

RULEMAKING FAQ

What is rulemaking?

Rulemaking is an important government function that allows state agencies to adopt, amend, or repeal rules. A rule is like a statute passed by the legislature, except a rule is adopted by an agency. Both a rule and a statute have the force and effect of law. A statute is more general and establishes the basic form and function of the law, while a rule makes the statute more specific and fills in gaps needed to complement the statute.

In Minnesota, agencies accomplish rulemaking by following the Minnesota Administrative Procedure Act (APA) under Minnesota Statutes, chapter 14, and Minnesota Rules, chapter 1400. Agencies must follow the APA's many requirements and procedures while accomplishing two main goals: accountability and transparency.

Why is rulemaking important?

Rulemaking is important because the legislature is limited in its expertise, time, and attention it can give to all areas of the government. But the legislature can ask agencies to help ensure that government runs smoothly and best serves the public. For example, the legislature can delegate rulemaking authority to agencies so that they can add their subject-matter experience and knowledge and adopt rules year-round. Yet not all agencies have rulemaking authority, some agencies are limited in the authority they do have, and the legislature can ultimately revoke an agency's authority.

Agencies use rulemaking to (1) update and modernize rules, (2) accurately reflect changes in society and better align agency practices with these societal changes, (3) repeal obsolete rules, or (4) conform with changes to the governing statute. Without rulemaking, the legislature would be forced to make all these changes yet would lack the resources and time to do so.

Who is involved in rulemaking?

1. Rulemaking involves both the legislature and the agency. The agency must ensure that it has the statutory authority to adopt rules, follow the direction of the legislature when adopting rules, and adopt rules that don't conflict with the governing statute. Furthermore, the agency must notify the legislature when the agency is adopting a rule, and the agency must send two annual rulemaking reports to the legislature.
2. As part of the executive branch, an agency also is in contact with the governor's office during the entire rulemaking process. This contact ensures that the agency is following the direction and goal of the governor's office for the rule.
3. There are two other important offices, one from the legislative branch and one from the executive branch.
 - a. From the legislative branch, the revisor's office provides drafting support to the agency, checks for legal issues, and certifies the rule as required under the APA.

The revisor's office provides the same services to the legislature for bills and other legislative documents, and it is a nonpartisan office.

- b. A key executive-branch agency is the Office of Administrative Hearings (OAH). OAH is an independent, quasi-judicial agency that oversees almost all rule proceedings. OAH ensures that an agency follows all the applicable requirements of the APA and that the rule:
 - is rationally related to the agency's objective and that the agency demonstrates the need for or reasonableness of the rule;
 - does not exceed, conflict with, or grant the agency discretion beyond what is allowed by its enabling statute or other applicable law;
 - is not unconstitutional or illegal; and
 - follows other substantive and procedural requirements of the APA.
4. There are also two other executive-branch agencies, the Department of Administration, and the secretary of state's office, both of which provide clerical support such as publishing and filing the rule.
5. Last, and most important, is the public. Rulemaking exists to provide the public the means to comment on law that affects them in their private lives or in their jobs. Public participation ensures agency accountability and transparency. The public is a critical part of rulemaking.

What are some of the key requirements?

An agency can use several different rulemaking procedures, such as permanent, expedited, or good-cause exempt. For permanent rules—the most common rule procedure—an agency must comply with the following requirements:

1. An agency must publish its rule twice in the *State Register*: once for the proposed rule, and once after the rule is adopted or has been modified.
2. An agency must notify persons on its rulemaking list and make additional efforts to notify persons who may be significantly affected by the proposed rules. An agency must notify persons through:
 - a. its Request for Comments, the initial step in rulemaking; and
 - b. its Notice of Intent to Adopt Rules or Notice of Hearing.
3. In addition to drafting the rule, an agency must also write a Statement of Need and Reasonableness (SONAR). The SONAR is a crucial part of rulemaking, and an agency uses its SONAR to justify the need and reasonableness for the rule. Important to keep in mind is that an agency's regulatory choice does not have to be the "best" option; rather, the regulation must be a reasonable option for accomplishing the rule's purpose.
4. An administrative law judge from OAH reviews an agency's rule to legality and compliance with the APA and, if there is a hearing, conducts the hearing. The administrative law judge then writes a report and determines whether the agency has the legal authority to adopt the rule, has complied with the substantive and procedural

requirements of the APA, and has justified the need and reasonableness of the rule. Depending on what the administrative law judge writes in the report, an agency may be able to cure any defects in its rule.

How can I be involved?

First, ask to be placed on the agency's rulemaking list. You will then be notified every time the agency undertakes a rule revision and on current developments for every rule.

Second, submit written comments during the Request for Comments and the Notice of Intent to Adopt or Notice of Hearing. Ensure that your comments are specific to the rule subject.

Third, if there is hearing, attend the hearing or submit written comments or exhibits.

Fourth, even after a rule is adopted, stay involved with the agency and don't hesitate to submit comments and ask questions.