# Chapter 12 - Expedited Rules Under 14.389

## Introduction

This chapter describes the process for rules adopted under the APA’s expedited rulemaking authority.[[1]](#footnote-1) Agencies may adopt rules using these expedited procedures only if a law authorizing rules specifically allows using the procedures found in section 14.389.

The statute is silent about the applicability of the 18-month deadline in section 14.125. If it is a rulemaking under a new or amended authority, the best practice is to do the rulemaking in a timely manner, meet that deadline, and avoid any complaints in public comments that would require a response and an ALJ finding.

## 12.1 Draft your Rules

Draft your rules as you would any rules. **[See** **Chapter 3.**]Your chain of command should review and support your proposed rules before you proceed. Some agencies have their legal counsel review the proposed rule language and double-check statutory authorities. An agency that is a multi-member board must follow board procedures, which usually means passing a formal resolution authorizing the Notice and authorizing a person to sign the Notice. A form for such a board resolution is in the appendix as **BD-NTC**.

Request the Revisor’s Office to prepare a preliminary draft of the rules and advise them that your agency is adopting the rules under the expedited procedure in Minnesota Statutes, section 14.389. Review the draft carefully, with the help of your agency’s subject matter expert, and request changes as necessary. The rule title should say that they are “Proposed Expedited Permanent Rules.”

## 12.2 Preparing your Expedited Rules for Comment

### 12.2.1 Notify Governor’s Office

You must notify the Governor’s Office of your expedited rulemaking per the Governor’s Office administrative rule review policy, **GOV-PLCY**. By this time, you should have had your rules reviewed and approved by your chain of command. Your next step is to submit the Preliminary Proposal Form **GOV-PRLM** signed by your director or commissioner when you are ready to move the expedited rules forward. The agency does not have to wait for Governor’s Office approval to proceed.

If you are uncertain about moving forward without the Governor’s approval, you should discuss it with the Governor’s Legislative Coordinator, but the Governor’s Office’s current practice is not to issue formal approval.

**Note:** The Governor’s Office Proposed Rule and SONAR form is not used in the expedited rulemaking procedure.

### 12.2.2 Get approved draft from the Revisor

Request the Revisor’s Office to prepare rules approved (certified) as to form. The Revisor’s Office will provide you with a certificate stating that the rules are approved for publication. The certified rule is ready for publication.

### 12.2.3 Draft Notice of Intent to Adopt Expedited Rules Without a Hearing

A Notice of Intent to Adopt Expedited Rules must contain the information in Minnesota Rules, part 1400.2085, subparts 2 and 3. A form for the Notice is in the appendix as **NTC-EXPEDITE** and is designed to be a checklist for meeting the requirements of part 1400.2085.

**Note:** You will only need to mention a possible hearing in your Notice if the law authorizing the rules makes specific reference to section 14.389, subdivision 5, rather than a general reference to section 14.389. Please see the draft Notice in the appendix, **NTC-EXPEDITE**, for specific wording on this topic.

### 12.2.4 “Substantially different” rules

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

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

To adopt rules that are substantially different from the proposed rules, you must go through additional rule proceedings.[[2]](#footnote-2)

## 12.3 Giving Notice

### 12.3.1 Agency mailing list

You must send your Notice through mail or email to everyone on your agency’s rulemaking mailing list **at least 33 days** before the comment period ends.[[3]](#footnote-3) However, there is no good reason to wait until three days before the publication date to begin work on sending the Notice, especially if you are mailing the Notice and not emailing it. There is no penalty for sending the Notice early. Email delivery can be accomplished using a subscription service such as GovDelivery.

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

You are not required to send a copy of your rules along with the Notice. If the rules are not included, the Notice must include an easily readable and understandable description of the nature and effect of the proposed rules and an announcement that a free copy of the proposed rules is available on request from the agency.[[4]](#footnote-4)

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

### 12.3.2 Additional notice—discretionary under part 1400.2410, subpart 2, item D

Providing additional notice is not required in expedited procedure, but it is considered a best practice. Notice of your new rules might not reach the affected parties if you rely solely on the *State Register* publication. Because rules are always subject to due-process considerations, you should give notice to these parties in some other way to avoid possible litigation. If you do give additional notice, include a certificate of additional notice as an exhibit in the documents that you file with OAH for approval. Remember though, that because additional notice is not required for this rulemaking, you have more flexibility in how you provide this notice (for example, you do not have to have this additional notice plan preapproved by an ALJ). For information on developing and using an additional notice plan, see Chapter 5, 6, or 7.

