

Introduction to Data Practices and the Open Meeting Law

Data Practices Act (DPA)

What does the DPA do?

- Presumes government data is public
- Classifies data that is not public
- Provides certain access rights for the public and for the subject of the data
- Requires that data on individuals is accurate, complete, current, and secure

Why is the DPA important?

- Balances (1) the public's right to know about government activities with (2) the data subject's privacy rights and (3) our need to have and use data to do our work

What is government data?

- All data collected, created, received, maintained, or disseminated regardless of its physical form
 - Examples: emails, notes, drafts, computer records, saved phone messages
- Does not include mental impressions
- Does not include personal data

How is government data classified?

- Public data (anyone can access)
- Not public data (either no one can access or only the data subject)

Records Management

What are the relevant laws?

- *The Official Records Act*: describes what government data the agency/entity must retain
- *The Records Management Statute*: describes when the agency/entity no longer needs to maintain official records and how to dispose of them

What is an official record?

- Agencies must keep “. . .all records necessary to a full and accurate knowledge of their official activities”
- These are the records needed for the public to understand what DLI is doing and why
- Official records are a subset of government data
- Official records can be stored in any media

Can a government entity destroy official records?

- Agencies must follow a process when disposing of official records that are no longer needed:
 - Establish record retention schedules
 - Document the destruction of official records
 - Protect not public information when records are destroyed

What do you need to know as TAG members?

- You are working with government data
- Most of the government data you will be working with is public
- Most of the TAG documents will be available online
- If DLI receives a data request for data you might have, DLI will work with you directly to retrieve the data—if you receive a data request, refer it to the TAG leader
- TAG members will likely not be dealing with official records, but nevertheless TAG members should maintain government data (emails, handouts, notes, etc.) for at least 30 days after the TAG reports to the CCAC

Open Meeting Law (OML)

What does the Open Meeting Law do?

- With limited exceptions, all meetings of public bodies must be open to the public

Why does the Open Meeting Law exist?

- It is important for a transparent government
- Prohibits secret meetings

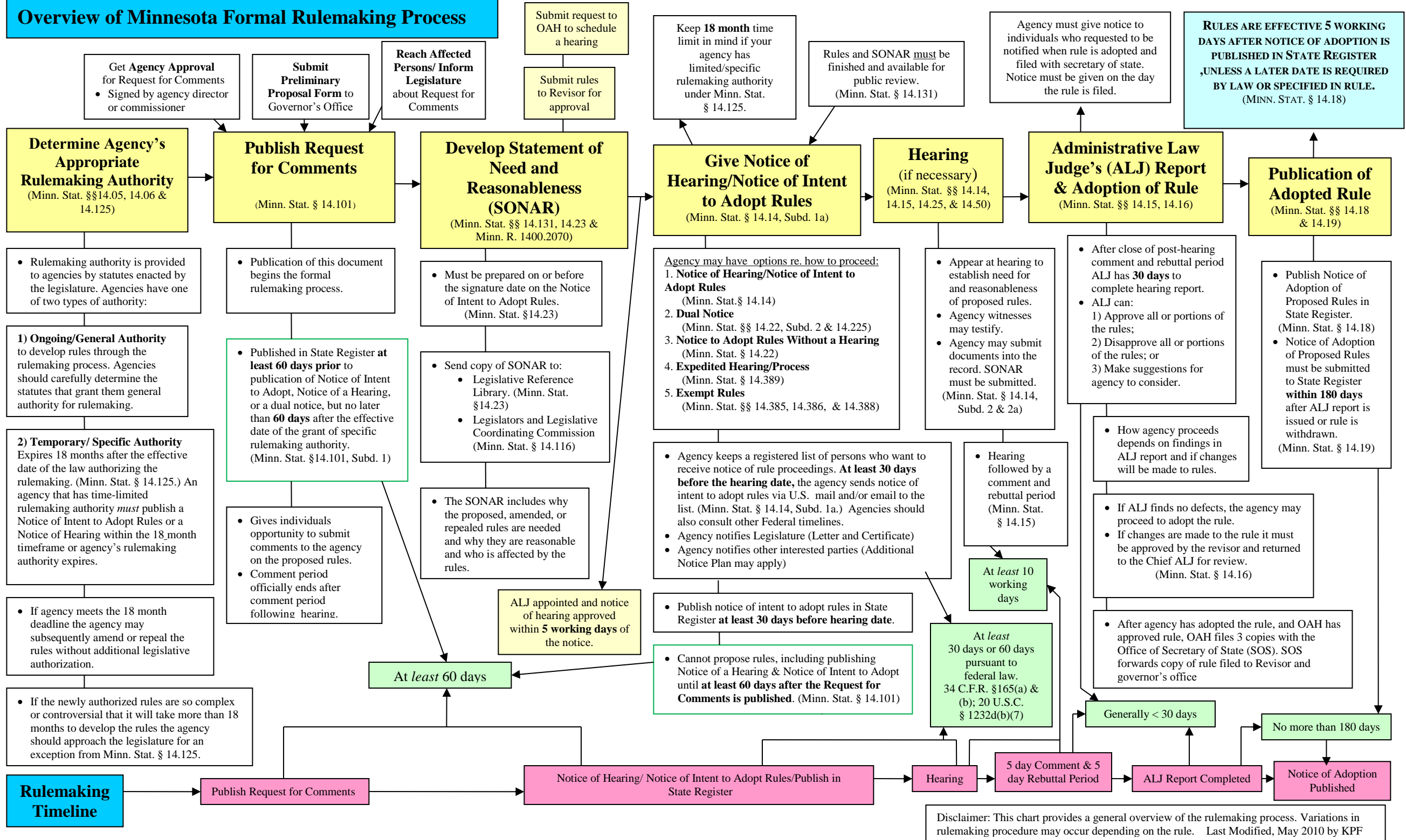
What is a meeting?

