

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

State of Minnesota



DEPARTMENT OF PERSONNEL
3rd Floor Space Center
444 Lafayette Road
St. Paul, Minnesota 55101
(612) 296-2616

February 23, 1981

The Honorable Warren Spannaus
Attorney General
State of Minnesota
Room 102, State Capitol
St. Paul, Minnesota 55155

RE: In the Matter of the Proposed Amendment of Rules of the Department of Employee Relations Governing the Statewide Affirmative Action Program

Dear Attorney General Spannaus:

A rule hearing was conducted on the above-captioned rules on November 25, 1980. The Hearing Examiner has completed his review and we are now submitting these rules to you for your review as to form and legality. The rules are adopted as originally proposed with certain minor changes approved by the Hearing Examiner and indicated in red on one of the enclosed copies of the Rules as Adopted.

Your prompt attention would be very much appreciated.

Yours very truly,

Barbara L. Sundquist

Barbara L. Sundquist
Commissioner

RECEIVED
FEB 23 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Our File No. 677

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 2/23
DATE FOR REVIEW 3/6
DATE DUE 3/16

Adopted w/a hearing X
Adopted w/o a hearing
Temporary rule

Approved 3/10 Disapproved Returned to Agency called 3/10 - Hoag & Jan. send interoff

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 3/10

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 2.23.81

✓ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
11.25.80 Date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice of rulemaking
10.15.80 At least 30 days prior to hearing/~~adoption~~

✓ Mailing list Certificate

✓ Publication in State Register
10.20.80 At least 30/~~20~~ days prior to hearing/~~adoption~~
copy part of record as Ex. 8

✓ Hearing Examiner's Report

N/A Chief Hearing Examiner's Report(s)
Approving H.E.'s Report
Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

NOTICE OF HEARING ON PROPOSED RULES

RECEIVED
OCT 3 1980
ADMINISTRATIVE
HEARINGS

In the Matter of the Proposed
Rules of the Department of Employee
Relations Governing the Statewide
Affirmative Action Program

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4, in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota 55155 commencing at 9:00 a.m. on Tuesday, November 25, 1980 and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate concerning the proposed rules captioned above. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Peter Erickson, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, either before the hearing or within five (5) working days after the close of the hearing, unless the hearing examiner orders at the hearing that the record will remain open for a longer period, not to exceed 20 calendar days. All such statements will be entered into and become part of the record. Testimony or other evidence to be submitted for consideration should be pertinent to the matter at hand. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, in order to save time

and avoid duplication, it is suggested that those persons, organizations or assocations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The conduct of the hearing shall be governed by the rules of the Office of Administrative Hearings, Minn. Stat. §§ 15.0411 - 15.0417 and 15.052 and by 9 MCAR §§ 2.101 - 2.113 (Minnesota Code of Agency Rules). Questions relating to procedures may be directed to Hearing Examiner Peter Erickson.

Notice: The proposed rules may be modified as the result of the hearing process. The Department therefore strongly urges those who are potentially affected in any manner by the proposed rules to participate in the hearing process.

If adopted, the rules proposed by the Commissioner of Employee Relations would implement Minn. Stat. § 43.15, clarifying and interpreting the obligations of all state agencies to develop and administer a statewide affirmative action program. The proposed rules establish minimum standards and guidelines for individual state agencies' affirmative action efforts, delineating certain responsibilities, establishing a framework for setting goals and timetables, requiring an internal procedure for resolution of employee complaints of discrimination, providing for methods of auditing, evaluating and reporting program results, in an effort to achieve progress in eliminating under-utilization of protected groups in the state service. The authority of the Commissioner to promulgate the proposed rules on the Statewide Affirmative Action Program is contained in Minn. Stat. § 43.15 (1978).

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing to the Minnesota Department of Employee Relations, 3rd Floor, Space Center Building, 444 Lafayette Road, St. Paul,

Minnesota 55101. Additional copies will be available at the door on the date of the hearing.

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all of the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge. 9

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five (5) working days. Any person may also request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be so notified, you may so indicate at the hearing. 8 After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 supplement) as an individual:

6

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in

any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

Questions concerning lobbyists or their required registration should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155, at telephone number (612) 296-5616.

Promulgation of the proposed rules will not result in the expenditures of public monies by local public bodies.

October 3, 1980

Barbara L. Sundquist
Commissioner of Employee Relations

James W. Geissner

By: James W. Geissner
Deputy Commissioner
Department of Employee Relations

Dept. Ex 3

RECEIVED
OCT 23 1980
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of the Proposed Rules of the Department of Employee Relations Governing the Statewide Affirmative Action Program

AFFIDAVIT OF MAILING OF AGENCY RULEMAKING NOTICE LIST

Affiant, being first duly sworn, deposes and says:

That on the 15 day of October, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States Mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage paid to all persons and associations at the addresses listed on the attached Agency Rulemaking Notice List.

FURTHER AFFIANT SAYETH NOT.

Patrick Halloran

Subscribed and sworn to before me this 15 day of October, 1980.

Christine F. Goodwill
Notary Public

CHRISTINE F. GOODWILL
NOTARY PUBLIC - MINNESOTA
DAKOTA COUNTY
MY COMMISSION EXPIRES NOV. 18, 1982

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

RECEIVED
OCT 3 1980
ADMINISTRATIVE
HEARINGS

In the Matter of the Proposed
Rules of the Department of Employee
Relations Governing the Statewide
Affirmative Action Program

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota 55155 commencing at 9:00 a.m. on Tuesday, November 25, 1980 and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that the Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Department of Employee Relations for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

BARBARA L. SUNDQUIST, Commissioner
Department of Employee Relations

James W. Geissner

By: James W. Geissner
Deputy Commissioner
Department of Employee Relations

SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Barbara Sundquist
Commissioner
Department of Employee Relations

DATE: 3/10/81

: Andrea Kircher, Special Assistant Attorney General

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 6-4692

SUBJECT: In the Matter of the Proposed Amendment of Rules of the Department of Employee Relations Governing the Statewide Affirmative Action Program

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

JSA/gy

Enc.

cc: Duane Harves
Susan Robertson

Dept. Ex 7
(Attachment)

Department of Personnel

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Statewide Affirmative Action Program

Notice is hereby given that the Department of Personnel is seeking information or opinions from sources outside the agency in preparing to propose rules implementing laws of 1978, ch. 708 relating to the statewide affirmative action program.

The department invites interested persons or groups to submit information or comments on the statewide affirmative action plan in writing or orally to Stanley Gardner, State Director of Equal Opportunity, 3rd Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101.

Department of Public Welfare
Medical Assistance Division

Correction to Notice of Extension of Comment Period Concerning the Surveillance and Utilization Review Program

This notice hereby corrects an error in the Department of Public Welfare's extension of the comment period for the Notice of Solicitation of Outside Opinion concerning draft Rule DPW 64, published at *State Register*, Monday, September 18, 1978 (3 S.R. 583).

The extension notice incorrectly referred to Rule DPW 64, Surveillance and Utilization Review, as a proposed rule. Rule DPW 64 is not a proposed rule: rather, it is a rule in working draft stage only.

Rules as Proposed

Chapter Eighteen: 2 MCAR §§ 2.201-2.269 Definitions

2 MCAR § 2.201. "Affirmative Action" means a management posture or point of view that all barriers to employment opportunity that are not based on specific job requirements should be identified and removed; further, that initial employment and advancement opportunities for persons in protected groups shown to be underutilized in an agency's work force should be facilitated so that the imbalance is redressed.

2 MCAR § 2.202. "Affirmative Action Plan" means a coherent set of management policies and procedures designed to find the barriers contributing to imbalance in an agency's workforce and to foster the correction of any imbalances which are found to exist.

2 MCAR § 2.~~201~~ 203 "Agency".

2 MCAR § 2.~~202~~ 204 "Agency Promotional List"

2 MCAR § 2.205. "Agency Subdivision" for purposes of affirmative action, means a state hospital/nursing home, state school, state university, community college, correctional facility or regional or district office under the jurisdiction of a state agency, which is geographically separate and which has an appointing authority.

