

Back to Basics: Rulemaking 101

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welcome

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26th Annual Rulemaking Seminar

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OASIS

Take The Evaluation



Your Presenter

Jacqueline Cavanagh

Management Analyst
Department of Health

Together,
as One Minnesota,
we can save lives.

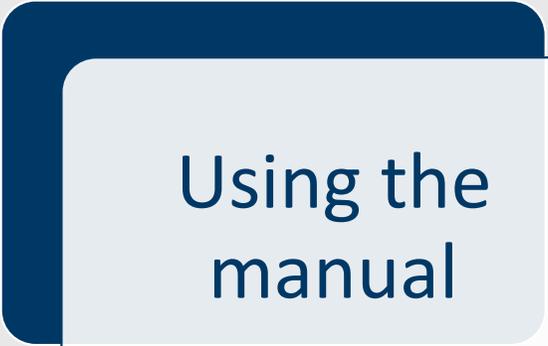
STAY SAFE MN

m MINNESOTA

Objectives



Regular
rulemaking
process



Using the
manual



Request For
Comments:
Deep Dive

What is Administrative Rulemaking?

Administrative rules are regulations

- An agency statement of general applicability and future effect, including amendments, suspensions, and repeal of rules, adopted to implement or make specific the law enforced or administered by that agency or to govern its organization or procedure (Minn. Stat. 14.02)
- Supports statutes with technical details
- Valid in court

Administrative Rulemaking is the process to create a rule

- Authority from the legislature
- Public notice and public comments
- Independent review by the Office of Administrative Hearings

Types of Rulemaking Projects



Regular rulemaking



Good Cause Exempt
Minn. Stat. 14.388

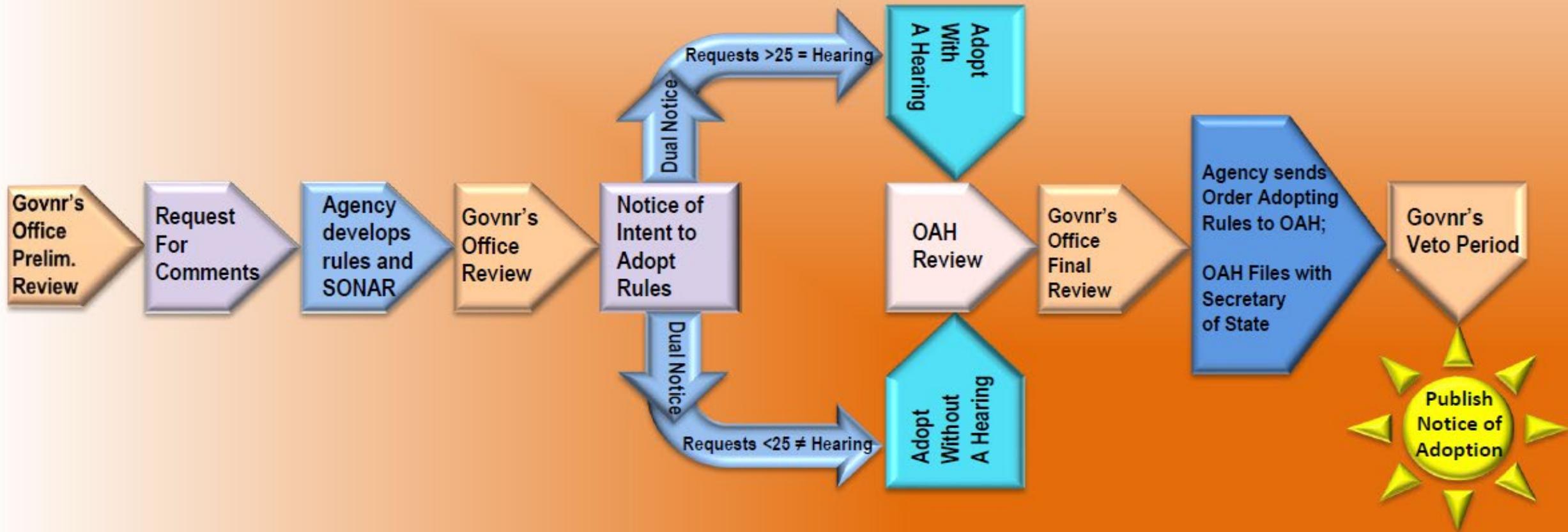


Expedited Exempt
Minn. Stat. 14.389



Obsolete Rules Repeal
Minn. Stat. 14.3895

Rulemaking Progress Chart



Rulemaking Players

In Your Agency:

