

Reforming Rulemaking: Building a More Accountable, Open, and Less Burdensome Process

Executive Summary

Minnesota's formal rulemaking process has been deemed one of the most complicated of any state's. With the rise of the regulatory state, the scope of rules has broadened to reach many aspects of commerce, government, and the lives of ordinary citizens. And, the sheer number of rules that affect Minnesotans has grown steadily. However, the increase, scope, and complexity of the rules and rulemaking process are not the only culprits posing problems; Minnesota may not be managing its rulemaking process in the most effective manner. The Governor, Legislature, and regulated communities have all called for an extensive look at the state's rulemaking process. In response, the 2000 Legislature created a task force to study the issue. More specifically, the task force was charged with making recommendations on how Minnesota can improve its rulemaking process, procedures for legislative review of agency rules, and an analysis of ways to ensure or encourage compliance with state policies and goals using methods in addition to rulemaking.

The Rules Reform Task Force—comprised of legislators, executive branch staff, business people and citizens—heard from affected parties on regulatory issues that they face. Their conclusion: Minnesota must maintain a balance. A balance between allowing agencies to implement the will of the Legislature, and maintaining legislative oversight of agency authority; between providing the public with substantial access and participation in the rulemaking process, and allowing an agency to implement rules efficiently and cost-effectively; and between achieving industry compliance, and reducing overall regulatory burdens.

Agency Accountability and Legislative Oversight

Instrumental in reforming the rulemaking process is ensuring that the Governor and the Legislature are able to maintain sufficient oversight of an agency's rulemaking activities. Even though the Legislature delegates rulemaking authority to agencies, lawmakers must still be able to hold agencies accountable by ensuring that agencies promulgating rules are following legislative intent. Further, the Governor and Executive Branch should play key roles to rein in excessive rulemaking and protect the public from unwarranted and unworkable rules. Finally, the process by which obsolete, outdated, and unnecessary rules are repealed or updated must be improved so that policymakers and the regulated community have greater opportunities to hold agencies accountable. Agencies bear significant costs when promulgating rules. As an unintended consequence, agencies may neglect revising or repealing less significant rules given their limited resources. Reform must include opportunities for agencies to repeal obsolete rules and update outdated rules more cost-effectively.

OBJECTIVES:

- Increase agency accountability for administrative rulemaking,
- Ensure that legislative intent is followed, and
- Serve citizens more responsibly and responsively.

STRATEGIES:

1. Prioritize and focus legislative review process
2. Amend notice requirement to Legislature
3. Dedicate Executive Branch position to oversee internal rules review process
4. Extend Governor's veto authority
5. Encourage legislative policy committee to review rule repeals

6. Allow full text of rule to accompany repeal legislation
7. Implement notice and comment process to repeal obsolete rules
8. Delay adoption of problematic rules

Public Access and Input in the Rulemaking Process

Communication between agencies, the regulated community, and the public-at-large is critical to ensure the broadest possible perspective on agency rules. Oftentimes the regulated community, particularly individuals or parties outside the Twin Cities metropolitan area, are not aware of an agency's efforts to promulgate a rule. While many agencies reach out to their regulated constituencies, greater use of technology and other outreach strategies would lead to increased opportunity for public input on rules and improve rulemaking process.

OBJECTIVE:

- ◆ Increase communication between agencies, the regulated community, and the public-at-large without unnecessarily lengthening the rulemaking process.

STRATEGIES:

1. Improve and expand web access to rules information
2. Make notices and dockets available to local newspapers
3. Obtain greater citizen feedback

Regulatory Burdens and Industry Compliance

Regulated entities, in many instances, are held to "hard and fast" rules and agencies are often not provided flexibility in their enforcement of rigidly defined rules. Forcing a party to achieve compliance may induce costs that would greatly exceed any additional benefits that compliance would yield. Regulated parties want agencies to focus on whether they achieved the Legislature's intended results, rather than whether they followed a specific process by which the results are achieved. While regulated entities would sometimes prefer that an agency enact a rule more quickly to know precisely how the agency will implement or enforce a particular law, regulated parties are also concerned about unadopted rules. These parties complain that there is no way to challenge enforcement of an unadopted rule short of an expensive court or contested case proceeding. Finally, regulated parties must also frequently respond to multiple state and federal agencies' rules. Rules reform should include ways to reduce these regulatory burdens through better coordination of multigovernmental laws and rules.

OBJECTIVES:

- ◆ Reduce regulatory burdens on regulated entities,
- ◆ Protect the public, and
- ◆ Achieve compliance with goals of state agencies.

