# Chapter 13 - Repeal of Obsolete Rules Under 14.3895

## Introduction

This chapter describes the process for repealing obsolete rules.[[1]](#footnote-1) An agency may repeal obsolete rules using this process if the agency has identified the specific rules in question as obsolete, unnecessary, or duplicative in the agency’s annual obsolete rules report.[[2]](#footnote-2) This authority does not apply if another law specifically requires another process or if 25 or more people submit a written request for a hearing. If either occurs, you must meet the requirements of Minnesota Statutes, sections 14.131 to 14.20, for rules adopted after a hearing or the requirements of sections 14.22 to 14.28 for rules adopted without a hearing.

## 13.1 Eligibility

Before you may do anything else, you must make sure that your agency has identified the specific rules in question as obsolete, unnecessary, or duplicative in the agency’s annual obsolete rules report.[[3]](#footnote-3) If not, and you wish to go forward before your next report, you may issue an amended report. You must, however, comply with all the requirements of Minnesota Statutes, section 14.05, subdivision 5.

Next, notify the Governor’s Office of your plans. The Governor’s Office administrative rule review policy, **GOV-PLCY**, states:

**RULE REPEALS**

Agencies do not need to submit rule repeals to the Governor’s Office for approval. However, an agency should send an informational memo identifying the obsolete, unnecessary, or duplicative rule(s) to be repealed, describing the rationale for repeal, and indicating any potential controversies. This memo will serve to notify the Governor’s Office that the agency is seeking to repeal a rule. No approval is necessary, at any stage, in the rule repeal process. Agencies should note, however, that obsolete rules repealed under Minnesota Statutes, section 14.3895 are subject to veto.

**Note:** The policy asks only for an “informational memo,” and does not mention using the usual form **GOV-PRLM.** But you should use the **GOV-PRLM** form anyway. The form alerts Governor’s Office staff that your submission is rule related and to handle your document accordingly, which lessens the chances that it will be set aside to review later or otherwise go astray. You do not need to wait for approval to go forward.

## 13.2 Draft your Rules and Obtain Approval

Draft your rules as you would any rules. **[See Chapter 3.]** Even though you are repealing obsolete rules, you will need a Revisor’s draft to do this.

Give your draft 14.3895 rules to the Revisor for approval as to form. The Revisor will enter your rules into the Revisor's system and edit them to produce an official version for you to adopt. The Revisor will also likely identify cross-references to the rules that you intend to repeal and ask that you provide updated cross-references. Advise the Revisor that these rules are obsolete rule repeals under section 14.3895. This will ensure that the title to the rules receives the obsolete rules repeal designation (see **section 13.16**). You will need draft rules *with a Revisor’s* *signed* *certificate* for your OAH submission.

Your chain of command should review and approve your rules before you proceed. 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**.

## 13.3 Draft your Notice of Intent to Repeal Obsolete Rules

A Notice of Intent to Repeal Obsolete Rules must contain the information in Minnesota Rules, part 1400.2085, subparts 2 and 3, items B to E. (Although the rule part does not explicitly govern the obsolete process under Minnesota Statutes, section 14.3895, OAH uses the criteria found in the rule part to evaluate the Notice of Intent to Repeal Obsolete Rule.) A form for the Notice is in the appendix as **NTC-OBS** and is designed to be a checklist for meeting the requirements of Minnesota Rules, part 1400.2085.

When drafting the Notice, include an explanation of why the specific rules are obsolete, unnecessary, or duplicative. Also make certain that you describe in an easily readable and understandable summary the overall nature and effect that the proposed repeal will have. This summary is required in the Notice that is published in the *State Register*.

## 13.4 Prepare your Notice Plan

You must draft a Notice Plan, obtain approval from the Chief ALJ, and follow the Notice Plan.[[4]](#footnote-4) In the Notice Plan, you must make reasonable efforts to notify persons or classes of persons who might be significantly affected by the rule repeal by giving notice of your intention to repeal obsolete rules by such means as newsletters, newspapers, other publications, or through other means of communication.

