

## Minnesota Rulemaking

### What is rulemaking?

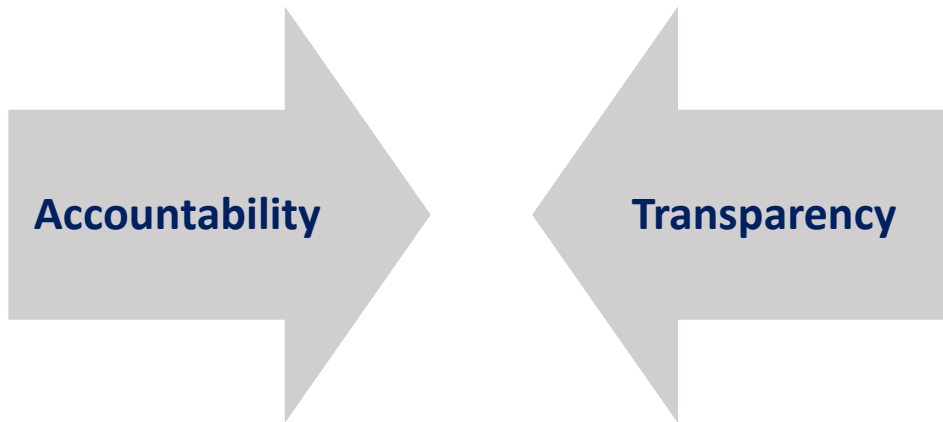
Rulemaking is an important government function under which state agencies adopt, amend, or repeal rules.

### What is a rule?

A rule is like a statute passed by the legislature, but 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 law's basic form and function, while a **rule** makes the statute more specific and fills in gaps needed to complement the statute.

### How does an agency adopt a rule?

In Minnesota, agencies accomplish rulemaking by following the Minnesota Administrative Procedure Act (APA).<sup>1</sup> Agencies must follow the APA's many requirements and procedures while accomplishing two main goals:



### Why is rulemaking important?

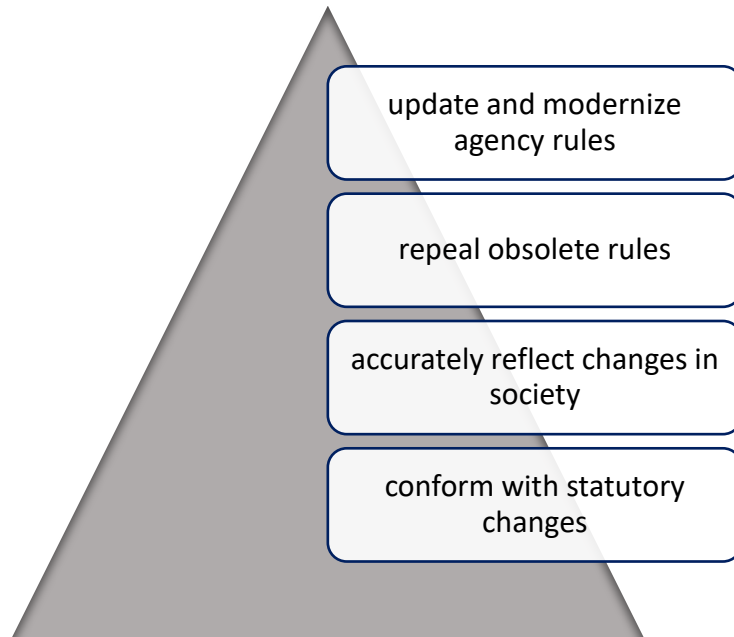
Rulemaking is important because the legislature is limited in the expertise, time, and attention that it can give to complex issues. So the legislature can ask agencies to write laws necessary for an efficient government that protects the public.

<sup>1</sup> Minnesota Statutes, chapter 14, and Minnesota Rules, chapter 1400.



## What do agencies use rulemaking for?

Agencies use rulemaking to accomplish many important public-policy goals:

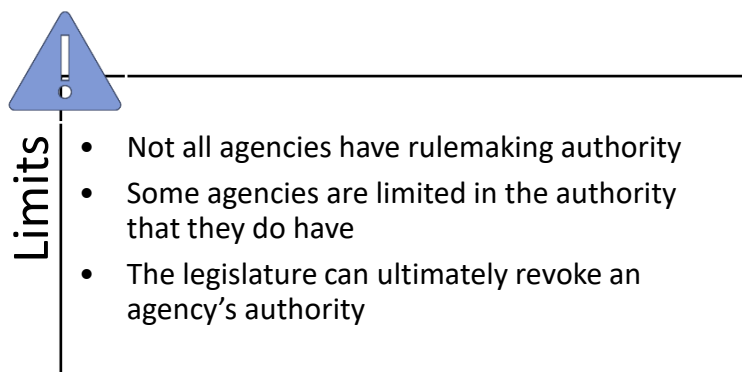


Without rulemaking, the legislature would be forced to make all these changes yet would lack the resources, time, and expertise to do so.

