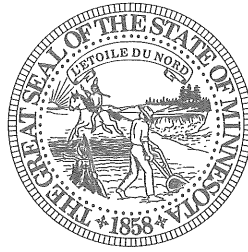
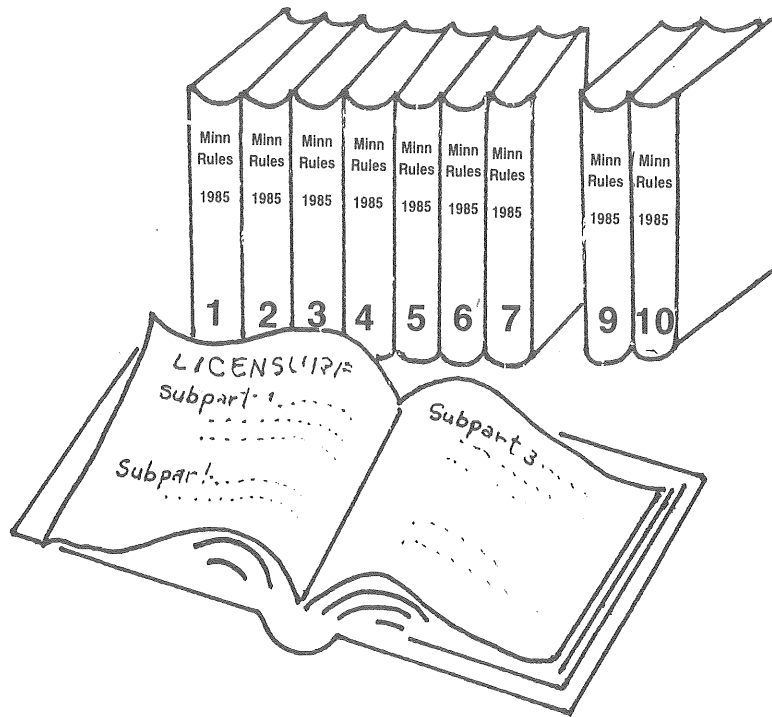


# MINNESOTA



870206

## LEGISLATIVE COMMISSION TO REVIEW ADMINISTRATIVE RULES



### 1985-1986 BIENNIAL REPORT



LCRAR

**Legislative Commission to  
Review Administrative Rules**

**Senator Carl W. Kroening**  
Chair

**Representative Kathleen A. Blatz**  
Vice-Chair

**Maryanne V. Hruby**  
Executive Director

January 30, 1987

Members of the Legislature:

The 1985-1986 Report of the Legislative Commission to Review Administrative Rules is hereby submitted as required by Minnesota Statutes, Section 14.40.

The Legislative Commission to Review Administrative Rules (LCRAR) was created by the Minnesota Legislature (Laws 1974, Chapter 355, Section 69) as a bipartisan, joint commission to "promote adequate and proper rules by state agencies and an understanding upon the part of the public respecting them."

The Legislature delegates authority to state agencies to adopt rules to carry out specific legislation. These rules have the force and effect of law. The purpose of the LCRAR is to provide legislative oversight of agency rulemaking. To carry out this function the LCRAR has the statutory authority to investigate complaints, hold public hearings, request agencies to hold rules hearings, and, if the circumstances warrant, suspend a rule. The suspension of a rule must be ratified by the Legislature and signed by the Governor.

The LCRAR welcomes your interest and hopes that it can serve each of you by monitoring state agencies' rulemaking. Ideally, the LCRAR's activities should not only serve to check possible abuses of rulemaking authority; they should also encourage productivity and accountability in state government, which is the goal of every legislator.

The report which follows describes the procedures used and actions taken on complaints about rules brought before the LCRAR from January, 1985 to December, 1986.

Sincerely,

Senator Carl W. Kroening  
Chairman, LCRAR

LEGISLATIVE COMMISSION TO REVIEW ADMINISTRATIVE RULES

BIENNIAL REPORT  
1985-1986

Prepared by LCRAR Staff  
Pursuant to Minnesota Statutes,  
Section 14.40

Published by LCRAR Staff  
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MEMBERS OF THE LEGISLATIVE COMMISSION  
TO REVIEW ADMINISTRATIVE RULES

Senator Carl Kroening, Chair  
Representative Kathleen Blatz, Vice Chair

Senator Duane Benson  
Senator Fritz Knaak  
Senator William Luther  
Senator Gene Waldorf