2 MCAR § 2.~~203~~ 206 "Allocation"

2 MCAR § 2.~~024~~ 207 "Appointing Authority"

2 MCAR § 2.~~205~~ 208 "Board"

2 MCAR § 2.~~206~~ 209 "Class"

2 MCAR § 2.~~207~~ 210 "Commission"

2 MCAR § 2.~~2071~~ 211 "Continuous Service"

2 MCAR § 2.~~208~~ 212 "Craft"

2 MCAR § 2.2121. "Craft-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.212 and 2.259.

2 MCAR § 2.~~209~~ 213 "Day"

2 MCAR § 2.~~210~~ 214 "Demotion"

2 MCAR § ~~2.~~211 215 "Department"

2 MCAR § 2.~~212~~ 216 " "Disabled Veteran"

2 MCAR § 2.~~213~~ 217 "Disabled Veterans' Preference"

2 MCAR § 2.~~214~~ 218 "Eligible"

2 MCAR § 2.~~215~~ 219 "Eligible List"

2 MCAR § 2.~~2151~~ 220 "Emergency Employee"

2 MCAR § 2.~~2152~~ 221 "Exclusive Representative"

2 MCAR § 2.~~216~~ 222 "Exist or Existing"

2 MCAR § 2.~~2161~~ 223 "Full-time Employee"

2 MCAR § 2.224. "Goal" means a numerical objective designed to correct an identified deficiency in the utilization of protected group members.

2 MCAR § 2.225. "Handicapped" means any person who:

A. has a physical or mental impairment which substantially limits one or more major life activities,

B. has a record of such an impairment, or

C. is regarded as having such an impairment.

For purposes of these rules, the term "handicapped" does not include any individual who is an alcohol or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

2 MCAR § 2.~~2162~~ 226" Intermittent Employee"

2 MCAR § 2.~~217~~ 227 "Intern"

2 MCAR § 2.228. "Labor Force Statistics" means figures as determined by the most recent Federal census published by the U.S. Department of Commerce, Bureau of the Census on the estimated number of persons sixteen (16) years of age or

over who are working or are seeking work or who are unemployed at the time.

2 MCAR § 2.229. "Labor Market Area" means a geographic area in which an employer is seeking a particular occupational category of worker and there is an available supply of workers seeking jobs in that occupational category.

2 MCAR § 2.~~218~~ 230 "Laborer"

2 MCAR § 2.2301. "Laborer-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.230 and 2.259.

2 MCAR § 2.~~219~~ 231 "Law"

2 MCAR § 2.~~220~~ 232 "Layoff List"

2 MCAR § 2.~~221~~ 233 "Leadworker"

2 MCAR § 2.~~222~~ 234 "Managerial"

2 MCAR § 2.~~223~~ 235 "Military Leave"

2 MCAR § 2.~~224~~ 236 "Occupational Category" means one of the groups of classes ~~established under 2 MCAR § 2.172, and~~ defined in 2 MCAR § 2.212, 2.2121., 2.230, 2.301A., 2.234, 2.237, 2.2371., 2.239, 2.2391., 2.249, 2.2491., 2.256, 2.2561., ~~2.246 and~~ 2.260 and 2.2601.

2 MCAR § 2.~~225~~ 237 "Office/Clerical"

2 MCAR § 2.2371. "Office/Clerical-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.237 and 2.259.

2 MCAR § 2.~~226~~ 238 "Open Competitive List"

2 MCAR § 2.~~227~~ 239 "Operative"

2 MCAR § 2.2391. "Operative-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.239 and 2.259.

2 MCAR § 2.~~228~~ 240 "Organization Unit"

2 MCAR § 2.~~229~~ 244 "Original Appointment"

2 MCAR § 2.~~230~~ 242 "Overtime"

2 MCAR § 2.~~231~~ 243 "Part-time Employee"

2 MCAR § 2.~~232~~ 244 "Permanent Employee"

2 MCAR § 2.~~233~~ 245 "Pre-Service Trainee"

2 MCAR § 2.~~234~~ 246 "Position"

2 MCAR § 2.~~235~~ 247 "Probationary Employee"

2 MCAR § 2.~~236~~ 248 "Probationary Period"

2 MCAR § 2.~~237~~ 249 "Professional"

2 MCAR § 2.2491. "Professional-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.249 and 2.259.

2 MCAR § 2.~~238~~ 250 "Promotion"

2 MCAR § 2.251 "Protected Group" means all groups defined as "protected group" by Minn. Stat. § 43.15, subd. 1. See also definition of "Handicapped", 2 MCAR § 2.225.

2 MCAR § 2.~~239~~ 252 "Provisional Employee"

2 MCAR § 2.~~240~~ 253 "Reclassification"

2 MCAR § 2.~~241~~ 254 "Reemployment List"

2 MCAR § ~~2.~~242 255 "Seasonal"

2 MCAR § 2.~~243~~ 256 "Service

2 MCAR § 2.2561. "Service-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.256 and 2.259.

2 MCAR § 2.~~444~~ 257 "Statewide Promotional List"

2 MCAR § 2.~~245~~ 258 "Student Worker"

2 MCAR § 2.~~246~~ 259 "Supervisory"

2 MCAR § 2.~~247~~ 260 "Technical/Professional"

2 MCAR § 2.2601. "Technical/Paraprofessional-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.260 and 2.259.

2 MCAR § 2.~~248~~ 261 "Temporary Employee"

2 MCAR § 2.262. "Timetable" means a prescribed reasonable time period in which affirmative action goals are expected to be achieved.

2 MCAR § 2.~~249~~ 263 "Transfer"

2 MCAR § 2.264. "Underutilization" means the employment, in an occupational category, of fewer qualified protected group members than would reasonably be expected by their availability in the labor market area.

2 MCAR § 2.~~250~~ 265 "Unlimited Employee"

2 MCAR § 2.~~251~~ 266 " Veteran"

2 MCAR § 2.~~252~~ 267 "Veterans Preference"

2 MCAR § 2.~~253~~ 268 "Work Assignment, Change In"

2 MCAR § ~~2.~~254 269 "Working Day"

2 MCAR §§ 2.~~255~~ 270 - 2.274 Reserved for future use.

Chapter Twenty: 2 MCAR §§ 2.290-2.299 Statewide Affirmative Action Program

2 MCAR § 2.290 Policy. It is the policy of the State of Minnesota to implement and maintain an affirmative action program designed to eliminate underutilization of qualified protected group members within the state civil service through a series of specific results oriented procedures combined with good faith effort.

2 MCAR § 2.291 Scope. The provisions of this chapter shall apply to all agencies in the executive branch and to both classified and unclassified positions of those agencies, notwithstanding 2 MCAR § 2.004. In event of a conflict or duplication between requirements of these rules and federal regulations and at the request of the agency head, the Commissioner shall permit an agency to substitute a federally required procedure for a similar procedure otherwise required by these rules.

2 MCAR § 2.292 Responsibilities and accountabilities of the Agency Head.

A. The agency head shall be responsible for administering the agency's Affirmative Action Program in compliance with existing laws, federal regulations and state rules.

B. The agency head shall be accountable to the Governor and to the Commissioner for affirmative action compliance.

2 MCAR § 2.293 Requirements for agency affirmative action plans.

A. The head of each agency with twenty-five (25) or more employees shall submit to the Commissioner an agency affirmative action plan that shall contain at least the following but at the discretion of the agency head may contain other provisions not in conflict with these rules:

1. Identification of the protected group or groups covered by the affirmative action plan.

2. Designations of those persons or groups responsible for directing and implementing the agency affirmative action program and the specific responsibilities, accountabilities, and duties of each person or group.

3. Statement of the agency head's commitment to affirmative action program and to the implementation of the agency affirmative action plan.

4. Location of posting of the agency's affirmative action plan.

5. Description of methods by which the agency affirmative action program is communicated internally and externally to employees and other interested persons.

6. Description of internal procedure for processing complaints of alleged discrimination from employees.

a. The initial step shall provide for a determination as to whether the complaint is properly a discrimination complaint and, therefore, appropriate to be addressed by the internal procedure. Time limits on such determinations shall be established to permit the employee to pursue a complaint determined to be other than a discrimination complaint through other appropriate grievance procedures in accordance with the time limitations of those procedures.

b. Complaint procedures shall provide for a final written answer within sixty (60) days of the filing of a formal complaint.

c. Disposition of complaints shall be filed with the Commissioner within thirty (30) days of final determination.

7. Goals and timetables that shall be established using the following standards.

a. Numerical goals shall be established for the agency and for each agency's subdivision with 25 or more employees that is in a geographic location with a labor market area separate from that of the central office.

b. Agency heads shall use labor force statistics from census data when available to examine work force participation, or when an agency requests the authority to substitute more specific data, the Commissioner shall consider alternative data sources and determine their applicability based on the following criteria:

1. the objectivity of the supplying organization,

2. the reliability of satistical procedures used to generate the data, and

3. comparability of data categories (occupational, geographic, handicapping condition, for example) used.

c. Underutilization of protected groups shall be determined using statistical formulae which shall be based on the following criteria:

1. Types of jobs within each agency and agency subdivision;

2. Number of employees in those jobs, by state class title and by protected group;

3. Availability of protected group workers having the qualifications for those jobs and;

4. Geographic locations and applicable labor market areas for each type of job in each agency and agency subdivision.

d. Goals shall be established for each occupational category by protected group based upon a comparison of the composition of the agency or the agency's subdivision work force to the composition of workers in an identified labor market area.

e. Goals shall be established for each occupational category by protected group for which the comparison shows an underutilization of one or more protected groups.

f. Timetables shall be established to meet goals based upon turnover and hire rates within each occupational category in the agency or within each agency subdivision.

