

# Introduction to Rulemaking:

*Rulemaking is your oyster,  
it's up to you to find the pearls*



Addison Otto  
Pollution Control Agency  
Rule Coordinator

# Do you have what it takes to do rulemaking?

With the right soft skills, anyone can do rulemaking!

## About me:

### Previously -

- One year majoring in Animal Science at NDSU
- Bachelor of Elective Studies in Biology from SCSU
- Feedlot Officer for Morrison County
- Planner for Sherburne County (Planning and Zoning)

### Now – Rule Coordinator at MPCA

- Air Toxics Emissions Reporting rule: *Published Oct. 6*
- Animal Feedlots rule
- PFAS in Products Currently Unavoidable Use rule
- PFAS in Products Reporting and Fees rule



# Congratulations!

You are now working on rulemaking!

You've read the,  
**Minnesota Rulemaking Manual**  
and the Revisor's,  
**Minnesota Rules Drafting Manual.**

**Now what?**



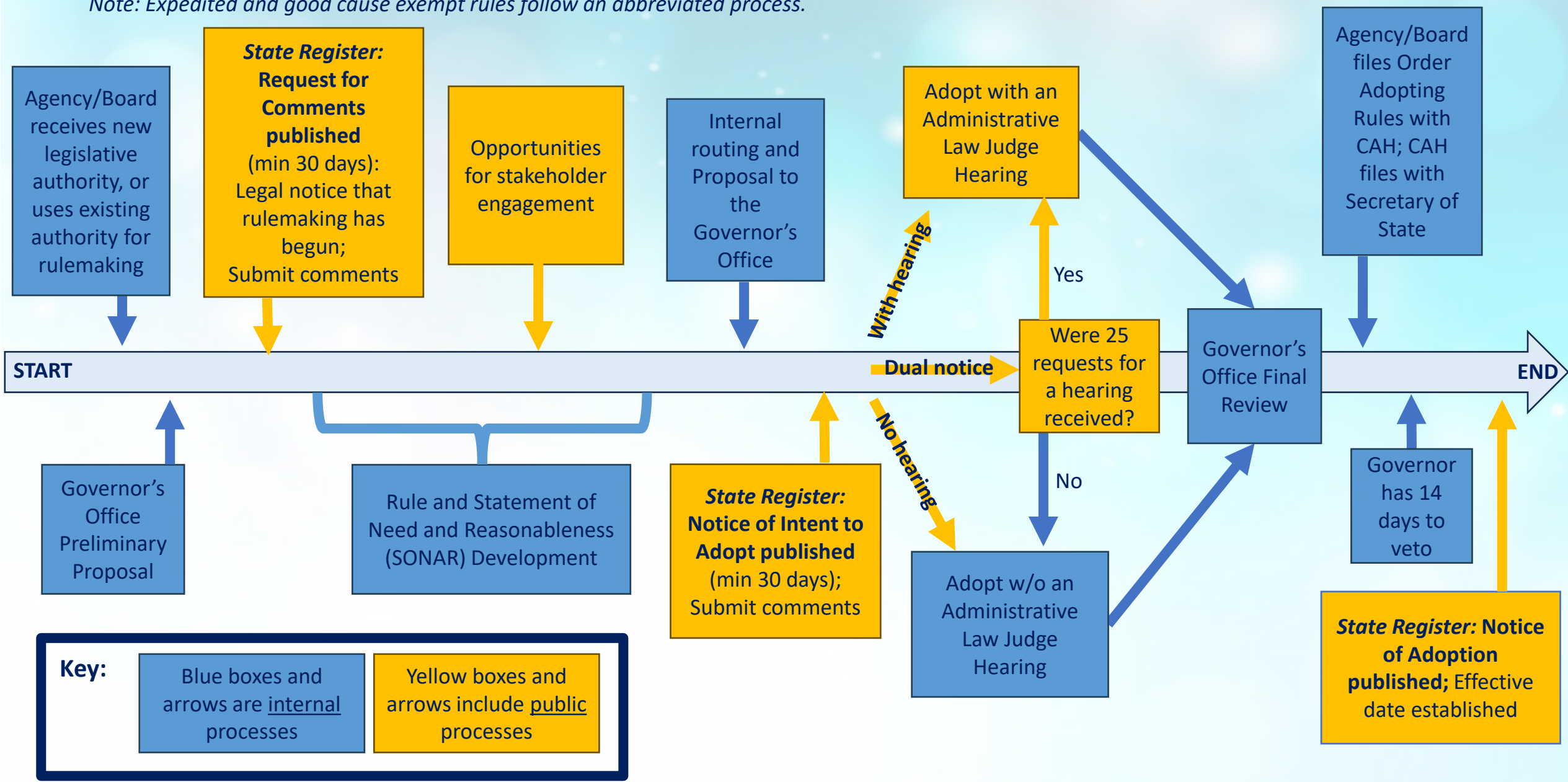
"MY JOB... IT'S  
JUST **RULES**."