- Subject Matter Experts
- Attorneys
- Administrative Staff
- Senior Management

Outside Your Agency:

- Revisor's Office
- Governor's Office
- Minnesota Management and Budget
- Legislature and the Legislature Reference Library (LRL)
- Office of Administrative Hearings
- Secretary of State's office
- State Register
- The public, including advisory committee and other stakeholders and experts

Rulemaking Manual

m DEPARTMENT OF HEALTH

HOME TOPICS ABOUT US

Search

Rulemaking

- Rulemaking Home
- MDH Rulemaking Docket
- Rulemaking Manual and Seminar

Minnesota Rulemaking Manual and Seminar

This page provides links to the current Minnesota Rulemaking Manual and materials from the Annual Rulemaking Seminar.

A Manual for the Practitioner

The Minnesota Rulemaking Manual reflects the collective wisdom and experience of the State's rule writing community. First issued on June 17, 1996, it has been revised annually ever since. The editor draws revisions from community members' suggestions, the previous year's experience, and recent legislative activity.

2020 Minnesota Rulemaking Manual

- 2020 Manual (PDF)
A reference book for drafting state agency administrative rules in Minnesota.
- 2020 Manual - Chapters and Forms
Word files of chapters and forms.

25th Annual Minnesota Rulemaking Seminar

Materials will be posted prior to the seminar.

We have made every effort to make these documents accessible. If there are any concerns, please contact the Department of Health at Cretia.Weaver@state.mn.us.

Email Updates

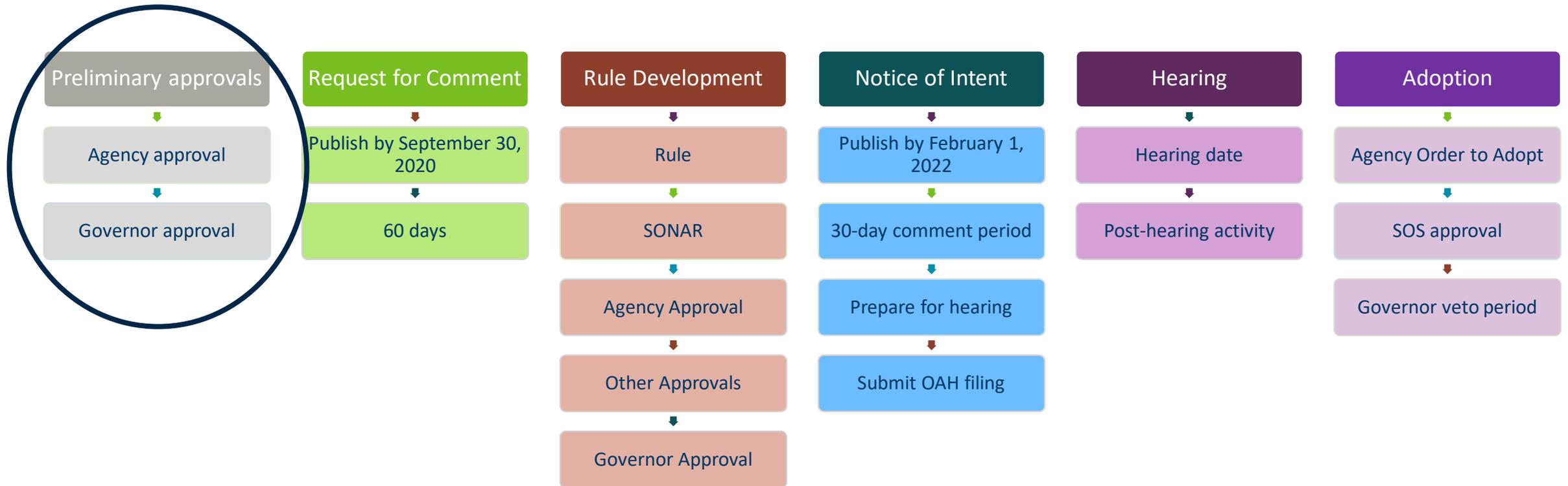
Share This

<https://www.health.state.mn.us/data/rules/manual/index.html>

How long does a rulemaking project take?



Authority and Preliminary Approval



Rulemaking Deadlines

- **Minn. Stat. §14.101, subd. 1:**

“[Request for Comments] notice must be published within 60 days of the effective date of any new or amendatory law requiring rules to be adopted, amended, or repealed.”