8. Identification and description of methods for developing programs and program objectives designed to meet affirmative action goals.

9. Methods of auditing, evaluating, and reporting program success to include a procedure that requires pre-employment review of all hiring decisions for occupational categories with unmet affirmative action goals.

10. The official affirmative action transmittal form which provides for section by section verification of the plan's components.

B. The head of each agency with fewer than twenty-five (25) employees shall submit to the Commissioner an agency affirmative action plan that shall contain the following:

1. Statement of the agency head's commitment to the affirmative action program.

2. Statement of the agency head's objective to hire members of protected groups when vacancies occur if an apparent underutilization of protected group members exists in the agency work force.

3. Description of internal procedure for processing complaints of alleged discrimination from employees.

a. The initial step shall provide for a determination as to whether the complaint is properly a discrimination complaint and, therefore, appropriate to be addressed by the internal procedure. Time limits on such determinations shall be so established to permit the employer to pursue a complaint determined to be other than a discrimination complaint through other appropriate grievance procedures in accordance with the time limitations of those procedures.

b. Complaints procedures shall provide for final written answer within sixty (60) days of filing of a formal complaint.

c. Disposition of complaints shall be filed with the Commissioner within thirty (30) days of the final determination.

2 MCAR § 2.294 Affirmative Action Plan Review.

A. Agency heads shall submit an affirmative action plan annually to the State Director of Equal Employment Opportunity, within thirty (30) days following the end of the prior fiscal year.

B. Within thirty (30) days of receipt of the agency plan, the State Director of Equal Employment Opportunity shall review the agency affirmative action plan and shall notify the agency head of the approval or of the need to modify the plan.

C. The State Director of Equal Employment Opportunity shall approve an agency plan which meets the requirements of the foregoing rules and shall indicate the basis on which an agency affirmative action plan was not approved.

D. An agency affirmative action plan that is not approved by the State Director of Equal Employment Opportunity shall be modified as necessary by the agency head and resubmitted to the State Director of Equal Employment Opportunity within thirty (30) days from the date of notification.

E. The State Director of Equal Employment Opportunity shall respond within ten (10) days of receipt of the resubmitted affirmative action plan.

2 MCAR § 2.295 Reporting Requirements.

A. Agency heads with twenty-five (25) or more employees shall submit quarterly to the Commissioner a report of the agency's efforts to meet affirmative action goals and the progress resulting from those efforts.

B. Agency heads with fewer than twenty-five (25) employees shall submit semi-annually to the Commissioner a report of the agency's efforts to meet affirmative action objectives and the progress resulting from those efforts.

C. Reports shall be due thirty (30) days following the close of the reporting period.

D. Agency heads shall submit biennially to the Governor and to the Legislature with a copy to the Commissioner a report on the implementation of the agency affirmative action plan as part of the agency budget request.

Chapter Eighteen: 2 MCAR §§ 2.201-2.269 Definitions

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2 MCAR § 2.~~223~~ 235 "Military Leave"

2 MCAR § 2.~~224~~ 236 "Occupational Category" means one of the groups of classes ~~established-under-2-MCAR-§-2.172,-and~~ defined in 2 MCAR § 2.212, 2.2121., 2.230, 2.301A., 2.234, 2.237, 2.2371., 2.239, 2.2391., 2.249, 2.2491., 2.256, 2.2561., ~~2.246-and~~ 2.260 and 2.2601.

2 MCAR § 2.~~225~~ 237 "Office/Clerical"

2 MCAR § 2.2371. "Office-Clerical-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.237 and 2.259.

2 MCAR § 2.~~226~~ 238 "Open Competitive List"

2 MCAR § 2.~~227~~ 239 "Operative"

2 MCAR § 2.2391. "Operative-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.239 and 2.259.

2 MCAR § 2.~~228~~ 240 "Organization Unit"

2 MCAR § 2.~~229~~ 244 "Original Appointment"

2 MCAR § 2.~~230~~ 242 "Overtime"

2 MCAR § 2.~~231~~ 243 "Part-time Employee"

2 MCAR § 2.~~232~~ 244 "Permanent Employee"

2 MCAR § 2.~~233~~ 245 "Pre-Service Trainee"

2 MCAR § 2.~~234~~ 246 "Position"

2 MCAR § 2.~~235~~ 247 "Probationary Employee"

2 MCAR § 2.~~236~~ 248 "Probationary Period"

2 MCAR § 2.~~237~~ 249 "Professional"

2 MCAR § 2.2491. "Profe[redacted]onal-Supervisory" means those [redacted]itions which meet the definitions of both 2 MCAR §§ 2.249 and 2.259.

2 MCAR § 2.~~238~~ 250 "Promotion"

2 MCAR § 2.251 "Protected Group" means all groups defined as "protected group" by Minn. Stat. § 43.15, subd. 1. See also definition of "Handicapped", 2 MCAR § 2.225.

2 MCAR § 2.~~239~~ 252 "Provisional Employee"

2 MCAR § 2.~~240~~ 253 "Reclassification"

2 MCAR § 2.~~241~~ 254 "Reemployment List"

2 MCAR § ~~2.~~242 255 "Seasonal"

2 MCAR § 2.~~243~~ 256 "Service

2 MCAR § 2.2561. "Service-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.256 and 2.259.

2 MCAR § 2.~~444~~ 257 "Statewide Promotional List"

2 MCAR § 2.~~245~~ 258 "Student Worker"

2 MCAR § 2.~~246~~ 259 "Supervisory"

2 MCAR § 2.~~247~~ 260 "Technical/Professional"

2 MCAR § 2.2601. "Technical/Paraprofessional-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.260 and 2.259.

2 MCAR § 2.~~248~~ 261 "Temporary Employee"

2 MCAR § 2.262. "Timetable" means a prescribed reasonable time period in which affirmative action goals are expected to be achieved.

2 MCAR § 2.~~249~~ 263 "Transfer"

2 MCAR § 2.264. "Underutilization" means the employment, in an occupational category, of fewer qualified protected group members than would reasonably be expected by their availability in the labor market area.

2 MCAR § 2.~~250~~ 265 "Unlimited Employee"

2 MCAR § 2.~~251~~ 266 " Veteran"

2 MCAR § 2.~~252~~ 267 "Veterans Preference"

2 MCAR § 2.~~253~~ 268 "Work Assignment, Change In"

2 MCAR § 2.~~254~~ 269 "Working Day"

2 MCAR §§ 2.~~255~~ 270 - 2.274 Reserved for future use.

2 MCAR § 2.290 Policy. It is the policy of the State of Minnesota to implement and maintain an affirmative action program designed to eliminate underutilization of qualified protected group members within the state civil service through a series of specific result oriented procedures combined with good faith effort.

2 MCAR § 2.291 Scope. The provisions of this chapter shall apply to all agencies in the executive branch and to both classified and unclassified positions of those agencies, notwithstanding 2 MCAR § 2.004. In the event of a conflict or duplication between requirements of these rules and federal regulations and at the request of the agency head, the Commissioner shall permit an agency to substitute a federally required procedure for a similar procedure otherwise required by these rules.

2 MCAR § 2.292 Responsibility and accountability of the Agency Head.

A. The agency head shall be responsible for administering the agency's Affirmative Action Program in compliance with existing laws, federal regulations and state rules.

B. The agency head shall be accountable to the Governor and to the Commissioner for affirmative action compliance.

2 MCAR § 2.293 Requirements for agency affirmative action plans.

A. The head of each agency with twenty-five (25) or more employees shall submit to the Commissioner an agency affirmative action plan that shall contain at least the following but at the discretion of the agency head may contain other provisions not in conflict with these rules:

1. Identification of the protected group or groups underrepresented in the agency's work force and, therefore, covered by the affirmative action plan.

2. Designations of those persons or groups responsible for directing and implementing the agency affirmative action program and the specific responsibility, accountability, and duties of each person or group.

3. Statement of the agency head's commitment to affirmative action program and to the implementation of the agency affirmative action plan.

4. Specify a readily accessible location for the posting of the agency's affirmative action plan.

5. Description of methods by which the agency affirmative action program is communicated internally and externally to employees and other interested persons.

