

Purpose of Today's Presentation:

1

- Overview of the rulemaking process
 - Through this presentation
- Why we are amending Minnesota Rules
- Scope and status of this rulemaking

What are rules?

2

- Rule: an agency statement of general or particular applicability and future effect
- Together with statutes, local ordinances and some federal regulations, rules comprise enforceable laws in Minnesota

Who can make rules?

3

- Executive branch agencies make rules
 - ⊗ The Legislature can direct agencies, or agencies may elect to make rules
 - ⊗ The public can petition agencies to make or amend rules

Why rules versus legislative statute?

4

- Busy legislative sessions aren't preferred venue for developing fine details required for some rules
- Agencies are often staffed with necessary technical expertise
- Rulemaking often fills in the details on a framework provided by legislation

What governs the rulemaking process?

5

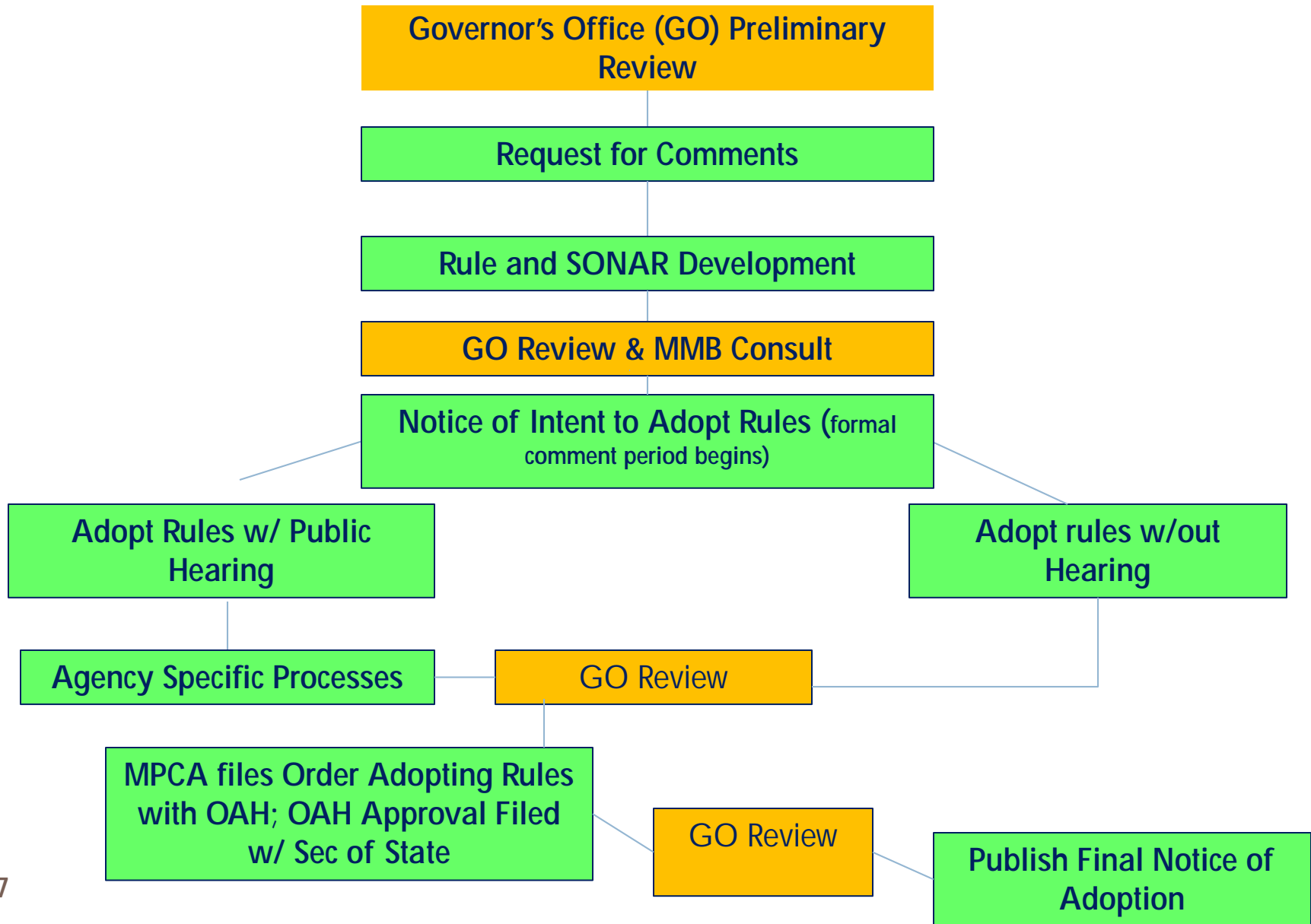
- Legislature authorizes agencies to make rules
- Agencies must follow Administrative Procedures Act (APA) found in Minn. Stat. Ch.14, and procedures found in Minn. R. Ch. 1400
- The APA provides streamlined processes for certain good causes
 - ⊗ Expedited or exempt rules