- **Minn. Stat. §14.125:**

“An agency shall publish a notice of intent to adopt rules within 18 months of the effective date of the law authorizing or requiring rules to be adopted, amended, or repealed.”

- **Other Deadlines:**

Does the rule correspond with new renewal period, licensing cycle, impending law change or other upcoming event?

Form BD-NTC

Minnesota Board of [Name]

CERTIFICATE OF THE BOARD OF [NAME]; AUTHORIZING RESOLUTION

Proposed [Amendment to] [Repeal of] Rules Governing [Topic], Minnesota Rules, [citation]; Revisor's ID Number [number]

I, [Name], certify that I am a member and the Chair of the Board of [Name], a board authorized under the laws of the State of Minnesota; that the following is a true, complete, and correct copy of a resolution that the Board of [Name] adopted at a properly convened meeting on _____, 20 ____; that a quorum was present; and that a majority of those present voted for the resolution, which has not been rescinded or modified. The Board resolved the following:

1. The [insert title, such as Executive Director or Chair] of the Board of [Name], is authorized and directed to sign and to give the Notice of the Board's Intent to Adopt [Rules Without a Public Hearing][Rules using Alternate Notices of whether a hearing will be held][Rules after holding a public hearing] in the Revisor of Statutes draft, file number [number], dated xx/xx/xx, identified as Minnesota rules, parts ~~xxxx xxxx~~ to ~~xxxx xxxx~~, with any modifications approved by the Board. The [title] must give this notice to all persons who have registered their names with the Board for that purpose. The [title] must also publish the Notice in the State Register. Furthermore, the [title] is authorized and directed to do anything else needed to complete this Notice.
2. If there are fewer than 25 outstanding hearing requests, the [title] of the Board of [Name] is authorized and directed to sign the Order Adopting Rules and to do anything else needed to adopt these rules without a hearing.
3. If there are 25 or more outstanding hearing requests, the [title] of the Board of [Name], is authorized and directed to act as the Board's representative at the hearing and do anything else needed to adopt these rules with a hearing. This includes authority to sign the Order Adopting Rules if there are no modifications to the rules other than modifications approved by the Board.

[Note: this form's format that can be adapted for authorizing a Request for Comments, too.]

[Date]

Attest by one other Board Member

[Name], Chair
Board Of [Name]

[If your board procedures do not
require attestation, you should
delete this from the form.]

Signature of Attesting Board Member

Printed Name of Attesting Board Member

Request for Comments





Review the manual and your agency's internal procedures



Make a list of every task you need to complete



Put them on a calendar so you can see the timing of what you need to do to get the Request for Comment completed correctly

**GET
ORGANIZED –
START A
CALENDAR!**

Calendar Task List

SEPTEMBER 2020						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
30	31	1	2	3	4	5
6	7	8	9	10	11	12
13	14 Finish the RFC draft with finalized dates	15	16	17 Prepare email/Gov Delivery	18 Request website update	19
20	21 eComments request to OAH	22 State Register Due Date	23 Prepare & send USPS mailing	24	25 email & live website ready for Monday	26
27	28 State Register Filing Date	29	30	1	2	3

Other considerations



Request For Comments

Possible Amendment to Rules Governing Unit and Program Approval, *Minnesota Rules*, chapter 8705

Revisor's ID Number 4576

Subject of Rules. The Minnesota Professional Educator Licensing and Standards Board (PELSB) requests comments on its possible amendments to the rules governing teacher preparation providers and programs (*Minnesota Rules*, chapter 8705). PELSB seeks to update teacher preparation provider and program requirements, such that all provider types and program types are held to the same requirements; establish a clear discretionary variance process; and update and clarify the approval processes.

Persons Affected. The amendment to the rules would likely affect current and aspiring teacher preparation providers, aspiring teachers enrolled in a teacher preparation program, and education stakeholder organizations.