STRATEGIES:

1. Implement general variance law
2. Reduce instances where state rules differ from federal requirements
3. Study whether interpretive notices should be extended to other state agencies
4. Provide Administrative Law Judge procedure for challenging unadopted rules
5. Implement one-stop-shopping pilot program to coordinate multigovernmental rules

The charts on the following pages provide a snapshot of the Task Force's recommendations. For more information on each proposal, including background information, rationale behind each recommendation, and implementation strategies, please refer to the main text of the report and the Rules Reform Task Force Website: www.commissions.leg.state.mn.us/rtf/rtf.htm.

AGENCY ACCOUNTABILITY AND LEGISLATIVE OVERSIGHT

Strategy	Recommendation
Prioritize and Focus Legislative Review Process	The task force recommends encouraging legislative committees to focus on one or two rule chapters or topic areas per session.
Amend Notice Requirement to Legislature	The task force recommends requiring notice to be given additionally to the ranking minority member on committees with jurisdiction over the subject matter of the rules. It also recommends deleting the statutory requirement that authors must continue to receive rule notices; instead, agencies should be required to provide notice to sitting recent chief bill authors.
Dedicate Executive Branch Position to Oversee Internal Rules Review Process	The task force supports the efforts of the Governor's Office to assign review the rulemaking process to a staff member in the Governor's Office or Minnesota Planning. This person would coordinate the internal rules review procedures, maintain a state rulemaking docket, and collaborate with state agencies to identify and implement improvements to the rulemaking process.
Extend the Governor's Veto Authority	The task force recommends extending this provision beyond the sunset date. In addition, the task force recommends changing the veto period to require the Governor's Office to submit a veto notice to the State Register within 14 days of receiving a copy of the rule from the Secretary of State. This change will give the Governor's Office a full 14 days to review a rule.
Encourage Legislative Policy Committee Rule Repeals Review	The task force recommends that each policy committee hold one or more hearings early in each legislative session on obsolete rules identified in agency reports. It also recommends that, when possible, rule repeals that surface late in a legislative session be considered first in a policy committee. Agencies should be encouraged to submit proposals for repeal of rules at the time of introduction of agency omnibus or housekeeping bills.
Allow Full Text of Rule to Accompany Repeal Legislation	The task force recommends allowing the full text of the rule to accompany the bill to repeal the rule.
Implement Notice and Comment Process to Repeal Obsolete Rules	The task force recommends allowing agencies to use a notice and comment rulemaking process to repeal rules listed in an agency's annual report on obsolete rules. It recommends requiring use of the full rulemaking process if 25 or more people object to the use of the notice and comment process.
Delay Adoption of Problematic Rules	The task force recommends temporarily delaying the adoption of rules if the standing committee of the House of Representatives or Senate with jurisdiction over the subject matter of the rules recommends that the rules should not be adopted as proposed.

PUBLIC ACCESS AND INPUT IN THE RULEMAKING PROCESS

Strategy	Recommendation
Improve and Expand Web Access to Rules Information	The task force recommends increasing web access to state agencies' public rulemaking dockets, rule notices, agency contact information, and other related documents. The group also recommends linking agency rulemaking dockets to a centralized state rulemaking docket.
Make Notices and Dockets Available to Local Newspapers	The task force recommends that rule notices, agency contact information and the statewide rulemaking docket be made available to local newspapers.
Obtain Greater Citizen Feedback	The task force supports the efforts of the Governor's Office and the Inter-Agency Rules Committee to assist agencies, boards and commissions with implementing citizen advisory committees, feedback panels, focus groups or other citizen input mechanisms where they are currently not used.

REGULATORY BURDENS AND INDUSTRY COMPLIANCE

Strategies	Recommendations
Implement General Variance Law	The task force recommends a general variance procedure permitting state agencies to vary a rule if the purpose behind it is met and the variance meets certain criteria.
Reduce Instances Where State Rules Differ from Federal Requirements	The task force recommends that the Legislature consider an amendment to the Minnesota Administrative Procedures Act which would allow for reconsideration of rules adopted before 1995 that are inconsistent with federal law of other state rules.
Study Whether Interpretive Notices Should Be Extended to Other State Agencies	The task force recommends that the House and Senate Government Operations Committees study whether interpretive notices should be extended to other appropriate situations. Further, if the use of interpretive notices is extended to other situations, it should be limited in scope and should include a sunset to prompt further review by the legislature as to the effectiveness of this provision and whether there are any unintended consequences.
Provide Administrative Law Judge Procedure for Challenging Unadopted Rules	The task force recommends allowing a party to have an administrative law judge determine whether an agency's pronouncement is in fact an unadopted rule that should be subject to the formal rulemaking procedures of the APA.
Implement One-Stop-Shopping Pilot Program to Coordinate Multi-governmental Rules	The task force recommends a regulatory one-stop-shop pilot program to coordinate the laws and rules of a particular regulated party to reduce the regulatory burdens on that party.