# Chapter 11 – Good Cause Exempt Rules Under 14.388

## Introduction

This chapter describes the process for rules that are adopted, amended, or repealed under the APA’s good-cause-exemption authority.[[1]](#footnote-1) The agency must meet the conditions of section 14.388 to use the procedures of 14.388; the good-cause exemption is an efficient way to clean up rules that fit these conditions.

## 11.1 Determine Whether your Rules Fall Under the Good Cause Exemption

An agency may use the good cause exemption if it finds that normal rulemaking requirements of chapter 14 are unnecessary, impracticable, or contrary to the public interest when proposing to adopt, amend, or repeal rules in any of these four situations:

1. The rules address a serious and immediate threat to public health, safety, or welfare.
2. The rules comply with a court order or federal law requirement that does not allow for compliance with sections 14.14 to 14.28.
3. The rules incorporate specific changes stated in applicable statutes where no interpretation of law is required. In other words, changes that must or could be made because of a statutory change made by the legislature fall under this exemption. For example, suppose your rules govern the accident-prevention course for senior drivers over the age of 65. Taking the course enables senior drivers to get a discount on their car insurance, per Minnesota Statutes. If the statute were changed to apply to all drivers that are over the age of 55, you would use the good cause exemption to change all the 65s to 55s in your rules. However, if you decide to make further changes to the course curriculum, they would be substantive changes to the rule, and you must use regular rulemaking procedures.
4. The rules make changes that do not alter the sense, meaning, or effect of a rule. For example, industry now uses the term “widgets” for a certain item, but when you adopted the rule, the term used was “gadgets.” Because “gadget” has become an obsolete term, you need to change the terms used in your rules to “widgets.” You may use the good cause exemption to substitute the term “widget” for “gadget” if this substitution doesn’t change the meaning, sense, or effect of the current rule. A change in effect could occur if the term "widget” is broader than the term “gadget” and therefore your rule applies to more widgets than gadgets. In this instance, the effect of your rule changed because it covers more widgets than it covered gadgets, and this result could positively or negatively affect the users of widgets.

## 11.2 Draft your Rules

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

Request the Revisor’s Office to prepare a preliminary draft of the rules and advise them that your agency is adopting the rules under the good cause exempt procedure in Minnesota Statutes, section 14.388. Review the draft carefully, with the help of your agency’s subject matter expert, and request changes as necessary.

## 11.3 Preparing your Good Cause Exempt Rules for Adoption

### 11.3.1 Notify Governor’s Office

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

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

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

### 11.3.2 Get approved draft from the Revisor

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

**Note:** Because exempt rules are published only once in the *State Register*, the revisor draft is entitled “Adopted Exempt Rules Relating to . . .” But the draft is still an RD.

### 11.3.3 Draft Proposed Order Adopting Rules

After you receive the Revisor’s approved draft, draft your proposed Order Adopting Rules. See **ORD-ADPT(EX)** in the appendix. Your proposed Order must include an explanation of the legality of the rule, an explanation of why the rule meets the good cause exemption requirements (see the four categories of exempt rules in section 11.1), and any other information required by law or rule. Because the law requires notice, you might want to include in the Order a description of your notice and why it satisfies the notice requirement. You may also attach a copy of the notice to the Order.

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

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

## 11.4 Prepare and Send the Notice of Submission

### 11.4.1 Prepare the Notice of Submission

See **NTC-SBM(EX)** in the appendix.

Do the following to help you organize:

1. choose the date for submitting your rules package to OAH and sending your Notice of Submission;
2. prepare an agency webpage, if desired; and
3. make sure that documents you will post online are accessible.

The Notice of Submission must include:

1. the proposed rules in certified Revisor form;
2. an explanation of why the rules meet the requirements of the good cause exemption; and
3. a statement that interested parties have five business days after the date of the notice to submit comments to OAH by United States mail or via the Office of Administrative Hearings [Rulemaking eComments Discussions (https://minnesotaoah.granicusideas.com/discussions)](https://minnesotaoah.granicusideas.com/discussions).[[2]](#footnote-2)

### 11.4.2 Using OAH’s eComments website

Minnesota Statutes, section 14.388, subdivision 2, requires the public have an opportunity to submit comments to OAH. Therefore, agencies must notify the public that they may submit public comments using OAH’s [eComments website (https://minnesotaoah.granicusideas.com)](https://minnesotaoah.granicusideas.com/).

The public may also submit comments to OAH by U.S. Mail, eComments, personal service or fax, so you must check for and respond to these comments as well. Public instructions for making comments can be found at <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 assigned to the rulemaking.
2. The dates the comment period will open and close.
3. A link to the agency’s rulemaking webpage, if applicable. OAH will add a link to the agency’s rulemaking webpage on the eComments site.
4. Optional: Finalized accessible copies of the documents you want to appear on the OAH eComments webpage, if any.

### 11.4.3 Giving Notice of Submission

On or before the date you submit your rules to OAH for review, you must give notice of your intent to amend your rules.[[3]](#footnote-3) Plus, you must send your Notice through mail or email to everyone on your agency’s rulemaking mailing list. There is no penalty for sending the Notice early. Email delivery can be accomplished using a subscription service such as GovDelivery.