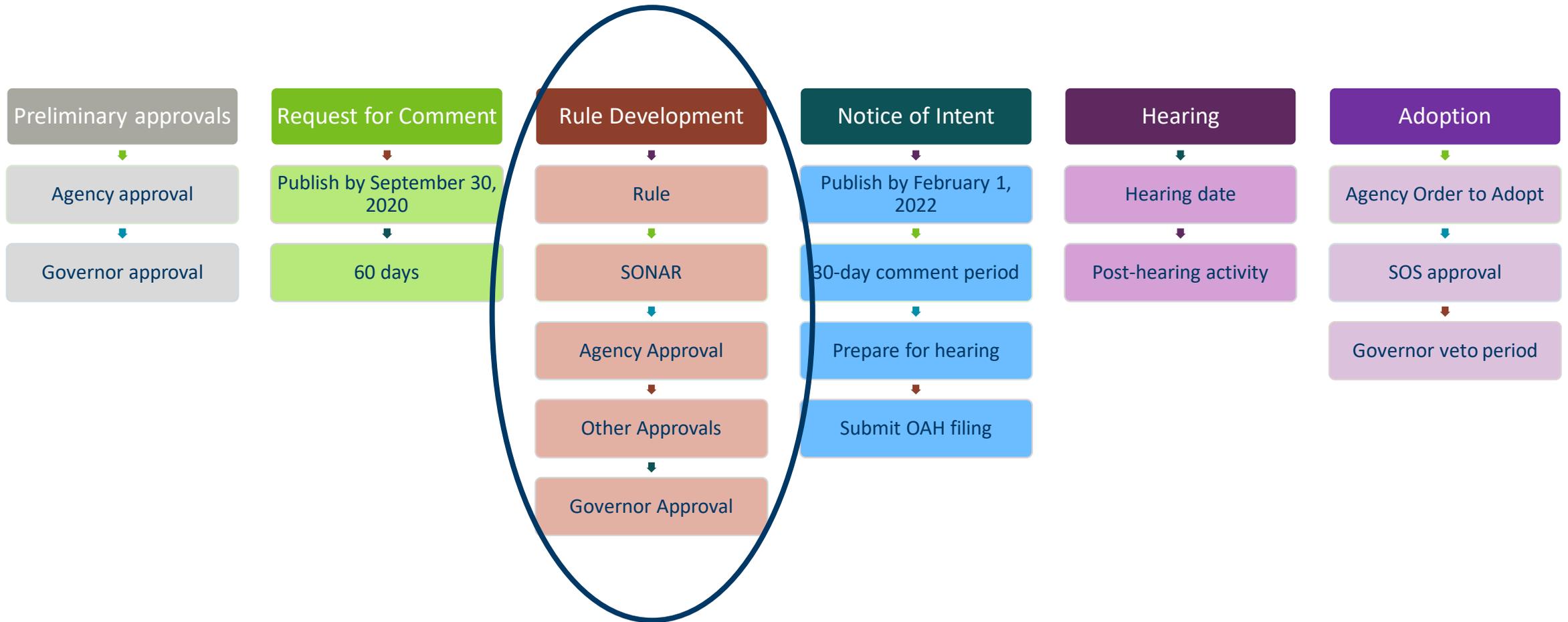
Official Recordkeeping File



Create your official file *at beginning of case*

- Review the statute, rule, and manual to ID all the documents you need to collect
- Look at your checklist and see where those documents will be created
- Highlight those steps so you don't forget to save the document!

Rule Development



Developing your Rule

Scope of your rule:

- Legislative authorization
- Request for Comments language

Players involved:

- Subject Matter Experts
- Advisory Committee
- Revisor's Office

- Introduction
- Regulatory Analysis
- Rule-by-rule Analysis
- Additional Notice Plan