6. Description of internal procedure for processing complaints of alleged discrimination from employees.

a. The initial step shall provide for a determination as to whether the complaint is properly a discrimination complaint and, therefore, appropriate to be addressed by the internal procedure. Time limits on such determinations shall be established to permit the employee to pursue a complaint determined to be other than a discrimination complaint through other appropriate grievance procedures in accordance with the time limitations of those procedures.

b. Complaint procedures shall provide for a final written answer within sixty (60) days of the filing of a formal complaint.

c. Disposition of complaints shall be filed with the Commissioner within thirty (30) days of final determination.

7. Goals and timetables that shall be established using the following standards.

a. Numeri[redacted] goals shall be established fo[redacted]he agency and for each agency's subdivision with 25 or more employees that is in a geographic location with a labor market area separate from that of the central office.

b. Agency heads shall use labor force statistics from census data when available to examine work force participation, or when an agency requests the authority to substitute more specific data, the Commissioner shall consider alternative data sources and determine their applicability based on the following criteria:

1. the objectivity of the supplying organization,

2. the reliability of satistical procedures used to generate the data, and

3. comparability of data categories (occupational, geographic, handicapping condition, for example) used.

c. Underutilization of protected groups shall be determined using statistical formulae which shall be based on the following criteria:

1. Types of jobs within each agency and agency subdivision;

2. Number of employees in those jobs, by state class title and by protected group;

3. Availability of protected group workers having the qualifications for those jobs and;

4. Geographic locations and applicable labor market areas for each type of job in each agency and agency subdivision.

d. Goals shall be established for each occupational category by protected group based upon a comparison of the composition of the agency or the agency's subdivision work force to the composition of the relevant civilian labor force in an identified labor market area.

e. Goals shall be established for each occupational category by protected group for which the comparison shows an underutilization of one or more protected groups.

f. Timetables shall be established to meet goals based upon turnover and hire rates within each occupational category in the agency or within each agency subdivision.

8. Identification and description of methods for developing programs and program objectives designed to meet affirmative action goals.

9. Methods of auditing, evaluating, and reporting program success to include a procedure that requires pre-employment review of all hiring decisions for occupational categories with unmet affirmative action goals.

10. The official affirmative action transmittal form which provides for section by section verification of the plan's components.

B. The head of each agency with fewer than twenty-five (25) employees shall submit to the Commissioner an agency affirmative action plan that shall contain the following:

1. Statement of the agency head's commitment to the affirmative action program.

2. Statement of the agency head's objective to hire members of protected groups when vacancies occur if an apparent underutilization of protected group members exists in the agency work force.

3. Description of internal procedure for processing complaints of alleged discrimination from employees.

a. The initial step shall provide for a determination as to whether the complaint is properly a discrimination complaint and, therefore, appropriate to be addressed by the internal procedure. Time limits on such determinations shall be so established to permit the employee to pursue a

complaint determined to [redacted]other than a discrimination co[redacted]aint through other appropriate grievance procedures in accordance with the time limitations of those procedures.

b. Complaints procedures shall provide for final written answer within sixty (60) days of filing of a formal complaint.

c. Disposition of complaints shall be filed with the Commissioner within thirty (30) days of the final determination.

2 MCAR § 2.294 Affirmative Action Plan Review.

A. Agency heads shall submit an affirmative action plan annually to the State Director of Equal Employment Opportunity, within thirty (30) days following the end of the prior fiscal year.

B. Within thirty (30) days of receipt of the agency plan, the State Director of Equal Employment Opportunity shall review the agency affirmative action plan and shall notify the agency head of the approval or of the need to modify the plan.

C. The State Director of Equal Employment Opportunity shall approve an agency plan which meets the requirements of the foregoing rules and shall indicate the basis on which an agency affirmative action plan was not approved.

D. An agency affirmative action plan that is not approved by the State Director of Equal Employment Opportunity shall be modified as necessary by the agency head and resubmitted to the State Director of Equal Employment Opportunity within thirty (30) days from the date of notification.

E. The State Director of Equal Employment Opportunity shall respond within ten (10) days of receipt of the resubmitted affirmative action plan.

2 MCAR § 2.295 Reporting requirements.

A. Agency heads with twenty-five (25) or more employees shall submit quarterly to the Commissioner a report of the agency's efforts to meet affirmative action goals and the progress resulting from those efforts.

B. Agency heads with fewer than twenty-five (25) employees shall submit semi-annually to the Commissioner a report of the agency's efforts to meet affirmative action objectives and the progress resulting from those efforts.

C. Reports shall be due thirty (30) days following the close of the reporting period.

D. Agency heads shall submit to the Commissioner, concurrent with the biennial agency budget request, a report on the results of the agency's affirmative action plan. The Commissioner shall submit these reports to the Governor and the Legislature.

AFFIRMATIVE ACTION PLAN
Fiscal Year _____
For

_____
(Agency or Agency Subdivision)

1. This annual review revealed underutilization of the following protected group(s) in the following occupational categories: (Check each category apporpriate)

OCCUPATIONAL CATEGORIES	PROTECTED GROUPS			
	WOMEN	MINORITIES	HANDICAPPED	VETERANS
Unclassified				
Management				
Professional-S				
Professional				
Technical-S				
Technical				
Crafts-S				
Crafts				
Office-S				
Office				
Operative-S				
Operative				
Laborer-S				
Laborer				
Service-S				
Service				

2. This annual plan is and will be posted at the following central location so that every employee is aware of the agency's commitments in affirmative action for the year.

_____

3. This annual plan contains an internal procedure for processing complaints of alleged discrimination from employees, and each employee has been apprised of this procedure as well as our agency's affirmative action goals for this fiscal year.

_____ _____
Affirmative Action Officer Date

4. This annual plan contains clear designations of those persons and groups responsible for implementing the attached affirmative action plan as well as my personal statement of commitment to achieving the goals and timetables described herein.

_____ _____
Agency Head Date

5. This annual plan meets the rules governing affirmative action, Chapter 20: 2 MCAR 2.290-2.299, and contains goals and timetables as well as methods for achieving them which are reasonable and sufficiently aggressive to deal with the identified disparities.

_____ _____
Equal Opportunity Division Date

RECEIVED Dept Ex.

OCT 23 1980

ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of the Proposed Rules of the Department of Employee Relations Governing the Statewide Affirmative Action Program

AFFIDAVIT OF MAILING OF DISCRETIONARY NOTICE LIST

Affiant, being first duly sworn, deposes and says:

That on the 15 day of October, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States Mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage paid to all persons and associations at the addresses listed on the attached Agency Discretionary Notice List.

FURTHER AFFIANT SAYETH NOT.

Patrick Halloran

Subscribed and sworn to before me this 15 day of October, 1980.

Christine F. Goodwill

Notary Public

CHRISTINE F. GOODWILL
NOTARY PUBLIC - MINNESOTA
DAKOTA COUNTY
MY COMMISSION EXPIRES NOV. 18, 1982

Dept. Ex 2

STATE OF MINNESOTA

COUNTY OF RAMSEY

RECEIVED
OCT 23 1980
ADMINISTRATIVE HEARINGS

In the Matter of the Proposed
Rules of the Department of Employee
Relations Governing the Statewide
Affirmative Action Program

CERTIFICATION

I hereby certify that the attached 42 labels and 1 sheets constitute the complete and accurate list of persons, associations, and other interested groups who, as of 11 a.m., this 15 day of Oct, 1980, have requested pursuant to Minn. Stat. § 15.0412, subd. 4, (1978), as amended by Laws of 1980, ch. 615 § 6, that their names be placed on the agency Rulemaking Notice List for the purpose of receiving notice of public hearings on proposed rules on the subject captioned above.

DEPARTMENT OF EMPLOYEE RELATIONS

Patrick Halvorsen

Patrick Halvorsen, Director
Evaluation and Planning

DOER-81-002-PE

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of Proposed Rules Governing the Statewide Affirmative Action Program.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson of the State Office of Administrative Hearings at 9:00 a.m. on Tuesday, November 25, 1980, in Room 83 of the State Office Building, St. Paul, Minnesota.