-KEN, BARBIE

**E** NEWS

# Minnesota Rulemaking Overview

*Note: Expedited and good cause exempt rules follow an abbreviated process.*

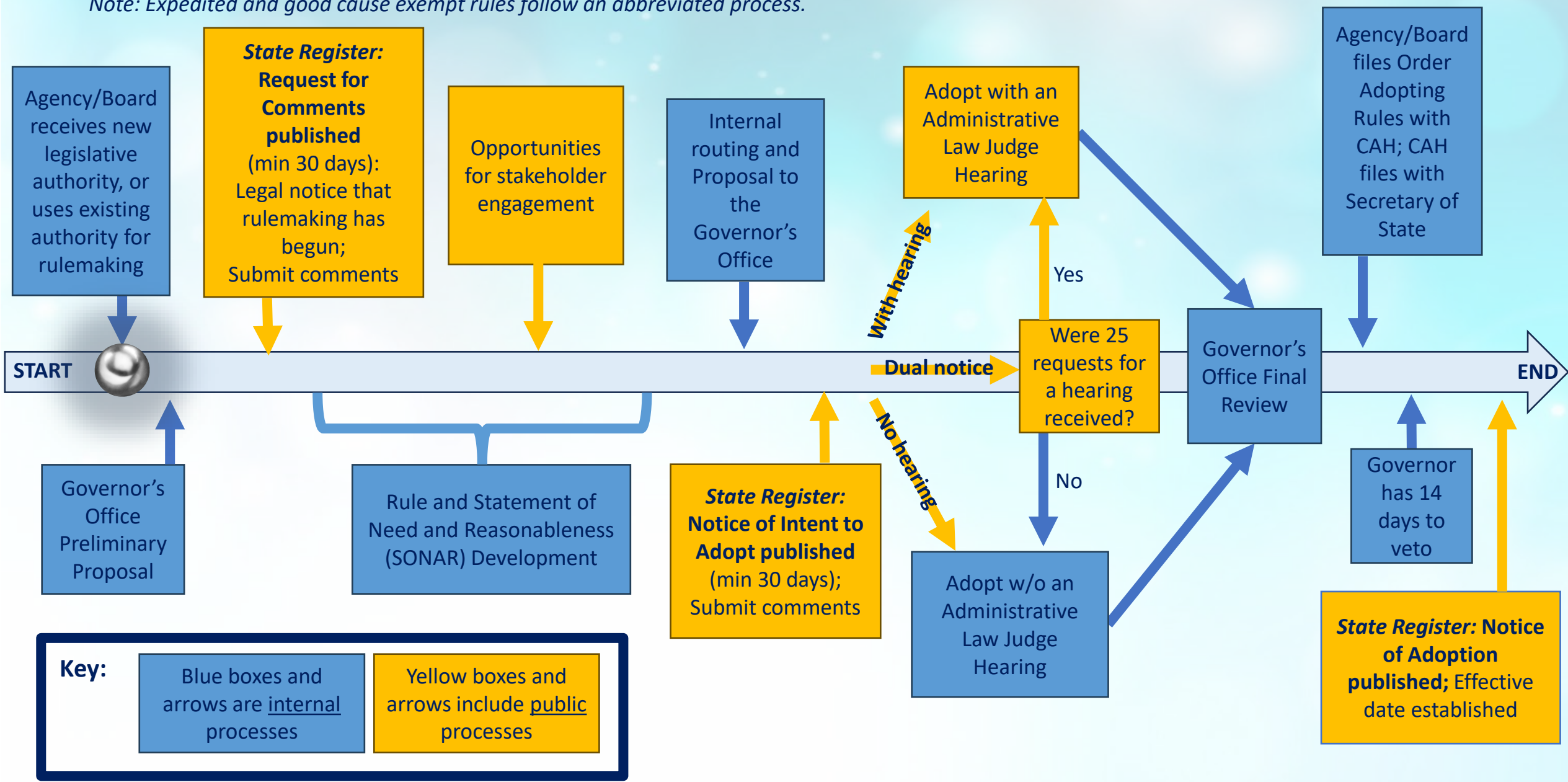




# Statutory Authority

# Minnesota Rulemaking Overview

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# Where does our rulemaking authority come from?

Agency/Board-driven



**EXISTING “GENERAL”  
STATUTORY AUTHORITY**



No legislatively  
mandated deadline

Legislatively directed



**NEW “SPECIFIC”  
STATUTORY AUTHORITY**



Minn Stat. § 14.125 (18  
months) unless waived

# Example: Air Toxics Emissions Reporting Rule

The MPCA has existing general statutory authority under **Minn. Stat. § 116.07** to adopt rules regarding air pollution.

“...the Pollution Control Agency may adopt, amend, and rescind rules and standards having the force of law relating to any purpose within the provisions of Laws 1967, chapter 882, for the prevention, abatement, or control of air pollution...”

The MPCA received new specific statutory authority under **Minn. Stat. § 116.062** to require air toxics emissions reporting.

“The commissioner must require owners and operators of a facility issued an air quality permit by the agency... to annually report the facility's air toxics emissions to the agency...”

# GO Preliminary Proposal Form

Template in the rulemaking manual

## Identify rulemaking authority/relevant statutes

## Identify the type of rule

- ☑ Permanent, exempt, or expedited

## Beginnings of the Statement of Need and Reasonableness (SONAR):

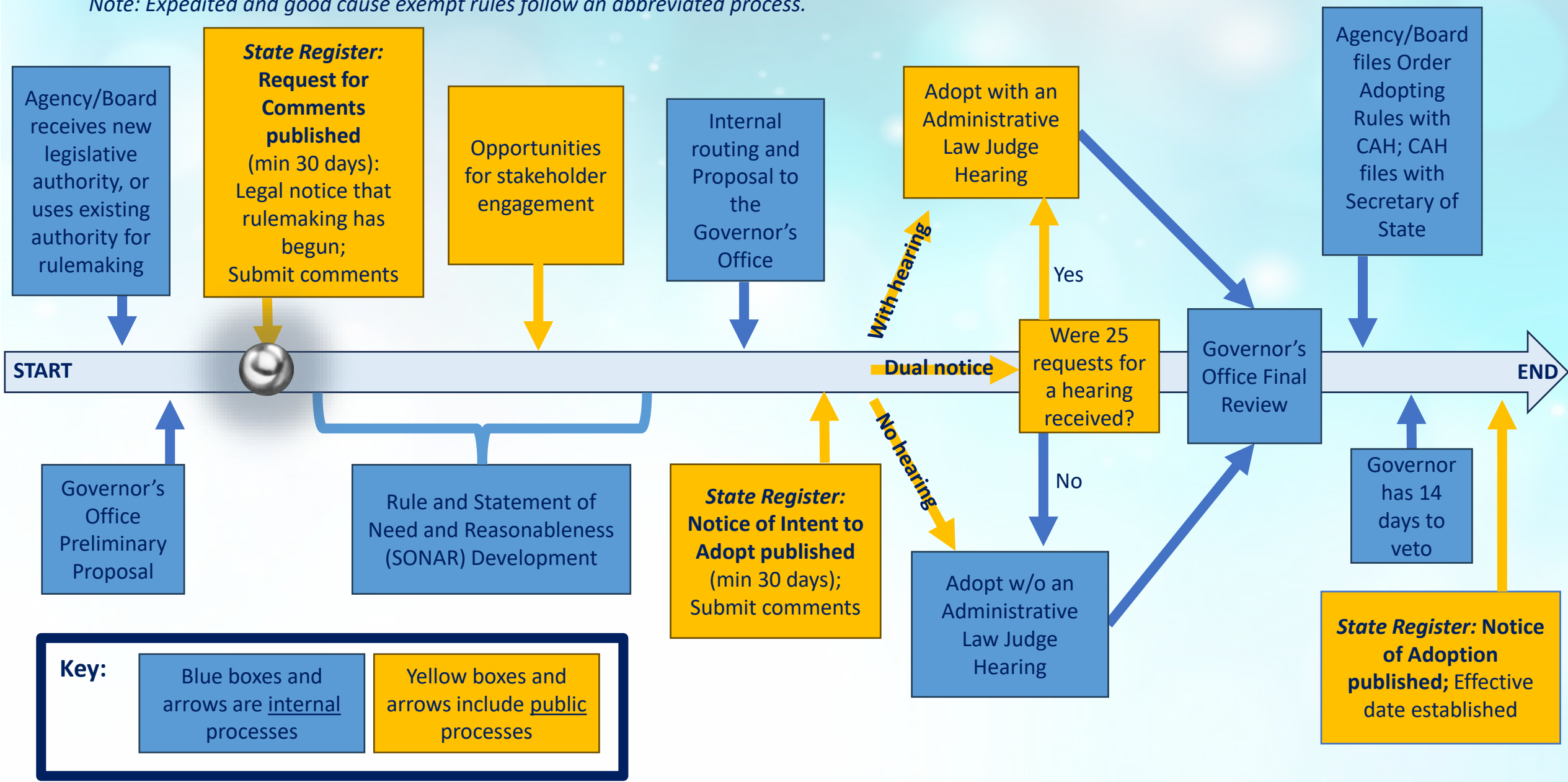
- ☑ Describe the need for the rule/background info
- ☑ Describe those anticipated to be interested in the rule (use later for your Additional Notice Plan)
  - Supporters and opponents
  - Possible controversies
- ☑ Identify agency impact (use later for your Regulatory Analysis)
- ☑ Determine fiscal impact
  - Yes, no, or undetermined



