even though the statute provides no direction to help you determine when exempt rule proceedings are "pending."

2) SUBMIT RULE TO REVISOR FOR APPROVAL.

No adopted exempt rule may be submitted to the OAH for approval unless it has been approved as to form by the Revisor. See Minnesota Statutes, sections 14.386 and 14.388. **See page 31 for a discussion of the use of an assigned Revisor ID number.**

The Revisor will also provide any assistance you need in drafting your rules, but is prohibited by Minnesota Statutes, section 14.47, subdivision 2, from acting as legal counsel for an agency before an Administrative Law Judge (ALJ). If you would like to ask the Revisor for drafting assistance, you should consider doing so at an early stage of the drafting process. The Revisor will help draft the rule so that it is in the correct form and may suggest changes in the substance or organization of the rules. The Revisor publishes a comprehensive manual setting out the form and method for drafting rules. A PDF of the manual is available for viewing and downloading at: <https://www.revisor.mn.gov/office/publications.php>. Paper copies of the Minnesota Rules Drafting Manual may be obtained without charge from the office.

If the rule has already been drafted by you, submit one copy to the Revisor. The exact time it takes for the Revisor's approval depends on the length and complexity of the rules, the type of assistance requested, and other demands on the office. Generally speaking, the review and approval of rules takes approximately one week. You will be given five copies of your rule, approved as to form by the Revisor.

3) NOTIFY GOVERNOR OF EXEMPT RULE ADOPTION.

You should notify the Governor's Office before submitting exempt rules to the OAH by submitting two copies of the Final Rule Form. See note 19. You must receive approval from the Governor's Office before submitting the exempt rules to the OAH. However, if you have not heard from the Governor's Office within seven days of providing the notification, you should contact the Legislative Coordinator for a status report.

4) FILE THE RULE AND ORDER ADOPTING THE RULE WITH OAH.

Minnesota Rules, part 1400.2400, subpart 2, requires you to file with the OAH a copy of: (1) the adopted exempt rule as approved by the Revisor; and (2) the order adopting the rule.

An ALJ will approve or disapprove your rule within 14 days after your filing with that office. The judge will decide whether or not the rule meets the standards of Minnesota Rules, part 1400.2100, items A and D to G, shown below, and whether you have established your exemption from rulemaking under either Minnesota Statutes, section 14.386 or 14.388.

⁴² By January 15 each year, the rulemaking docket for each rule adopted during the preceding calendar year must be submitted to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule. See Minnesota Statutes, section 14.116.

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);

.....

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

.....

If your rule is disapproved by the ALJ, the judge will explain why and what changes are necessary for approval or why the rule is not exempt from rulemaking. If the judge has suggested changes, you must resubmit the changed rule. The judge then has five working days to approve or disapprove the rule as changed. See Minnesota Rules, part 1400.2400, subpart 4a.

If your rule has been disapproved by the ALJ and you choose not to make the changes being suggested, or if you disagree with the judge's finding that the rule is not exempt from rulemaking procedures, you may ask the chief judge to review the rule. You must make this request within five working days of receiving the judge's decision. The chief judge has 14 days after receiving it to approve or disapprove it based on the same standards that were used by the ALJ. See Minnesota Rules, part 1400.2400, subpart 3.

Remember, all materials submitted to the ALJ or chief ALJ must be on 8-1/2" x 11" paper. See Minnesota Rules, part 1400.2030, subpart 2.

5) OFFICE OF ADMINISTRATIVE HEARINGS FILES APPROVED ADOPTED RULE WITH SECRETARY OF STATE.

After the OAH has informed you that your rule has been approved, the OAH will file an electronic copy of the adopted rule with the Secretary of State. See Minnesota Statutes, sections 14.386, paragraph (a), clause (3), and 14.388. The Secretary of State will forward one copy of the rule to the Revisor and one copy to the Governor as required under Minnesota Statutes, section 14.05, subdivision 6. Here is the statutory provision relating to the Governor's veto power:

14.05 GENERAL AUTHORITY.

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.

6) SUBMIT APPROVED ADOPTED RULE TO THE STATE REGISTER FOR PUBLICATION.

