# Chapter 4 - Developing the Statement of Need and Reasonableness (SONAR)

## Introduction

This chapter discusses requirements and suggestions for drafting the SONAR. It is a good idea to review this entire chapter before proceeding. At the end of this chapter is a checklist so you can easily note when you have completed each of the requirements for developing a SONAR.

The **SONAR** form in an annotated explanation of how to develop your SONAR, complete with advice and tips.

## 4.1 Timing

Agencies must prepare the SONAR on or before the signature date on the Notice of Intent to Adopt Rules. The agency must send a copy of the SONAR to the Legislative Reference Library when the notice is mailed or emailed.[[1]](#footnote-1)

## 4.2 Required Contents

The SONAR must contain a summary of the evidence and argument that the agency is relying on to justify why the rules are needed and reasonable. The information provided must be sufficiently specific to allow interested persons to prepare testimony or evidence in favor of or in opposition to the proposed rules. An agency should cite to research, studies, or law that the agency anticipates relying on to support the rules. An agency must also include any information required by statute that imposes specific rulemaking requirements on the agency. For a complete list of the required contents of a SONAR, see Minnesota Statutes, sections 14.131 (with a hearing) and 14.23 (without a hearing), and Minnesota Rules, part 1400.2070.

### 4.2.1 Regulatory analysis

The SONAR must contain a regulatory analysis that includes the following information, to the extent that the agency can get this information through reasonable effort:

1. A description of the classes of persons that will probably be affected by the proposed rules, including those that will bear the costs of the rules and those that will benefit from the rules.
2. An estimate of the probable costs to the agency and other agencies of implementing and enforcing the rules and any anticipated effect of the rules on state revenues.
3. A determination and discussion of whether there are less-costly or less-intrusive methods of achieving the purpose of the rules.
4. A description of any alternative ways to achieve the purpose of the rules that the agency seriously considered and the reasons why they were rejected in favor of the proposed rules.
5. An estimate of the probable costs of complying with the rules, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.
6. An estimate of the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.
7. An assessment of any differences between the rules and existing federal regulations and analysis of the need for and reasonableness of each difference.
8. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

### 4.2.2 Performance-based rules

The legislature recognizes the important and sensitive role for administrative rules in implementing policies and programs created by the legislature. However, the legislature has found that some regulatory rules and programs have become overly prescriptive and inflexible, thereby increasing costs to the state, local governments, and the regulated community and decreasing the effectiveness of the regulatory program. The SONAR must describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.[[2]](#footnote-2)

What does this mean? It depends on the agency. For most agencies, having a variance or waiver procedure can demonstrate flexibility toward the regulated party. Flexibility could also be interpreted as allowing multiple methods toward completing or complying with an agency requirement. For example, a regulated party can choose option 1, 2, or 3 to comply. Or an agency can set a standard and give the regulated party the discretion on how to meet or exceed the standard. Many times, the agency can tie flexibility to an agency’s ability to become a more efficient regulator.

The upshot to meeting this performance-based standard is for an agency to allow regulated parties to creatively find ways to meet the purpose of a rule while also making it less expensive or less burdensome for the agency and the regulated parties.

### 4.2.3 Additional notice

The SONAR must describe the agency’s efforts to provide additional notification to persons or classes of persons that may be affected by the proposed rules or explain why these efforts were not made. *See sections 2.7 and 5.8, 6.8, or 7.8 (depending on the type of Notice you choose) for detailed information on developing an Additional Notice Plan.*

### 4.2.4 Consultation with MMB on local government impact

The SONAR must include the agency’s consultation with MMB. *See sections 5.4, 6.4, or 7.4 (depending on the type of Notice you choose) for detailed information on this consultation.*

### 4.2.5 Determination about rules requiring local implementation

The agency must determine whether a local government will have to adopt or amend an ordinance or other regulation to comply with a proposed agency rule and submit this determination for ALJ approval. An agency must make this determination before the close of the hearing record, or if there is no hearing, before the agency submits the record to the ALJ.[[3]](#footnote-3)

Although the statute does not require that the SONAR contain this determination, current practice is to include it. Furthermore, including it will ensure that your agency completes the analysis. The statute defines *local government* as “a town, county, or home rule charter or statutory city.” For more discussion on this topic, see the **SONAR** form in the appendix.

**Note**: If Minnesota Statutes, section 14.128, applies, you may need to put an effective date in your rules. Read the statute to see how this applies to your rule. You must pay particular attention to this when you adopt the rules to make sure that you have accurately stated the effective date, as circumstances can change during rulemaking, especially if there are delays.