Request for Comments

# Minnesota Rulemaking Overview

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# What is a Request for Comments?



- Legal notice that rulemaking has begun
- Published in the *Minnesota State Register*, the official weekly publication of the State of Minnesota's Executive Branch of government
- Request for comments (RFC) period to give feedback, submit comments, and ask questions
  - You do not have to respond to comments received during this period; your response is the set of rules that you draft
  - Allows your board/agency to address important issues and ensure informed decision-making as rules are drafted
- Template in the rulemaking manual

# Publishing the RFC

| Court of Administrative Hearings<br>(CAH)                                                                                                                                                                                     | State Register                                                                                                                                                                       |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>William Moore</b><br/>Administrative Rule and Applications Specialist<br/>Court of Administrative Hearings<br/><a href="mailto:William.T.Moore@state.mn.us">William.T.Moore@state.mn.us</a><br/>651-361-7893</p>        | <p><b>Sean Plemmons</b><br/>State Register Editor<br/>Department of Administration<br/><a href="mailto:Sean.Plemmons@state.mn.us">Sean.Plemmons@state.mn.us</a><br/>651-201-3204</p> |
| <p>Documents Needed:</p> <ul style="list-style-type: none"><li>• Accessible RFC Document (pdf version)</li><li>• Details for the comment period (duration, docket #, administrative law judge assigned to the rule)</li></ul> | <p>Documents Needed:</p> <ul style="list-style-type: none"><li>• RFC Document (word version)</li><li>• Print Order Form (on the State Register webpage)</li></ul>                    |

# Soliciting meaningful comments

How are you going to use the comments that we submit?



- **Tip: People want to give meaningful feedback that will be used.**
  - Ask questions in the RFC to guide the conversation!
  - Especially helpful for rules that are highly technical, complex, and/or controversial!
- If the rulemaking is due to a legislative directive, are there portions of the statute or procedures that are left up to agency/board decision?
  - This is an opportunity to solicit meaningful feedback from affected parties!
- Get a sense for commenters' level of understanding of the rule
  - **Tip: You can use this to shape the education and outreach!**

# Example: Animal Feedlots Rule

475 comments and 688 petition signatures received; 7,492 pages of comments and attachments

| Comment # | Date      | Name/Contact | Affiliation (if applicable)       | Attachment(s) | Reviewed | Form Letter | Main Themes                                                                                                                                                                                                                                                                                                                                                                                        | General Support or Opposition |
|-----------|-----------|--------------|-----------------------------------|---------------|----------|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------|
| 1         | 4/10/2025 |              | N/A                               | N             | Y        | N           | Advocate for feedlot rules that protect our water, soil, and animal health. Please limit feedlot animal size.                                                                                                                                                                                                                                                                                      | Support                       |
| 2         | 5/19/2025 |              | Environmental group (form letter) | Mailed        | Y        | Y           | I am writing to ask the MPCA to do more to protect our lakes, rivers, streams, and groundwater by revising the Animal Feedlot Rule to address the crisis of nitrate pollution in our state. Feedlots are a major source of nitrate pollution in our waters, and by adding stronger rules for the handling of manure, MPCA can help ensure that all Minnesotans' water at the tap is safe to drink. | Support                       |
| 3         | 5/23/2025 |              | Environmental group (form letter) | Mailed        | Y        | Y           | Form letter                                                                                                                                                                                                                                                                                                                                                                                        | Support                       |
| 4         | 5/23/2025 |              | Environmental group (form letter) | Mailed        | Y        | Y           | Form letter                                                                                                                                                                                                                                                                                                                                                                                        | Support                       |
| 5         | 5/23/2025 |              | Environmental group (form letter) | Mailed        | Y        | Y           | Form letter; water purity is crucial to our health and sustainability                                                                                                                                                                                                                                                                                                                              | Support                       |
| 6         | 5/23/2025 |              | Environmental group (form letter) | Mailed        | Y        | Y           | Form letter                                                                                                                                                                                                                                                                                                                                                                                        | Support                       |
| 7         | 5/23/2025 |              | Environmental group (form letter) | Mailed        | Y        | Y           | Form letter                                                                                                                                                                                                                                                                                                                                                                                        | Support                       |

Comments

Stats

Obsolete Rules

Prohibitions

LandApp

Agonomic Rates

WinterApp

Record

Sort and organize qualitative data into a format that you can use to shape your rule.

