# Chapter 8 - Adopting Rules without a Hearing

## Introduction

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

### Deadline

Be aware of the statutory deadline requiring that the rules be submitted to OAH within 180 days of the end of the comment period or the rules are automatically withdrawn.[[1]](#footnote-1)

## 8.1 Decide on any Changes to the Rules

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

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

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

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

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

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

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

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

You should start drafting your answers as soon as the comments are received. Because you must submit your answers for OAH review, a common practice is to add them to the exhibits that you will submit. [This process appears in section 8.6.] You could either intersperse your response with the comments or create a separate document of responses to file. Minnesota Rules, part 1400.2310, item J[[3]](#footnote-3) gives you a good place to collect your responses organized in a way that makes sense to your readers, especially the ALJ who will be officially reviewing the record.

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

## 8.3 Governor’s Office Approval

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

**FINAL RULE FORM**

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

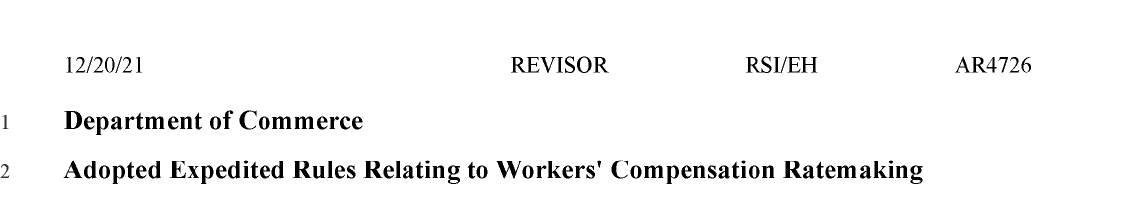
**When the agency is adopting rules without a hearing:** the agency must submit the completed Final Rule Form to the Office of the Governor when the agency has decided on the final rules and its SONAR is complete. The agency must wait for the Office’s approval before submitting its request to Office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

\* \* \*

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

## 8.4 Get a Copy of Adopted Rules from the Revisor

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



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

## 8.5 Draft the Order Adopting the Rules

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

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

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

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

## 8.6 Submit the File to OAH for Official Review

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

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

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

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

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

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

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

## 8.7 Notice of Submission of Rules to OAH

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

## 8.8 ALJ Report

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

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

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

## 8.9 Withdrawal, Disapproval, or New Modifications of the Rules

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

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

### 8.9.1 Approval of the rules

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

### 8.9.2 Disapproval and you choose to make suggested changes

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

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

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

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

#### 8.9.2.1 Making suggested or other changes to address disapproval

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

**Notes:**

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

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

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

1. end the rule proceeding;
2. adopt the portions of the rules that are not substantially different (requires withdrawing rules[[12]](#footnote-12));
3. start a new rule proceeding to adopt the substantially different rules; or
4. proceed under Minnesota Rules, part 1400.2110, to adopt substantially different rules.

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

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

### 8.9.5 Making recommended modifications or modifications other than those recommended

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

### 8.9.6 Withdrawal of rules

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

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

For example:

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

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

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

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

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

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

**2110.0320 [Withdrawn at … SR …]**

**2110.0330 [Withdrawn at … SR …]**

* 1. **PHYSICAL REQUIREMENTS.**

Subpart 1. **Space.**

1. The school must have enough classroom and clinic space and workstations on the clinic floor to support the school’s scheduled instruction and training programs.
2. The school classrooms must have chairs and table work space for the maximum number of students scheduled for class at any one time.

*[For text of item C, see Minnesota Rules]*

1. The school must ~~comply with the Minnesota State Building Code, the Minnesota State Fire Code~~ meet applicable building codes, fire codes, and zoning codes as determined by local zoning and building officials and the state fire marshal.

*[For text of item E, see Minnesota Rules]*

*[For text of subparts 2 ~~and 2a~~ to 6, see Minnesota Rules]*

Subp. 3. [Withdrawn at … SR …]

Subp. 3a. [Withdrawn at … SR …]

Subp. 3b. [Withdrawn at … SR …]

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

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

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

## 8.10 Finalize and File the Order Adopting Rules

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

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

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

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

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

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

### 8.11.1 Governor veto

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

### 8.11.2 When to publish the Notice of Adoption

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

### 8.11.3 180-day deadline

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

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

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

### 8.11.4 *State Register* lead time

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

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

## 8.12 Prepare and Store the Official Rulemaking Record

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

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

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

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

Shortly after the Notice of Adoption is published, the Revisor will send you a “stripped” copy of the rules with the stricken text deleted and the underscoring removed. In most cases, the people within your agency who work with the rules would like a complete version of the entire chapter of the rules, including the portions amended and the portions not amended. When appropriate, get a complete copy of your rules (when available) from the [Revisor’s website (http://www.revisor.leg.state.mn.us/rules/)](http://www.revisor.leg.state.mn.us/rules/). Your rules will be available after the Revisor has finished editing them.