- ANY gathering of a quorum of the TAG when that quorum is transacting public business
- Interactions outside of formal TAG meetings *could* still qualify as a meeting for the OML if TAG topics are discussed

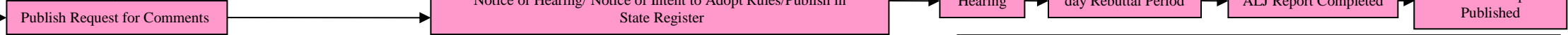
Takeaway

- TAG meetings are open to the public
- Be mindful of interactions with other TAG members outside of formal TAG meetings, especially if a quorum of members are present and engaged
- Save your conversations and discussions about TAG topics for the public meetings

Overview of Minnesota Formal Rulemaking Process



Rulemaking Timeline



Disclaimer: This chart provides a general overview of the rulemaking process. Variations in rulemaking procedure may occur depending on the rule. Last Modified, May 2010 by KPF

RULES ARE EFFECTIVE 5 WORKING DAYS AFTER NOTICE OF ADOPTION IS PUBLISHED IN STATE REGISTER, UNLESS A LATER DATE IS REQUIRED BY LAW OR SPECIFIED IN RULE. (MINN. STAT. § 14.18)

Keep 18 month time limit in mind if your agency has limited/specific rulemaking authority under Minn. Stat. § 14.125.

Rules and SONAR must be finished and available for public review. (Minn. Stat. § 14.131)

Agency must give notice to individuals who requested to be notified when rule is adopted and filed with secretary of state. Notice must be given on the day the rule is filed.

Submit request to OAH to schedule a hearing
Submit rules to Revisor for approval

Get Agency Approval for Request for Comments
• Signed by agency director or commissioner

Submit Preliminary Proposal Form to Governor's Office

Reach Affected Persons/ Inform Legislature about Request for Comments

Determine Agency's Appropriate Rulemaking Authority
(Minn. Stat. §§14.05, 14.06 & 14.125)

Publish Request for Comments
(Minn. Stat. § 14.101)

Develop Statement of Need and Reasonableness (SONAR)
(Minn. Stat. §§ 14.131, 14.23 & Minn. R. 1400.2070)

Give Notice of Hearing/Notice of Intent to Adopt Rules
(Minn. Stat. § 14.14, Subd. 1a)

Hearing (if necessary)
(Minn. Stat. §§ 14.14, 14.15, 14.25, & 14.50)

Administrative Law Judge's (ALJ) Report & Adoption of Rule
(Minn. Stat. §§ 14.15, 14.16)

Publication of Adopted Rule
(Minn. Stat. §§ 14.18 & 14.19)

• Rulemaking authority is provided to agencies by statutes enacted by the legislature. Agencies have one of two types of authority:

1) Ongoing/General Authority to develop rules through the rulemaking process. Agencies should carefully determine the statutes that grant them general authority for rulemaking.