### 12.3.3 Publish in *State Register*

You must publish your Notice in the *State Register* **at least 30 days** before the end of your comment period.[[5]](#footnote-5) The published Notice must include the proposed rules, an easily readable and understandable summary of the overall nature and effect of the proposed rule, and a citation to the most specific statutory authority for the rule, including the authority for the rule to be adopted under the expedited process. (See information on how to publish in the *State Register* and “Production Schedule” for publication dates and deadlines on the [Minnesota State Register website (https://mn.gov/admin/bookstore/register.jsp)](https://mn.gov/admin/bookstore/register.jsp).)

When you send your documents to the *State Register*, you will also need to provide the *State Register* Editor with your Revisor’s ID number. The editor will request the Revisor’s Office to transmit the approved draft directly to the *State Register* electronically.

### 12.3.4 30-day comment period

You must allow at least 30 days after publication in the *State Register* for comment on the proposed rules.[[6]](#footnote-6) That is the minimum requirement. Consider whether a longer comment period might be beneficial (such as 45 or 60 days). Keep copies of all comments and submissions that you receive and the agency’s responses, because these must be included with the rest of the documents that you file with OAH.[[7]](#footnote-7)

### 12.3.5 Collecting comments

OAH collects public comments on its [Rulemaking eComments (https://mn.gov/oah/forms-and-filing/ecomments/)](https://mn.gov/oah/forms-and-filing/ecomments/), as well as through U.S. Mail, eFiling, personal delivery, or fax. Public instructions for making comments can be found at [Rulemaking eComments (https://mn.gov/oah/forms-and-filing/ecomments/)](https://mn.gov/oah/forms-and-filing/ecomments/).

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

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

## 12.4 Modifications to your Expedited Rules

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

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

## 12.5 Expedited Rules Subject to Hearing

If the law authorizing your expedited rules makes specific reference to section 14.389, subdivision 5, rather than a general reference to section 14.389, a hearing is required if you have 50 or more requests for a hearing during the 30-day comment period. If you do not have 50 requests, you may proceed with your rulemaking following the procedures for expedited rules.

If you receive at least 50 requests, and the requests are valid under section 14.25, you must hold a hearing and comply with all the normal requirements for adopting rules after a public hearing found in the APA. These include preparing a SONAR, publishing and mailing a Notice of Hearing, and sending the Notice of Hearing to those persons who requested a public hearing. In other words, this removes the rulemaking from the expedited procedure for the remainder of the rulemaking process. Refer to **Chapter 7,** Giving Notice of Hearing, and **Chapter 9,** Adopting Rules with a Hearing, for more information on what these requirements entail.

### 12.5.1 Withdrawal of hearing requests

If your agency receives 50 or more requests for a hearing but is willing to change the rules to address enough of the requests or can address some requestors’ reasons for making a hearing request (such as clearing up a misunderstanding), your agency may be able to avoid going to hearing, if you meet the following requirements:

1. First, you must get enough hearing requests withdrawn to reduce the number of requests to less than 50.
2. Second, you must notify all persons who requested a hearing, in writing, if enough requests are withdrawn to reduce the number of requests below 50 and if the agency has taken any actions to obtain the withdrawals. A form for this notice is in the appendix as **NTC-HRWD** and serves as a checklist for meeting the requirements of section 14.25, subdivision 2. A form for a certificate of mailing this Notice is in the appendix as **CRT-HRWD**.

