

Prelude to Rulemaking

Presented by

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Welcome



Act 1: the art



Act 2: the practice

of rulemaking

The Art of Rulemaking

Three Concepts to Stay True To

- Must be true to the underlying statutes passed by the Legislature. These are the statutes that create a duty or a program for your agency to carry out, along with any specific or general grants of rulemaking authority for your agency to use.
- Must do our best to minimize burdens for those who must comply with the rules.
- Must do our best to maximize the benefits for those who are protected or benefited from the rules.



Rulemaking authority



Agency/Board driven
Existing statutory
authority
No legislatively mandated
deadline



Legislatively driven
New statutory authority
Minn Stat. § 14.125 (18
months) unless waived

Rulemaking by Minnesota state agencies

- The **Administrative Procedure Act** in [Minnesota Statutes, chapter 14](#), defines what a rule is and sets the statutory requirements for rulemaking
- [Minnesota Rules, chapter 1400](#), adds further details for general rulemaking, hearings, review as to legality, and forms
- [Minnesota Rulemaking Manual](#) is the how-to desk reference

Roles of various state offices

Office of Governor—To reduce the risk of a veto at the end of a rulemaking, agencies submit rules to the Governor's Office for review at specific milestones during the rulemaking process.

Office of Revisor of Statutes—Prepares the official rule drafts at each stage of a rulemaking process and can provide drafting advice. [legislative branch]

Court of Administrative Hearings (CAH)—Administrative law judges (ALJs) review and approve proposed permanent rules as to legality and conduct a rules hearing if required or on request of the responsible agency. [executive branch]

Office of Attorney General (AGO)—Assistant AG reviews DNR's expedited emergency (temporary) rules as to legality. [constitutional office]

Office of Secretary of State—Files adopted rules as official state document. [constitutional office]

State Register (Dept of Admin)—Publishes proposed rules and notices of adoption

Permanent rulemaking – the full process

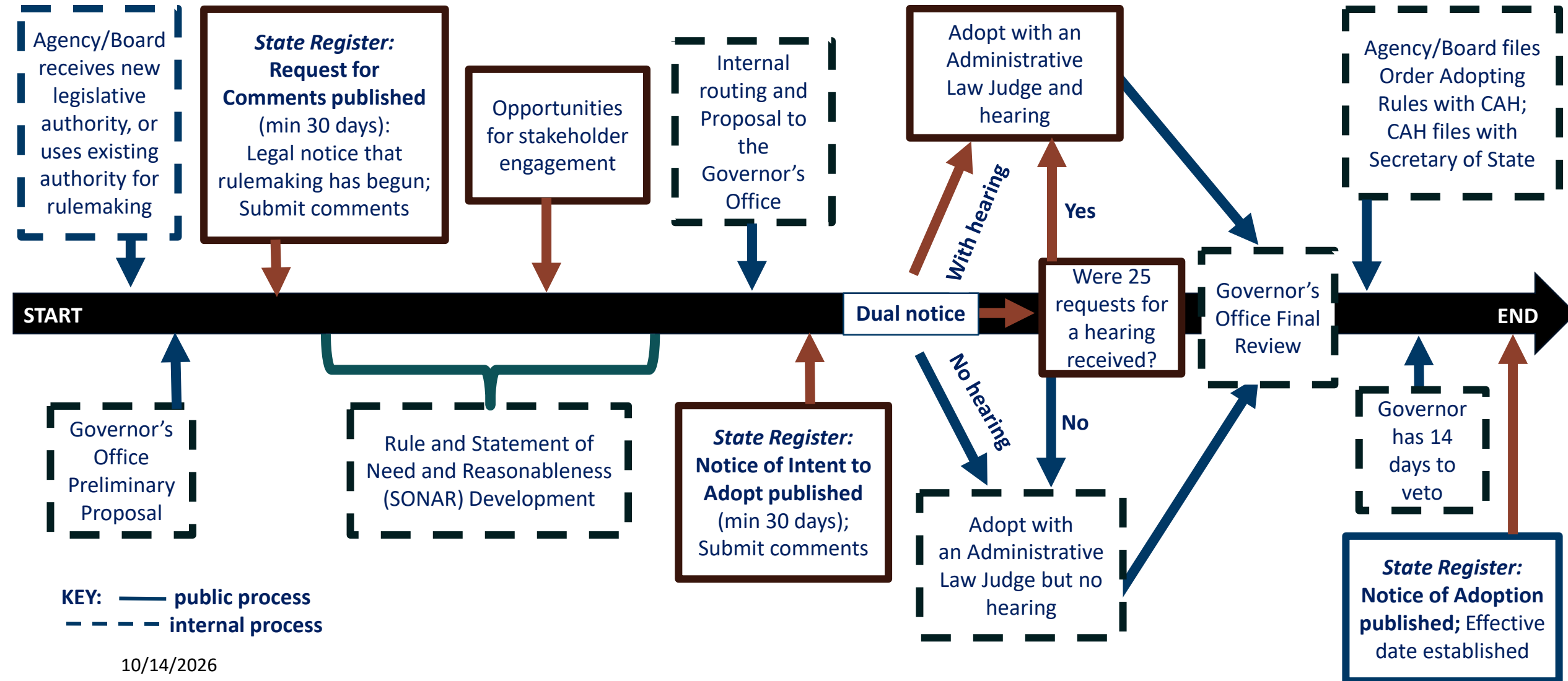
Under Chapter 14

- Rule of thumb = 18 to 24 months start to finish (if work is steady with few interruptions)
- Notice of Hearing, or No Hearing, or Dual Notice
- Review by CMO adds genuine benefit; it's a higher-level check with department mission, strategic priorities, and cohesiveness
- **Subject to veto by governor**

