

Summary of Rulemaking Process and Advisory Committee Role

The rulemaking process is governed by Minnesota Statutes, chapter 14, and Minnesota Rules, chapter 1400. This short summary describes the main parts of the rulemaking process, important documents, and the timeline for developing and adopting rules.

1. Rulemaking process.

1.1 Request for Comments.

The Request for Comments begins the formal rulemaking process. We cannot publish a Notice of Intent to Adopt Rules for at least 60 days after the Request for Comments is published. We published the Request for Comments in the *State Register* on September 20, 2021, and posted it on our website.

1.2 Proposed rules.

We are now drafting amendments to Minnesota Rules, chapter 2911. DOC has chosen to establish an advisory committee to solicit feedback from multiple stakeholders on draft language. More information on the advisory committee process appears below. The revisor's office will review the rule draft and edit the draft for legality and style and form.

1.3 Statement of Need and Reasonableness.

We must justify that each rule change is needed and reasonable. **Needed** means that there are problems or a legislative directive that requires us to adopt or amend rules. **Reasonable** means that a proposed requirement is a reasonable solution to the problem. We will justify each rule requirement in a document called the Statement of Need and Reasonableness (SONAR).

1.4 Notice of Intent to Adopt Rules.

When we have finished drafting the rules and have completed the SONAR, we will publish a Notice of Intent to Adopt Rules in the *State Register* along with a copy of the rule. In addition, we will mail or email the notice, proposed rules, and SONAR to our advisory committee, rulemaking list, stakeholders, interested persons, and certain legislative committees.

1.5 Comment period.

After the Notice of Intent to Adopt Rules is published, there is a 30-day comment period during which you and others can submit written comments on the proposed rules. You can also request a hearing on the rules during the 30-day comment period. We may make changes to the rule in response to comments.

1.6 Rule hearing.

If there are 25 hearing requests, we must hold a hearing on the rules before an administrative law judge (ALJ). After the hearing, there are two more comment periods.

1.7 Review by ALJ.

Whether or not there is a hearing, an ALJ reviews the proposed rules, SONAR, and other rulemaking documents. The ALJ will approve the rules to determine if we have:

- statutory authority for the rules;
- shown the rules to be needed and reasonable;
- given proper notice of the proposed rules; and
- complied with all other rulemaking requirements.

1.8 Governor veto.

After the ALJ approves the rules and the rules are sent to the secretary of state, the governor has 14 days to review them. The governor has the power to veto the rules.

1.9 Notice of Adoption.

After the governor's review period, we will publish a Notice of Adoption in the *State Register*.

1.10 Effective date.

The rules are effective five working days after the Notice of Adoption is published, unless the rules provide a later effective date.

1.11 Timeline.

Drafting rules can be open-ended, although we plan to complete the rule draft and SONAR by early 2023. The formal part of the rulemaking process, from publishing the Notice of Intent to Adopt Rules until the date the rules become effective, typically takes about three months if there is no hearing and about five months if there is a hearing.

2. Role of advisory committee.

2.1 Advice, not voting.

The role of the advisory committee is to advise us on developing the rules. We look to the committee for its expertise. The advisory committee does not have voting authority on what will go in the rules; the commissioner makes any final decisions. The committee does, however, have the power of persuasion and the power that comes from having the information needed to make these rules workable.

2.2 Represent your interest group.

Each of you likely represents an interest group in one way or another. We encourage you to communicate with others who share your interests.

2.3 Consensus.

Our goal is to achieve consensus on as many issues as possible. Even where there is disagreement on some issues, we hope to make the rules as workable as possible for those who have to comply with them.

2.4 Reasonable comments and suggestions.

We will carefully consider all comments and suggestions on the rules. You will have the most success persuading us with your comments and suggestions if you give reasons along the same lines as how we must justify the need for and reasonableness of each rule requirement.

2.5 Regulatory analysis.

Minnesota Statutes, section 14.131, lists eight factors that we must analyze as part of the SONAR. We will look to you for advice and information as we analyze these factors:

- 1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- 2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
- 3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;
- 4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

- 5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals;
- 6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals;
- 7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference; and
- 8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

2.6 Cost to small businesses and small cities.

Minnesota Statutes, section 14.127, requires us to determine whether any small business or small city would have to spend over \$25,000 to comply with the proposed rules during the first year after the rules become effective. A **small business** is defined as a business (either for profit or nonprofit) with less than 50 full-time employees. A **small city** is defined as a city with less than ten full-time employees. We will look to you for information about the cost of compliance for small businesses and cities.

2.7 Performance-based rules.

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

We will look to you for advice and information on how we can make the rules work better for you, while still meeting our goals for these rules.

- Are there any special situations that we should consider in developing the rules?
- Are there any ways to reduce the burdens of the rules?
- Do you have any other insights on how to improve the rules?

2.8 Additional notice.

When we publish the proposed rules and the Notice of Intent to Adopt Rules, we also must "provide additional notification to persons or classes of persons who might be affected by the proposed rule or must explain why these efforts were not made."

We will look to you to help us identify all interested persons and to come up with ways to let them know about the rules. We must notify both likely supporters and opponents of the rules.

2.9 Local government impact.

We must evaluate the fiscal impact and benefits of proposed rules on local governments. As part of our evaluation, we consult with Minnesota Management and Budget.

In addition, we will look to you to help us identify the fiscal impact and benefits of the proposed rules on local governments.