Andrea Kircher, Special Assistant Attorney General, appeared on behalf of the Department of Employee Relations. Pearl Mitchell, Assistant Commissioner, Patrick Halvorsen, Director of Planning and Evaluation, Catherine Warrick, Acting Manager of the Equal Opportunity Division, and Julie Vikmanis, Manager of the Examining and Referral Division, appeared and testified in support of the proposed rules on behalf of the Department. In addition, Rachael Rohde, Hennepin County personnel representative, and Anna Wooten, president of B.T.W. Associates, Inc., testified on behalf of the Department. The hearing continued until all interested groups or persons had had an opportunity to testify concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. § 15.0412, subd. 4d and 4e (1980), this Report shall be available for review to all affected individuals upon request for at least five working days. Thereafter, the Commissioner of Employee Relations shall, if he proposes to adopt the rule as recommended herein, submit the rule, together with the complete hearing record to the Attorney General and shall be responsible for notifying persons who have indicated that they wish to be notified of such filing. If the Commissioner makes changes in the rule other than those recommended herein, he shall submit the rule with the complete hearing record to the Chief Hearing Examiner for a review of the changes prior to submitting it to the Attorney General for review.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On October 3, 1980, the Department filed the following documents with the Chief Hearing Examiner:

   (a) A copy of the proposed rules.
   (b) The Order for Hearing.
   (c) The Notice of Hearing proposed to be issued.
   (d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On October 20, 1980, a Notice of Hearing and a copy of the proposed rules were published at 5 State Register 627.

3. On October 15, 1980, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Department of Employee Relations for the purpose of receiving such notice.

4. On October 23, 1980, the Department filed the following documents:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.
(c) The Affidavit of Mailing the Notice to all persons on the Agency's list.
(d) The Statement of Need and Reasonableness.
(e) The names of Department personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
(f) A copy of the State Register containing the proposed rules.
(g) An Affidavit of Additional Notice.
(h) All materials received following a Notice of Intent to Solicit Outside Opinion published at 3 State Register 740, October 16, 1978.

The documents were available for inspection at the Office of Administrative Hearings from the date of filing to the date of the hearing.

5. The record remained open through December 16, 1980 for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

6. Statutory authority to promulgate the proposed rules is contained in Minn. Stat. § 43.15 (1979 Supp.), as amended by Laws of 1980, Ch. 614, § 69.

7. At hearing, the Department made several clerical and one substantive change to the proposed rules as published. They are:

2 MCAR § 2.290 ". . . results oriented procedures. . ." should read ". . . result oriented procedures. . .". ✓ p.8

2 MCAR § 2.291 "In event of a conflict . . ." should read "In the event of a conflict. . .". ✓ p.8

2 MCAR 2.292 "Responsibilities and accountabilities of the Agency Head" should read "Responsibility and accountability of the Agency Head". ✓ p.8

2 MCAR § 2.293 A.2. ". . . the specific responsibilities, accountabilities, and duties. . ." should read ". . . the specific responsibility, accountability, and duties. . .". ✓ p.9

2 MCAR § 2.293 A.10. The transmittal form referred to was intended to be promulgated as rule but was inadvertently omitted when the proposed rules were published in the State Register. The form to be incorporated is attached. [Form omitted from this Report.] ✓ attached

2 MCAR § 2.293 B.3.a. ". . . to permit the employer to pursue a complaint. . ." should read ". . . to permit the employee to pursue a complaint. . .". ✓ p.11

The one substantive change is the inclusion of a reporting form which must be used by agencies. This form merely confirms the implementation of the rule requirements and was available at the hearing. There were no public comments on its content.

The Examiner finds that the need for and reasonableness of the amendments set forth above has been shown, and that none constitutes a substantial change to the rules as published.

8. This Report will not address with specificity proposed rules which are adequately supported by the Statement of Need and Reasonableness. Rather, only rules which received public comment and/or the need and reasonableness have been questioned will be specifically discussed. Generally, the purpose of the proposed rules is to establish a statewide affirmative action program which is mandated by state law. This program is designed to operate in accordance with federal requirements, including the Standards for a Merit System of Personnel Administration, 5 C.F.R. Part 900, subpart F, § 900.607 and Appendix B.

9. The Affirmative Action Advisory Committee of the Minnesota Department of Education commented that the definition of "Protected Group" contained in § 2.251 should be expanded as follows:

> 2 MCAR § 2.251 "Protected Group" means all females and veterans as defined in Minn. Stat. § 43.15, subd. 1., 2 MCAR § 2.225 definition of "Handicapped", and:
> Minorities - a. The category "Black" (not of Hispanic origin): All persons having origins in any of the Black racial groups of Africa.
> b. The category "Hispanic": All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.
> c. The category "Asian or Pacific Islanders": All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This includes, for example, China, Japan, Korea, the Philippine Islands and Samoa.
> d. The category "American Indian or Alaskan Native": All persons having origins in any of the original peoples of North America and who maintain cultural identification though tribal affiliation or community recognition.

The Committee asserts that protected groups must be clearly delineated in order to eliminate possible misunderstandings as to who is included in the definition.

The Department stated that it:

> . . . does not wish to expand these definitions beyond the statutory language in Minn. Stat. § 43.15 becausae, in addition to meeting state requirements in affirmative action, we must also report annuallly to the federal Equal Employment Opportunity Commission on affirmative action using their minority definitions (EEO-4 Form). Further, these definitions have a history of changing frequently, and we should not have to amend the Rules everytime the definitions change and be out of conformance with federal reporting requirements while the Rules are being amended. Finally, the particular definitions suggested set up a hierarchical ranking in identification that poses problems. The ethnicity of "Hispanic" and "Pacific Islander" take precedence over a race designation such as Black.

For the reasons stated above, the Examiner finds the proposed rule to be both needed and reasonable.

10. The Advisory Committee commented that the definition of "Underutilization" contained in § 2.264 should be amended by deleting the term "labor market area" and replacing it with "relevant civilian labor force" because the data available regarding "labor market area" tend to reflect discriminatory employment patterns rather than actual persons qualified and the availability of those qualified persons. The Department stated that it intended to convey the notion of geographical area in the proposed language as well as the concept of labor pool. The Examiner finds the proposed rule to be both needed and reasonable. The bare assertion that "labor market area" data reflects discriminatory employment patterns is not an adequate factual basis to reject the proposed rule

11. The Minnesota State Council for the Handicapped questioned the reasonableness of using 25 employees in § 2.293 as the number to differentiate between large and small agencies. It stated that:

> . . . the Council understands the necessity of establishing somewhat less elaborate affirmative action requirements for small agencies than for large ones. It feels, however, that the divid-

ing point between small and large has been set too high. A more appropriate division would be one separating agencies with fewer than 15 employees from agencies and departments employing 15 or more persons. Not only would this division more accurately reflect what is truly a small agency, it would also better parallel federal Section 504 regulations, thus reducing the potential for confusion in agencies and departments which must also comply with those regulations.

The Department responded to the Council's comments as follows:

The Council wishes the Department to specify 15 or more employees as the definition of a large agency for purposes of affirmative action and indicates that this would be consistent with federal Section 504 regulations. The difficulty is that other federal regulations, for example Merit System Standards for Intergovernmental Personnel Programs which the Department of Employee Relations is obligated to follow, specifies units with fewer than 25 employees as exempt from many of the standards. It is also important to recall that these Rules are intended to cover other protected groups in addition to the handicapped and that in Minnesota, there are statistical problems in requiring agencies with small numbers of employees to prepare goals and timetables. In the outstate areas, it has been necessary to pool all minority persons into one category called "minorities" in order to achieve a labor force pool of 2%. When this goal is applied to agencies of under 25 persons, the goal is less than half a person which is not a very reasonable expectation.

Finally, the change from 25 to 15 would affect only four executive branch units: The Arts Council (17), the Board of Nursing (17), the Board of Electricity (21), and the Office of Hearing Examiners (24) [now known as the Office of Administrative Hearings].

The Examiner finds that the reasons set forth by the Department above demonstrate that the "25 employee" cut-off is both needed and reasonable.

12. Ms. Nina Rothchild, Executive Director of the Council on the Economic Status of Women, commented that the language contained in § 2.293 A.1., "Identification of the protected group or groups covered by the plan", does not square with the intent of the rule. The Department agreed with this comment and amended the rule as follows:

"Identification of the protected group or groups underrepresented in the agency's work force and, therefore, covered by the affirmative action plan." ✓amended p.9

As amended, the Examiner finds the rule to be both needed and reasonable and not substantially different from the proposed rule as published.

13. The Affirmative Action Advisory Committee commented that § 2.293 A.2. should be amended as follows:

Designations of those persons, <u>the Affirmative Action Officer and members of the Affirmative Action Advisory Committee</u> responsible for directing and implementing the agency affirmative action program and the specific responsibilities, accountabilities, and duties of each persons <u>and</u> group.

The Committee contends that:

It is necessary and reasonable to ensure that the agency head and those responsible for developing and implementing the agency Affirmative Action Program receive input, director and advisory information from a broad cross-secton of the agency work force. The Affirmative Action Advisory Committee provides the agency head with a sounding board to test ideas on strengthening the agency Affirmative Action Program, provides a direct link between the agency head and employees of the agency who are affected by affirmative action policies, and provides an opportunity for employees to evaluate their own behavior in the implementation of affirmative action.