## 13.5 Get your Notice Plan Approved by Chief ALJ

You must obtain the Chief ALJ’s approval of the Notice Plan before publishing the notice in the *State Register* and implementing the Notice Plan. Submit to the Chief ALJ the following:

1. the proposed obsolete rule to be repealed with Revisor’s certification;
2. your proposed notice of intent to repeal obsolete rules; and
3. an explanation as to why your agency believes the Notice Plan complies with Minnesota Statutes section 14.3895, subdivision 2.

A form letter for requesting approval is in the appendix as **NP(O)-RQST**.

### 13.5.1 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.**

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

## 13.6 Giving Notice

### 13.6.1 Agency mailing list

You must send your Notice through mail or email to everyone on your agency’s rulemaking mailing list and to chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule repeal.[[5]](#footnote-5) In addition, you must give notice according to the Notice Plan approved by the Chief ALJ as described in **section 13.4**.[[6]](#footnote-6)

This mailing must be done at least **63 days** before the end of the comment period (60 days if done electronically). Email delivery can be accomplished using a subscription service such as GovDelivery.

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.[[7]](#footnote-7)

The notice must contain a statement that if 25 or more people submit a written request, the agency will have to meet the requirements of sections 14.131 to 14.20 for rules adopted with a hearing, or 14.22 to 14.28 for rules adopted without a hearing, including the preparation of a statement of need and reasonableness and the opportunity for a hearing.

A suggested letter for mailing the notice to legislators is in the appendix as **LEG(O)**.

When you mail your Notice, prepare a Certificate of Mailing Notice to Persons on Mailing List, a Certificate of Accuracy of the Mailing List, a Certificate of Sending Notice to Legislators, and a Certificate of Giving Notice Pursuant to the Notice Plan. Forms for these certificates can be found in the appendix as **CRT-MLNG**, **CRT-LIST, CRT-LEG,** and **CRT-GNRC**.

### 13.6.2 Notice Plan

Give notice according to your Notice Plan and document your efforts. For any mailed notice, whether using U.S. mail or email, complete a certificate of mailing and attach a copy of the notice and the mailing list. [**Note:** Traditionally, this Manual has advised you to attach mailing lists to your certificate. This remains good practice **as long as your mailing list contains public information.** If your email lists consist of subscribers to your web delivery system, you may wish to describe your subscribers more generally. See the note in section 1.8.4 for Data Practices considerations.]

Detail any efforts you made to develop your mailing list. For more traditional paper-based Notices, obtain copies of newsletters or newspapers in which a Notice is published. Obtain tapes or transcripts of announcements made on radio or television. Detail any efforts you made to get a Notice published or broadcast, especially if you made a Notice available and others did not publish or broadcast it. You can document what you have done by using the generic certificate form that is in the appendix as **CRT-GNRC**.

### 13.6.3 Publication in the *State Register*

You must publish your Notice and proposed rules in the *State Register* at least **60 days** before the end of your comment period.[[8]](#footnote-8) See **ST-REG** in the appendix for information on how to publish in the *State Register*.

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

### 13.6.5 60-day comment period (after publication)

You must allow at least 60 days after publication in the *State Register* for comment on the proposed rules. Keep copies of all comments and submissions you receive and the agency’s responses, because these must be included with the rest of the documents that you file with the OAH.[[9]](#footnote-9)

### 13.6.6 Collecting comments

OAH collects public comments on its [eComments website (https://minnesotaoah.granicusideas.com)](eComments%20website%20(https://minnesotaoah.granicusideas.com)), as well as through U.S. Mail, eFiling, personal delivery, or fax. 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, 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.

