

1.7 THE CORE AND LCRAR REPORTS

Attention to state agency rulemaking was at a peak in early 1992 when two separate bodies decided to study rulemaking. In February of 1992, the Commission on Reform and Efficiency (CORE) selected administrative rulemaking as one of several topics to study. CORE was a group of 22 citizens appointed by Governor Arne Carlson and the Minnesota Legislature to develop state government reform initiatives. The concern of the members of the Commission was that oversight of rulemaking was weak and rules were often setting policy rather than implementing legislative initiatives. Then, in April of 1992, the Legislative Audit Commission also directed the Legislative Auditor to look at how well rulemaking was working in Minnesota, and to recommend whether any changes to the APA were needed. Each group conducted extensive interviews and issued detailed reports.¹

The CORE staff interviewed agencies, regulated parties, legislators, the attorney general's office, the revisor of statutes, the LCRAR, and OAH. Although CORE made 27 individual recommendations concerning the rulemaking process, it identified the most serious problem as the large scope of authority granted to agencies by the legislature, which then resulted in policy being made by non-elected officials. The group's recommendations were grouped into five areas:

1. *Delegation of rulemaking authority* - CORE recommended that the legislature limit and focus past and future delegation of rulemaking powers, including stating desired outcomes, requiring examination of major cost impacts, and setting a deadline for rulemaking;
2. *Accountability for rules* - CORE recommended that the governor have the opportunity to comment on all rules and help agencies obtain clarification of legislative intent, and that rulemaking authority be limited to governor-appointed commissioners and not be given to independent boards;
3. *Oversight of rulemaking* - CORE recommended that the LCRAR be strengthened or replaced, that it evaluate legislative rulemaking delegations, and that it keep policy committees informed of rules adopted under a delegation originating in the committee;
4. *Amendments to the APA* - CORE recommended that the agencies should be required to provide more information about the task forces formed to work on rules and alternatives considered in rulemaking. CORE also suggested that people requesting a hearing be required to state their objections, and a shorter process be provided to cure substantial change determinations; and
5. *Agency initiatives* - Several changes were recommended by CORE, including better notice of rulemaking, a simplified approval process by the attorney general, repeal of obsolete rules, and exploration of the exemption of interpretative material from rulemaking.

¹ Commission on Reform and Efficiency, *Reforming Minnesota's Administrative Rulemaking System*, DETAILED REPORT (March 1993).

The CORE report was issued in March of 1993 with the stated goal of helping the legislature to regain control over rulemaking.

Generally, the focus of the study by the Legislative Auditor was to gather data about how the rulemaking process was functioning and to determine if it could be improved to make rulemaking more efficient while ensuring the process is open and accessible to the public. The study sought to answer complaints that rulemaking took too long and was too complicated. It also sought to determine whether the public had meaningful input into the process. The interview and data analysis for this study was extensive and thorough. It is a wealth of information about how the rulemaking process actually works in Minnesota. The study has been nationally recognized as an outstanding analysis of a state rulemaking process.

The final report contained a large number of conclusions based upon the data gathered.² The following are among the most significant:

- Approximately 125 rules are adopted each year of which 80 percent are adopted without a hearing and with an average time-frame for adoption of 14 months;
- A small number of rules take an unusually long time to adopt because they are very controversial and because agency staff may proceed at their own pace in drafting a rule;
- Rulemaking is a lengthy process principally due to the demands of rule drafting and the need to accommodate competing interests, not because of procedural requirements in the APA;
- There is a great deal of public input into rulemaking, but negotiating the content of rules to avoid a hearing may exclude some participants.
- The present public notice provisions may be inadequate to ensure timely notice and meaningful participation; and
- Statements of Need and Reasonableness (SONARs) could be improved and receive wider public distribution.
- Rules without a public hearing are not as thoroughly scrutinized as rules with a hearing.

The final report made 14 specific recommendations for improving rulemaking.³ Many were later acted upon by the legislature. The following were among the most important:

1. Agencies should maintain a rulemaking docket to show the status of rulemaking actions;
2. Rules not adopted within 18 months should require reauthorization from the legislature;
3. There should be a single definition of “substantial change” in the APA;

² Office of the Legislative Auditor, *Administrative Rulemaking* (March 1993).

³ Office of the Legislative Auditor, *Administrative Rulemaking* (March 1993).

4. Notice efforts by agencies should be part of the record and subject to external review;
5. Exempt rules should be reviewed;
6. OAH should review all rules; and
7. Legislative rule review should be strengthened.

The Legislative Auditor's recommendations were intended to shorten the rule process, ensure minimum due process, strengthen legislative oversight, and minimize requirements that may be appropriate for only a few rules.