The Department responded as follows:

> The Committee desires to have mandatory agency affirmative action committees added to the Rules. This issue has already been discussed in the Department's need and reasonableness statement from four perspectives: dilution of accountability, variation in management styles, the risk of stressing means over ends, and lack of capacity to monitor committee action. It might be added that there has been a persistent problem with some affirmative action representatives of large state agencies who wish rules promulgated in light of their particular situations that would be onerous for smaller units of the executive granch. (We have 44 units with less than 25 employees.)

The Examiner finds that the need for and reasonableness of the proposed rule has been shown. This issue, the inclusion of a mandatory affirmative action committee, is a policy question which is within the discretion of the Department to decide in promulating these rules.

14. The Advisory Committee commented that § 2.293 A.4. should be amended to insure that the designated place for posting an agency's affirmative action plan is readily accessible. The Department concurred with the comment and amended the rule as follows: amended p.9

> "Specify a readily accessible location for the posting of the agency's affirmative action plan."

As amended, the Examiner finds the rule to be both needed and reasonable and not substantially different from the proposed rule as published.

15. The Affirmative Action Advisory Committee commented that § 2.293 A.7.d. should be amended by replacing the word "workers" with "the relevant civilian labor force" because use of the term "workers" implies that the comparable population must be currently employed. The Department agreed with this suggestion and amended the rule as follows:

> "Goals shall be established for each occupational category by protected group based upon a comparison of the composition of the agency or agency subdivision's work force to the composition of the relevant civilian labor force in an identified labor market area."

As amended, the Examiner finds the rule to be both needed and reasonable and not substantially different from the proposed rule as published. amended p.10

16. Section 2.295 D. requires that each agency head submit "a report of the implementation of the agency affirmative action plan as part of the agency budget request." Finance Commissioner Wayne S. Burggraaff commented that because of the "significant issues that must be addressed in the biennial budget and the time constraints involved. . ., it is felt that due consideration could not be given to affirmative action reports." Nina Rothchild suggested that the word "implementation" be replaced with the word "results", to emphasize the result rather than the process.

The Department stated that it is acceptable to relieve the Finance Department from having to handle all of the affirmative action reports, but a budget should not be developed without knowledge of an agency's affirmative action deficits. The Department agreed with Ms. Rothchild's suggestion, in addition, and amended the rule as follows:

> "Agency heads shall submit to the Commissioner, concurrent with the biennial agency budget request, a report on the results of the agency's affirmative action plan. The Commissioner shall submit these reports to the Governor and the Legislature." so amended p.13

As amended, the Examiner finds the rule to be both needed and reasonable and not substantially different from the proposed rule as published.

17. The Council for the Handicapped and the Statewide Handicap Accessibility Coordinator commented that provisions for adaptive testing procedures and reasonable accommodations on the job should be included in the proposed rules. The Advocate for the Blind commented that the proposed rules should mandate a complete review by each agency of its physical and mental job qualifications. These, and other public comments regarding additions and revisions to the proposed rules, not specifically discussed herein, should be fully examined by the Department prior to taking final action on these rules.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

1. The Department of Employee Relations gave due, timely and adequate legal notice of the hearing on this matter.

2. All relevant, procedural requirements of law or rule within the meaning of Minn. Stat. § 15.0412, subd. 4-4f (1980), have been met.

3. The Department has documented its statutory authority to promulgate the proposed rules within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980), and has met all other substantive requirements of law.

4. The Department has demonstrated the need for and reasonableness of the proposd rules, as amended herein, by an affirmative presentation of facts within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980).

5. The amendments made to the proposed rules after publication of the rules in the State Register are not substantial changes to the rules as published within the meaning of Minn. Stat. § 15.0412, subd 4d (1980).

6. Any Findings which might properly be termed Conclusions, and any Conclusions which might properly be termed Findings, are hereby adopted as such.

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Department of Employee Relations adopt the proposed rules consistent with the Findings and Conclusions made above.

Dated this 15 day of January, 1981.

Peter C. Erickson

PETER C. ERICKSON
Hearing Examiner

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of the Proposed Adoption of Rules Governing the Statewide Affirmative Action Program

FINDINGS OF FACT

The above-entitled matter came on for hearing at St. Paul, Minnesota, on November 25, 1980 before Peter C. Erickson, a hearing examiner assigned by the Chief Hearing Examiner.

Andrea Kircher, Special Assistant Attorney Gereral, appeared on behalf of the Department of Employee Relations. Pearl Mitchell, Assistant Commissioner, Patrick Halvorsen, Director of Planning and Evaluation, Catherine Warrick, Acting Manager of the Equal Opportunity Division, and Julie Vikmanis, Manager of the Examining and Referral Division, appeared and testified in support of the proposed rules on behalf of the Department. In addition, Rachael Rohde, Hennepin County personnel representative, and Anna Wooten, president of B.T.W. Associates, Inc., testified on behalf of the Department.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, and considered all of the evidence, Hearing Examiner Erickson prepared a Report of the Hearing Examiner dated January 15, 1981 pursuant to Minn. stat. § 15.052, subd. 3 and 9 MCAR § 2.106.

Based upon all the records and proceedings herein, the Commissioner makes the following:

FINDINGS OF FACT

1. Findings 1-6 of the Hearing Examiner's Report, which relate to the procedural requirements and statutory authority for the proposed rules, are adopted.

2. Findings 7-17 of the Hearing Examiner's Report, which relate to the need for, the non-substantial modification and reasonableness of the proposed rules, are adopted.

CONCLUSIONS

1. Conclusions 1-6 of the Hearing Examiner's Report are adopted.

Dated:

Barbara J. Sundquist

BARBARA SUNDQUIST
COMMISSIONER OF EMPLOYEE RELATIONS

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of the Proposed Adoption
of Rules Governing the Statewide
Affirmative Action Program

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner Peter C. Erickson on the 25th day of November, 1980, at 9:00 A.M., in the State Office Building Auditorium, St. Paul, Minnesota, after proper notice required by Minnesota Statutes section 15.0412 was served upon all persons, associations, and other interested groups registered with the State Department of Employee Relations for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, hearing all of the testimony, considering all of the evidence adduced and upon the records, files, and proceedings herein and applicable statutory standards or criteria, and confirming the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as the Rules Governing the Statewide Affirmative Action Program are adopted this 23rd day of February, 1981, pursuant to authority vested in my by Minnesota Statutes section 43.15 (1980).

STATE OF MINNESOTA

Barbara J Sundquist

BARBARA SUNDQUIST
COMMISSIONER OF EMPLOYEE RELATIONS

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Rules as Adopted 2-3-81

Chapter Eighteen: 2 MCAR §§ 2.201-2.269 Definitions

2 MCAR § 2.201. "Affirmative Action" means a management posture or point of view that all barriers to employment opportunity that are not based on specific job requirements should be identified and removed; further, that initial employment and advancement opportunities for persons in protected groups shown to be underutilized in an agency's work force should be facilitated so that the imbalance is redressed.

2 MCAR § 2.202. "Affirmative Action Plan" means a coherent set of management policies and procedures designed to find the barriers contributing to imbalance in an agency's work force and to foster the correction of any imbalances which are found to exist.

2 MCAR § 2.~~201~~ 203 "Agency".

2 MCAR § 2.~~202~~ 204 "Agency Promotional List"

2 MCAR § 2.205. "Agency Subdivision" for purposes of affirmative action, means a state hospital/nursing home, state school, state university, community college, correctional facility or regional or district office under the jurisdiction of a state agency, which is geographically separate and which has an appointing authority.

2 MCAR § 2.~~203~~ 206 "Allocation"

2 MCAR § 2.~~024~~ 207 "Appointing Authority"

2 MCAR § 2.~~205~~ 208 "Board"

2 MCAR § 2.~~206~~ 209 "Class"

2 MCAR § 2.~~207~~ 210 "Commission"

2 MCAR § 2.~~2071~~ 211 "Continuous Service"

2 MCAR § 2.~~208~~ 212 "Craft"

2 MCAR § 2.2121. "Craft-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.212 and 2.259.

2 MCAR § 2.~~209~~ 213 "Day"

2 MCAR § 2.~~210~~ 214 "Demotion"

2 MCAR § ~~2.~~211 215 "Department"

2 MCAR § 2.~~212~~ 216 " "Disabled Veteran"

2 MCAR § 2.~~213~~ 217 "Disabled Veterans' Preference"

2 MCAR § 2.~~214~~ 218 "Eligible"

2 MCAR § 2.~~215~~ 219 "Eligible List"

2 MCAR § 2.~~2151~~ 220 "Emergency Employee"

2 MCAR § 2.~~2152~~ 221 "Exclusive Representative"

2 MCAR § 2.~~216~~ 222 "Exist or Existing"

2 MCAR § 2.~~2161~~ 223 "Full-time Employee"

2 MCAR § 2.224. "Goal" means a numerical objective designed to correct an identified deficiency in the utilization of protected group members.

