# RULEMAKING CHECKLIST ‑ RULES ADOPTED AFTER A HEARING

NOTES:

1. If rules are pursuant to a newly adopted or amended rulemaking mandate, you must publish the Request for Comments (step 5) within 60 days of the law's effective date. MS 14.101, s1.

2. The agency must publish a notice of intent to adopt rules (step 13) within 18 months of the effective date of the law authorizing or requiring rules to be adopted, amended, or repealed. Otherwise, the agency will lose the authority to do the rules. MS 14.125. This applies only to first-time rule adoptions under the statutory authority and not to subsequent amendments or repeals unless the Legislature subsequently alters the authority. Failure to adopt rules within 180 days of issuance of the ALJ's post-hearing report must be explained to the Legislature. MS 14.19.

3. The steps are listed in the recommended order, but the steps do not have to be done in the sequence indicated. However, steps 1–12 *must* be completed before step 13.

4. The Rulemaking Manual Editor *strongly* recommends that you write the SONAR (or at least make notes about what will go into it) concurrently with rule development.

5. For the precise deadlines for submissions to the State Register, see [Minnesota Bookstore (https://mn.gov/admin/bookstore/)](https://mn.gov/admin/bookstore/).

6. If the proposed rules are highly controversial, it might be advisable to meet with associations and other interested parties even before step 1.

