**Office of the Governor**

# ADMINISTRATIVE RULE REVIEW PROCESS

## INTRODUCTION

This document provides guidance on the Administrative Rule Review Process and is designed to create clear direction from the Office of the Governor about how the Office will administer the rulemaking process.

The Administrative Rule Review includes three forms (Preliminary Proposal Form, Proposed Rule and SONAR Form, and Final Rule Form) that all agencies will use to communicate with the Governor’s Office. These forms create uniform communication among agencies and efficiency within the Office’s Administrative Rule Review.

The following information provides direction and information about how the Administrative Rule Review will proceed. The following document might not answer all of the questions that might occur during rulemaking. Therefore, Rule Coordinators are encouraged to contact Madeline Hormann, Legislative Coordinator of Legislative and Cabinet Affairs (LACA) with any questions you might have. Madeline can be reached via email at Madeline.Hormann@state.mn.us or by calling (651) 201‑3427.

The main goal of interaction with the Governor’s Office throughout the Administrative Rule Review, is for the Governor’s Office to give the agency input on important issues during the process.

## PRELIMINARY PROPOSAL FORM

When an agency has developed a rule idea, it should complete the Preliminary Proposal Form and submit it to the Governor’s Office. The form must be signed by the Commissioner or Director of the agency and will serve as the official notification to the Governor’s Office that an agency is seeking a rule. Regardless of the type of rule the agency is proposing (Exempt, Expedited, Permanent or Good-Cause Exemption), this form should be completed in its entirety and submitted to the Legislative Coordinator of LACA. The information contained in the Preliminary Proposal Form likely will be broad and general because of the proposal being at the very beginning stages of rulemaking. Although, this information is important to the Governor’s Office, the Policy Advisors cannot perform a substantive review of the proposed rule until they receive the Statement of Need and Reasonableness (SONAR). Therefore, the agency does not need to wait for a response from the Governor’s Office before publishing the Request for Comments. Should the information contained in the Preliminary Proposal Form be of concern to the Policy Advisor, he or she will contact the agency.

The information sought in the Preliminary Proposal Form includes a short descriptive title, chapter number, supporters, opponents, possible controversies, need for the rule, background information, and rulemaking authority. The form also seeks fiscal impact information. Because this form is submitted early in the rulemaking process three fiscal impact choices are listed: Yes, No, and Undetermined. The Governor’s Office recognizes that at this point in the process the agency might not be able to determine if the proposed rule will have a fiscal impact.

## GOVERNOR’S OFFICE USES REVISOR’S ID NUMBER FOR TRACKING RULES

The Governor’s Office tracks the project by its Revisor’s ID number. Therefore the agency should include its Revisor’s ID number, the title given to the proposed rule, and the chapter number on all correspondence.

## PROPOSED RULE AND SONAR FORM

After the agency has published its Request for Comment, created the SONAR, and has final or almost final draft rules, it should complete the Proposed Rule and SONAR Form and the Commissioner or Director sign it. The agency must then submit the completed form, SONAR, and draft rules to the Governor’s Office.

This stage is crucial to rulemaking and is the critical point of information for the Governor’s Office. The Proposed Rule and SONAR Form seeks the information received during the Request for Comment, an Executive Summary of the SONAR, supporters, opponents, possible controversies, and any significant changes from the Preliminary Proposal Form. The form also contains an “other” box. The Governor’s Office understands that every rulemaking experience is slightly different. Therefore, the “other” box seeks information that might not fit into the SONAR or one of the other boxes of information requested. The “other” box can be viewed as “any information that may be of importance to this rule.”

The Proposed Rule and SONAR Form again seeks fiscal impact information. However, at this point, only two options (yes or no) exist. The fiscal impact “yes” box should be checked for positive or negative fiscal impact to the State of Minnesota. If the fiscal impact declaration changed from the Preliminary Proposal Form, the agency should explain why. Within the SONAR Executive Summary box, the agency should include all fiscal information that affects individuals, businesses, units of government, or the agency itself.

## NOTICE OF INTENT TO ADOPT PROPOSED RULES

The agency must receive official approval from the Legislative Coordinator of LACA before proceeding with the Notice of Intent to Adopt Proposed Rules. In most cases, the agency will receive the approval to proceed with the Notice of Intent to Adopt Proposed Rules within three weeks of the Governor’s Office’s receiving the SONAR, draft rules, and Proposed Rules and SONAR Form. If the agency hasn’t received a communication by the 21st day after the Governor’s Office received this information, the agency should contact the Legislative Coordinator for a status report.

The agency’s Policy Advisor will communicate any questions, comments or concerns about the content of the proposed rule to the agency.

The agency may proceed with the Notice of Intent to Adopt Rules after the Policy Advisor has approved the proposed rule and only after the Legislative Coordinator has communicated approval to the agency.