Representative David Gruenes  
Representative John Hartinger  
Representative Sandra Pappas  
Representative Peter Rodosovich

STAFF

Maryanne V. Hruby, Executive Director  
Betty Ann Burch, Research Assistant  
Andrea C. Perkins, Commission Secretary  
Paul M. Marinac, Commission Counsel

## INTRODUCTION

The intent of this report is to summarize the 12 major rule reviews conducted by the Commission in 1985 and 1986 and to provide a general orientation of the Commission's activities. Since the Commission's work is a direct response to rule complaints brought to it by legislators, the report reflects the Legislature's actual interest in agency oversight and its faith in the LCRAR's ability to provide that oversight.

The Commission is often thought of as a group of 10 legislators who have the power to suspend rules if circumstances warrant. While this is true, it is an incomplete perception of the Commission's activity. The report indicates that during this biennium the Commission initiated the suspension process three times, but it never took a final vote to suspend a rule. Rather, it exercised its oversight power by:

- referring issues to policy committees;
- sponsoring legislation to address rule problems;
- requesting agencies to amend specific rules;
- directing staff to study issues at length;
- giving an agency its advice and comment on the need and reasonableness of two proposed rules; and
- monitoring agency implementation of 1985 and 1986 grants of permanent rulemaking authority.

## CONTENTS

PART ONE summarizes issues addressed by the Commission at meetings held throughout 1985 and 1986.

PART TWO describes the Commission's processes for rule review, rule suspension, and giving advice and comment on the need and reasonableness of proposed rules.

PART THREE includes statistics that reflect Commission activities.

PART FOUR includes the statutes that give the Commission the authority to do its work.

## PART ONE: COMMISSION ACTIVITIES 1985 - 1986

### A. ORGANIZING FOR THE BIENNIUM:

The 1985-1986 Biennial Reporting period began with an organizational meeting on February 14, 1985. Three new members were welcomed: Representatives Dave Gruenes (St. Cloud), John Hartinger (Coon Rapids), and Sandra Pappas (St. Paul). Former House members who had been reappointed to the Commission were Representatives Kathleen Blatz (Bloomington) and Peter Rodosovich (Faribault).

All former Senators had been reappointed: Senators Duane Benson (Lanesboro), William Luther (Brooklyn Park), Fritz Knaak (White Bear Lake), Carl Kroening (Minneapolis), and Gene Waldorf (St. Paul).

The members elected Senator Carl Kroening as Chair and Representative Kathleen Blatz as Vice Chair.

Kathleen Burek, Executive Director for 3 years, announced her resignation, and the Commission appointed a screening committee to find a replacement. Paul Marinac remained as Commission Counsel.

Betty Ann Burch remained as Commission Secretary/Research Assistant.

### B. FEBRUARY 28, 1985: A LONG AND COMPLEX BUSINESS MEETING

The first official business meeting was held February 28, 1985, at which time the Commission approved its 1986-1987 Budget. The budget provided that Commission staff be increased from 2 1/2 to 3 full-time positions: executive director, research assistant, and clerk-typist.

Of the eight rule-related agenda items, three were new items and five were carried over from hearings in 1984. The following are brief descriptions of the Commission's actions on these eight agenda items.

1. DEPARTMENT OF HUMAN SERVICES, MINNESOTA RULES, PARTS 9525.0015-9525.0353  
(EMERGENCY) GOVERNING COUNTY BOARD RESPONSIBILITIES TO THE MENTALLY  
RETARDED

In November 1984 Representative Simoneau requested the review of these emergency rules on behalf of Anoka County who complained that the department was exceeding its authority by having the rules apply to all mentally retarded persons, not only to those covered by waived services. The rules required counties to identify the services needed by all mentally retarded persons. Anoka County feared a large and unexpected increase in its social service budget if services for mentally retarded persons had to be provided to all needy mentally retarded persons.

Anoka County also objected in general to the department's use of emergency rules to adopt major policy changes without public participation.

The County sought LCRAR review to ensure the rules complied with the legislative intent of the Community Social Services Act.

Due to the complexity of the complaint, the Commission took public testimony on the issue, and staff recommended that the Commission refer to appropriate policy committees several issues for clarification of legislative intent. The Commission approved the staff recommendation.



During the 1985 session, Commission members were instrumental in passing Laws 1985, 1st Special Session, Chapter 9, Article 2, Sections 40-45 to address the Commission's concerns. This law is codified in amendments to Minnesota Statutes, Section 256B.092.