| **Step** | **Timeline/Notes** | **Rulemaking Manual Reference** | **Target Date** | **Completion Date** |
| --- | --- | --- | --- | --- |
| 1. | Authorization from Commissioner or Board to begin project.  At least 1 week before step 5 | BD‑NTC |  |  |
| 2. | Obtain Revisor’s ID Number and send Preliminary Proposal Form to the Governor's Office via email to Emmet Hedin, [Emmet Hedin@state.mn.us](mailto:Emmet%20Hedin@state.mn.us), (651) 201-3408.  \* **Governor's Office 9/19/19 rules review policy GOV‑PLCY**: “When an agency has developed a rule idea, it should complete the Preliminary Proposal Form [GOV-PRLM] and submit it to the Governor’s Office. The form must be signed by the Commissioner or Director of the agency and will serve as the official notification to the Governor’s Office that an agency is seeking a rule. Regardless of the type of rule the agency is proposing (Exempt, Expedited, Permanent or Good-Cause Exemption), this form should be completed in its entirety and submitted to the Legislative Coordinator of LACA. The information contained in the Preliminary Proposal Form likely will be broad and general because of the proposal being at the very beginning stages of rulemaking. Although, this information is important to the Governor’s Office, the Policy Advisors cannot perform a substantive review of the proposed rule until they receive the Statement of Need and Reasonableness (SONAR). Therefore, the agency does not need to wait for a response from the Governor’s Office before publishing the Request for Comments. Should the information contained in the Preliminary Proposal Form be of concern to the Policy Advisor he or she will contact the agency. . .  \* **Huge Hint**: The Preliminary Proposal Form to the Governor's Office is an excellent opportunity *at the beginning of your rules project* to clearly set out your goals for the project and to write a first complete draft of the statement of need and the statutory authority for the rules. Having worked on many rules projects with the need and the goals *clearly in mind*, it became quickly apparent after doing one Governor's form that it was preferable and beneficial to have the need and the goals *clearly on paper*. The project goals and statutory authority will fit nicely into the SONAR.  *\** ***Note on Repealing Rules***. Per Governor's Office 9/19/19 rules review policy: “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.” | GOV-PRLM |  |  |
| 3. | Begin saving documents for official rulemaking record.  \* If needed, establish a rules advisory committee. Consult with affected parties, such as trade associations and agency advisory councils. | RECORD |  |  |
| 4. | Develop an Additional Notice Plan, which must be included in SONAR (step 8b). MR 1400.2060. |  |  |  |
| 5. | Request for Comments ‑ submit to State Register via electronic copy in Word Format and State Register Printing Order Form using the Revisor’s Office ID no.  Publish on the Monday 6 days after submission to the State Register. | REQUEST |  |  |
| 6. | Request for Comments ‑ mail to people on mailing list;  (optional) prepare Certificate of Mailing.  At least 3 days before publication  \* Notify additional people, if this is part of the Additional Notice Plan for the Request for Comments | CRT‑GNRC |  |  |
| 7. | Request for Comments – publish in State Register  At least 60 days before Notice of Intent to Adopt  \* **NOTE**: At any time there is a significant change from the initial proposal, send a memo to Emmet Hedin. From the 9/19/19 Governor's rule review policy GOV‑PLCY: “The Governor’s Office recognizes that agencies cannot predict all controversies at the outset of a rules project. As a result, the agency should use its judgment to send issues to the Governor’s Office for review throughout the process. Additional review might be necessary if a rule suddenly becomes controversial. If the agency believes that an issue or proposed change might be in conflict with the Governor’s beliefs and principles, the agency should notify its Policy Advisor.”  \* Only if you are using a rules advisory committee: Meet with the committee to discuss the rulemaking timeline and possible rule language | ADV‑COMM |  |  |
| 8. | Steps 8a, 8b, and 8c can be done in any order; they are often done concurrently. | Heading cell – no response require | Heading cell – no response require | Heading cell – no response require |
| 8a. | Ask Revisor for preliminary draft of proposed rules. | REVISOR |  |  |
| 8b. | Draft SONAR, including Additional Notice Plan  Concurrent w/ rule development  \* **Decide whether to use a Notice of Hearing or Dual Notice**. Use a Dual Notice if you're not sure whether or not the proposed rules will be controversial. | SONAR |  |  |
| 8c. | Get rules & SONAR, including Additional Notice Plan, approved by commissioner or executive director.  When rules & SONAR completed |  |  |  |