## 12.6 Get Governor’s Office Approval

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

**When the agency is adopting expedited rules:** the agency must submit the completed Final Rule Form **[GOV-FNL]** to the Office of the Governor before the agency is submitting its request to Office of Administrative Hearings (OAH) for rule review and approval. The agency must attach a copy of the proposed rules and any justification that the agency has prepared. *The agency must wait for Governor’s Office approval before publishing the notice of adoption.* [emphasis added]

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

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



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

## 12.8 Draft your *Proposed* Order Adopting Rules

A form for the Order is in the appendix as **ORD-ADPT** and is designed to be a checklist to meet the requirements of Minnesota Rules, part 1400.2090.

Even though there is no SONAR document laying out the agency’s case for expedited rules, it is still a best practice to provide background for the ALJ. Here are two ways to do that:

* Insert in the proposed Order a concise outline of need and reasonableness (like a rule-by-rule analysis) for the proposed rules. This alternative works well for shorter and less-complex rules.
* Prepare a supplemental memorandum as an additional exhibit. This alternative might be well suited for longer or more-complex rules.

**Note:** OAH does not require that the proposed Order be signed at this point. The recommended practice is to submit an unsigned proposed Order Adopting Rules for the ALJ to approve as to legality. Later, you will have the finalized approved draft signed and then will transmit a copy of the signed Order to OAH.

## 12.9 Submit the File to OAH for Official Review

Minnesota Rules, part 1400.2410, subpart 2, items A to K, list the documents you must file with OAH for official review of your adopted rules. A sample cover letter to OAH is in the appendix as **EXPEDITE-LTR**. This letter is designed to serve as a checklist for meeting the requirements under Minnesota Rules, part 1400.2410.

### 12.9.1 eFiling rule-related documents

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

### 12.9.2 Best practices for working within OAH’s eFiling system

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

* Organize your documents as described in Minnesota Rules 1400.2410, subpart 2, items A–K. OAH prefers that you consolidate the documents as one PDF document and bookmark them. Best practice: Include the agency response to comments along with those comments.
* If your case has a large volume of pages, consider adding a unique sequential page number through the entire set. One system designed to apply such a unique number automatically is called a “Bates” stamp. Some photocopiers can do this and so can Adobe Pro.
* Scan the pages as a single PDF or combine saved PDF files into a single PDF. Prepare an index keyed to the unique numbers. In Adobe Pro, for example, it is simple to mark and label a bookmark at the first page of each document.
* If the filing is quite large, you may create more than one PDF. For example, a large volume of comments or a large map file may require a separate document to keep file size manageable.
* Consolidating your exhibits might simply exceed your technology’s capabilities, so you might have to solicit additional assistance within your agency or acquire more powerful software, such as Adobe Pro.

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

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

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

### 12.9.3 OAH standards of review

As with any other rules, you must make certain that the proposed rules comply with standards of legality before you submit them to OAH for review.[[8]](#footnote-8) Review these standards directly in Minnesota Rules, part 1400.2100.

## 12.10 Notice of Submission of Rules to OAH

Individuals may request to be informed of when you submit the rules to OAH for official review. You must provide a Notice of Submission on the same day that the rules are submitted to OAH. Although not specifically mentioned in section 14.389 or the in the Notice of Intent to Adopt Expedited Rules, Minnesota Rules, parts 1400.2410 and 1400.2570, both refer to giving notice that a Department has submitted its expedited rules to OAH for review if a person requests this notice. Forms for this Notice and for the certificate showing the agency sent out this Notice are in the appendix as **NTC-SBM** and **CRT-SBM**.

## 12.11 ALJ Review

The ALJ has 14 days to review and approve or disapprove your rules. If approved, OAH will send you a copy of the ALJ’s decision and return your file to you.

## 12.12 Procedure for Resubmitting Disapproved Rules

If the ALJ does not approve your rules, you may resubmit the rules with any necessary changes or challenge the disapproval, or neither. If you decide to do neither, note that your rules cannot take effect unless are approved.

### 12.12.1 Resubmitting with corrections

If the ALJ disapproves your rules, the defects noted are correctable, and your agency agrees to the corrections, you can resubmit the corrected rules to OAH for review. You will need an updated Revisor’s copy for doing this. The ALJ has five working days to approve or disapprove.

**Note:** This process is different from normal rules, in which corrections and disapproval are both submitted to the Chief ALJ.