2. DEPARTMENT OF COMMERCE, BOARD OF COSMETOLOGY, MINNESOTA RULES, PART 2640.3700, SUBPART 7, RELATING TO SALON VENTILATION REQUIREMENTS

In August 1984 several legislators requested LCRAR review of this rule based on complaints from salon operators. The rule required a mechanical ventilation system to remove potentially harmful fumes produced during certain beauty treatments. The rule differed from the Building Code which allowed window ventilation as a means of compliance.

Salon operators claimed the cost of compliance was burdensome, especially for operators who rent a salon. Operators feared the extra cost might force them to close shop.

The Board's rule had gone through the hearing process during its adoption and the hearing examiner found it was needed and reasonable.

The Commission held a public hearing (8/24/84) at which time Commissioner of Commerce Michael Hatch asked the LCRAR to suspend the rule to avoid having the department go through the time-consuming rule repeal process. Meanwhile, the department asked inspectors not to enforce the rule.

The LCRAR voted to initiate suspension of this rule. In so doing the Commission referred the issue of suspension to appropriate policy committees in the House and Senate. The Commission also passed along to these committees the Chair's concern about the dangers of products used by cosmetologists.

In February 1985 the Commission took no further action on the matter because the Commissioner of Commerce was not enforcing the rule. It did not vote to suspend the rule, although the Chairs of the Commerce and Economic Development in the House and Senate supported rule suspension.

The issue was resolved in August 1985 when the Department adopted a rule amendment that eliminated the ventilation requirement.

3. POLLUTION CONTROL AGENCY, MINNESOTA RULES, PARTS 7045.0131, SUBPART 4  
CORROSIVITY OF HAZARDOUS WASTE, AND 7035.1700, RECYCLING OF HAZARDOUS  
WASTE

This complaint arose in 1984 from Representative Forsythe's concern over a pile of lime sludge located in Northeast Minneapolis. She believed the MPCA hazardous waste rules were inhibiting recycling of this sludge. Hazardous waste generators also believed that the state hazardous waste recycling rules were more stringent than necessary, and that state adoption of federal standards were sufficient to protect the environment.

Under the newly amended hazardous waste rules, recycled wastes were no longer subject to the same restrictions as hazardous wastes. Rather, recycled wastes were now only subject to manifest and transportation requirements.

Because a Senate subcommittee was investigating the issue of recycling lime sludge, the LCRAR directed staff to monitor the subcommittee's efforts. The Commission also directed staff to continue investigating the larger question of the impact of PCA hazardous waste recycling rules and to present a report at the next meeting.

At the February 28 hearing, the Commission took no further action because PCA was about to publish a proposed rule to amend Part 7045.0125. New language

provided that wastes that are hazardous solely due to a high pH value and that are reusable or recyclable need not meet burdensome manifest or pretransport requirements. The Department of Transportation had recently become responsible for the sludge and was contracting to recycle it. PCA adopted the necessary rule change in June 1985.

4. DEPARTMENT OF ENERGY AND ECONOMIC DEVELOPMENT (DEED), MINNESOTA RULES, CHAPTER 4215, MODEL ENERGY CODE

In June 1984 Senators Benson and Luther, on behalf of the Minnesota State Builders Association (MSBA), asked the Commission to review several issues relating to the newly amended Model Energy Code. Builders were concerned about liability for problems associated with new standards for foundation wall insulation and vapor barriers. MSBA also believed that DEED exceeded its statutory authority. At Commission direction, staff acted as facilitator for a task force that included staff from MSBA, the Building Code Division in the Department of Administration, and the Energy Division of the Department of Energy and Economic Development. Meetings were held during the latter part of 1984 and into 1985.

In February 1985 staff reported resolution of most of the issues due to the task force's efforts. The Commission requested that the department proceed to rule hearing to implement the negotiated agreement. A public hearing was held in June 1985 and new rules were effective in February 1986.

5. DEPARTMENT OF HUMAN SERVICES, MINNESOTA RULES, PARTS 9500.0031-9500.0353  
(EMERGENCY), AFDC

In 1984 the Chair requested review of these emergency rules on behalf of several counties that were responsible for administering the rules. The review focused on two parts of the rules, both relating to AFDC benefits.