2 MCAR § 2.225. "Handicapped" means any person who:

A. has a physical or mental impairment which substantially limits one or more major life activities,

B. has a record of such an impairment, or

C. is regarded as having such an impairment.

For purposes of these rules, the term "handicapped" does not include any individual who is an alcohol or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

2 MCAR § 2.~~2162~~ 226" Intermittent Employee"

2 MCAR § 2.~~217~~ 227 "Intern"

2 MCAR § 2.228. "Labor Force Statistics" means figures as determined by the most recent Federal census published by the U.S. Department of Commerce, Bureau of the Census on the estimated number of persons sixteen (16) years of age or

over who are working or are seeking work or who are unemployed at the time.

2 MCAR § 2.229. "Labor Market Area" means a geographic area in which an employer is seeking a particular occupational category of worker and there is an available supply of workers seeking jobs in that occupational category.

2 MCAR § 2.~~218~~ 230 "Laborer"

2 MCAR § 2.2301. "Laborer-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.230 and 2.259.

2 MCAR § 2.~~219~~ 231 "Law"

2 MCAR § 2.~~220~~ 232 "Layoff List"

2 MCAR § 2.~~221~~ 233 "Leadworker"

2 MCAR § 2.~~222~~ 234 "Managerial"

2 MCAR § 2.~~223~~ 235 "Military Leave"

2 MCAR § 2.~~224~~ 236 "Occupational Category" means one of the groups of classes ~~established-under-2-MCAR-§-2.172,-and~~ defined in 2 MCAR § 2.212, 2.2121., 2.230, 2.301A., 2.234, 2.237, 2.2371., 2.239, 2.2391., 2.249, 2.2491., 2.256, 2.2561., ~~2.246-and~~ 2.260 and 2.2601.

2 MCAR § 2.~~225~~ 237 "Office/Clerical"

2 MCAR § 2.2371. "Office/Clerical-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.237 and 2.259.

2 MCAR § 2.~~226~~ 238 "Open Competitive List"

2 MCAR § 2.~~227~~ 239 "Operative"

2 MCAR § 2.2391. "Operative-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.239 and 2.259.

2 MCAR § 2.~~228~~ 240 "Organization Unit"

2 MCAR § 2.~~229~~ 244 "Original Appointment"

2 MCAR § 2.~~230~~ 242 "Overtime"

2 MCAR § 2.~~231~~ 243 "Part-time Employee"

2 MCAR § 2.~~232~~ 244 "Permanent Employee"

2 MCAR § 2.~~233~~ 245 "Pre-Service Trainee"

2 MCAR § 2.~~234~~ 246 "Position"

2 MCAR § 2.~~235~~ 247 "Probationary Employee"

2 MCAR § 2.~~236~~ 248 "Probationary Period"

2 MCAR § 2.~~237~~ 249 "Professional"

2 MCAR § 2.2491. "Professional-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.249 and 2.259.

2 MCAR § 2.~~238~~ 250 "Promotion"

2 MCAR § 2.251 "Protected Group" means all groups defined as "protected group" by Minn. Stat. § 43.15, subd. 1. See also definition of "Handicapped", 2 MCAR § 2.225.

2 MCAR § 2.~~239~~ 252 "Provisional Employee"

2 MCAR § 2.~~240~~ 253 "Reclassification"

2 MCAR § 2.~~241~~ 254 "Reemployment List"

2 MCAR § ~~2.~~242 255 "Seasonal"

2 MCAR § 2.~~243~~ 256 "Service

2 MCAR § 2.2561. "Service-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.256 and 2.259.

2 MCAR § 2.~~444~~ 257 "Statewide Promotional List"

2 MCAR § 2.~~245~~ 258 "Student Worker"

2 MCAR § 2.~~246~~ 259 "Supervisory"

2 MCAR § 2.~~247~~ 260 "Technical/Professional"

2 MCAR § 2.2601. "Technical/Paraprofessional-Supervisory" means those positions which meet the definitions of both 2 MCAR §§ 2.260 and 2.259.

2 MCAR § 2.~~248~~ 261 "Temporary Employee"

2 MCAR § 2.262. "Timetable" means a prescribed reasonable time period in which affirmative action goals are expected to be achieved.

2 MCAR § 2.~~249~~ 263 "Transfer"

2 MCAR § 2.264. "Underutilization" means the employment, in an occupational category, of fewer qualified protected group members than would reasonably be expected by their availability in the labor market area.

2 MCAR § 2.~~250~~ 265 "Unlimited Employee"

2 MCAR § 2.~~251~~ 266 " Veteran"

2 MCAR § 2.~~252~~ 267 "Veterans Preference"

2 MCAR § 2.~~253~~ 268 "Work Assignment, Change In"

2 MCAR § ~~2.~~254 269 "Working Day"

2 MCAR §§ 2.~~255~~ 270 - 2.274 Reserved for future use.

Chapter Twenty: 2 MCAR §§ 2.290-2.299 Statewide Affirmative Action Program

2 MCAR § 2.290 Policy. It is the policy of the State of Minnesota to implement and maintain an affirmative action program designed to eliminate underutilization of qualified protected group members within the state civil service through a series of specific result oriented procedures combined with good faith effort. results HE 7

2 MCAR § 2.291 Scope. The provisions of this chapter shall apply to all agencies in the executive branch and to both classified and unclassified positions of those agencies, notwithstanding 2 MCAR § 2.004. In the event of a conflict or duplication between requirements of these rules and federal regulations and at the request of the agency head, the Commissioner shall permit an agency to substitute a federally required procedure for a similar procedure otherwise required by these rules. In event of ... HE 7

Responsibilities and accountabilities HE 7.

2 MCAR § 2.292 Responsibility and accountability of the Agency Head.

A. The agency head shall be responsible for administering the agency's Affirmative Action Program in compliance with existing laws, federal regulations and state rules.

B. The agency head shall be accountable to the Governor and to the Commissioner for affirmative action compliance.

2 MCAR § 2.293 Requirements for agency affirmative action plans.

A. The head of each agency with twenty-five (25) or more employees shall submit to the Commissioner an agency affirmative action plan that shall contain at least the following but at the discretion of the agency head may contain other provisions not in conflict with these rules:

1. Identification of the protected group or groups [underrepresented in the agency's work force and, therefore,] covered by the affirmative action plan. HE 12

The bracketed phrase was added.

2. Designations of those persons or groups responsible for directing and implementing the agency affirmative action program and the specific ~~responsibilities, accountabilities~~ [responsibility, accountability,] and duties of each person or group. HE 7

3. Statement of the agency head's commitment to affirmative action program and to the implementation of the agency affirmative action plan.

[4. Specify a readily accessible location for the] posting of the agency's affirmative action plan. HE 14

~~4.~~ Location of posting of the agency's AA plan.

5. Description of methods by which the agency affirmative action program is communicated internally and externally to employees and other interested persons.

6. Description of internal procedure for processing complaints of alleged discrimination from employees.

a. The initial step shall provide for a determination as to whether the complaint is properly a discrimination complaint and, therefore, appropriate to be addressed by the internal procedure. Time limits on such determinations shall be established to permit the employee to pursue a complaint determined to be other than a discrimination complaint through other appropriate grievance procedures in accordance with the time limitations of those procedures.

b. Complaint procedures shall provide for a final written answer within sixty (60) days of the filing of a formal complaint.

c. Disposition of complaints shall be filed with the Commissioner within thirty (30) days of final determination.

7. Goals and timetables that shall be established using the following standards.

a. Numerical goals shall be established for the agency and for each agency's subdivision with 25 or more employees that is in a geographic location with a labor market area separate from that of the central office.

b. Agency heads shall use labor force statistics from census data when available to examine work force participation, or when an agency requests the authority to substitute more specific data, the Commissioner shall consider alternative data sources and determine their applicability based on the following criteria:

1. the objectivity of the supplying organization,

2. the reliability of statistical procedures used to generate the data, and

3. comparability of data categories (occupational, geographic, handicapping condition, for example) used.

c. Underutilization of protected groups shall be determined using statistical formulae which shall be based on the following criteria:

1. Types of jobs within each agency and agency subdivision;

2. Number of employees in those jobs, by state class title and by protected group;

3. Availability of protected group workers having the qualifications for those jobs and;

4. Geographic locations and applicable labor market areas for each type of job in each agency and agency subdivision.

d. Goals shall be established for each occupational category by protected group based upon a comparison of the composition of the agency or the agency's subdivision work force to the composition of the relevant civilian labor force in an identified labor market area.

e. Goals shall be established for each occupational category by protected group for which the comparison shows an underutilization of one or more protected groups.

f. Timetables shall be established to meet goals based upon turnover and hire rates within each occupational category in the agency or within each agency subdivision.