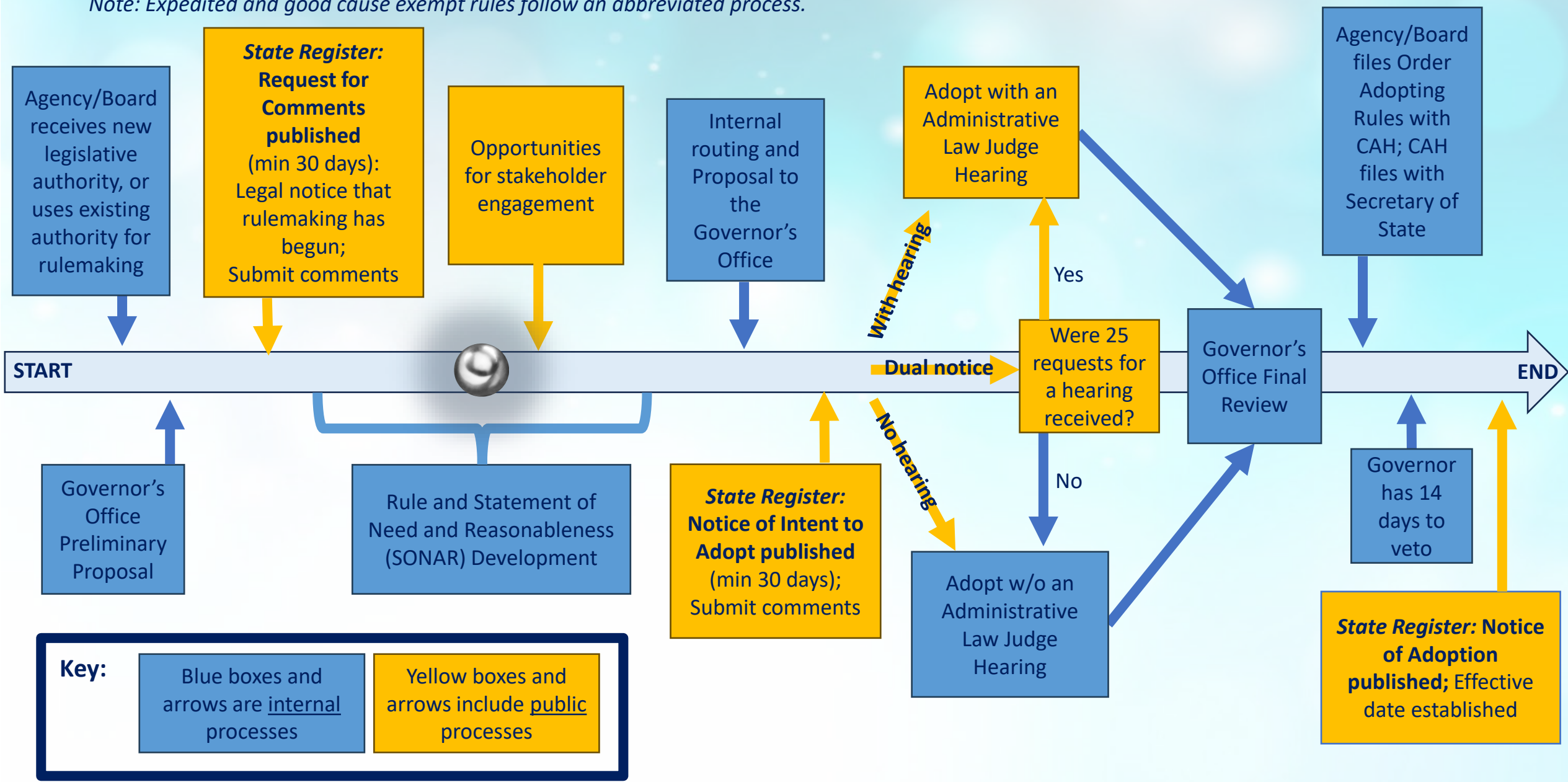


# Rule and SONAR Development



# Minnesota Rulemaking Overview

*Note: Expedited and good cause exempt rules follow an abbreviated process.*



# Do similar rules already exist?

*Tip: Use this research in the regulatory analysis section of your SONAR!*

## In Minnesota:

- 🔍 Search Office of the Revisor of Statutes website

## In other states:

- 🔍 Search their equivalent to the Revisor or State board/agency websites

## In federal regulations:

- 🔍 Code of Federal Regulations (CFR): rules and regulations issues by federal agencies
- 🔍 United States Code (USC): laws enacted by Congress

# Rule Drafting

## 🎯 How you can contribute:

- Try to “break” the rule language
- Devil’s advocate (communicate this)
- Point out inconsistencies or contradictions
- Correct formatting issues
- Look for opportunities to simplify
- Change passive voice to active voice
- Always ask yourself who is doing what, and when?

**Tip: The Revisor can be a resource!**

### What is wrong with this language:

“The report shall be submitted on or before April 1 of the year following the year being reported.”

### Corrections:

~~“The report shall be submitted~~ The owner or operator of an emission reporting facility or air toxics reporting facility must submit the report on or before April 1 of the year following the calendar year being reported.”