Part 9500.0071, Subpart 3 (Emergency), related to visitation by absent parents. Counties complained that the new criteria for visitation by absent parents were too easily met, thereby enabling more people to qualify for AFDC, and making it more difficult for counties to prosecute cases of fraud. Some counties also believed the new definition of absent parent violated a Minnesota Supreme Court decision.

Parts 9500.0331 to 9500.00353 (Emergency) provided for AFDC-Emergency Assistance for recipients' utility and mortgage payments. Counties were concerned that changes in emergency assistance payments would cause them to exceed their budgets.

In general, counties complained that the department was making major policy changes through emergency rules which do not require public hearings.

The Commission voted to hold a public hearing on the issues relating to these two major portions of the emergency rules even though the department was planning to adopt permanent rules which would most likely require public hearings.

At the conclusion of the public hearing in February 1985, the Commission voted to initiate the rule suspension process for the rule relating to visitation by absent parents and AFDC eligibility. A final vote to suspend the rule never occurred. And the Legislature did not respond formally to the issue.

As for the emergency assistance rule, the Commission accepted the staff

recommendation to refer the emergency and proposed permanent rules and their statutory authorities to appropriate policy committees for consideration of cost containment measures.

The Legislature responded (Laws 1985, 1st Special Session, Chapter 9, Article 2, Section 33, which amended Minnesota Statutes, Section 256.871, subdivision 4) by clarifying the definition of "emergency" and by requiring the Commissioner of Human Services to limit emergency assistance payments for utilities and housing when families are not able to demonstrate a good faith effort to make these payments on their own.

6. MINNESOTA DEPARTMENT OF HEALTH, MINNESOTA RULES, PART 4620.1800, FORMALDEHYDE LEVELS IN HOUSING UNITS

In January 1985 Senator Benson and Representative Gruenes requested review of a recently (1/7/85) adopted amendment to a rule providing for a performance standard for new and remodeled housing units. The rule required that the level of ambient indoor air contain not more than .4 parts per million of formaldehyde.

Home builders, seeking a higher product standard rather than the performance standard, questioned the department's rule process and the reasonableness of the standard.

The Commission took public testimony at its hearing on February 28, 1985 and voted to initiate the rule suspension process, thus referring the issue to appropriate policy committees.

The legislative response (Laws 1985, Chapter 216, amending Minnesota Statutes, Section 144.495) provided for a product standard of .4 parts per million of formaldehyde, clarified the Commissioner's rulemaking authority, and

required a departmental feasibility study for product standards for exempt building materials.

7. DEPARTMENT OF COMMERCE, ORDER TO ESTABLISH A DRAM SHOP LIABILITY ASSIGNED RISK PLAN

Senator Benson asked the Commission to review a Commerce Department order that allowed the department to issue dram shop insurance policies. His concern was that the Commissioner used a departmental order to implement a legislative policy when it appeared that the Legislature gave specific statutory authority to adopt emergency rules for an assigned risk plan.

The Commission was aware that the order was being challenged in district court and it directed the staff to study the issue further. The district court found that the order was a rule that required adoption under the APA. On appeal, the Court of Appeals found that the Commissioner had authority to determine the need for an assigned risk plan without initiating rulemaking, but if the Commissioner deviated from the statutory elements of the plan, rules were required.

By September 1985 the Department had adopted emergency and permanent rules establishing the assigned risk plan.

8. DEPARTMENT OF ECONOMIC SECURITY, COMMUNITY ACTION BLOCK GRANTS

The Commission received a request from a private organization concerning the Department of Economic Security administration of the Community Services Block Grant Program. The department had no rules and no statutory authority to adopt rules; rather, the claim was that policies were being made without sufficient public participation and perhaps rulemaking was appropriate.

The Commission referred the complaint to appropriate policy committees, asking them to consider whether administrative rules were needed for transferring and reallocating surplus funds from the Community Services Block Grant.

C. NEW DIRECTOR, NEW STATUTORY AUTHORITY

From mid-March until early May 1985 the Commission was without an executive director. Maryanne Hruby replaced Kathleen Burek as director on May 6, 1985.

During a special session in 1985 the State Departments Conference Committee amended the Commission's authority in Section 14.40. Laws 1985, 1st Special Session, Chapter 13, Section 84 provided:

If the rules that are the subject of the public hearing were adopted without a rulemaking hearing, it may request the office of administrative hearings to hold the public hearing and prepare a report summarizing the testimony received at the hearing. The office of administrative hearings shall assess the costs of the public hearing to the agency whose rules are the subject of the hearing.