### 4.2.6 Cost of complying for small business or city

#### 4.2.6.1 Definitions

* *Small business:* a business (either for-profit or nonprofit) with less than 50 full-time employees.
* *Small city:* a city with less than ten full-time employees.

#### 4.2.6.2 Requirements

The agency must determine if the cost of complying with proposed rules in the first year after the rules take effect will exceed $25,000 for any small business or small city.[[4]](#footnote-4) There is nothing in the statute that requires the agency’s determination to be in the SONAR, but current practice is to include it.

The agency must make its determination before the close of the hearing record, or if there is no hearing, before the agency submits the record to the ALJ. Generally, the determination is made before the SONAR is completed and submitted to the Legislative Reference Library. A signed SONAR cannot be changed, so if the agency receives input during the comment period or the hearing that would persuade the agency to change the determination it made in the SONAR, the agency must explain its rationale.

The best practice is for the agency to supplement the hearing record as best it can with a letter submitted to the ALJ or, for extensive changes, a lengthier explanation that serves as an informal addendum to the SONAR. Consult with your ALJ for guidance and remember to include this supplemental piece in the official rulemaking record.

#### 4.2.6.3 Considerations

If the costs of complying exceed $25,000 for the first year after the rules take effect, then any small business or small city can exempt itself from the rules by simply filing a written statement with the agency claiming a temporary exemption from the rules.

There are several safety valves or exceptions to the provisions of Minnesota Statutes, section 14.127, including:

* legislative approval of the rules;
* legislative funding of the compliance costs;
* federal mandate;
* good cause exemption;
* being the PUC; and
* Governor waiver.

Information about any applicable exceptions should be included in the SONAR; for example, if the agency plans to seek a Governor waiver or legislative approval of the rules.

### 4.2.7 Other required information

The SONAR must contain an explanation of what effort the agency made to obtain any information that it states could not be ascertained through reasonable effort.

### 4.2.8 Agency-specific requirements

An agency may have other statutory directives specific to the agency, such as the requirement to analyze the effect of Pollution Control Agency rules on business, commerce, and municipalities. The SONAR is a logical place to include these analyses. The SONAR is also a good place to inform your audience of any other evaluations or considerations that the agency has made related to the rulemaking, even if not required by statute.

Both the Department of Human Services and the Pollution Control Agency have agency-specific policies. For example, the Department of Human Services has an Equity Review Policy that all program areas must apply to legislative and policy initiatives and changes, including rules. The DHS Equity Review Policy requires that “communities experiencing inequities be consulted when programs are designed, implemented, and evaluated.” The purpose of the policy is to reduce inequities by addressing “broad social, economic, and political factors that result in systemic disadvantages as well as the needs, assets, and challenges of communities experiencing inequities.”[[5]](#footnote-5)

The Minnesota Pollution Control Agency has an Environmental Justice Policy that sets an expectation that the agency will give communities of color, Indigenous communities, and low-income communities an opportunity to be meaningfully involved in the “development, adoption, implementation, and enforcement of environmental laws, regulations, and polices,” including rules.[[6]](#footnote-6)

If your agency has done the work, show it! It will provide your audience, including the ALJ, with a deeper understanding of your agency’s values and how they shaped the rules.

### 4.2.9 List of witnesses

The SONAR must include a list of any agency and nonagency witnesses the agency anticipates asking to testify if a hearing is scheduled and a summary or description of their testimony.

## 4.3 Rule-by-Rule Analysis

The rule-by-rule analysis is the hardest yet most important part of the SONAR. There is no one correct way to write the analysis as long as the agency justifies each provision of the rules and provides a narrative explanation of why each part, subpart, item, and subitem is needed and reasonable. There should be sufficient specificity so that interested persons can fully prepare any testimony or evidence in favor of or in opposition to the proposed rules.

For each requirement in the rules, provide the need, summary, and reasonableness.

1. Statement of Need: why the agency is writing a rule on the topic, what problem needs to be addressed, what thing needs to be done, or why it is important to do something
2. Summary: what the rule requirement does or accomplishes
3. Statement of Reasonableness: why the rule requirement is a reasonable solution to the need or the problem

### 4.3.1 Statement of need

The statement of need explains why an agency believes that the proposed rules are necessary to address the agency’s regulatory concerns. For rules that will regulate a subject for the first time, the statement of need can often entail a long, involved explanation of a problem and the reasons that the problem needs to be addressed through rules. When established rules are being amended, however, the statement of need may simply list a few aspects of the existing rules that have become outdated or have caused problems and explain why an amendment to the rules is needed.