**Pretend your audience is Amelia Bedelia:**



**“Draw the drapes”**



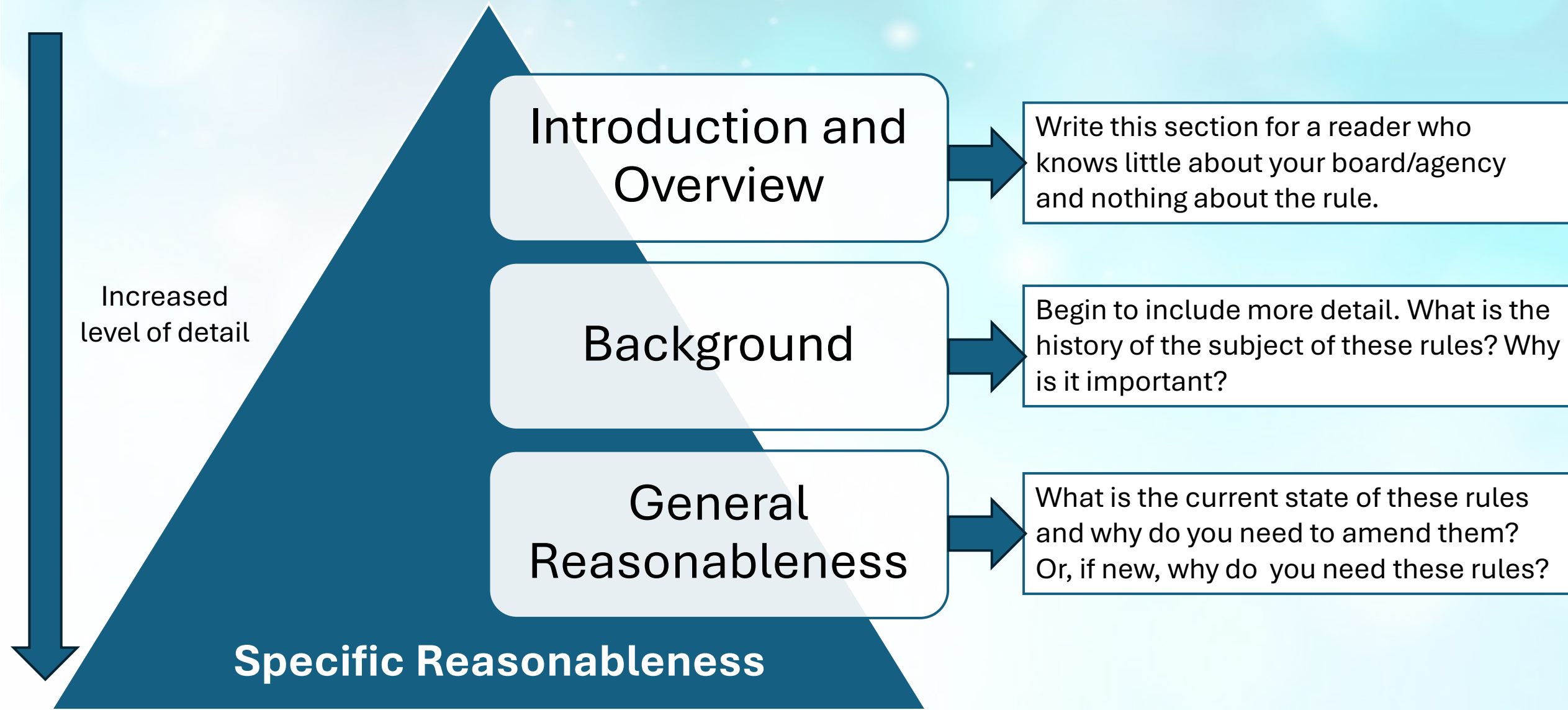
**“Dress the turkey”**



**“Put out the lights”**

# SONAR Drafting

Template in the rulemaking manual



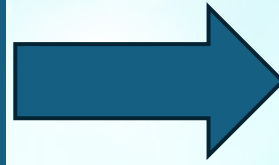
# Specific Reasonableness

- For new language or amendments to existing language:
  - What are we proposing? + How are we proposing it? + Why is it reasonable to do it this way?
- “Subpart 1 is proposed to... [explain the purpose of subp. 1]...[provide context or examples]... It is reasonable to [reiterate purpose]... because [insert reasonableness]...”
- Housekeeping changes: list amendments to existing rule language recommended by the Revisor
  - Shall → Must
  - Which → That
  - Agency → Commissioner

# Example: Air Toxics Reporting Rule

## Rule language:

Subpart 1. **Inventory required.** An owner or operator of an air toxics reporting facility, as defined in part 7005.0100, subpart 2d, must include the air toxics emissions under subpart 2 in the annual air toxics emission inventory according to part 7019.3000.



## SONAR Specific Reasonableness:

Subp. 1 identifies who is responsible for reporting air toxics emissions. It is reasonable to provide the scope of a proposed section of rule so that affected parties know whether a particular section applies to them or not.

- 🌀 Your specific reasonableness may be a few sentences, a few paragraphs, or even a few pages.

**Tip: Do not include directly-quoted rule language in your SONAR!**

# Required Elements

🌀 Minn. Stat. § 14.131

🌀 Regulatory Analysis – A description of:

- 1) Those who will be affected by the rule vs. bear costs vs. benefit;
- 2) Costs to the agency and any other agency & effect on state revenues;
- 3) Less costly methods;
- 4) Alternative methods that were seriously considered;
- 5) Costs of complying & total costs borne by identifiable parties;
- 6) Costs or consequences of not adopting the rule;
- 7) Differences between the rule and existing federal regulations and analysis of the need for and reasonableness of any differences; and
- 8) Cumulative effect of the rule with other federal and state regulations.

🌀 **Tip: If one of these is not directly relevant to your rule, explain why!**

○ *Be careful, because not addressing one of these could result in a procedural deficiency in your rule!*