Minnesota Statutes, sections 14.386 and 14.388, require you to publish the text of your adopted exempt rule. You should submit to the State Register the Revisor ID number from the upper right corner of the adopted rules approved as to form by the Revisor along with a State Register Printing Order form after you receive approval to do so from the Governor. Submit these documents electronically via e-mail to: sean.plemmons@state.mn.us. The rule will appear in the State Register six days after the applicable publication deadline.⁴³

You are responsible for maintaining the official rulemaking record for all rules adopted under Minnesota Statutes, chapter 14. For specific statutory requirements, see Minnesota Statutes, section 14.365. By January 15 each year, the rulemaking record for each rule adopted during the preceding calendar year must be submitted to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule. See Minnesota Statutes, section 14.116.

⁴³ The adopted rule must be received by the State Register by noon on Tuesday for publication six days later.

D. EXPEDITED RULES

Steps	Time Periods
1) Determine whether use of expedited process is authorized or required	No statutory deadline
2) Submit rule to Revisor for approval	No statutory deadline; 1 week average for review and approval
3) Publish notice of proposed expedited rules and notify persons registered with agency for the purpose of receiving these notices	Notice published 6 days after State Register publication deadline. Must be published at least 30 days before agency submits to Office of Administrative Hearings (OAH) and mailed to persons registered at least 33 days before the submission
4) Submit any modifications to Revisor for approval	No statutory deadline; 3 day average for review and approval
5) Submit rules as adopted to OAH for review	Approved or disapproved within 14 days after OAH receives it
6) OAH files approved rules with Secretary of State	No statutory deadline
7) Revisor prepares notice of adoption	No statutory deadline; 2 day average for preparation and approval
8) Submit notice of adoption to State Register	Notice published 6 days from State Register publication deadline

1) **USE OF EXPEDITED PROCESS UNDER MINNESOTA STATUTES, SECTION 14.389.**

Minnesota Statutes, section 14.389, provides an expedited process to adopt rules. The law delegating rulemaking authority must state that this expedited process is authorized or required to adopt the rules. The specific statutory requirements governing this process are shown below:

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

(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.

For expedited rules **other than those rules for which a public hearing must be held under Minnesota Statutes, section 14.389, subdivision 5**, Minnesota Rules, part 1400.2410, subpart 2, requires you to file the documents listed in that subpart. The subpart reads as follows:

1400.2410 REVIEW OF EXPEDITED RULES ADOPTED WITHOUT A PUBLIC HEARING.

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.⁴⁴

The Governor has established rules review procedures that ask you to submit an Administrative Rule Preliminary Proposal Form to the Legislative Coordinator in the Governor's office when you have developed a rule idea. See note 24.

Minnesota Statutes, section 14.366, requires you to maintain a public rulemaking docket of all pending rulemaking proceedings.⁴⁵

2) SUBMIT RULE TO REVISOR FOR APPROVAL.

No expedited rule may be published in the State Register unless it has been approved as to form by the Revisor. See Minnesota Statutes, section 14.389, subdivision 2. **See page 31 for a discussion of the use of an assigned Revisor ID number.**

The Revisor will also provide any assistance you need in drafting your rules, but is prohibited by Minnesota Statutes, section 14.47, subdivision 2, from acting as legal counsel for an agency before an Administrative Law Judge (ALJ). If you would like to ask the Revisor for drafting assistance, you should consider doing so at an early stage of the drafting process. The Revisor will help draft the rule so that it is in the correct form and may suggest changes in the substance or organization of the rules. The Revisor publishes a comprehensive manual setting out the form and method for drafting rules. A PDF of the manual is available for viewing and downloading at: <https://www.revisor.mn.gov/office/publications.php>. Paper copies of the Minnesota Rules Drafting Manual may be obtained without charge from the office.

If the rule has already been drafted by you, submit one copy to the Revisor. The exact time it takes for the Revisor's approval depends on the length and complexity of the rules, the type of assistance requested, and other demands on the office. Generally speaking, the review

⁴⁴ Minnesota Statutes, section 14.002 (printed on p. 6), requires you to show how you considered and implemented the regulatory policy of the state.

⁴⁵ By January 15 each year, the rulemaking docket for each rule adopted during the preceding calendar year must be submitted to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule. See Minnesota Statutes, section 14.116.

and approval of rules takes approximately one week. You will be given five copies of your rule, approved as to form by the Revisor.

3) PUBLISH NOTICE OF PROPOSED EXPEDITED RULES AND NOTIFY PERSONS REGISTERED WITH AGENCY FOR THE PURPOSE OF RECEIVING THESE NOTICES.

You should submit the Revisor ID number from the upper right corner of the proposed expedited rules approved as to form by the Revisor and a State Register Printing Order form to the State Register for publication. Send them via e-mail to: sean.plemmons@state.mn.us.