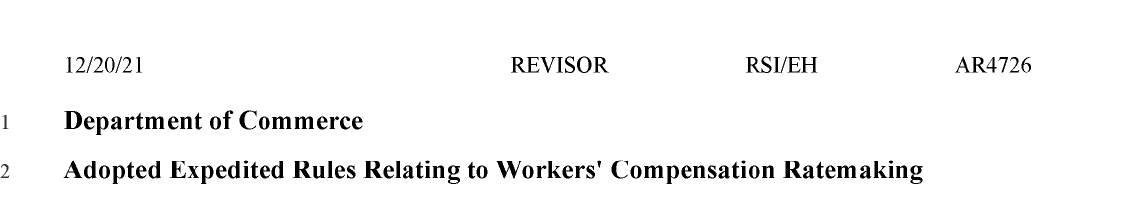
## 13.7 Modifications to your Repeal of Rules

During the 60-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*.* Finally, remember to obtain a certified copy of the modified rules from the Revisor, which will be a markup on the stripped (clean) copy of the rules as originally proposed.

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

During the 60-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, you may use the stripped version for the Order Adopting Rules. 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. In your request, indicate when you would like the adopted rules back, and the Revisor will tell you if that is workable.

## 13.9 Repeal of Obsolete Rules Subject to Hearing

If 25 or more people submit a written request during the 60-day comment period, the agency must meet the requirements of Minnesota Statutes, sections 14.131 to 14.20, for rules adopted after a hearing or the requirements of sections 14.22 to 14.28 for rules adopted without a hearing. If you do not receive 25 requests, you may proceed with your rulemaking following the procedures for repeal of obsolete rules.

### 13.9.1 Withdrawal of hearing requests

If your agency receives 25 or more requests for a hearing but is willing to change the rules to address enough of the requests, your agency may be able to avoid going to hearing if you meet the following requirements:

1. First, you must get enough hearing requests withdrawn to reduce the number of requests to less than 25; and
2. You must notify all persons who requested a hearing, in writing, if enough requests are withdrawn to reduce the number of requests below 25 and if the agency has taken any actions to obtain the withdrawals. 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**.

## 13.10 Draft your *Proposed* Order Adopting Rules

In this case, your Order Adopting Rules will repeal the 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 part 1400.2090.

Even though there is no SONAR document laying out the agency’s case for repealing obsolete 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 in the process, you will have the finalized approved draft signed and transmit a copy of the signed Order to OAH.

## 13.11 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. A sample cover letter to OAH is in the appendix as **REVW(O)-LTR**. This letter is designed to serve as a checklist for meeting the requirements set out in Minnesota Rules, part 1400.2410.

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

### 13.11.1 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.**

### 13.11.2 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. You can adapt the cover-letter text (REVW(O)-LTR) into a template for this purpose. OAH prefers that you consolidate the documents as one PDF document and bookmark them. Best practice: Include the 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.

### 13.11.3 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.[[10]](#footnote-10) Review these standards directly in Minnesota Rules, part 1400.2100.

In summary, these standards require that:

1. the agency complies with procedural requirements for repealing obsolete rules;
2. the rules are not substantially different from the proposed rules;
3. the rules do not exceed or conflict with the authority in the enabling law;
4. the rules are not unconstitutional or illegal;
5. the rules do not improperly delegate the agency’s powers to another; and
6. the rules fit the definition of a “rule” as defined in statute.

## 13.12 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 14.3895, Minnesota Rules, parts 1400.2410 and 1400.2570, both refer to giving notice that a department has submitted expedited rules to OAH for review if a person requests this notice. Because, as noted in section 13.3, OAH uses the notice requirements pertaining to expedited rules when reviewing the contents of a notice of rule repeal, it is prudent to conclude that the requirement about a request to be informed of OAH submittal of expedited rules also pertains to obsolete rules. Forms for this Notice and for the certificate showing the agency sent out this Notice are in the appendix as **NTC-SBM** and **CRT-SBM**.

## 13.13 ALJ Review

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

## 13.14 Procedure for Resubmitting Disapproved Rules

If the ALJ does not approve your rules, you may resubmit the rules with any necessary changes. The rules cannot be published or take effect until the rules have been approved.

### 13.14.1 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.

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

If controversies have arisen, you should communicate with the Governor’s Office. To do this, submit a completed Final Rule Form [**GOV-FNL]** to the Office of the Governor.