You must also notify interested persons. Be creative about finding ways to reach them. The effort you make should be proportional to the potential controversy of the rules. For controversial rules, you might need to compile lengthy mailing lists that you should organize in advance to meet the notice requirements. A list-management service such as GovDelivery is a real timesaver. Preserving evidence of your efforts and list is prudent for preparing a certificate of mailing, if the ALJ requests one. If the proposed rules are not controversial, posting the notice on your agency’s website might suffice. If you have concerns, send your notice plan to OAH for review.

A Certificate of Accuracy of the Mailing List and a Certificate of Mailing should be completed and saved for submission to OAH. The date on the Certificate of Mailing should be the same as the date that the Notice was sent. Forms for the certificates are in the appendix as **CRT-LIST** and **CRT-MLNG**. If one person performs both actions, you can create a single certificate for that person that covers both actions. You may choose to submit these certificates when you file with OAH, or the ALJ might require them as “any other information required by law or rule.”[[4]](#footnote-4)

## 11.5 Submitting your Good Cause Exempt Rules to OAH

Minnesota Rules, part 1400.2400, subpart 2, lists the documents you must file with the OAH for official review of your adopted rules. A form for the cover letter to OAH submitting your adopted exempt rules for approval is in the appendix as **EXEMPT-LTR**.

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

### 11.5.1 eFiling rule-related documents

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

### 11.5.2 Best Practices for working within OAH’s eFiling system

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

* Organize your documents as described in Minnesota Rules 1400.2400, subpart 2. OAH prefers that you consolidate the documents as one PDF document and bookmark them. Best practice: Include the replies that the agency sent to comments along with those comments.
* If your case has a large volume of pages, consider adding a unique sequential page number through the entire set. This is often called applying a “Bates” stamp. Some photocopiers can do this and so can Adobe Pro.
* Scan the pages as a single PDF or combine saved PDF files into a single PDF. Prepare an index keyed to the unique numbers. In Adobe Pro, for example, it is simple to mark and label a bookmark at the first page of each document.
* If the filing is quite large, you may create more than one PDF. For example, a large volume of comments or a large map file may require a separate document to keep file size manageable.
* Consolidating your exhibits might simply exceed your technology’s capabilities, so you might have to solicit additional assistance within your agency or acquire more powerful software, such as Adobe Pro.

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

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

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

### 11.5.3 OAH standards of review

As with any other rules, you must make certain that the proposed rules comply with standards of legality before you submit them to OAH for review.[[5]](#footnote-5) Review these standards directly in Minnesota Rules, part 1400.2100.

## 11.6 ALJ Review

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

## 11.7 Procedure for Resubmitting Disapproved Rules

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

### 11.7.1 Resubmitting with corrections

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

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

### 11.7.2 Procedure for appealing the ALJ decision

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

## 11.8 Adopting your Approved Exempt Rules

Once the ALJ approves your rules, you may officially adopt the rules.

### 11.8.1 Finalize the Order Adopting Rules and have it signed

If you made no changes to your proposed rules, finish the proposed Order Adopting Rules by removing the word “Proposed” from the title and inserting the number of comments received. These changes should be the only differences between the proposed Order and your final Order Adopting Rules.

If you made changes to your proposed rules, update your Order Adopting Rules to reflect those changes along with removing the word “Proposed” from the title and inserting the number of comments received.

The commissioner or director (or other authorized person) may now sign it.

### 11.8.2 Determine whether to further notify the Governor’s Office

If you made changes to the proposed rules or controversies have arisen, you might wish to communicate with the Governor’s Office. Per the Governor’s Office administrative rule review policy, **GOV-PLCY**:

**When the agency is adopting exempt rules or good cause exempt rules:** the agency may exercise its judgment about whether to submit a completed Final Rule Form **[GOV-FNL]** to the Office of the Governor. The nature of exempt . . . rules is that there are no policy considerations to make or controversies to address, so waiting for approval is not necessary. If either were to develop, however, the agency should notify the Office. Submitting a completed Final Rule Form is usually a wise precaution against error. When in doubt, the agency may contact the Legislative Coordinator. . .. Good cause exempt rules adopted under Minnesota Statutes, section 14.388 *are not* subject to veto. *[emphasis added]*

### 11.8.3 Filing your approved exempt rules

eFile your signed Order Adopting Rules as you would your other documents.

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

1. When the agency eFiles the signed Order Adopting Rules, OAH usually requests the Final Rules from the Revisor’s Office. With exempt rules, however, the agency has already eFiled the certified adopted rule with OAH and the Revisor’s office does not produce any additional documents. So, OAH files the Final Rules with the Secretary of State’s Office.
2. The Secretary of State’s Office serves the Final Rules on the Governor’s Office via email using a distribution list that includes the agency. **(Note: there is no veto period; see exception noted in 11.8.6 for good cause exempt rules).** The email contains no explanation and is how you will know your rule was served on the Governor’s Office, so you must watch for it. Typically, the agency rule contact is copied on the service email from the Secretary of State’s Office to the Governor’s Office. After you receive this email or some other confirmation, you should proceed with publishing the updated rule in the *State Register*. The Secretary of State’s Office will also notify the Revisor’s Office that the rule has been filed.
3. 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.