# Outreach and Engagement



Informal  
comment  
periods on rule  
concepts



Host webinars,  
working groups,  
or advisory  
committees



Update the rule-  
specific webpage  
as you are able



Send GovDelivery  
rule updates as  
you are able



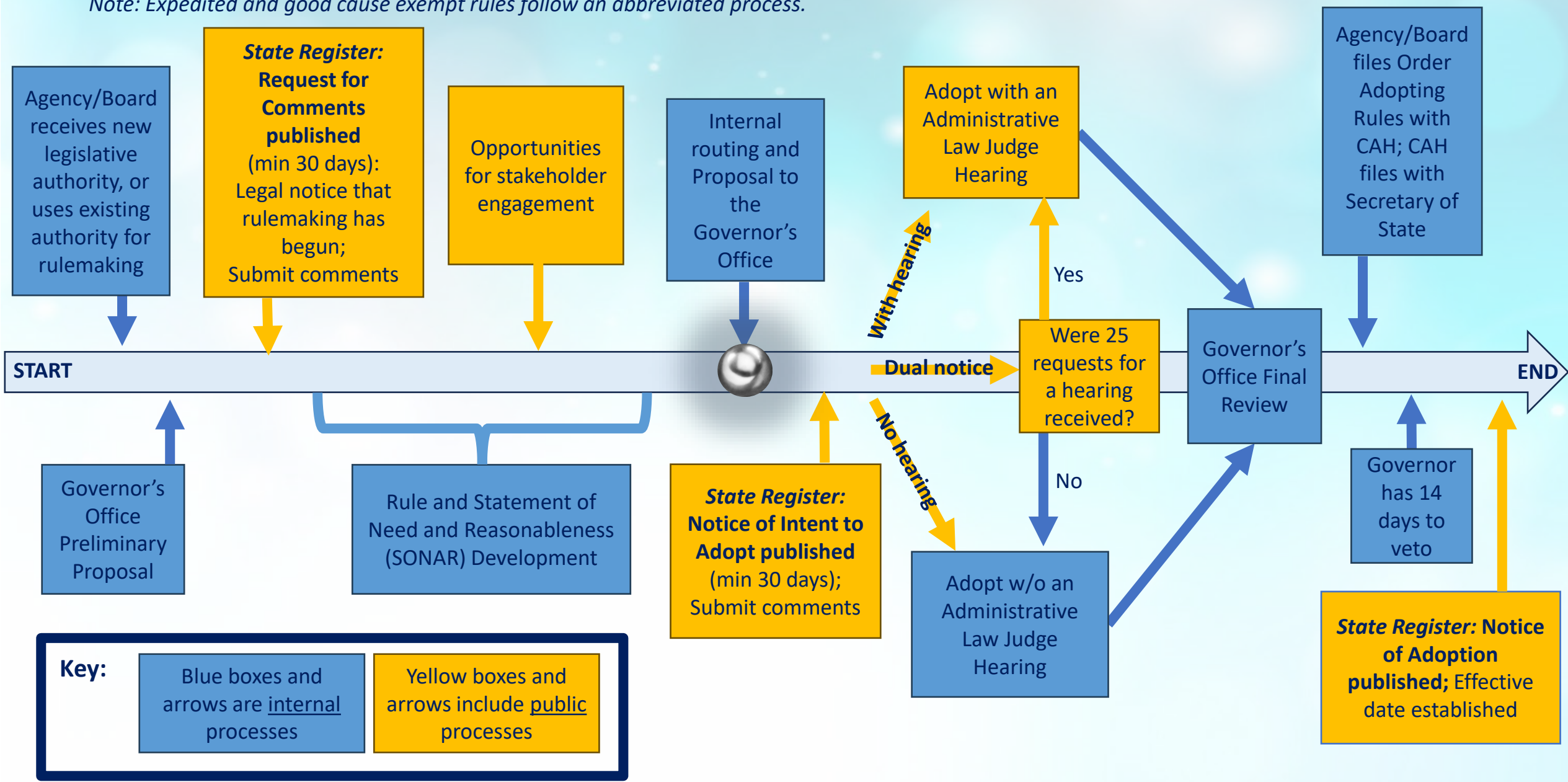
Note – the requirements for each rule may vary.



# Notice of Intent to Adopt

# Minnesota Rulemaking Overview

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# Three Options:

Templates in the rulemaking manual



Without a hearing

Non-controversial\* rule with little to no public interest (i.e. housekeeping)



Dual notice

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



With a hearing

Decide whether the hearing will be in-person, virtual (WebEx), or hybrid and get ALJ approval along with your ANP.

*\*Note – If you expect the rule to be non-controversial and publish a Notice of Intent to Adopt without a hearing and receive 25 or more requests for a hearing, you will have to re-notice your rule.*

# GO Proposed Rule and SONAR Form

Template in the rulemaking manual

**Comments received during RFC**

**SONAR executive summary**

**Supporters, opponents, and controversies**

**Significant changes from preliminary proposal**

# Before Publishing

- ✓ Certified Revisor copy of the rule
- ✓ Internal/legal review
- ✓ Commissioner/Board review
- ✓ Minnesota Management and Budget (MMB) review
- ✓ Governor's Office review
- ✓ Notice and Additional Notice Plan approved by ALJ



# Publishing the NOIA

| Court of Administrative Hearings<br>(CAH)                                                                                                                                                                                                                | State Register                                                                                                                                                                                                            |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>William Moore</b><br/>Administrative Rule and Applications Specialist<br/>Court of Administrative Hearings<br/><a href="mailto:William.T.Moore@state.mn.us">William.T.Moore@state.mn.us</a><br/>651-361-7893</p>                                   | <p><b>Sean Plemmons</b><br/>State Register Editor<br/>Department of Administration<br/><a href="mailto:Sean.Plemmons@state.mn.us">Sean.Plemmons@state.mn.us</a><br/>651-201-3204</p>                                      |
| <p>Documents Needed:</p> <ul style="list-style-type: none"><li>• Accessible Notice of Intent to Adopt (pdf)</li><li>• Certified Revisor Copy of Proposed Rules (pdf)</li><li>• Accessible SONAR (pdf)</li><li>• Details for the comment period</li></ul> | <p>Documents Needed:</p> <ul style="list-style-type: none"><li>• Notice of Intent to Adopt (word version)</li><li>• Certified Revisor Copy of Proposed Rules (unless exempted) (pdf)</li><li>• Print Order Form</li></ul> |