#### Examples

1. If rules are being proposed to adopt federal standards that are required for Minnesota to retain delegations or authorizations to implement federal programs, the statement of need can be a short statement that demonstrates that the state needs to adopt the federal standards to maintain equivalency with the federal standards.
2. If rules are being proposed in direct response to a statutory mandate to create rules, you can adequately establish the need for the rules by merely quoting the statute. It is not necessary and, in many cases, not advisable to go into the reasons the statute was enacted because you would just reopen the debate on the need for the statute, which is something rulemaking is not meant to address. But you can give a short, informative background for context.
3. The statement of need for a technical amendment to rules designed to remove an ambiguity that has come up in applying and enforcing the rules could simply describe a couple of the situations that created confusion due to the ambiguity in the rules. This discussion would show that a clarification is needed. The statement of reasonableness would then explain why the agency’s proposed resolution of the ambiguity is reasonable.

### 4.3.2 Statement of reasonableness

This part of the SONAR explains why the approach taken in the proposed rules is a good one. When drafting the statement of reasonableness, it is often useful to begin the discussion by briefly paraphrasing the content of the proposed rule section that you are discussing. One of the most common problems, however, in drafting a SONAR is a failure to go beyond paraphrasing or restating the rules to *explaining why* the agency staff chose to draft the rules with the provisions that they contain.

Virtually every section of a set of proposed rules reflects a decision made by staff as they undertook to solve the regulatory problem that is causing the agency to write the rules. The statement of reasonableness must explain why the agency staff chose this requirement to appear in the rules rather than some other requirement. A general statement of statutory implementation is insufficient.

The statement of the reasons for what agency staff are proposing should not be made up solely of conclusory statements. For example, sometimes a draft SONAR will paraphrase the language of the rules and then state: “After considering various options, the agency decided that this approach is the most reasonable one.” This type of sentence is fine as a topic sentence for a paragraph that then goes on to describe exactly *why* the agency staff decided to proceed the way that they did. It is not, however, sufficient to simply state that the agency has concluded that the rules are reasonable.

**Important:** An independent reader—and the ALJ—needs to see specific reasons and evidence in the SONAR about why staff reached that conclusion.

### 4.3.3 Justify each requirement in the rules

Make sure to justify each requirement or change in the rules. For requirements so obvious that no one will question them, you can do the justification in a sentence or two. For controversial requirements, you may need a paragraph, a page, or several pages of justification. The amount of justification you put into the SONAR for a specific requirement depends directly on your judgment of the anticipated controversy and the sophistication or complexity of the factors involved in your analysis.

How you write the rule-by-rule analysis is up to you. How your rule is structured and how detailed the rule changes are may dictate the best approach. One common approach to writing the justification is to justify each requirement in the order that it appears in the rule. You would justify each part separately and, usually, each subpart and so on as necessary. Whatever the rule structure, each requirement must be justified.

Another approach is to group justifications for related provisions that are very similar. In this case, you would provide the main part of the justification once and add a sentence or two for each separate provision that ties it to the main justification.

**Note:** The best way to visualize justifying rule requirements is to read other agency SONARs and save language or examples that you in turn can then refer to or use.

### 4.3.4 Common issues

Issues that come up in drafting many SONARs concern justifying the rule’s applicability section and definitions, dealing with repetitive changes in various rules that are of a similar nature, and repealers.

1. **Applicability section of rules:** The SONAR often describes the applicability section of a set of rules and then states that it is reasonable to identify to whom the rules apply “in order to inform the public.” An applicability section is the first section of almost all proposed rules and contains the most fundamental regulatory decision made in the rules—who must comply with the rules and who is not required to comply with the rules. The section of the SONAR demonstrating the agency’s choice of people that the rules apply to is thus one of the central parts of the SONAR and should be thoroughly explained.
2. **Definitions in rules:** When drafting a section explaining the reasonableness of the definitions in the rule, reviewing prior SONARs will provide some good sample language. More explanation will typically be required for key definitions. But for many definitions, defining the term is reasonable simply because the rules make a distinction between a regulated party that fits under that definition and a regulated party that does not.