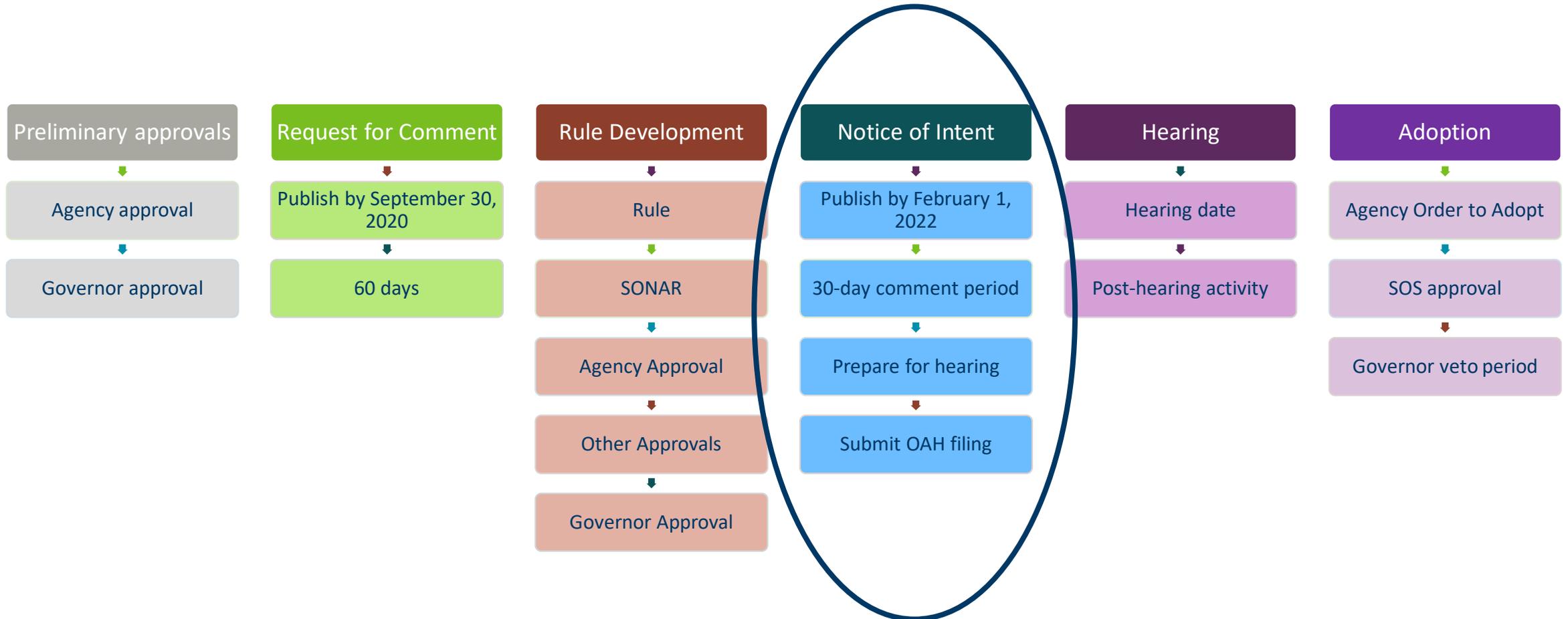


Remember to make your documents accessible!

Proposed Rule and SONAR form

- ✓ Revisor's Office
- ✓ Agency
- ✓ Gov's Office – Proposed Rule and SONAR form
- ✓ MMB – evaluates the fiscal impact and fiscal benefits of the proposed rule on units of local government.

Notice of Intent



Notice of Intent



Notice of Intent to Adopt a Rule With a Hearing



Notice of Intent to Adopt a Rule Without a Hearing



Dual Notice

Before you get started



Readiness Checklist:

- Rule draft is complete
- SONAR is complete
- Additional Notice plan is complete
- All approvals received
- Notice of Intent form draft without dates

Top of the Rollercoaster



Step One:

Request your
hearing date

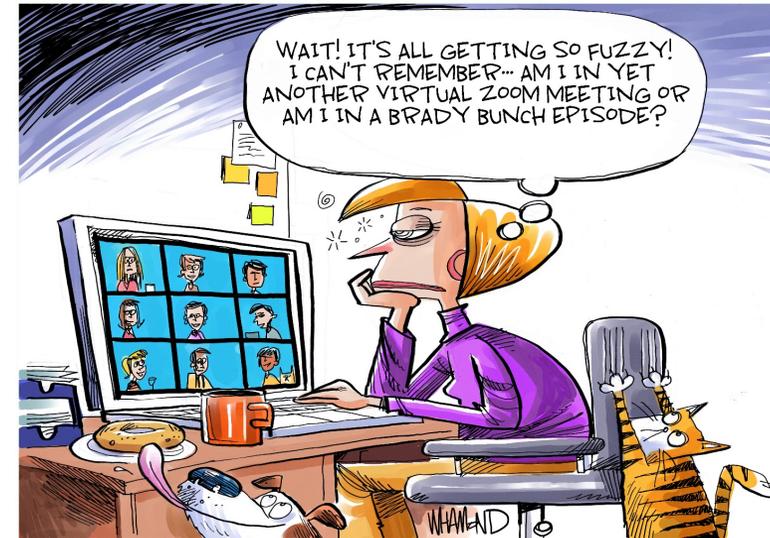
Virtual vs. In-Person Hearings

Considerations:

- Capacity (tech savviness)
- Is this rulemaking subject to other legal or procedural requirements (i.e., agricultural)
- Stakeholder buy-in

Tips:

- Give notice on how to log in, and how to communicate



Notice of Intent Task Calendar.