2) Temporary/ Specific Authority Expires 18 months after the effective date of the law authorizing the rulemaking. (Minn. Stat. § 14.125.) An agency that has time-limited rulemaking authority must publish a Notice of Intent to Adopt Rules or a Notice of Hearing within the 18 month timeframe or agency's rulemaking authority expires.

• If agency meets the 18 month deadline the agency may subsequently amend or repeal the rules without additional legislative authorization.

• If the newly authorized rules are so complex or controversial that it will take more than 18 months to develop the rules the agency should approach the legislature for an exception from Minn. Stat. § 14.125.

• Publication of this document begins the formal rulemaking process.

• Published in State Register at least 60 days prior to publication of Notice of Intent to Adopt, Notice of a Hearing, or a dual notice, but no later than 60 days after the effective date of the grant of specific rulemaking authority. (Minn. Stat. §14.101, Subd. 1)

• Gives individuals opportunity to submit comments to the agency on the proposed rules.
• Comment period officially ends after comment period following hearing.

• Must be prepared on or before the signature date on the Notice of Intent to Adopt Rules. (Minn. Stat. §14.23)

• Send copy of SONAR to:
• Legislative Reference Library. (Minn. Stat. §14.23)
• Legislators and Legislative Coordinating Commission (Minn. Stat. § 14.116)

• The SONAR includes why the proposed, amended, or repealed rules are needed and why they are reasonable and who is affected by the rules.

ALJ appointed and notice of hearing approved within 5 working days of the notice.

Agency may have options re. how to proceed:
1. Notice of Hearing/Notice of Intent to Adopt Rules (Minn. Stat. § 14.14)
2. Dual Notice (Minn. Stat. §§ 14.22, Subd. 2 & 14.225)
3. Notice to Adopt Rules Without a Hearing (Minn. Stat. § 14.22)
4. Expedited Hearing/Process (Minn. Stat. § 14.389)
5. Exempt Rules (Minn. Stat. §§ 14.385, 14.386, & 14.388)

• Agency keeps a registered list of persons who want to receive notice of rule proceedings. At least 30 days before the hearing date, the agency sends notice of intent to adopt rules via U.S. mail and/or email to the list. (Minn. Stat. § 14.14, Subd. 1a.) Agencies should also consult other Federal timelines.
• Agency notifies Legislature (Letter and Certificate)
• Agency notifies other interested parties (Additional Notice Plan may apply)

• Publish notice of intent to adopt rules in State Register at least 30 days before hearing date.

• Cannot propose rules, including publishing Notice of a Hearing & Notice of Intent to Adopt until at least 60 days after the Request for Comments is published. (Minn. Stat. § 14.101)

• Appear at hearing to establish need for and reasonableness of proposed rules.
• Agency witnesses may testify.
• Agency may submit documents into the record. SONAR must be submitted. (Minn. Stat. § 14.14, Subd. 2 & 2a)

• Hearing followed by a comment and rebuttal period (Minn. Stat. § 14.15)

At least 10 working days

At least 30 days or 60 days pursuant to federal law. 34 C.F.R. §165(a) & (b); 20 U.S.C. § 1232d(b)(7)

• After close of post-hearing comment and rebuttal period ALJ has 30 days to complete hearing report.
• ALJ can:
1) Approve all or portions of the rules;
2) Disapprove all or portions of the rules; or
3) Make suggestions for agency to consider.

• How agency proceeds depends on findings in ALJ report and if changes will be made to rules.