## 13.15 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*.[[11]](#footnote-11) 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

## 13.16 File your Approved Obsolete Rules Repeal

After OAH approves your rules, the commissioner (or other authorized person) must sign the Order Adopting Rules. Go forward with submitting the signed Order to OAH. eFile your signed copy 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 requests the Final Rules from the Revisor’s Office, which then has five working days to provide them to OAH.
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.

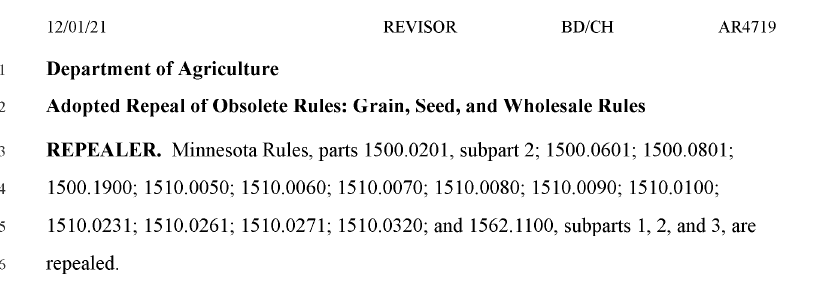
**Note:** While these steps can take place swiftly, that’s not always the case. Make sure to keep track of where and when the rule was forwarded and how long it has been at a specific office. Follow up with the appropriate office, as needed.

## 13.17 Publish the Repeal of Obsolete Rules

Before the repeal of your rules can take effect, you must publish the rule in the *State Register*. See **ST-REG** in the appendix for information on how to publish in the *State Register*.

Your repeal of obsolete rules takes effect when all the requirements in Minnesota Statutes, section 14.3895, have been met and five working days after the notice of repeal is published in the *State Register* unless a later date is required by law or specified in the rule repeal proposal.

If the final repeal is identical to the action originally published in the *State Register*, publication will simply be in the form of a repealer – this will only be the case if the rule is a strict repealer.



Otherwise, the agency must publish a copy of the changes in the *State Register* as well. Request the AR draft from the Office of the Revisor of Statutes, who will send the notice directly to the *State Register*.

For rules that aren’t a strict repealer and have striking and underscoring, the title will say “exempt permanent” because technically the obsolete process is exempt from most normal rulemaking requirements. The following is an example of an obsolete rule being published the second time in the *State Register* (after being approved by the Chief ALJ):

### Image of header for a Revisor's draft of the rules showing "AR4769" in the upper right hand corner and the words "Adopted Exempt Permanent Rules Repealing Ambulance Standards and Radio Frequency Assignments" in the title.

### 13.17.1 Governor Veto

The Governor may veto the repeal of obsolete rules adopted under the procedures of section 14.3895.[[12]](#footnote-12) 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*. The Governor’s Office will let you know whether the rule or portions of the rule will be vetoed.

### 13.17.2 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 requires or would significantly benefit from the rule being adopted early in the 14-day veto period, you should contact the Legislative Coordinator at LACA about an expedited approval.

### 13.17.3 180-day deadline

There are two 180-day deadlines that apply to the repeal of obsolete rules.

1. Under Minnesota Statutes, section 14.26, subdivision 1, you must submit the obsolete rules and administrative record to the Administrative Law Judge for review within 180 days of the day the comment period closes.
2. Also,the 180-day deadline in Minnesota Statutes, section 14.19, applies to the repeal of obsolete rules. This deadline requires you to submit a notice of adoption to the *State Register* within 180 days after the ALJ issues the decision.

Failure to meet either of these deadlines will result in your rules being automatically withdrawn, and you must then start the process over.