A photograph of a stage microphone on a stand, positioned in the center-right of the frame. The background is a dimly lit room with a red ceiling and white walls. Several bright spotlights create strong beams of light, illuminating the scene from above and the sides. The overall atmosphere is quiet and anticipatory, typical of an intermission in a theater or concert hall.

The room where it happens...

Rulemaking process



4 stages of rulemaking

Rule development

Commissioner approves rule proposal and signs gov office forms and notices for publication (and the SONAR in full permanent process)

Approval as to form

- ❖ Certified by Office of Revisor of Statutes

Approval as to legality

Commissioner signs another milestone gov office form in non-exempt permanent rulemaking

- ❖ Certified by Office of Administrative Hearings (OAH) *or* Office of Attorney General
(only DNR General Counsel review for exempt fisheries)

Filing and publication

Commissioner signs *Order Adopting Rules* in permanent rulemaking

- ❖ Rule filed as official state document by Office of Secretary of State
- ❖ Notice of adoption published in State Register

Rule development



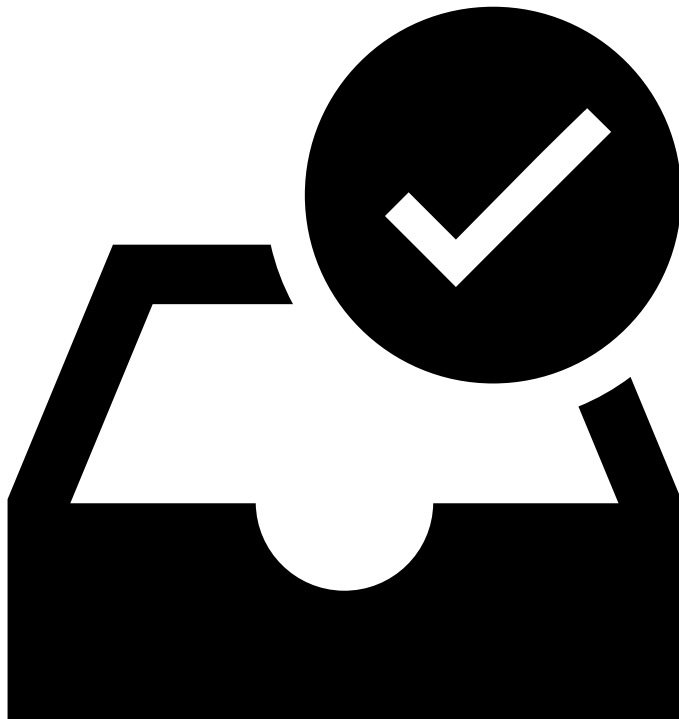
Request for Comments



Outreach and
engagement



Drafting



- ✓ **Approval as to form** with the Revisor's Office
 - Certified Revisor copy of the rule
- ✓ Internal/legal review
- ✓ Commissioner review
- ✓ Minnesota Management and Budget (MMB) review
- ✓ Governor's Office review

Approval as to legality



- ✓ **Approval as to legality** with the Administrative Law Judge, Court of Administrative Hearings
 - Notice and Additional Notice Plan approved by ALJ
 - Submit exhibits for ALJ approval and report



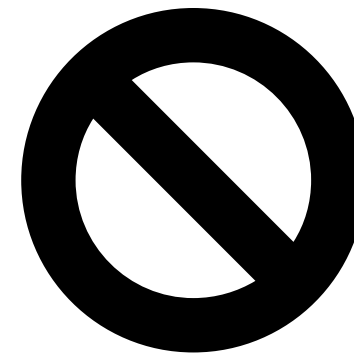
With a Hearing

Request ALJ approval
along with additional
notice plan



Dual Notice

Without a hearing unless
25 or more requests for
a hearing are received)



Without a Hearing

Non-controversial rule
with minimal to no
public interest

Exhibits



With a Hearing

Minn. R. Ch. [1400.2220](#)
items A through K



Without a Hearing

Minn. R. Ch. [1400.2310](#)
items A through P

ALJ Report



Approval

New Modifications

No changes or all changes
accepted and proceed with
adopting rules



Disapproval

Defect found; proceed
with modifications or
withdrawal

Filing and publication



Governor's Office



Court of Administrative
Hearings



Secretary of State



State Register



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Cast and crew



Presenters

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Resources

- [Rulemaking Manual](#)
- [IRC Teams Page](#)