JANUARY 2022						
SUNDAY	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
						1 New Years Day
2	3	4	5	6	7 Finalize Notice of Intent	8
9	10 Additional Notice to ALJ	11	12	13	14	15
16 Religious Freedom Day	17 Martin Luther King Day	18	19 State Register Due Date	20	21	22
23	24 eComments request in	25 SONAR to LRL and legislature	26 Send all notices	27	28 Website live for Monday	29
30	31 Last Day for State Register					

Leveraging Technology



Rules Hearing on the Proposed Changes to the Rules Governing Teacher Preparation (R-4576)

A virtual rules hearing on the proposed changes to the rules governing teacher preparation will be held on Tuesday, September 1, 2020, at 9:30 a.m.

How to join the hearing

For a video and audio connection, join the hearing through an internet connection, such as with a computer or tablet:

Enter <https://tinyurl.com/4576ruleshearing> or <https://minnesota.webex.com>

Meeting number: 146 356 1733

Meeting password: qCBxC78Sj3j

For audio connection only, join the hearing by phone:

Call: 1-415-655-0003 (US Toll)

Access code: 146 356 1733

How to participate

All interested individuals will have the opportunity to participate. You may present your views either orally at the hearing or in writing at any time before the hearing record closes (written comments can be submitted through [OAH's eComments website](#)).

- Use GovDelivery for electronic notice and updates
- Maintain your “Rulemaking List” (Minn. Stat. 14.14, subd. 1a)
- Provide regular updates

Hearing



Preparing for your hearing

Exhibits

- Minn. R. 1400.2220 subpart 1
- Post to agency's rulemaking webpage
- Compile and eFile

Agency Panel

- Presentation
- Questions asked at the hearing

Logistics

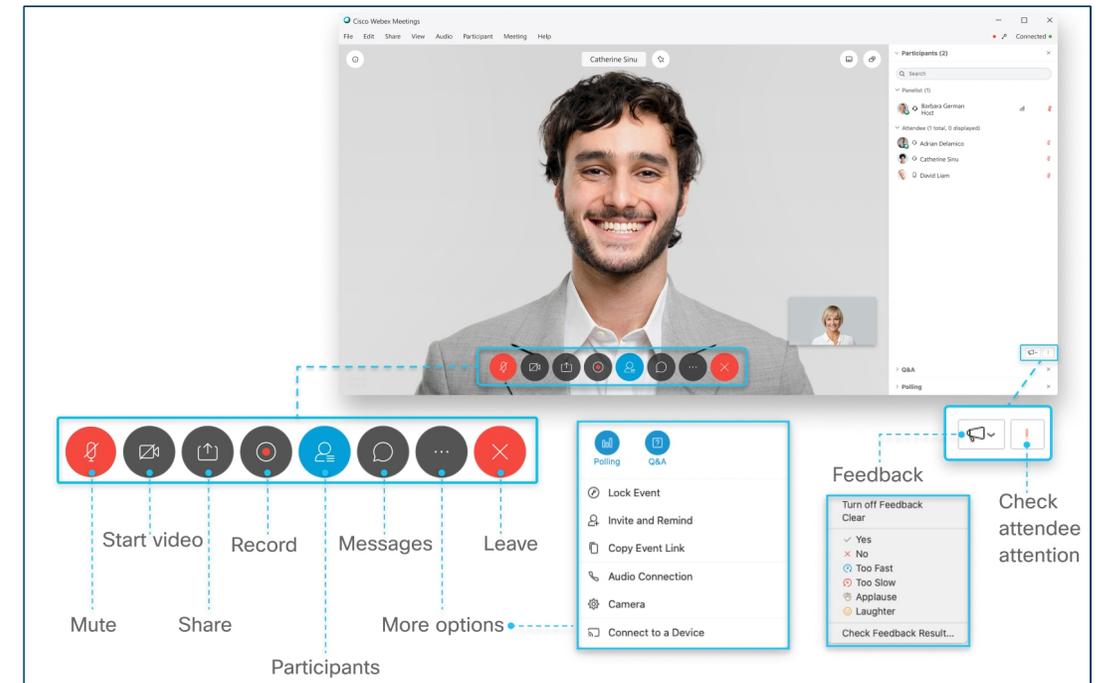
- Court reporter/transcript
- Interpreter
- Budget approvals for any costs

Virtual hearings

Possible Platform: WebEx Events

Features:

- Join via computer, tablet, or phone
- Chat feature
- Mute all attendees
- Host & panelists can share screen (i.e., PowerPoint presentation)