| 9. | Send rules & SONAR electronically to Governor's Office  Almost final rules & SONAR  \* **From the Governor's Office 9/19/19 administrative rule review policy, GOV PLCY**: "After the agency has published its Request for Comment, created the SONAR, and has final or almost final draft rules, it should complete the Proposed Rule and SONAR Form [GOV PRPS] and the Commissioner or Director sign it. The agency must then submit the completed form, SONAR, and draft rules to the Governor’s Office.  “This stage is crucial to rulemaking and is the critical point of information for the Governor’s Office. The Proposed Rule and SONAR Form seeks the information received during the Request for Comment, an Executive Summary of the SONAR, supporters, opponents, possible controversies, and any significant changes from the Preliminary Proposal Form. The form also contains an ‘other’ box. The Governor’s Office understands that every rulemaking experience is slightly different. Therefore, the ‘other’ box seeks information that might not fit into the SONAR or one of the other boxes of information requested. The ‘other’ box can be viewed as ‘any information that may be of importance to this rule.’  “The Proposed Rule and SONAR Form again seeks fiscal impact information. However, at this point, only two options (yes or no) exist. The fiscal impact ‘yes’ box should be checked for positive or negative fiscal impact to the State of Minnesota. If the fiscal impact declaration changed from the Preliminary Proposal Form, the agency should explain why. Within the SONAR Executive Summary box, the agency should include all fiscal information that affects individuals, businesses, units of government, or the agency itself. . . .  “The agency must receive official approval from the Legislative Coordinator of LACA before proceeding with the Notice of Intent to Adopt Proposed Rules. In most cases, the agency will receive the approval to proceed with the Notice of Intent to Adopt Proposed Rules within three weeks of the Governor’s Office’s receiving the SONAR, draft rules, and Proposed Rules and SONAR Form. If the agency hasn’t received a communication by the 21st day after the Governor’s Office received this information, the agency should contact the Legislative Coordinator for a status report.” | GOV‑PRPS |  |  |
| 10. | Draft Notice of Intent to Adopt Rules. Have commissioner or executive director sign Notice & SONAR.  After Gov's Office approval and when rules & SONAR are final  \* If you plan to go directly to a hearing or if you feel there is a strong likelihood of receiving 25+ hearing requests, your Notice of Intent to Adopt can be either a Notice of Hearing or a Dual Notice. Refer to paragraph 6.1 in the Rulemaking Manual for the pros and cons of how to proceed.  \* Allow 30-day comment period; add day if last day is holiday.  \* If you are using a Dual Notice, you need to have at least 10 days between the close of the comment period and the hearing date. | NTC-HR or NTC-DL |  |  |
| 11. | Ask Revisor for approved draft of the rules. |  |  |  |
| 12. | Send letter to OAH requesting hearing date and judge  After SONAR is signed  \* Send Additional Notice Plan to OAH for approval (optional, yet encouraged). | HR-RQUST |  |  |
| 13. | Notice of Intent to Adopt – submit to State Register via email using the Revisor’s document number for the rules & Printing Order form  12 or 6 days before publication (check State Register website for exact due date) | ST-REG |  |  |
| 14. | Notice of Intent to Adopt ‑ give notice to persons on rulemaking mailing list and per your Additional Notice Plan. Prepare Certificate of Mailing, Certificate of Accuracy of Mailing List, and Certificate of Giving Additional Notice.  After submit Notice of Intent to Adopt State Register, no later than 33 days before end of commend period | CRT-MLNG  CRT-LIST  CRT-GNRC |  |  |
| 15. | Send SONAR to Legislative Reference Library via email;  Prepare Certificate of Mailing to library OR make copy of cover letter.  When SONAR becomes available to the public. | LRL  CRT-LRL |  |  |
| 16. | Send notice to legislators - chairs and ranking minority party members of House & Senate policy & budget committees; PLUS chief legislative authors of rulemaking authority if it is within two years of the effective date of the authority; prepare Certificate of Mailing to legislators OR make copy of cover letter.  When Notice is mailed  \* Send to other legislative committees if required in special circumstances. For example, MS62J.07 requires reports to the Legislative Commission on Health Care Access.  \* Provide other notices if required in special circumstances. See, for example, MS14.111 re notice to Department of Agriculture on rules that affect farming operations; MS3.9223,s4, re notice to Council on Affairs of Chicano/Latino People on rules that have their primary effect on Chicano/Latino people. | LEG  CRT-LEG |  |  |
| 17. | Notice of Intent to Adopt published in State Register. Make copy for RECORD.  Published on the Monday 12 days after submission to State Register (long rules) |  |  |  |
| 18. | Comments: maintain folder with comments and any responses you make.  Comments must be received within 30 calendar days of publication in State Register |  |  |  |
| 19. | Proceed according to number of hearing requests.  After end of comment period  \* If you published NTC‑HR, proceed with this checklist.  \* If you published NTC‑DL and you got fewer than 25 hearing requests, you will likely want to cancel the hearing (which you must do at least four working days before the hearing). Switch to step 17 of NH‑CKLST, the checklist for adopting rules without a hearing.  \* If you published NTC‑DL and you got 25+ hearing requests, notify ALJ and notify persons who requested a hearing. NTC‑HR25 & CRT‑HR25. Proceed with this checklist. |  |  |  |