## 8.14 Notify Agency Decision Makers of the Completion of the Process

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

## Checklist for Chapter 8 – Adopting Rules without a Hearing

| **Date Completed** | **Item** |
| --- | --- |
|  | **8 – Entire chapter reviewed before proceeding** - Be aware of statutory deadline requiring the rules to be submitted within 180 days of the end of the comment period |
|  | **8.1 – Decide on any changes to the rules** - If agency is a multi-member board, **BD-ADPT** form used |
|  | **8.2 – Agency responses to comments prepared** - Adapting **HR-RSPNS** considered |
|  | **8.3 – Governor’s Office approval obtained - GOV-FNL** used |
|  | **8.4 – Copy of adopted rules obtained from Revisor** |
|  | **8.5 – Order Adopting Rules drafted  - ORD-ADPT** and **SMPLFNDS** used |
|  | **8.6 – File submitted to OAH for official review (eFile) - NH-REVW** used; **OAH-INF** referred to - Notify ALJ before filing - Submitted within 180 days of the end of the comment period |
|  | **8.7 – Notice of Submission of Rules to OAH given** - **NTC-SBM** and **CRT-SBM** used |
|  | **8.8 – ALJ Report received** - Disapprovals noted |
|  | **8.9 – Rules withdrawn, disapproved, or new modifications made** - **8.9.1 – Withdrawal of rules  - NTC-WITHDRAWAL** used **- 8.9.2 – Suggested changes made - 8.9.3 and 8.9.4 – Suggested changes NOT made - 8.9.5 – Recommended modifications or other modifications made - 8.9.6 – Governor’s Office approval to resubmit rules obtained  - GOV-FNL** revised and resubmitted |
|  | **8.10 – Order Adopting Rules finalized and filed** - Order Adopting Rules signed by:  - Signed order eFiled with OAH - Rules filed with Secretary of State - Notice of Adoption received from Revisor |
|  | **8.11 – Notice of Adoption published in the *State Register***- Notice submitted after agency is certain Governor will not veto rules  - *State Register* website used |
|  | **8.12 – Official Rulemaking Record prepared - RECORD** used |
|  | **8.13 – Complete version of entire chapter of new rules obtained** |
|  | **8.14 – Agency decision makers notified of completion of process** |

1. Minn. Stat. § 14.26, subd. 1. [↑](#footnote-ref-1)
2. *Minnesota Environmental Science and Economic Review Bd. v. Minnesota Pollution Control Agency*, 870 N.W.2d 97 (Minn. Ct. App. 2015): An agency must respond to questioning “in order to explain the purpose or intended operation of a proposed rule, or a suggested modification, or for other purpose if material to the evaluation or formulation of the proposed rule.” [↑](#footnote-ref-2)
3. Minn. R. 1400.2310(J). [↑](#footnote-ref-3)
4. Minn. R. 1400.2090. [↑](#footnote-ref-4)
5. Minn. R. 1400.2310(N). [↑](#footnote-ref-5)
6. Minn. Stat. § 14.26, subd. 1. [↑](#footnote-ref-6)
7. Minn. Stat. § 14.26, subd. 1. [↑](#footnote-ref-7)
8. 1400.2300, subp. 6. [↑](#footnote-ref-8)
9. Minn. Stat. § 14.15, subd. 2. This limitation appears to apply only to the first issuance of the report; if your rules are disapproved and you correct the reason for the disapproval, you might be able to act on the rules immediately after getting the Chief ALJ’s advice, but you should check with the Chief ALJ to make sure it is okay. [↑](#footnote-ref-9)
10. Minn. R. 1400.2240. [↑](#footnote-ref-10)
11. Minn. Stat. § 14.26, subd. 2. [↑](#footnote-ref-11)
12. See section 8.9.1. [↑](#footnote-ref-12)
13. Minn. Stat. § 14.26, subd. 3(c). [↑](#footnote-ref-13)
14. Minn. R. 1400.2300, subp. 8a. [↑](#footnote-ref-14)
15. Minn. Stat. § 14.05, subd. 3. [↑](#footnote-ref-15)
16. Withdrawing amendments to existing language is tricky; ask the revisor’s office for help. [↑](#footnote-ref-16)
17. See GOV-PLCY in the appendix. [↑](#footnote-ref-17)
18. Minn. R. 1400.2090. [↑](#footnote-ref-18)
19. Minn. Stat. § 14.27. [↑](#footnote-ref-19)
20. Minn. Stat. § 14.05, subd. 6. [↑](#footnote-ref-20)
21. Minn. Stat. §§ 14.126, .19. [↑](#footnote-ref-21)
22. Minn. Stat. § 14.365. [↑](#footnote-ref-22)