The notice and the proposed rules will appear in the State Register six days after the applicable publication deadline.⁴⁶ They must be published at least 30 days before the date the comment period ends.^{47, 48}

You should notify the Governor's Office before you publish a notice of proposed expedited rules in the State Register under Minnesota Statutes, section 14.389, by submitting two copies of the Final Rule Form. See note 2. You must receive approval from the Governor's Office before publishing the notice in the State Register. However, if you have not heard from the Governor's Office within seven days of providing the notification, you should contact the Legislative Coordinator for a status report.

4) SUBMIT ANY MODIFICATIONS TO REVISOR FOR APPROVAL.

If you wish to modify a proposed rule, you must obtain the Revisor's form approval before submitting the modified rule to the OAH for review. See Minnesota Statutes, section 14.07, subdivision 2.

Submit one copy of your modifications to the Revisor. Although there is no statutory time limit on the Revisor's review, the review will normally be completed within three days. The Revisor will provide you with three copies of the modified rules, approved as to form.

A proposed rule may be modified if the modifications are supported by the data and views submitted to you and if the modifications are not substantially different from the rules as proposed.

The ALJ will review your modifications to determine if they involve substantial differences to the rules as proposed. If the ALJ disapproves the modifications, the judge's determination must be reviewed by the chief ALJ. Step 5 describes this review and approval procedure in more detail. Here are the relevant statutory and rule provisions on the issue of substantial difference:

⁴⁶ The notice and proposed rules must be received by the State Register by noon on Tuesday for publication six days later.

⁴⁷ If you are proposing to adopt or repeal rules that affect farming operations, you must provide a copy of the proposed rules to the commissioner of agriculture no later than 30 days before the proposed rules are published in the State Register. See Minnesota Statutes, section 14.111.

⁴⁸ If your rules will have their primary effect on Chicano/Latino people, Minnesota Statutes, section 3.9223, subdivision 4, requires you to submit them to the Council on Affairs of Chicano Latino People at least 15 days before they are published in the State Register.

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.

5) **SUBMIT RULES AS ADOPTED TO OFFICE OF ADMINISTRATIVE HEARINGS FOR REVIEW.**

You should submit your rules to the OAH for review and approval at the end of the 30-day comment period. An order adopting rules must be executed before the rules are submitted. See Minnesota Rules, part 1400.2410, subpart 2, item I. **If your rules are not submitted to the OAH within 180 days of the day the comment period ends, the rules are automatically withdrawn.** See Minnesota Statutes, section 14.389, subdivision 1.

Minnesota Statutes, section 14.127, requires you to determine, before the close of the hearing record, if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for certain businesses and cities. This statute may require you to obtain legislative approval. Here is the text of this statute:

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.

You may withdraw a rule that has been submitted to the OAH for review by complying with Minnesota Rules, part 1400.2300, subpart 4.

Minnesota Statutes, section 14.05, subdivision 3, authorizes you to withdraw a proposed rule any time before it is filed with the Secretary of State. You must publish a notice of withdrawal in the State Register. The OAH has interpreted this as a qualified right. A portion of a rule may not be withdrawn if it constitutes a substantial difference from the rules as proposed.

On the same day the rule is submitted to the OAH, the OAH will send one copy to the Revisor for approval. The Revisor has five days, excluding weekends and holidays, to approve or disapprove a rule. See Minnesota Statutes, section 14.08, paragraph (a).

After the Revisor approves the rules as to form, the Revisor will send an electronic copy of the approved rules to the OAH and send one paper copy to you.

An ALJ has 14 calendar days to approve or disapprove a rule. Minnesota Statutes, section 14.50, requires the ALJ 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 substantive and 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.

Minnesota Rules, part 1400.2410, subpart 3, provides standards for the review of these expedited rules. Here is the text of the relevant rule provision:

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 law⁴⁹ 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;

...

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).

If the ALJ finds no defect in your rules, you may proceed to adopt the rules as indicated in Step 6.

If the ALJ finds a defect in the rules and the defect relates only to your failure to establish the need for and reasonableness of the rules, **you may proceed to adopt the rules regardless of this finding after submitting the rules to the chief ALJ and to the Legislative Coordinating Commission and certain legislative committees for advice and comment.** See Minnesota Statutes, section 14.26, subdivision 3, paragraph (c), and Minnesota Rules, part 1400.2300, subpart 9.