# Prepare Exhibits List



## Without a hearing:

Minn. R. Ch. 1400.2310 items A through P



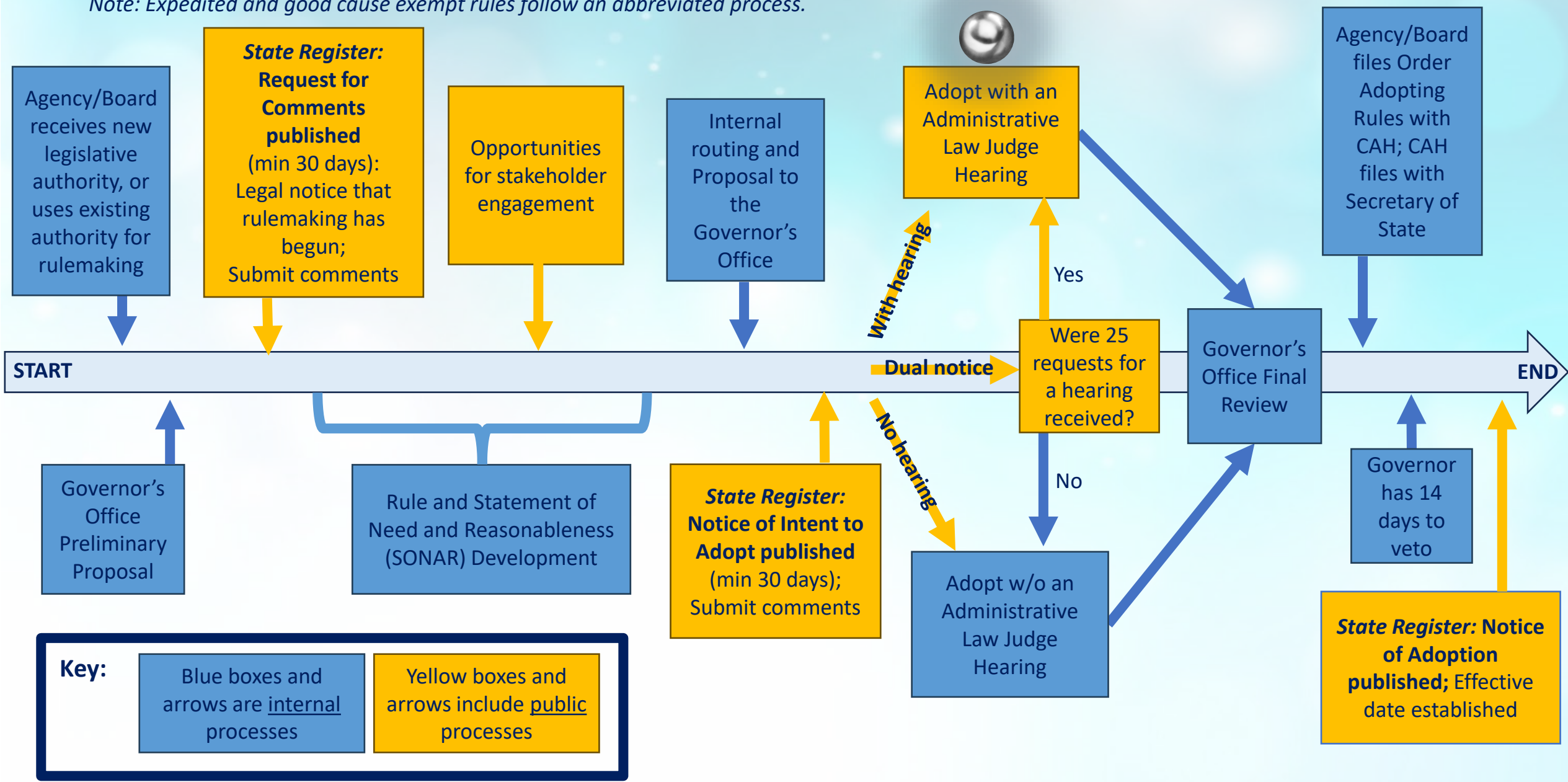
## With a hearing:

Minn. R. Ch. 1400.2220 items A through K

- Include an index/cover letter
- If an item from rule is not enclosed, explain why:
  - Example: “B. Not enclosed: a petition for rulemaking because no petition was filed on the rules.”

# Minnesota Rulemaking Overview

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# The Hearing

## My only advice:

- 🕒 Schedule a technical rehearsal with the judge and court reporter
- 🕒 Schedule a presentation rehearsal with your rule team
- 🕒 Prepare a “run of show” document to assign responsibilities
- 🕒 Read the manual every morning
- 🕒 Prepare for post-hearing activities  
(**response to comments, potential rule changes, & additional exhibits**)



# After the ALJ Report

## Approval

- 🕒 You are either making no changes to the proposed rules or the ALJ has approved all changes in the ALJ Report. You can proceed with adopting your rules.

## New modifications

- 🕒 You are making changes to the proposed rules. You must submit your Order Adopting and modifications to the Chief ALJ for review to determine whether the modifications make the rule “substantially different”.

## Disapproval

- 🕒 There is a defect in the rule text, or you didn't follow procedures correctly;
- 🕒 You modified the rule so that it's substantially different from the proposed rule; or
- 🕒 You didn't adequately justify the need for and reasonableness of your rule.

## Withdrawal

- 🕒 You decide to withdraw your rule.