Rulemaking checks/balances:

6

- .. Internal executive branch policy review by Governor's Office and affected agencies
- .. Revisor of Statutes approves form of draft rules
- .. Public review and comment
- .. The Office of Administrative Hearings (OAH) determines compliance with the APA
- .. Secretary of State executes adoption
- .. Revisor of Statutes prepares Notice Adopting Rules

Overview of Rule Revision Process



Public participation:

8

- Petition legislators or agency for rules
- Respond to RFC
 - ⊗ Advance notice of proposed rules (may precede draft)
- Comment or request hearing on rules as proposed
- Enter comments into hearing record

Good rulemaking form:

9

- Outcome-based rules/performance standards are favored over design/operating standards
- Plain language, not vague or ambiguous
- Use consistent language for similar rules
- APA prohibits unbridled discretion in rules
- Documents incorporated by reference must be readily available in the public domain
- Rules to be succinct and sufficient as regulatory tools; not educational documents

Request for Comments

10

- RFC within 60-days of new rulemaking authority
- Describes general subject matter and types of groups/individuals likely to be affected
- Draft rules may or not be available during RFC
- RFC comment period may be 30 days or longer
- Explains how and when to provide comments
- Comments from RFC not in rulemaking record
- Propose rules at least 60 days after RFC published

Rules and Statement of Need and Reasonableness (SONAR) Development

11

- Agency develops rules language
- Revisor's Office reviews, edits and prepares formal rules draft
- Agency develops SONAR:
 - ⊗ Show need for and reasonableness of rule provisions
 - ⊗ Address statutory requirements established by the APA
 - ⊗ Include fiscal impacts analysis

Three options for Notice of Intent to Adopt Rules

12

1. Notice of Intent to Adopt Rules with Public Hearing (controversy anticipated)
2. Notice of Intent to Adopt Rules without Public Hearing (little controversy)
3. Dual notice (uncertain need; combination of above notices)

Adopting rules with a Public Hearing

13

- .. Happens if:
 - ⊗ Agency chooses to proceed directly to hearing
 - ⊗ More than 25 valid hearing requests remain following public comment period and clarification process
- .. OAH facilitates hearing
 - ⊗ No sooner than 10 days after public comment period
 - ⊗ Admin. Law Judge (ALJ) determines APA compliance
 - ⊗ ALJ reports findings of fact and conclusions that agency:
 - (i) had authority to take proposed action
 - (ii) fulfilled all relevant procedural requirements
 - (iii) demonstrated actions were “needed & reasonable”
 - (iv) Made harmless errors or should change and re-notice rules

Adopting rules with a Public Hearing (Cont'd)

14

- Post-hearing comment and rebuttal period
 - ⊗ 5 to 20 days to submit post-hearing comments
 - ⊗ 5 day rebuttal period
- ALJ issues final report
 - ⊗ 30-45 days following rebuttal period
- Project may then need to follow agency-specific processes

Adopting rules without a Public Hearing

15

- .. Fewer than 25 hearing requests remain following public comment period and clarification process
- .. Agency may seek withdrawal of hearing requests by clarifying or resolving issues for commenters
- .. Agency may make non-substantial changes to rules
- .. Fewer procedural requirements to complete prior to final adoption of rules
- .. Less costly than proceeding to OAH hearing

Adopting rules without a Public Hearing (Cont'd)

16

- Order Adopting Rules and Required documents filed With OAH
- ALJ writes report identifying harmless errors and proposing changes
- Agency adopts rules w/o substantial changes or re-notices if substantial changes needed
- Adopted rules filed with Secretary of State
- Notice of Adoption Published in State Register

Questions?