• If ALJ finds no defects, the agency may proceed to adopt the rule.
• If changes are made to the rule it must be approved by the revisor and returned to the Chief ALJ for review. (Minn. Stat. § 14.16)

• After agency has adopted the rule, and OAH has approved rule, OAH files 3 copies with the Office of Secretary of State (SOS). SOS forwards copy of rule filed to Revisor and governor's office

• Publish Notice of Adoption of Proposed Rules in State Register. (Minn. Stat. § 14.18)
• Notice of Adoption of Proposed Rules must be submitted to State Register within 180 days after ALJ report is issued or rule is withdrawn. (Minn. Stat. § 14.19)

CODE CHANGE PROPOSAL FORM

(Must be submitted electronically)

Author/requestor:

Date:

Email address:

Model Code:

Telephone number:

Code or Rule Section:

Firm/Association affiliation, if any:

Topic of proposal:

Code or rule section to be changed:

Intended for Technical Advisory Group ("TAG"):

General Information

Yes No

- | | | |
|--|--------------------------|--------------------------|
| A. Is the proposed change unique to the State of Minnesota? | <input type="checkbox"/> | <input type="checkbox"/> |
| B. Is the proposed change required due to climatic conditions of Minnesota? | <input type="checkbox"/> | <input type="checkbox"/> |
| C. Will the proposed change encourage more uniform enforcement? | <input type="checkbox"/> | <input type="checkbox"/> |
| D. Will the proposed change remedy a problem? | <input type="checkbox"/> | <input type="checkbox"/> |
| E. Does the proposal delete a current Minnesota Rule, chapter amendment? | <input type="checkbox"/> | <input type="checkbox"/> |
| F. Would this proposed change be appropriate through the ICC code development process? | <input type="checkbox"/> | <input type="checkbox"/> |

Proposed Language

1. The proposed code change is meant to:

- change language contained the model code book? If so, list section(s).

- change language contained in an existing amendment in Minnesota Rule? If so, list Rule part(s).

- delete language contained in the model code book? If so, list section(s).

- delete language contained in an existing amendment in Minnesota Rule? If so, list Rule part(s).

- add new language that is not found in the model code book or in Minnesota Rule.

2. Is this proposed code change required by Minnesota Statute? If so, please provide the citation.

3. Provide *specific* language you would like to see changed. Indicate proposed new words with underlining and ~~striethrough~~ words proposed for deletion. Include the entire code (sub) section or rule subpart that contains your proposed changes.
4. Will this proposed code change impact other sections of a model code book or an amendment in Minnesota Rule? If so, please list the affected sections or rule parts.

Need and Reason

1. Why is the proposed code change needed? Please provide a general explanation as well as a specific explanation for any changes to numerical values (heights, area, etc.)
2. Why is the proposed code change a reasonable solution?
3. What other factors should the TAG consider?

Cost/Benefit Analysis

1. Will the proposed code change increase or decrease costs? Please explain and provide estimates if possible.
2. If there is an increased cost, will this cost be offset by a safety or other benefit? Please explain. If the benefit is quantifiable (for example energy savings), provide an estimate if possible.
3. If there is a cost increase, who will bear the costs? This can include government units, businesses, and individuals.
4. Are there any enforcement or compliance cost increases or decreases with the proposed code change? Please explain.
5. Will the cost of complying with the proposed code change in the first year after the rule takes effect exceed \$25,000 for any one small business or small city ([Minn. Stat. § 14.127](#))? A small business is any business that has less than 50 full-time employees. A small city is any statutory or home rule charter city that has less than ten full-time employees. Please explain.

Regulatory Analysis

1. What parties or segments of industry are affected by this proposed code change?

2. Can you think of other means or methods to achieve the purpose of the proposed code change? What might someone opposed to this code change suggest instead? Please explain what the alternatives are and why your proposed change is the preferred method or means to achieve the desired result.

3. What are the probable costs or consequences of not adopting the code change, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals?

4. Are you aware of any federal or state regulation or requirement related to this proposed code change? If so, please list the federal or state regulation or requirement and your assessment of any differences between the proposed code change and the federal regulation or requirement.

***Note: The information you provide in this code change proposal form is considered Public Data and used by the TAG to consider your proposed modification to the code. Any code change proposal form submitted to DLI may be reviewed at public TAG meetings and used by department staff and the Office of Administrative Hearings to justify the need and reasonableness of any proposed rule draft subject to administrative review and is available to the public.

****Note: Incomplete forms will be returned to the submitter with instruction to complete the form. Only completed forms will be accepted and considered by the TAG. The submitter may be asked to provide additional information in support of the proposed code change.