During 1985 and 1986 the Commission did not exercise this new authority.

D. A RARE REQUEST: ADVICE AND COMMENT ON PROPOSED DHS RULES

The Commission held two meetings during August 1985 upon request by the Department of Human Services. Pursuant to Section 14.15, subdivision 4, the department asked for the Commission's advice and comment on the need and reasonableness of two proposed rules relating to health services that require prior authorization for reimbursement by Medical Assistance or General Assistance/Medical Care.

On August 14, 1985 the Commission held a public hearing on the issue.

On August 28, 1985 the Commission advised DHS to comply with the ALJ's suggestions to delete the two rule parts in question.

The Commission met its statutory responsibility to DHS by giving its advice within 30 days of the request. Although the advice was not binding, DHS followed it and deleted the two proposed rule parts.

E. DEPARTMENT OF CORRECTIONS (OFFICE OF ADULT RELEASE) POLICY ON RESIDENTIAL CONDITIONS OF SUPERVISED RELEASE OR PAROLE

The Commission held three meetings during 1985-1986 to consider a policy of the Office of Adult Release relating to the residential placement of inmates on supervised release.

After receiving several inquiries from Stillwater inmates about the Department's authority over inmates on supervised release, staff brought the issue before the Commission. The department was using an internal memorandum as a guideline to determine which inmates served their supervised release time in a residential placement or half-way house for chemically dependent persons or sexual offenders. Although DOC twice published this guideline as a proposed rule, the agency never adopted it as a rule, contending that it needs flexibility to make these decisions affecting public safety.

Staff took the position that Minnesota Statutes, Sections 243.05, subdivision 2 and 244.05, subdivision 2 require DOC to adopt as rules the policies concerning placement of inmates on supervised release. Staff therefore recommended that the Commission exercise its authority under Section 14.41 by requesting DOC to hold a public hearing and adopt the policy as a rule.



Without approving the staff recommendation, the Commission directed staff to further research the issue, especially in light of Section 14.02, subdivision 4, clause (b) that exempts DOC from going through the normal APA rulemaking process for rules "relating to the internal management of institutions under the Commissioner's control and those rules governing the inmates thereof prescribed pursuant to Section 609.105;". Specifically, the Commission requested DOC to supply staff with all its departmental rules, guidelines, policies and the like that may be exempt from the normal APA rulemaking process, according to Section 14.02, subdivision 4, clause (b).

Staff found that DOC has many rules and policies that have not been adopted under the APA. While some appear to be merely internal, others appear to be broader in scope. Ultimately, the Commission became interested in the policy behind the exemption for DOC in Section 14.02, subdivision 4, clause (b). At this writing, staff is preparing an Interim Report on its study of this exemption.

#### F. FOLLOW UP: DEPARTMENT OF HUMAN SERVICES RULES RELATING TO DAYCARE

As reported in the LCRAR Biennial Report for 1983-1984, during that biennium the Commission held many meetings about DHS rules relating to the regulation of family and group family daycare homes (Minnesota Rules, Parts 9502.0315-9502.0445).

In October 1985 the issue rose again for review. DHS had revised its rules in April 1985 but they were not fully effective until October 1985, at which time legislative interest rose as complaints were received about extensive regulation in this area.

As requested by Senators Benson, McQuaid, and Kamrath, the LCRAR held a

hearing on October 9, 1985 to follow-up on its recommendations made in February 1984 to DHS; the Department of Administration, Building Code Division; and the Department of Public Safety, Fire Marshall Division. The public testified that the daycare rules were still burdensome, costly, and threatening to the very existence of many daycare homes throughout the state. The departments believed that the revised rules addressed earlier Commission concerns and general legislative direction to maintain a balance between ensuring safety for children while not discouraging the availability of quality daycare services.

Because Senate and House policy committees were already planning to address the issue of daycare regulation during the 1986 session, the Commission directed staff to prepare a summary of the testimony it had received and to refer that summary to the appropriate policy committees.

The Legislature subsequently passed Laws 1986, Chapter 395, the Child Care Services Act.