| 20. | Compile documents for rule hearing: see MR1400.2220.  Prepare presentation on rule and consider possible questions that may arise. Prepare staff and board members | STAFF-HR |  |  |
| 21. | E-file documents cited in MR1400.2220. Bring courtesy copies for ALJ use at rule hearing. Introduce into record. |  |  |  |
| 22. | During post-hearing comment period, submit response to testimony and questions: see MR1400.2230  Post-hearing comment period is 5 working days; can be extended by ALJ to 20 calendar days  \* Submit any changes the agency wants to make to the rules. If ALJ prefers a preliminary response during the post-hearing comment period, label these as intended changes, then put in any final changes by the end of the post-hearing rebuttal period. |  |  |  |
| 23. | During post-hearing rebuttal period, submit response to comments and information received by ALJ during the post-hearing comment period.  Post-hearing rebuttal period is 5 working days |  |  |  |
| 24. | Hearing record closes.  At end of post-hearing rebuttal period |  |  |  |
| 25. | ALJ completes report.  30 days after close of hearing record  \* ALJ returns entire hearing record to agency. |  |  |  |
| 26. | Decide how to proceed; get approval from agency decision makers (commissioner, executive director, and appropriate board members) about changes recommended by ALJ. Do language changes if needed  If a Board, prior to Board meeting at which rules will be adopted |  |  |  |
| 27. | Get Governor's Office approval.  Before sending Order Adopting Rules to OAH  \* Per the Governor's Office 9/19/19 rules review policy, GOV‑PLCY: “When the agency is adopting rules after a hearing: the agency must submit the completed Final Rule Form [GOV‑FNL] to the Office of the Governor before the agency submits its signed Order Adopting the Rules to OAH. The agency must explain why a hearing was requested and attach a copy of the Administrative Law Judge Report. The agency must also explain any changes made in response to the ALJ Report, including any large deletions from the rule. The Policy Advisor will direct any concerns the Advisor might have directly to the agency. Upon final approval of the rule by the Policy Advisor, the Legislative Coordinator will contact the agency and inform them it may formally submit the signed Order Adopting Rules to the OAH. . .  If the proposed rule remained substantially unchanged from the SONAR stage, final review of the rule should take less than a week. If the agency hasn’t received a communication by the 7th day after the Governor’s Office received the above information, the agency should contact the Legislative Coordinator for a status report. | GOV-FNL |  |  |
| 28. | Draft Order Adopting Rules and, for Boards, a Board Resolution Adopting Rules.  If a Board, prior to Board meeting when rules will be adopted  \*If your rules were approved and you are making no changes other than those already approved, then skip to step 30. | ORD-ADPT  SMPLFNDS  BD-ADPT |  |  |
| 29. | If you are making changes to the rules other than those approved by the ALJ OR to correct a disapproval by the ALJ, submit the rules to the Chief ALJ for review. It is recommended that you ask the Revisor for a rules draft, approved as to form. See MS 14.16 and MR 1400.2240,s4&5.  Chief ALJ must approve or disapprove within 5 working days, if you are correcting a defect, or 10 days, if making changes other than those already approved | CHNG-OTH  CHNG-DIS |  |  |
| 30. | Order Adopting Rules signed by commissioner or by person authorized in Board Resolution.  Commissioner's signature or Board action must be at least 5 working days after ALJ report  \* OAH will get a rules draft from the Revisor, approved for filing with the Secretary of State. OAH will file the rules with the Secretary of State and notify the agency in advance of when it will do this.  \* Secretary of State forwards rules to the Governor, who may veto within 14 days. MS 14.05,s6. |  |  |  |
| 31. | Mail Notice of Filing to all persons requesting this. (See sign-up sheet in hearing record for names.)  Notice of Filing must be sent when the rules are filed with the Secy of State | NTC-SECY  CRT-SECY |  |  |
| 32. | Revisor drafts Notice of Adoption and sends to agency. |  |  |  |
| 33. | **After you are sure Governor will not veto:** Submit Notice of Adoption to State Register by submitting the Revisor’s document number & Printing Order form.  To ST-REG Tuesday or Wednesday at noon, 6 or 12 days before publication, depending on length; (Holidays may change deadlines). |  |  |  |
| 34. | State Register publishes Notice of Adoption.  The Monday, 6 or 12 days after submission to State Register. |  |  |  |
| 35. | Rules take effect.  Five working days after publication in State Register |  |  |  |
| 36. | Notify staff of rule change  ASAP | CLOSURE |  |  |
| 37. | Inform regulated persons. Publish information about rules in newsletter and/or web page.  ASAP |  |  |  |
| 38. | Finalize Official Rulemaking Record and archive rule documents. MS14.365 | RECORD |  |  |