### 12.12.2 Governor’s Office approval for resubmission

Per the Governor’s Office administrative rule review policy, **GOV-PLCY**:

If the ALJ makes any substantive recommendations to the rule or if defects are found, the agency should resubmit the Final Rule Form to the Governor’s Office, clearly labeling it as a revised form. The agency must explain its response to the ALJ’s Report, including any large deletions from the rule. A copy of the ALJ Report should be submitted to the Governor’s Office with the revised Final Rule Form. Upon final approval of the rule by the Policy Advisor, the Legislative Coordinator will contact the agency and inform it that it may publish the expedited rules in the State Register.

### 12.12.3 Procedure for appealing the ALJ decision

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

## 12.13 Withdrawal of Rules

There might be circumstances that require your agency to withdraw the rules or a portion of the rules from review. You can do this, without repercussion, if the remaining rules are not substantially different. To withdraw the rules, you must submit a Notice of Withdrawal, signed by a person authorized to do so. The Notice must contain an explanation of the person’s authority to withdraw the rules.Note that Minnesota Statutes, section 14.05, subdivision 3, requires that you publish notice in the *State Register* that you have withdrawn the rules.

The form for Notice of Withdrawn Rules is available in the appendix as **NTC-WITHDRAWL.** At a minimum, the notice should:

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

For example:

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

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

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

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

What if an agency wants to withdraw portions of its rules? If the agency is proposing new language, the agency can strike the language in its AR draft instead of formally withdrawing the rules by publishing a withdrawal in the *State Register*.[[9]](#footnote-9) For larger withdrawals for which the agency still wants to adopt other parts of its rule, such as in the example above, the agency should follow the normal withdrawal process. A few tweaks are needed, however, because the APA doesn’t explicitly outline a process for a hybrid rule withdrawal/rule adoption:

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

**2110.0320 [Withdrawn at … SR …]**

**2110.0330 [Withdrawn at … SR …]**

* 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

## 12.14 Finalize and File the Order Adopting Rules

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

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

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

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

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

Before your rules can take effect, you must publish the Notice of Adoption in the *State Register*. See information on how to publish in the *State Register* and “Production Schedule” for publication dates and deadlines on the [Minnesota State Register website (https://mn.gov/admin/bookstore/register.jsp)](https://mn.gov/admin/bookstore/register.jsp). The rules become effective on the day that they are published in the *State Register* if a different effective date is not specified in the rule.

### 12.15.1 Governor veto

The Governor may veto rules adopted under the expedited procedures of section 14.389.[[10]](#footnote-10) 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*.[[11]](#footnote-11) The Governor’s Office will let you know whether the rule or portions of the rule will be vetoed.

### 12.15.2 When to publish the Notice of Adoption

Even though the statute is silent on whether the agency must wait for the Governor to act before publishing its Notice of Adoption, you should wait to submit your agency’s Notice of Adoption to the *State Register* for publication until after your agency is certain that the Governor will not veto the rules. If your agency feels it is urgent that the rules become effective ASAP, contact the Governor’s Office to relay your concerns and discuss whether you can move forward with the rules before the end of the 14 days.

### 12.15.3 180-day deadline

The 180-day deadline in Minnesota Statutes, section 14.19, applies to an expedited rulemaking. This deadline requires you to submit a notice of adoption to the *State Register* within 180 days after the issuance of the ALJ decision. Failure to do this will result in your rules being automatically withdrawn, and you must start the process over.

### 12.15.4 *State Register* lead time

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

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

## 12.16 Official Rulemaking Record

After expedited rules are adopted, you must keep an Official Rulemaking Record. The requirements for the Official Rulemaking Record are stated in Minnesota Statutes, section 14.365, clauses (1) to (11). A form for the Official Rulemaking Record is in the appendix as **RECORD**. Note that paragraphs (1) to (11) of this form are keyed to clauses (1) to (11) of section 14.365, so that this form can serve as a checklist to meet the requirements of section 14.365. In addition to the required documents, it is good practice to keep documents that show any additional justification for your rules, the date the rules took effect, evidence of official approval by your agency, and any information on how you considered giving affected parties notice.