Virtual Hearing Logistics

How to participate:

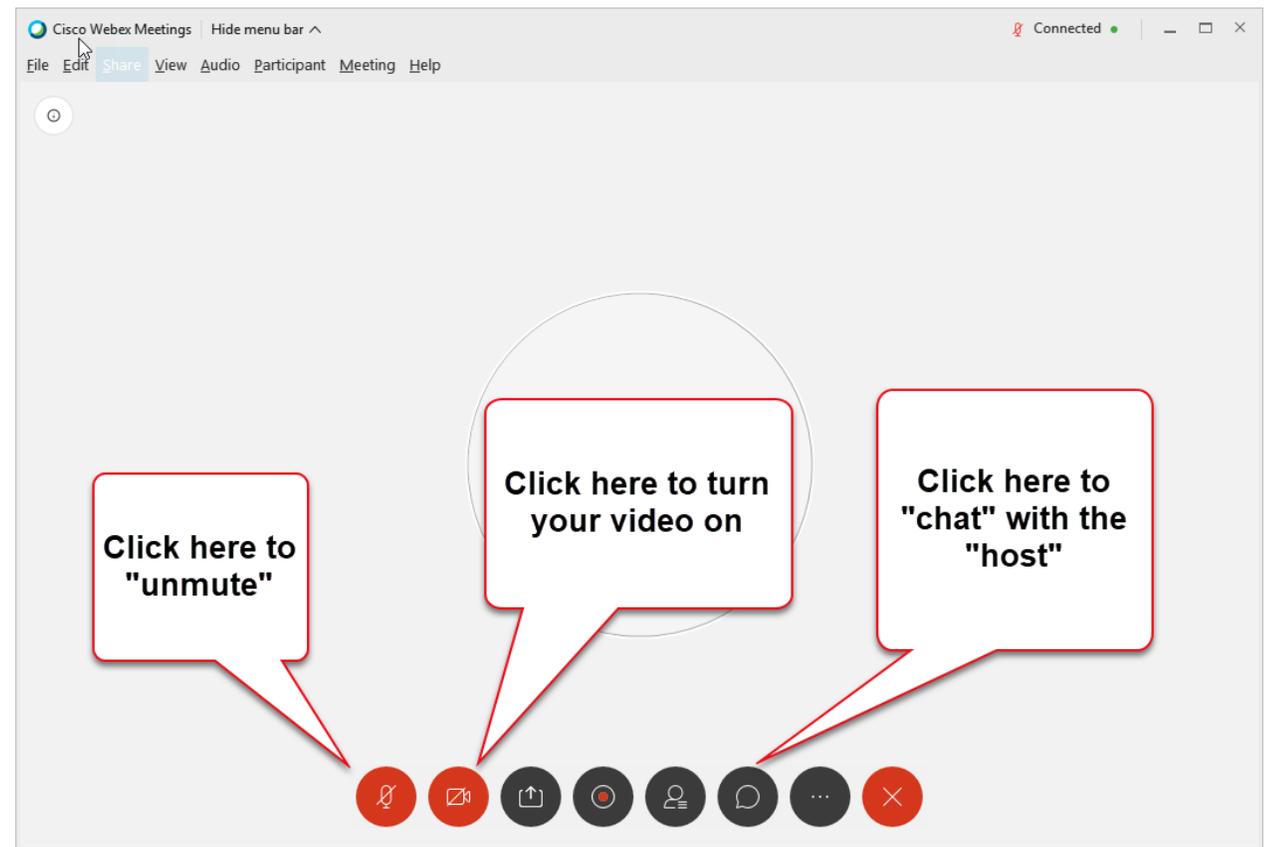
Use the “Chat” feature to notify the “host” that you would like to speak during today’s hearing.

When called to speak:

Please give the host a minute to make you a panelist.

Once a panelist, you can choose to turn on your video while speaking.

Please state your name and organization.