#### G. REVIEW OF DEPARTMENT OF LABOR AND INDUSTRY ABSENCE FROM PLANT RULE

Representatives Blatz and Gruenes requested a Commission hearing to investigate a rule complaint brought to them by the Minnesota Agri-Growth Council, an organization representing small and large agricultural processing plants. The Absence From Plant rule (Minnesota Rules, Part 5225.1100) prohibits engineers who attend high-pressure boilers in plants from leaving the plant for more than 15 minutes or from being more than 200 feet away from the plant, unless they are replaced by an engineer who has a license not more than one grade below that of the engineer being replaced.

The complaint was that the strict time and distance requirements are outdated and unnecessary in view of the automatic controls and safety devices

now widely available. It was argued that continuous human monitoring of boilers is uneconomical; engineers' time could be more efficiently spent doing other plant chores.

The hearing held September 24, 1986 elicited much response, especially from boiler engineers who expressed concern about boiler safety, if boilers went unmonitored for longer periods of time than provided in the rule.

The Commission directed staff to study the issue, giving special attention to the issue of boiler safety.

#### H. MINNESOTA STATUTES, SECTION 14.12

In early 1986 Commission staff began to study agency efforts to comply with the requirements in Section 14.12 of the Administrative Procedures Act.

It provides:

The agency shall, within 180 days after the effective date of a law requiring rules to be promulgated, unless otherwise specified by law, publish an appropriate notice of intent to adopt a rule in accordance with sections 14.05 to 14.36. If an agency has not given this notice, it shall report to the legislative commission to review administrative rules, other appropriate committees of the legislature, and the governor its failure to do so, and the reasons for that failure.

Section 14.12 is designed to encourage agencies to propose rules within a reasonable time after being given the statutory authority to make them. Since 1983 the LCRAR has been designated as one of the recipients of the agency's report of its failure to meet the 180-day requirement.

At the meeting of June 3, 1986 the Commission heard staff's preliminary report on agency compliance with Section 14.12 in regards to the legislative grants of permanent rulemaking authority enacted in 1985.

Staff found:

- 1) that of the 40 grants of permanent rulemaking authority for 1985, agencies met the 180-day publication requirement in Section 14.12 for only 16 rulemaking grants, or 40%; and
- 2) that there was virtually no compliance with the requirement in section 14.12 that an agency's failure to meet this publication deadline must be reported to the LCRAR and others.

When asked to explain why they had not published their proposed rules in 180 days, agencies cited drafting, negotiation, staff and funding problems. A few agencies concluded they were not required to adopt rules.

Staff sought approval to continue the monitoring project for 1986 rulemaking grants. The Commission approved these staff efforts.

#### I. STAFF RESPONSE TO OTHER COMPLAINTS

In addition to the 13 complaints that led to rule reviews conducted by the Commission, in 1985 and 1986 staff received approximately 70 other complaints.

A small number of them (15) required very little staff effort. Several (10) required much staff effort. Most fell into the middle category of requiring some legislative and rule research, clarification of the problem, and explanation of the statutory authority, the LCRAR's role, and various aspects of the APA process.

A good portion of staff time is spent monitoring legislation affecting rules and rulemaking, acting as a clearing house for information about specific rules, statutes, and APA procedures; and answering questions about state government in general.

## PART TWO: LCRAR PROCEDURES

### A. RULE REVIEW

Complaints or inquiries about rules come to the Commission staff from Commission members, other legislators, individual citizens, or interest groups.

Staff begins preliminary research into the rule's history and statutory authority and contacts the agency for more information.

Sometimes the complaint can be handled with an explanatory phone call or letter from staff. At other times, if a complaint appears to raise issues that may require the attention of the Commission, staff prepares a written preliminary assessment to present at a Commission meeting. This assessment summarizes staff research and analysis to date and recommends whether or not the Commission should proceed to conduct a formal rule review.

The Commission meets to hear the staff's preliminary assessment and public testimony as to whether the complaint is "meritorious and worthy of attention" (Minnesota Statutes, Section 14.40).

Unless a complaint requires no further action, staff then continues to investigate the issues raised and to accomplish other recommendations of the Commission.

At this point the Commission has the option to hold a public hearing about the rule in question and related issues. A public hearing is generally held for the most controversial rules under review.

Finally, staff presents a final written report at a Commission meeting. The Commission decides its course of action. Many options are available. For example, the Commission may refer issues to legislative policy committees for consideration; it may request an agency to amend or adopt a rule; it may

initiate the process of suspending a rule or may proceed to suspend a rule; it may decide no LCRAR action is necessary; or it may have staff continue to monitor an agency's rulemaking process.