For example, if rules are going to regulate a type of pollution source and are going to establish emission limitations that differ for different sizes of pollution source, the definitions might break that source into different size classifications. The SONAR for the definitions of each class of the source may just state that it is reasonable to define this term and distinguish this one size of source from another size of source because the rules establish different emission limitations for those two sizes of source. That statement justifies the reasonableness of defining the term separately.

However, when the SONAR later undertakes to describe *why* the size cutoff was made where it is and why the emission limitations were set where they are (in discussing the emission standards portion of the rules), the agency’s reasons for the size distinctions must be fully explained and supported.

1. **Dealing with repetitive changes:** There are multiple ways to handle explaining the need and reasonableness of repetitive changes throughout the rules. You could add a paragraph to the beginning of the rule-by-rule analysis describing the change and stating that the change has been made “throughout the rules.” You could flesh out the arguments in the analysis of the first rule part containing the change, then refer future rule parts with the same changes back to the original analysis, or you could copy and paste the explanation under each applicable rule part.
2. **Repealers:** Repealers are also rules, so you need to justify them. For large rules with a lot of repealers at the end, relying on reasoning elsewhere in the rules might be tempting. The better practice is to include a cross-reference that clearly ties the repealer back to the discussion that prompts the repeal. This way, the ALJ can easily follow the progression.

## 4.4 Suggestions for Drafting the SONAR

There is no “cookbook” for drafting a SONAR because of the (1) variety of regulatory needs that cause an agency to propose rules, (2) differing scope of various rules, and (3) variety of reasons that can lead an agency to regulate different parties in different ways.

A SONAR is supposed to explain the circumstances that have created the need for the proposed rules and why the rules are an appropriate solution for meeting the need. A SONAR need not be long, but it must articulate good reasons and evidence for proposing the rules in the way that agency staff has drafted the rules. It must tell a neutral nonexpert reader, such as an ALJ or an interested member of the public, why the agency has taken the approach proposed in the rules.

**Remember**: the SONAR tells your story to the ALJ and the public. Therefore, you want the narrative to flow. Do not make your reader work too hard to understand your points or bog them down with excruciating detail. In other words, use plain language. The following advice reflects well-established best practice for drafting SONARs.

### 4.4.1 Review other SONARs

When you start drafting your proposed rules, find and review other agency SONARs. If you can, look at SONARs for rules that are similar to the rules that you are proposing. For example, if you are proposing rules establishing a standard of performance for one category of pollution source, review the SONAR drafted to support existing rules for a different category of pollution source.

If you are amending rules, it is helpful to review the SONAR that justified the rules that you are amending. Finding SONARs for rules that bear some similarity to the rules that you are proposing will help you determine what level of detail is required to support your proposed rules and what kind of reasoning and evidence will be required.

For SONAR examples, you can search the Legislative Reference Library’s website, which has a vast collection of SONARs available online at http://www.leg.state.mn.us/lrl/sonar/sonar.aspx.

### 4.4.2 Get information from an advisory committee to help with the regulatory analysis and the cost determination

The agency must use reasonable methods to get the information required for the regulatory analysis. A broadly representative advisory committee is, in many cases, your best source of information for doing the regulatory analysis. If you decide to use an advisory committee, ask members to identify costs, benefits, parties affected, and other regulatory analysis factors. Also ask advisory committee members for suggestions on performance-based standards.

Similarly, the advisory committee will likely have valuable information and insight into the regulatory analysis and cost determination the agency needs to make under Minnesota Statutes, section 14.127. If the advisory committee comes up with nothing about costs, having them say so adds to your authority as you write the SONAR. If you simply receive no response, that too is significant. Ask these questions early. Make sure that advisory committee opinions reflect all views and include justifications for any proposals.

See section 3.2.5 for additional information on advisory committees.

### 4.4.3 Approaches to drafting the SONAR

To accomplish the task of drafting a SONAR, the following suggestions might be helpful.

#### 4.4.3.1 Make notes when drafting

First, when you are drafting the proposed rules, make notes of why you drafted the proposed rules the way that you did. Often, the rule draft will be hammered out informally. The hammering out might take place in discussions with staff who have helpful expertise, policy meetings of agency management or its governing board that determines the agency’s direction, and meetings of a technical advisory committee. Therefore, at least noting the reasons that the agency is proceeding in various ways as the proposed rules are developing is very important. Otherwise, you might forget some of the reasons that persuaded you to write the rules the way that you did when you start to draft the SONAR a few months later.