## Do agencies need the legislature's permission to adopt rules?

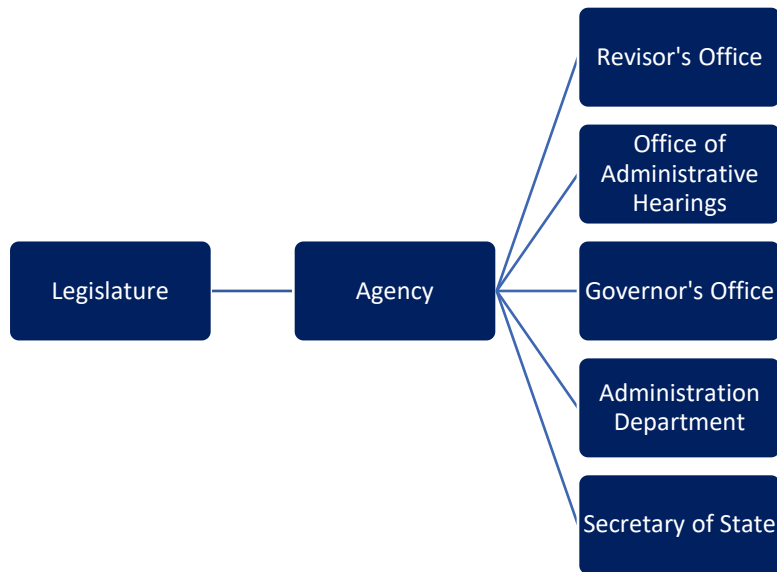
Before an agency can use rulemaking, an agency must receive the legislature's permission to adopt rules. To give permission, the legislature delegates law-making authority by granting **statutory authority** to agencies so that they can add their subject-matter expertise on important topics that affect the lives of Minnesotans. But when granting statutory authority, the legislature must consider constitutional restraints and separation-of-powers concerns.

In addition to these concerns, there are exceptions to how the legislature grants statutory authority:



## Who is involved in rulemaking?

Rulemaking involves both the legislative and executive branches. And within the executive branch, various state agencies participate in the rulemaking process.



### The legislature and the agency

Rulemaking involves both the legislature and the agency. The agency must ensure that it (1) has the statutory authority to adopt rules, (2) follows the legislature's direction when adopting rules, and (3) adopts rules that don't conflict with the governing statute.

### The revisor's office

The revisor's office is a nonpartisan legislative office that (1) provides drafting support to the agency, (2) checks for clarity and legal issues, and (3) certifies the rule as to form.

### The Office of Administrative Hearings

The Office of Administrative Hearings (OAH) is an independent, quasi-judicial agency that oversees almost all rule proceedings. OAH ensures that an agency follows all applicable APA requirements and that the rule:

- is rationally related to the agency's objective and that the agency demonstrates the rule's need and reasonableness;
- 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 procedural APA requirements.



## Governor's Office

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.

## Administration Department and Office of the Secretary of State

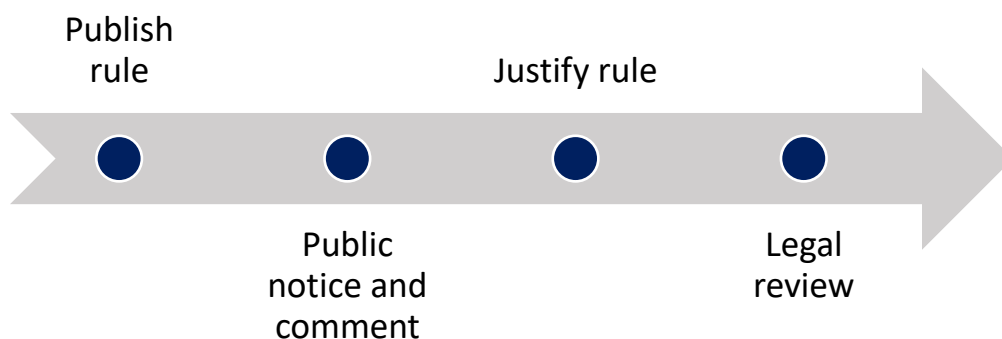
Two other government entities involved in rulemaking are the Administration Department and the Office of the Secretary of State, which publish and file the rule, respectively.

## The public

Last, and most important, is the public. Rulemaking exists to provide the public the means to comment on law that affects them. Public participation ensures agency accountability and transparency and is a critical part of rulemaking.

## What are some of the key rulemaking requirements?

An agency can use several different rulemaking procedures, but the most common one requires an agency to comply with several requirements.



### Step 1: Publish rule in the *State Register*.

An agency must publish its rule twice in the *State Register*: once for the proposed rule, and once after the rule is adopted—with or without modifications to the proposed rule.



## Step 2: Give public notice and allow for public comment.

An agency must notify people on its rulemaking list and make additional efforts to notify people who may be significantly affected by the proposed rule. An agency must notify people in two different steps and allow for them to comment on the rule.



## Step 3: Justify the rule with Statement of Need and Reasonableness.

In addition to drafting the rule, an agency must write a Statement of Need and Reasonableness, or **SONAR**. The SONAR is a crucial part of rulemaking because an agency uses its SONAR to justify the rule's need and reasonableness. The agency's regulatory choice doesn't have to be the "best" option; rather, the regulation must be a reasonable option for accomplishing the rule's purpose.

## Step 4: Submit rule and SONAR to OAH for legal review.

An administrative law judge from OAH reviews an agency's rule for 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;
- complied with procedural APA requirements; and
- justified the rule's need and reasonableness.

Depending on what the administrative law judge writes in the report, an agency may be able to cure, or fix, any identified defects in its rule. Generally, the agency can't legally adopt its rule until it cures any identified defects.



## How can I get involved?

Ask to be placed on the agency's rulemaking list. You will then be notified every time that the agency undertakes a rulemaking project.

Submit written comments during the Request for Comments and the Notice of Intent to Adopt Rules. Ensure that your comments are specific to the rule subject.

If there is a hearing, attend the hearing or submit written comments.

After a rule is adopted, stay involved with the agency and continue to submit comments and ask questions.

## Glossary

**Office of Administrative Hearings:** Executive-branch agency responsible for administering the Administrative Procedure Act.

**Rule:** Enforceable agency statement that has the force and effect of law.

**Statement of Need and Reasonableness:** Agency document that justifies the agency's proposed rules.

**Statute:** Law passed by the legislature.

**Statutory authority:** Legislative permission for an agency to adopt rules.

Credit: Ian Lewenstein (2024)