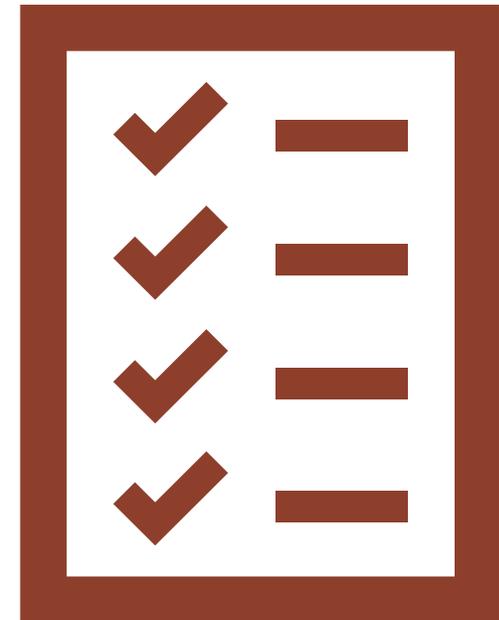


Adoption



Adoption

- Submit Governor's Final Rule Form (GOV-FNL)
- Draft Order of Adoption (ORD-ADPT)
- Submit signed order and final rule to OAH
- OAH will file final rule with Secretary of State
- Governor's Office "served" (triggers 14-day veto period)
- Publish Notice of Adoption in State Register



Request For Comments: Deep Dive

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A Closer Look



Timing and
Deadlines



Asking Questions



Data Practices



OAH
Recommendations

Minn. Stat. § 14.101, subd. 1, sets out two timing requirements related to the Request for Comments:

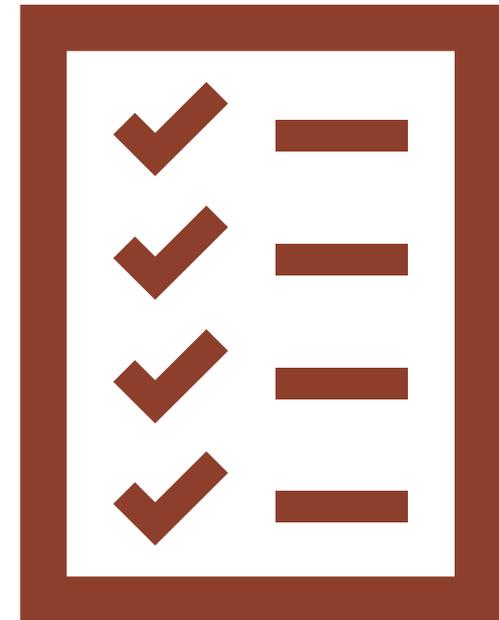
#1 - The Request for Comments must be published within 60 days of the effective date of any new or amendatory law requiring rules to be adopted, amended, or repealed.

- 60 days isn't a lot of time
- State Register lead time
- Internal agency approval process and Governor's Office process

Time Limits

- Follow legislation that affects your program
- Early preparation is OK but don't publish before final enactment
- Rulemaking authority might be deleted at the last minute
- OAH opinion on publishing early:

[9028-36708 Long Term Support Board Assisted Living Director Licensure Rules Order on Review \(mn.gov\)](#)



#2 - The agency may not officially propose rules by publishing a Notice of Intent to Adopt or a Notice of Hearing until at least 60 days after the Request for Comments has been published.

- With standing or existing rulemaking authority, generally there are no timing considerations unless otherwise specified in statute.
- Minn. Stat. 14.101 , Subd. 4. **Reduction of time period.** The chief administrative law judge shall reduce the time period before publication from 60 to 30 days for good cause.
- [9003-35783 MPCA Type IV Facility Operators and Inspectors Recertification Rules Order Denying Request to Shorten Adoption Period \(mn.gov\)](#)

Ask questions, but **BE SPECIFIC**

- Good idea to ask questions in the RFC
- Unlikely to have a rule draft to share at this early stage
- [9019-36312 SOS Rules Order on Additional Notice Plan \(mn.gov\)](#)

- Rulemaking is a public enterprise
- Constantly seeking ways to engage the public and stakeholders to better inform our rules and be transparent throughout the process
- Inform stakeholders that their comments are public

Public Data. Comments submitted during formal rulemaking proceedings are public government data. This means that any member of the public can request to see the information. It is a violation of the Minnesota Government Data Practices Act to share private data about a third party without their permission. Please only submit comments that include personal information about yourself or your minor child(ren) that you are comfortable being classified as public data.

Resource Round-Up

Minnesota Rulemaking Manual | <https://www.health.state.mn.us/data/rules/manual/index.html>

Minnesota Administrative Procedures Act | <https://www.revisor.mn.gov/statutes/cite/14>

Data Practices Office | <https://mn.gov/admin/data-practices/>

Revisor's Rule Status page | <https://www.revisor.mn.gov/rules/status/>

Interagency Rules Committee | creatia.weaver@state.mn.us (GovDelivery list)

suzanne.todnem@state.mn.us – (MS Teams site owner)

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