After you have met the requirements of these provisions, you may proceed as indicated in Step 6. If the ALJ finds defects in the rules that are not harmless errors,⁵⁰ other than those relating to the issue of need and reasonableness (for example, statutory authority, legality, or procedural defects), the report must be submitted by the ALJ to the chief ALJ for approval of those findings. If the ALJ report finds that one of your rules has been modified in a way that makes it substantially different from the rule as proposed, the report will again be submitted to the chief ALJ for review based on the criteria in Minnesota Statutes, section 14.05, subdivision 2. The chief ALJ has ten calendar days to complete this review. **You may not adopt rules containing defects identified by the ALJ in findings which are then approved by the chief ALJ.** You may, however, request the chief ALJ to reconsider the disapproval. Minnesota Rules, part 1400.2410, subpart 8, requires the chief ALJ to review and approve or disapprove the request within five working days after the OAH receives it. If you do not request reconsideration, or if such a request is denied, you must either withdraw those portions of the rules that contain the defects or take the actions prescribed by the chief ALJ to correct the defects. However, if the defect relates to a modification that has been found to be a substantial difference, you may adopt the rule after satisfying the requirements of Minnesota Rules, part 1400.2110.

If you choose to correct the defects, you must resubmit the rule to the chief ALJ for a determination of whether or not the defects have in fact been corrected. The chief ALJ has five

⁴⁹ See note 17, for example.

⁵⁰ Minnesota Statutes, section 14.26, subdivision 3, paragraph (d), requires the ALJ to disregard procedural errors or defects if the ALJ finds that the error or defect did not deprive any person or entity of an opportunity to participate meaningfully in the process; or that the agency has taken corrective action to cure the error or defect so that the failure did not deprive the person or entity of the opportunity to participate meaningfully in the process.

working days to approve or disapprove the resubmitted rule. See Minnesota Rules, part 1400.2410, subpart 6.

Remember, rules are not properly adopted unless the requirements discussed in this step have been met and you have an order adopting the rules. A recommended order adopting rules is contained in Minnesota Rules, part 1400.2560. Here is the text of those rule provisions:

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.

DATE: _____

Name

Title

6) OFFICE OF ADMINISTRATIVE HEARINGS FILES APPROVED RULES WITH SECRETARY OF STATE.

If the OAH approves the rules, the OAH will file an electronic copy with the Secretary of State. The Secretary of State will forward one copy to the Revisor and one copy to you. The OAH must also notify those persons that requested notification that the judge's decision is available. See Minnesota Rules, part 1400.2410, subpart 7.

The rules review procedures of the Governor's office requires you to notify the OAH to verify that the rule did not change from the approved draft and that no controversial issues have surfaced since the rule was first published.

You must submit one copy of the adopted rule to the Governor as required under Minnesota Statutes, section 14.05, subdivision 6. Here is this statutory provision relating to the Governor's rule veto power:

14.05 GENERAL AUTHORITY.

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.

7) REVISOR PREPARES A NOTICE OF ADOPTION.

After the Revisor is notified by the Secretary of State that your adopted rules have been filed with the Secretary of State, the Revisor will prepare a notice of adoption in compliance with the requirements of Minnesota Statutes, section 14.18. You will be given one copy of this document, approved as to form.

The notice of adoption will only list those portions of the rules that have been modified since the proposed rules were published in the State Register. Consequently, it must be read together with the proposed rules previously published for a complete understanding of the adopted rule.

There is no statutory time limit that applies to the Revisor's preparation and approval of your notice of adoption. The average time taken to prepare and approve a notice of adoption is two days.

8) SUBMIT NOTICE OF ADOPTION TO STATE REGISTER.

After you receive the notice of adoption from the Revisor and approval from the Governor, you should submit the Revisor ID number from the upper right corner of the notice of adoption approved as to form by the Revisor and a State Register Printing Order form to the State Register for publication of the notice. Submit these documents electronically via e-mail to: sean.plemmons@state.mn.us. The notice will appear in the State Register six days after the applicable publication deadline.⁵¹ Your rules will become effective five working days after the notice of adoption is published unless a later date is required by law or specified in the rules.

⁵¹ The notice of adoption must be received by the State Register by noon on Tuesday for publication six days later.

You are responsible for maintaining the official rulemaking record for all rules adopted under Minnesota Statutes, chapter 14. For the specific statutory requirements, see Minnesota Statutes, section 14.365. By January 15 each year, the rulemaking record for each rule adopted during the preceding calendar year must be submitted to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule. See Minnesota Statutes, section 14.116.