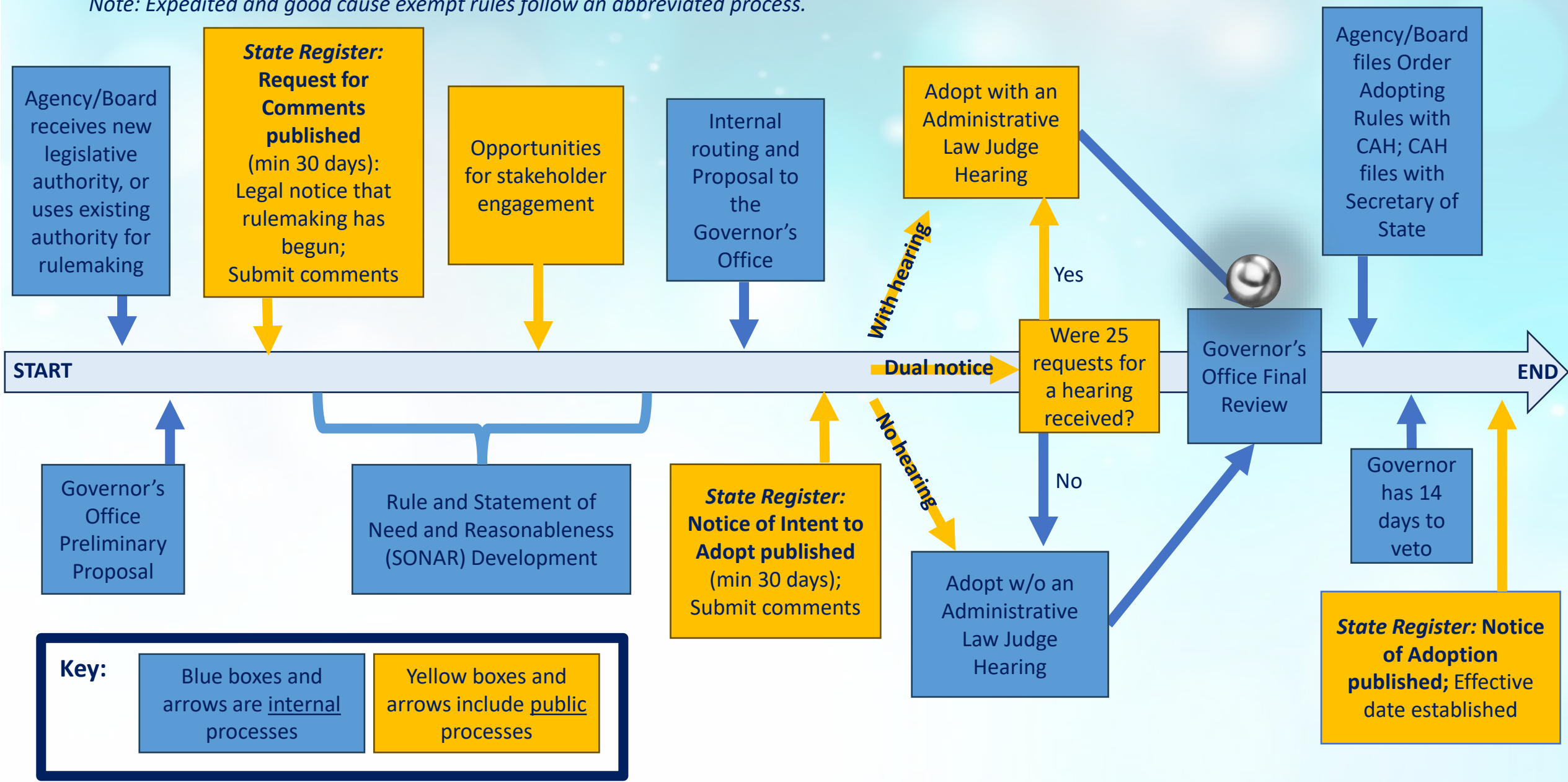


# Adopting the Rules



# Minnesota Rulemaking Overview

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**Key:**

Page 10

[illegible][illegible]

# Order Adopting Rules

Template in the rulemaking manual

## State Register

**Sean Plemmons**

State Register Editor

Department of Administration

[Sean.Plemmons@state.mn.us](mailto:Sean.Plemmons@state.mn.us)

651-201-3204

● If you are making changes to the rule language that was noticed, you must list Findings of Fact in your Order Adopting that include:

- Why the proposed changes are reasonable; and,
- Why the proposed changes do not make the rule substantially different.

(Minn. Stat. 14.05 subd. 2)

● Your proposed changes\* must be approved by the Chief ALJ

(Minn. Stat. 14.16 subd. 1)

*\*Note – This includes changes that are recommended by the ALJ in their report.*

# GO Final Rule Form

Template in the rulemaking manual

## Comments received during NOIA

- 🌀 Summarize and/or attach your response to comments/rebuttal

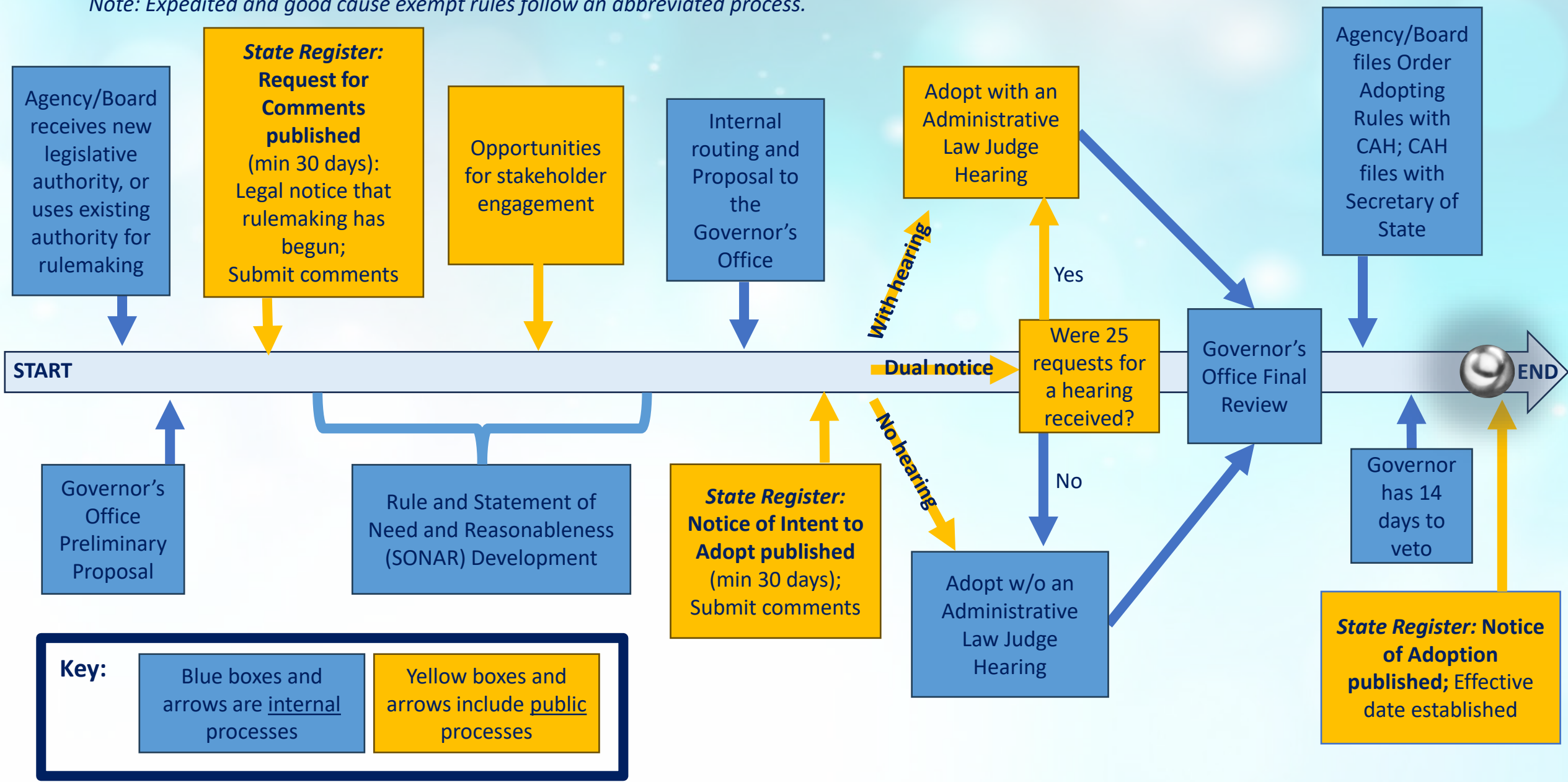
## Changes from draft rules proposal

- 🌀 Attach Order Adopting Rules that includes Findings of Fact

## Reason for hearing (if applicable) and ALJ Report attached

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# Rulemaking Resources



## Current:

- IRC Teams Channel: Join today!
- Rulemaking Manual: Hosted by MDH!
- The people in this room!

## Future?

- Leadership academy project:
  - Rulemaking Training



# Thank you!

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