#### B. RULE SUSPENSION

Suspension of a rule is a Commission action that temporarily repeals an agency rule, pending ratification of this action by the Legislature. Minnesota Statutes, Sections 14.40, 14.42, and 14.43 provide procedures for suspending a rule.

In practice, the Commission holds one or two rule review hearings about the rule, and then votes to initiate the suspension process. This means that the Commission requests the Speaker of the House and the President of the Senate to refer the question of suspension to appropriate policy committees in each house for committee recommendations. These recommendations are advisory only.

The Commission must wait until it receives the committees' recommendations, or until 60 days have elapsed since the question of suspension was referred to the Speaker of the House and the President of the Senate.

The Commission then votes on whether or not to suspend the rule. A rule is suspended upon an affirmative vote of at least six members of the Commission.

At the next year's session the Commission must introduce a bill to ratify the rule suspension. If this bill does not pass, then upon adjournment of the session the rule is reinstated. If the bill to ratify the rule suspension is passed by both houses and signed by the Governor, the rule is permanently repealed.

C. ADVICE AND COMMENT ON NEED AND REASONABLENESS OF PROPOSED RULES

Minnesota Statutes, Section 14.15, subdivision 4 is the authority for the LCRAR to give its advice and comment on the need or reasonableness of a proposed rule that has gone through a public rulemaking hearing.

At the conclusion of a rulemaking hearing, if the Chief Administrative Law Judge finds that the agency has not demonstrated the need or reasonableness of a particular rule, he or she will prescribe a way to correct this defect. If the agency disagrees with the Chief ALJ and chooses not to correct the rule defect as suggested, the agency must request the LCRAR to give its advice and comment on the proposed rules.

Commission practice is to hold two meetings. At the first meeting, the staff presents an initial report of the issues, and the agency testifies in defense of the need and reasonableness of the rule. Other testimony may also be taken. At the second meeting, staff presents a final report and the Commission gives its advice and comment.

This process must occur within 30 days of the request for the advice and comment made by the agency. If more than 30 days pass, the agency may proceed with its course of action notwithstanding the Commission's advice. In any case, the advice is not binding upon the agency.

PART THREE: LCRAR STATISTICS FOR 1985 AND 1986

1. Number of Commission meetings - 8
2. Number of rule reviews conducted by the Commission - 12

The rule reviews conducted by the Commission in 1985 and 1986 involved the following agencies. Other than DHS, which had 4 rules reviewed, and Department of Commerce, which had 2 rules reviewed, the other agencies were each subject to only one review.

Department of Commerce  
Department of Corrections  
Department of Economic Security  
Department of Energy and Economic Development  
Department of Human Services  
Department of Labor and Industry  
Minnesota Department of Health  
Pollution Control Agency

3. Number of rule complaints received by staff - 85
4. Final Commission actions resulting from rule reviews

Referral to policy committees	7
Initiation of suspension process	3
Further staff study	3
Members sponsored legislation	2
Requested agency to amend rules	1
Submission of advice and comment on proposed rules	1
No formal action: agency initiated rule amendments	2



PART FOUR: STATUTES

LEGISLATIVE REVIEW OF RULES

**14.39 LEGISLATIVE COMMISSION TO REVIEW ADMINISTRATIVE RULES; COMPOSITION; MEETINGS.**

A legislative commission for review of administrative rules, consisting of five senators appointed by the committee on committees of the senate and five representatives appointed by the speaker of the house of representatives shall be appointed. The commission shall meet at the call of its chair or upon a call signed by two of its members or signed by five members of the legislature. The office of chair of the legislative commission shall alternate between the two houses of the legislature every two years.

*History: 1974 c 355 s 69; 1975 c 271 s 6; 1980 c 615 s 1; 1980 c 618 s 26; 1981 c 112 s 1,2; 1981 c 253 s 1; 1981 c 342 art 2 s 1; 1982 c 424 s 130; 1986 c 444*