## FINAL RULE FORM

This form notifies the Governor’s Office of any new information or late changes. This last notification gives the Governor’s Office a final opportunity to make changes before only having the option of veto. The Governor’s Office is seeking information describing any late controversies that might have arisen since the agency submitted the Proposed Rule and SONAR Form. The Final Rule Form requests information on any changes to the previously submitted draft rules. Also, if a hearing were requested, information as to why it was requested. The timing for submitting the Final Rule Form varies, depending on the type of rulemaking the agency is doing. If the agency is adopting rules without a hearing, adopting rules after a public hearing, or adopting expedited rules, the agency must wait for the Policy Advisor to approve the final rule before taking the next step, as described below. **[Rulemaking Manual Editor’s Note:** in all three cases, the agency should submit its Order Adopting Rules in unsigned draft form for the ALJ review. See the corresponding chapter for more discussion.**]**

**When the agency is adopting rules without a hearing:** the agency must submit the completed Final Rule Form to the Office of the Governor when the agency has decided on the final rules and its SONAR is complete. The agency must wait for the Office’s approval before submitting its request to Office of Administrative Hearings (OAH) for rule review and approval. If the ALJ who performs the review makes any substantive recommendations to the rule or finds defects, the agency should resubmit the Final Rule Form, clearly labeling it as a revised form. The agency must explain its response to the ALJ’s Report, including any large deletions from the rule. The agency should also submit a copy of the ALJ Report with the revised Final Rule Form. Upon final approval of the rule by the Policy Advisor, the Legislative Coordinator will contact the agency and inform it that it may submit the signed Order Adopting Rules to the OAH.

**When the agency is adopting rules after a hearing:** the agency must submit the completed Final Rule Form to the Office of the Governor **and wait for approval** before the agency submits its signed Order Adopting the Rules to OAH. The agency must explain why a hearing was requested and attach a copy of the Administrative Law Judge Report. The agency must also explain any changes made in response to the ALJ Report, including any large deletions from the rule. The Policy Advisor will direct any concerns the Advisor might have directly to the agency. Upon final approval of the rule by the Policy Advisor, the Legislative Coordinator will contact the agency and inform it that the Commissioner or Director may sign the Order Adopting Rules and formally submit it to OAH.

**When the agency is adopting expedited rules:** the agency must submit the completed Final Rule Form to the Office of the Governor when the agency is submitting its request to Office of Administrative Hearings (OAH) for rule review and approval. The agency must attach a copy of the proposed rules and any justification that the agency has prepared. The agency must wait for Governor’s Office approval before publishing the notice of adoption.

If the ALJ makes any substantive recommendations to the rule or if defects are found, the agency should resubmit the Final Rule Form to the Governor’s Office, clearly labeling it as a revised form. The agency must explain its response to the ALJ’s Report, including any large deletions from the rule. A copy of the ALJ Report should be submitted to the Governor’s Office with the revised Final Rule Form. Upon final approval of the rule by the Policy Advisor, the Legislative Coordinator will contact the agency and inform it that it may publish the expedited rules in the State Register.

**When the agency is adopting exempt rules or good cause exempt rules:** the agency may exercise its judgment about whether to submit a completed Final Rule Form to the Office of the Governor. The nature of exempt or obsolete rules is that there are no policy considerations to make or controversies to address, so waiting for approval is not necessary. If either were to develop, however, the agency should notify the Office. Submitting a completed Final Rule Form is usually a wise precaution against error. When in doubt, the agency may contact the Legislative Coordinator. Agencies should note that exempt rules adopted under Minnesota Statutes, section 14.386 are subject to veto. Good cause exempt rules adopted under Minnesota Statutes, section 14.388 are not subject to veto.

**In all cases:** If the proposed rule remained substantially unchanged from the SONAR stage, final review of the rule should take less than a week. If the agency hasn’t received a communication by the 7th day after the Governor’s Office received the above information, the agency should contact the Legislative Coordinator for a status report.

## THE OFFICE OF ADMINISTRATIVE HEARINGS

When OAH approves receives confirmation that the Order has been signed, it will request the adopted rules from the Revisor’s Office, stamp and date the rules as approved, and file the final rules with the Office of the Secretary of State. The Secretary of State will stamp and date the copies, retaining one, and forward two to the agency, and one to the Governor’s Office.

## GOVERNOR’S DECISION

When the rule, time-and-date stamped by the Office of the Secretary of State, arrives in the Governor’s Office, the veto clock starts running. Excluding the day it is received, the Governor has 14 days to veto the rule. If the rule is not vetoed within the 14-day period, it goes into effectafter notice of adoption is published in the State Register.

If the rule is approved, the Legislative Coordinator will contact the agency and inform it that it may proceed with publishing the Notice of Adoption. If the Governor vetoes the rule, the Legislative Coordinator will contact the agency with the Governor’s explanation and rationale. If the agency requires or would significantly benefit from the rule being adopted early in the 14-day veto period, the agency should contact the Legislative Coordinator about an expedited approval.

## COMMUNICATION

The Governor’s Office recognizes that agencies cannot predict all controversies at the outset of a rules project. As a result, the agency should use its judgment to send issues to the Governor’s Office for review throughout the process. Additional review might be necessary if a rule suddenly becomes controversial. If the agency believes that an issue or proposed change might be in conflict with the Governor’s beliefs and principles, the agency should notify its Policy Advisor.

## RULE REPEALS

Agencies do not need to submit rule repeals to the Governor’s Office for approval. However, an agency should send an informational memo identifying the obsolete, unnecessary, or duplicative rule(s) to be repealed, describing the rationale for repeal, and indicating any potential controversies. This memo will serve to notify the Governor’s Office that the agency is seeking to repeal a rule. No approval is necessary, at any stage, in the rule repeal process. Agencies should note, however, that obsolete rules repealed under Minnesota Statutes, section 14.3895 are subject to veto.

## FORM AVAILABILITY

This Administrative Rule Review Policy, all of the above mentioned forms (in both PDF and Word formats) and the Administrative Rule Review Process Flow Chart are available online. They are published in the *Minnesota Rulemaking Manual*, whichcan be obtained at [Minnesota Rulemaking Manual and Seminar (https://www.health.state.mn.us/data/rules/manual/index.html)](https://www.health.state.mn.us/data/rules/manual/index.html).

Office of the Governor

Tim Walz, Governor

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