### 11.8.4 Publish in the *State Register*

Before your rules can take effect, you must publish them in the *State Register*.[[6]](#footnote-6) See **ST-REG** in the appendix for information on how to publish*.* The rules become effective on the date of publication if a different effective date is not specified in the rule.

### 11.8.5 *State Register* lead time

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

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

### 11.8.6 Governor veto

A governor’s veto does not apply to good cause exempt rules adopted under Minnesota Statutes, section 14.388.[[7]](#footnote-7)

## 11.9 Notice to Affected Parties

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

## 11.10 Possible Expiration of Good Cause Exempt Rules

Rules adopted under clauses (1) and (2) of section 14.388 are effective for two years from the date of publication of the rule in the *State Register*. Rules adopted under clauses (3) and (4) of section 14.388 are effective upon publication in the *State Register* and don’t expire.

## 11.11 Official Rulemaking Record

After 14.388 rules are adopted, you must keep an Official Rulemaking Record. The requirements for the Official Rulemaking Record are stated in Minnesota Statutes, section 14.365, clauses (1) to (11). A form for the Official Rulemaking Record is in the appendix as **RECORD**. Note that paragraphs (1) to (11) of this form are keyed to clauses (1) to (11) of section 14.365, so that this form can serve as a checklist to meet the requirements of section 14.365. In addition to the required documents, it is good practice to keep documents that show any additional justification for your rules, the date the rules took effect, evidence of official approval by your agency, and any information on how you considered giving affected parties notice.

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

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

## Checklist for Chapter 11 – Good Cause Exempt Rules under 14.388

**Date Completed Item**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **11 – Entire chapter reviewed before proceeding**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **11.1 – Determined whether rules fall under Good Cause Exemption**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **11.2 – Rules drafted**- Draft rules as you would any other rules (See Chapter 3)
- Request preliminary draft from Revisor; tell them the rules are exempt under 14.388
- If agency is a multi-member board, **BD-NTC** used

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **11.3 – Rules prepared for adoption**

 - **11.3.1 – Governor’s Office notified
 - GOV-PRLM** used

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **- 11.3.2 – Revisor’s Draft approved for publication obtained (with certificate signed by Revisor)**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **- 11.3.3 – Proposed Order Adopting Rules drafted
 - ORD-ADPT(EX)** used

 **11.4 – Notice of Submission prepared and sent**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **- 11.4.1 – Notice of Submission prepared
 - NTC-SBM(EX)** used

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **- 11.4.2 –eComments set up
- 11.4.3 – Notice of Submission given
 - CRT-LIST** and **CRT-MLNG** used

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **11.5 – Rules submitted to OAH**- **11.5.1 – eFile rule-related documents; EXEMPT-LTR** used

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **11.6 – ALJ review completed
-** ALJ has 14 days to review

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **11.7 – Resubmitting disapproved rules
- 11.7.1 – Resubmitting with corrections
- 11.7.2 – Appealing ALJ decision**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **11.8 – Approved Exempt Rules adopted
- 11.8.1 – Order Adopting Rules finalized and signed** - Order signed by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Checklist for Chapter 11 (Continued)**

**Date Completed Item**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **- 11.8.2 – Determine whether to further notify the Governor’s Office
 - GOV-FNL** used

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **- 11.8.3 – Signed Order Adopting Rules eFiled**- Signed order eFiled with OAH
 - Rules filed with Secretary of State
 - Notice of Adoption received from Revisor

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **- 11.8.4 – Rules published in the *State Register*** - Notice submitted after agency is certain Governor will not veto rules
 - **ST-REG** used

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **11.9 – Affected parties notified (Optional)**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **11.10 – Possible expiration of Exempt Rules noted
-** Rules adopted under clauses (1) and (2) of section 14.388 are effective for two years from the date of publication in the State Register. **-** Rules adopted under clauses (3) and (4) of section 14.388 are effective upon publication in the State Register.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **11.11 – Official Rulemaking Record prepared
- RECORD** used

1. Minn. Stat. § 14.388. [↑](#footnote-ref-1)
2. See form NTC‑SBM(EX) in the Appendix. [↑](#footnote-ref-2)
3. Minn. Stat. § 16E.07, subd. 3. [↑](#footnote-ref-3)
4. Minn. R. 1400.2400, subp. 2B(3). [↑](#footnote-ref-4)
5. Minn. R. 1400.2400, subp. 3. [↑](#footnote-ref-5)
6. Minn. Stat. § 14.388, subd. 1, requires the agency to follow the procedures of section 14.386, which includes the publication requirement in paragraph (a), clause (4). [↑](#footnote-ref-6)
7. *See* Minn. Stat. § 14.05, subd. 6. [↑](#footnote-ref-7)