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

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

## Checklist for Chapter 12 – Expedited Rules under 14.389

| **Date Completed** | **Item** |
| --- | --- |
|  | **12 – Entire chapter reviewed before proceeding** |
|  | **12.1 – Rules drafted**- Draft rules as you would any other rules (See Chapter 3)- Request preliminary draft from Revisor; tell them the rules are expedited under 14.389- If agency is a multi-member board, **BD-NTC** used |
|  | **12.2 – Rules prepared for comment**- **12.2.1 – Governor’s Office notified****- GOV-PRLM** used**- 12.2.2 – Revisor’s Draft approved for publication obtained (with certificate signed by Revisor)****- 12.2.3 – Notice of Intent to Adopt Expedited Rules w/o a Hearing drafted****- NTC-EXPEDITE** used |
|  | **12.3 – Notice given** - **12.3.1 – Notice sent to agency mailing list - CRT-LIST** and **CRT-MLNG** used**- 12.3.2 – Additional notice given (optional)- 12.3.3 – Notice published in *State Register* -** *State Register* website used- **12.3.4 – Allow at least 30-days for comment- 12.3.5 – Consider using OAH’s eComments** |
|  | **12.4 – Modifications to your Expedited Rules-** Review comments and decide on modifications- Get approval from chain of command |
|  | **12.5 – Expedited Rules subject to Hearing (if § 14.389, subd. 5 applies) -** If you receive 50 or more requests for a hearing, you must hold a hearing and comply with all normal requirements for adopting rules after a public hearing (See Chapters 7 and 9) |
|  | - **12.5.1 – Withdrawal of hearing requests- NTC-HRWD** and **CRT-HRWD** used |
|  | **12.6 – Governor’s Office approval received- GOV-FNL** used |
|  | **12.7 – Copy of adopted rules obtained from Revisor** |
|  | **12.8 – Proposed Order Adopting Rules drafted - ORD-ADPT** |
|  | **12.9 – File submitted to OAH for official review (eFile)- EXPEDITE-LTR** used - Notify ALJ before filing |
|  | **12.10 – Notice of Submission of Rules to OAH given**- **NTC-SBM** and **CRT-SBM** used |
|  | **12.11 – ALJ review completed**- ALJ has 14 days to review |
|  | **12.12 – Resubmitting disapproved rules - 12.12.1 – Resubmitting with corrections- 12.12.2 – Governor’s Office approval for resubmission- 12.12.3 – Appealing ALJ decision** |
|  | **12.13 – Withdrawal of rules (optional)** |
|  | **12.14 – Order Adopting Rules finalized and filed**- Order Adopting Rules signed by: - Signed order eFiled with OAH- Rules filed with Secretary of State- Notice of Adoption received from Revisor |
|  | **12.15 – Notice of Adoption published in the *State Register***- Notice submitted after agency is certain Governor will not veto rules - *State Register* website used- Rules published within 180 days of ALJ review |
|  | **12.16 – Official Rulemaking Record prepared- RECORD** used |

1. Minn. Stat. § 14.389. [↑](#footnote-ref-1)
2. Minn. R. 1400.2110, .2300, subp. 7; Minn. Stat. §§ 14.05, subd. 2, .24. [↑](#footnote-ref-2)
3. Minn. R. 1400.2080, subp. 6. The 33-day requirement applies only if you are mailing the requirement; otherwise, it must be 30 days before the comment period ends. [↑](#footnote-ref-3)
4. Minn. Stat. § 14.22, subd. 1(a). [↑](#footnote-ref-4)
5. Minn. Stat. § 14.389, subd. 2. [↑](#footnote-ref-5)
6. Minn. Stat. § 14.389, subd. 2. [↑](#footnote-ref-6)
7. Minn. R. 1400.2085, subp. 2E. [↑](#footnote-ref-7)
8. Minn. R. 1400.2410, subp. 3. [↑](#footnote-ref-8)
9. Withdrawing amendments to existing language is tricky; ask the revisor’s office for help. [↑](#footnote-ref-9)
10. Minn. Stat. § 14.05, subd. 6. [↑](#footnote-ref-10)
11. Minn. Stat. § 14.05, subd. 6. [↑](#footnote-ref-11)