## 13.18 Official Rulemaking Record

After obsolete rules are repealed, 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 13 – Repeal of Obsolete Rules under 14.3895

**Date Completed Item**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **13 – Entire chapter reviewed before proceeding**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 1**3.1 – Eligibility determined**- Ensure agency has identified the rules in the obsolete rules report  
- Governor’s Office notified  
 - **GOV-PRLM** used

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **13.2 – Rules drafted; agency approval obtained**- Draft rules as you would any other rules (See Chapter 3)  
- Request preliminary draft from Revisor; tell them the rules are obsolete rule repeals under 14.3895  
- If agency is a multi-member board, **BD-NTC** used

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **13.3 – Notice of Intent to Repeal Obsolete Rules drafted  
- NTC-OBS** used

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **13.4 – Notice plan prepared**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **13.5 – Notice plan approved by Chief ALJ  
- NP(O)-RQST** used  
- Set up eFile account

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **13.6 – Notice given**- **13.6.1 – Notice sent to agency mailing list  
 - CRT-LIST** and **CRT-MLNG** used  
 - Legislators notified; **LEG(O)** and **CRT-LEG** used  
**- 13.6.2 – Additional notice given  
 -** Efforts documented; **CRT-GNRC** used **- 13.6.3 – Notice published in *State Register*  
 - ST-REG** used  
- **13.6.5 – Allow at least 60-days for comment  
- 12.3.6 – Consider using OAH’s eComments**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **13.7 – Modifications to your Expedited Rules  
-** Review comments and decide on modifications  
- Get approval from chain of command  
- Obtain certified copy of modified rules from Revisor

**Checklist for Chapter 13 (Continued)**

**Date Completed Item**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **13.8 – Obsolete Rules subject to Hearing   
-** If you receive 25 or more requests for a hearing, you must meet the requirements of §§ 14.131 to 14.20, for rules adopted after a hearing or the requirements of §§ 14.22 to 14.28 for rules adopted without a hearing.  
- **12.5.1 – Withdrawal of hearing requests  
 - NTC-HRWD** and **CRT-HRWD** used

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **13.9 – Proposed Order Adopting Rules drafted   
- ORD-ADPT**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **13.10 – File submitted to OAH for official review (eFile)  
- REVW(O)-LTR** used   
- Notify ALJ before filing

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **13.11 – Notice of Submission of Rules to OAH given**- **NTC-SBM** and **CRT-SBM** used

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **13.12 – ALJ review completed** - ALJ has 14 days to review

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **13.13 – Resubmitting disapproved rules   
- 13.13.1 – Resubmitting with corrections  
- 13.13.2 – Determine whether to further notify the Governor’s Office  
 - GOV-FNL** used

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **13.14 – Withdrawal of rules (optional)**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **13.15 – 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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **13.16 – Repeal of Obsolete Rules published in the *State Register***- Notice submitted after agency is certain Governor will not veto rules   
- **ST-REG** used  
- Rules published within 180 days of ALJ review

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **13.17 – Official Rulemaking Record prepared  
- RECORD** used

1. Minn. Stat. § 14.3895. [↑](#footnote-ref-1)
2. *See* Minn. Stat. 14.05, subd. 5. [↑](#footnote-ref-2)
3. Minn. Stat. § 14.05, subd. 5. [↑](#footnote-ref-3)
4. *See* Minn. Stat. § 14.3895, subd. 2. [↑](#footnote-ref-4)
5. Minn. Stat. § 14.3895, subd. 3. [↑](#footnote-ref-5)
6. Minn. Stat. § 14.3895, subd. 3. [↑](#footnote-ref-6)
7. Minn. Stat. § 14.3895, subd. 3. [↑](#footnote-ref-7)
8. Minn. Stat. § 14.3895, subd. 3. [↑](#footnote-ref-8)
9. Minn. R. 1400.2085, subp. 2E. [↑](#footnote-ref-9)
10. *See, e.g.,* Minn. R. 1400.2400, subp. 3 (explicitly stating that certain standards in part 1400.2100 must be met for exempt rules). [↑](#footnote-ref-10)
11. Withdrawing amendments to existing language is tricky; ask the revisor’s office for help. [↑](#footnote-ref-11)
12. Minn. Stat. § 14.05, subd. 6. [↑](#footnote-ref-12)