**14.40 REVIEW OF RULES BY COMMISSION.**

The commission shall promote adequate and proper rules by agencies and an understanding upon the part of the public respecting them. The jurisdiction of the commission includes all rules as defined in section 14.02, subdivision 4. The commission also has jurisdiction of rules which are filed with the secretary of state in accordance with section 14.38, subdivisions 5, 6, 7, 8, 9, and 11 or were filed with the secretary of state in accordance with the provisions of section 14.38, subdivisions 5 to 9, which were in effect on the date the rules were filed. It may hold public hearings to investigate complaints with respect to rules if it considers the complaints meritorious and worthy of attention. If the rules that are the subject of the public hearing were adopted without a rulemaking hearing, it may request the office of administrative hearings to hold the public hearing and prepare a report summarizing the testimony received at the hearing. The office of administrative hearings shall assess the costs of the public hearing to the agency whose rules are the subject of the hearing. The commission may, on the basis of the testimony received at the public hearings, suspend any rule complained of by the affirmative vote of at least six members provided the provisions of section 14.42 have been met. If any rule is suspended, the commission shall as soon as possible place before the legislature, at the next year's session, a bill to repeal the suspended rule. If the bill is not enacted in that year's session, the rule is effective upon adjournment of the session unless the agency has repealed it. If the bill is enacted, the rule is repealed. The commission shall make a biennial report to the legislature and governor of its activities and include its recommendations to promote adequate and proper rules and public understanding of the rules.

*History: 1974 c 355 s 69; 1975 c 271 s 6; 1980 c 615 s 1; 1980 c 618 s 26; 1981 c 112 s 1,2; 1981 c 253 s 1; 1981 c 342 art 2 s 1; 1982 c 424 s 130; 1984 c 655 art 1 s 4; 1Sp1985 c 13 s 84*

**14.41 PUBLIC HEARINGS BY STATE AGENCIES.**

By a vote of a majority of its members, the commission may request any agency issuing rules to hold a public hearing in respect to recommendations made pursuant to section 14.40, including recommendations made by the commission to promote adequate and proper rules by that agency and recommendations contained in the commission's biennial report. The agency shall give notice as provided in section 14.14, subdivision 1 of a hearing thereon, to be conducted in accordance with sections 14.05 to 14.36. The hearing shall be held not more than 60 days after receipt of the request or within any other longer time period specified by the commission in the request.

*History: 1974 c 355 s 69; 1975 c 271 s 6; 1980 c 615 s 1; 1980 c 618 s 26; 1981 c 112 s 1,2; 1981 c 253 s 1; 1981 c 342 art 2 s 1; 1982 c 424 s 130*

#### **14.42 REVIEW BY STANDING COMMITTEES.**

Before the commission suspends any rule, it shall request the speaker of the house and the president of the senate to refer the question of suspension of the given rule or rules to the appropriate committee or committees of the respective houses for the committees' recommendations. No suspension shall take effect until the committees' recommendations are received, or 60 days after referral of the question of suspension to the speaker of the house and the president of the senate. However, the recommendations shall be advisory only.

*History: 1974 c 355 s 69; 1975 c 271 s 6; 1980 c 615 s 1; 1980 c 618 s 26; 1981 c 112 s 1,2; 1981 c 253 s 1; 1981 c 342 art 2 s 1; 1982 c 424 s 130*

#### **14.43 NOTICE OF SUSPENSION.**

In addition to the other requirements of this section, no suspension shall take effect until notice has been published in compliance with section 14.38, subdivision 4. The commission shall send the notice to the State Register.

*History: 1974 c 355 s 69; 1975 c 271 s 6; 1980 c 615 s 1; 1980 c 618 s 26; 1981 c 112 s 1,2; 1981 c 253 s 1; 1981 c 342 art 2 s 1; 1982 c 424 s 130*

#### **14.15 ADMINISTRATIVE LAW JUDGE'S REPORT.**

**Subd. 4. Need or reasonableness not established.** If the chief administrative law judge determines that the need for or reasonableness of the rule has not been established pursuant to section 14.14, subdivision 2, and if the agency does not elect to follow the suggested actions of the chief administrative law judge to correct that defect, then the agency shall submit the proposed rule to the legislative commission to review administrative rules for the commission's advice and comment. The agency shall not adopt the rule until it has received and considered the advice of the commission. However, the agency is not required to delay adoption longer than 30 days after the commission has received the agency's submission. Advice of the commission shall not be binding on the agency.

*History: 1957 c 806 s 2; 1974 c 344 s 1-3; 1975 c 380 s 2; 1975 c 413 s 1; 1976 c 138 s 1; 1977 c 443 s 2; 1980 c 615 s 3-7,9-11,39-50; 1981 c 253 s 5-19; 1981 c 357 s 25; 1Sp1981 c 4 art 2 s 1; 1982 c 424 s 130; 1983 c 210 s 5-7; 1984 c 640 s 10,32*