In the time taken to think through and draft proposed rules, your reasoning as the rules’ author becomes obvious or you become used to expressing your reasons in a shorthand fashion. Then, when you later begin to draft the SONAR, fully explaining all that reasoning again and presenting it step by step can be difficult. One experienced rule writer’s suggestion for keeping track of your notes is to maintain two computer copies of your current rules draft, one on which you keep notes related to the need-and-reasonableness requirements. Often, just a few words or phrases are enough to jog the memory when it comes time to complete the SONAR.

#### 4.4.3.2 Justify the main requirements

A second approach that might help you draft a SONAR is to start drafting the SONAR by justifying the reasonableness of the sections that form the core requirements of the proposed rules. In other words, you start by justifying the main requirements that you want to impose on the regulated parties. Often, when that more focused work is done, it is easier to draft a short introduction to the SONAR and a short statement of why the rules overall are reasonable. Starting from the core rule requirements and working out from that core to draft a complete SONAR is almost certainly easier than trying to proceed linearly through the SONAR requirements.

#### 4.4.3.3 Draft a statement of need

Another experienced rule writer’s approach is to draft a relatively complete statement of need at the start of the rulemaking project. This will memorialize the problems and reasons that you need to do rules. This also forces you and management to articulate and defend why you are opening the rules, which creates a real sense of purpose and a focus for drafting the rule requirements that will resolve the problems.

#### 4.4.3.4 Refining the SONAR

The best time to start polishing a SONAR section is when the proposed rule text is in pretty good shape—that is, you’ve received enough feedback from agency leadership, subject matter experts, and the public and you are confident that only minor tweaks are left. Working and reworking a section of the SONAR is not helpful nor a wise use of resources, especially because it’s not uncommon for a midstream policy change to reverse the initial approach.

Conversely, it is important to not finish the proposed rules and then think that you can just sit down and write out the SONAR over the weekend—it takes a lot of time. The SONAR is a lot of painfully dull work, and the act of writing down and explaining the reasons for the chosen approach forces you to think through the rules in a different way than you have thought about them before. This can often lead to changes in the rules’ wording, which ultimately helps improve the rules.

## Checklist for Chapter 4 – Statement of Need and Reasonableness (SONAR)

| **Date Completed** | **Item** |
| --- | --- |
|  | **4 – Entire chapter reviewed before proceeding** |
|  | **4.1 – Timing requirements met-** SONAR prepared before publication of Notice of Intent to Adopt Rules in *State Register* |
|  | **4.2 – SONAR requirements met**- **4.2.1 – Regulatory analysis- 4.2.2 –** Description of consideration and implementation of performance-based standards**- 4.2.3 – Description of efforts to provide additional notice- 4.2.4 – Consultation with MMB on local government impact** (see chapters 6, 7, or 8 for details)**- 4.2.5 –** Determination about whether local governments will have to amend an ordinance or regulation to comply with the proposed rules**- 4.2.6 – Cost of complying for any small business or city- 4.2.7 – Other required information- 4.2.8 – Agency-specific requirements- 4.2.9 – List of witnesses for hearing** |
|  | **4.3 – Rule-by-Rule Analysis**- Statement of need and reasonableness for each rule; justify requirement or change for each rule |
|  | **4.4 –** Review suggestions for drafting the SONAR**- SONAR** form used |
|  | **Determine how to proceed (see introductions in chapters 5, 6, and 7 for explanation)-** Publish a Notice of Intent to Adopt Rules without a Hearing (Chapter 5)- Publish a Dual Notice (Chapter 6)- Publish a Notice of Hearing (Chapter 7) |

1. Minn. Stat. §§ 14.131, .23; Minn. R. 1400.2070, subp. 3. [↑](#footnote-ref-1)
2. Minn. Stat. § 14.002 [↑](#footnote-ref-2)
3. Minn. Stat. § 14.128. [↑](#footnote-ref-3)
4. Minn. Stat. § 14.127. [↑](#footnote-ref-4)
5. An example of the Equity Policy Review report can be found in the SONAR for the Department of Human Services’ 2022 Child Care Assistance Program rulemaking. [↑](#footnote-ref-5)
6. The Pollution Control Agency’s Environmental Justice Policy is available on its website at [Environmental justice (https://www.pca.state.mn.us/about-mpca/mpca-and-environmental-justice)](https://www.pca.state.mn.us/about-mpca/mpca-and-environmental-justice), and an example of including the Environmental Justice Policy report can be found in the SONAR for the Pollution Control Agency’s 2021 Clean Cars rulemaking. [↑](#footnote-ref-6)