8. Identification and description of methods for developing programs and program objectives designed to meet affirmative action goals.

9. Methods of auditing, evaluating, and reporting program success to include a procedure that requires pre-employment review of all hiring decisions for occupational categories with unmet affirmative action goals.

10. The official affirmative action transmittal form which provides for section by section verification of the plan's components. The form was added.

B. The head of each agency with fewer than twenty-five (25) employees shall submit to the Commissioner an agency affirmative action plan that shall contain the following:

1. Statement of the agency head's commitment to the affirmative action program.

2. Statement of the agency head's objective to hire members of protected groups when vacancies occur if an apparent underutilization of protected group members exists in the agency work force.

3. Description of internal procedure for processing complaints of alleged discrimination from employees.

a. The initial step shall provide for a determination as to whether the complaint is properly a discrimination complaint and, therefore, appropriate to be addressed by the internal procedure. Time limits on such determinations shall be so established to permit the employer ~~employee~~ to pursue a HE 7

complaint determined to be other than a discrimination complaint through other appropriate grievance procedures in accordance with the time limitations of those procedures.

b. Complaints procedures shall provide for final written answer within sixty (60) days of filing of a formal complaint.

c. Disposition of complaints shall be filed with the Commissioner within thirty (30) days of the final determination.

2 MCAR § 2.294 Affirmative Action Plan Review.

A. Agency heads shall submit an affirmative action plan annually to the State Director of Equal Employment Opportunity, within thirty (30) days following the end of the prior fiscal year.

B. Within thirty (30) days of receipt of the agency plan, the State Director of Equal Employment Opportunity shall review the agency affirmative action plan and shall notify the agency head of the approval or of the need to modify the plan.

C. The State Director of Equal Employment Opportunity shall approve an agency plan which meets the requirements of the foregoing rules and shall indicate the basis on which an agency affirmative action plan was not approved.

D. An agency affirmative action plan that is not approved by the State Director of Equal Employment Opportunity shall be modified as necessary by the agency head and resubmitted to the State Director of Equal Employment Opportunity within thirty (30) days from the date of notification.

E. The State Director of Equal Employment Opportunity shall respond within ten (10) days of receipt of the resubmitted affirmative action plan.

2 MCAR § 2.295 Reporting Requirements.

A. Agency heads with twenty-five (25) or more employees shall submit quarterly to the Commissioner a report of the agency's efforts to meet affirmative action goals and the progress resulting from those efforts.

B. Agency heads with fewer than twenty-five (25) employees shall submit semi-annually to the Commissioner a report of the agency's efforts to meet affirmative action objectives and the progress resulting from those efforts.

C. Reports shall be due thirty (30) days following the close of the reporting period.

D. Agency heads shall submit to the Commissioner, concurrent with the biennial agency budget request, a report on the ~~results~~ implementation of the agency's affirmative action plan. The Commissioner shall submit these reports to the Governor and the Legislature.

HE 16

D. Agency heads shall submit biennially to the Governor and to the Legislature with a copy to the Commissioner a report on the implementation of the agency affirmative action plan as part of the agency budget request.

AFFIRMATIVE ACTION PLAN
Fiscal Year _____
For

_____
(Agency or Agency Subdivision)

1. This annual review revealed underutilization of the following protected group(s) in the following occupational categories: (Check each category appropriate)

OCCUPATIONAL CATEGORIES	PROTECTED GROUPS			
	WOMEN	MINORITIES	HANDICAPPED	VETERANS
Unclassified				
Management				
Professional-S				
Professional				
Technical-S				
Technical				
Crafts-S				
Crafts				
Office-S				
Office				
Operative-S				
Operative				
Laborer-S				
Laborer				
Service-S				
Service				

2. This annual plan is and will be posted at the following central location so that every employee is aware of the agency's commitments in affirmative action for the year.

_____

3. This annual plan contains an internal procedure for processing complaints of alleged discrimination from employees, and each employee has been apprised of this procedure as well as our agency's affirmative action goals for this fiscal year.

_____ _____
Affirmative Action Officer Date

4. This annual plan contains clear designations of those persons and groups responsible for implementing the attached affirmative action plan as well as my personal statement of commitment to achieving the goals and timetables described herein.

_____ _____
Agency Head Date

5. This annual plan meets the rules governing affirmative action, Chapter 20: 2 MCAR 2.290-2.299, and contains goals and timetables as well as methods for achieving them which are reasonable and sufficiently aggressive to deal with the identified disparities.

_____ _____
Equal Opportunity Division Date

PE-00102-01 (12/80)

APPROVED AS TO FORM AND LEGALITY

3/10 1981

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry Anderson

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR 10 1981
Joan Anderson Growe
Secretary of State
3:45 PM

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

IN THE MATTER OF THE PROPOSED RULES GOVERNING A STATEWIDE AFFIRMATIVE ACTION PROGRAM

STATEMENT OF NEED AND REASONABLENESS

Aside from renumbering of existing rules to accommodate new definitions, the above captioned rules are new. They are necessary to implement Minn. Stat. § 43.15 enacted during the 1978 legislative session to ensure equality of employment opportunity within the state civil service.* The authority of the Department of Employee Relations to promulgate and adopt these rules is Minn. Stat. § 43.15, subd. 1 and Minn. Stat. § 43.05, subd. 2 (1) as amended by Laws of 1980, ch. 617. See Attachment A.

Impetus for these rules also comes from the federal government which has enacted laws, issued executive orders, promulgated regulations, issued guidelines and rendered judicial opinions to prohibit employment discrimination and to ensure equal employment opportunity in the public and private sectors. Many of the federal mandates for equal employment opportunity and affirmative action are described briefly in Attachment B.

* Minn. Stat. § 43.15 was amended by Laws of 1979, Chs. 245 § 1, 332 Art. I, § 40 and Laws of 1980, ch. 614 § 69.

These rules are both necessary and reasonable because they establish a statewide program mandated by state law and furthermore they are in accordance with federal standards and guidelines which, when implemented, also will assist all state agencies to comply with the requirements of the various federal equal employment opportunity enforcement agencies. The proposed rules also are in accordance with the Standards for a Merit System of Personnel Administration promulgated by the United States Office of Personnel Management, 5 CFR Part 900, Subpart F, § 900.607 and Appendix B. These standards govern the State's personnel system. See Attachment C.

It is necessary to define the terms listed below for affirmative action purposes so all users of the rule have the same understanding of the meanings. Specifically:

2 MCAR § 2.201 Definition of "Affirmative Action." It is necessary to define this key phrase because the statute does not specifically do so and because it is often confused with equal employment opportunity which is not as forceful a concept as affirmative action. In federal and state law and executive orders, equal employment opportunity forbids discrimination in the hiring process. Affirmative action, however, is a posture which requires elimination of present imbalances existing in an organization's work force which may have resulted from past practices, in addition to forbidding current practices based on something other than specific job requirements. See attachments A and B.

2 MCAR § 2.2012 Definition of "Affirmative Action Plan". It is reasonable to define affirmative action plans to distinguish good intention and proper attitude which is conveyed in the phrase "affirmative action" from specific management activities designed to remedy a condition of underutilization.

2 MCAR § 2.2025 Definition of "Agency Subdivision". It is reasonable to allow separate geographic entities of large agencies which have different recruitment sources in many cases and which are often larger than many of the smaller state agencies to establish separate affirmative action goals and timetables.

2 MCAR §§ 2.2121, 2.2301, 2.2371, 2.2391, 2.2491, 2.2561, 2.2601 Definitions of "Craft Supervisory", "Laborer-Supervisory", "Office/Clerical Supervisory", "Operative-Supervisory", "Professional-Supervisory", "Service Supervisory", and "Technical/Professional-Supervisory". It is reasonable and necessary to separate occupational categories so that various types of supervisory jobs are considered as distinct groups. The separation will provide better data for affirmative action purposes than one category. Further, the distinction is necessary because recruiting areas vary greatly among occupational supervisory classes, e.g., clerical supervisory classes are recruited locally while professional supervisory classes are often recruited nationally. The current rules contain definitions for all non-supervisory occupational categories as well as a definition of the term "supervisory". It is reasonable to make these distinctions by reference to the non-supervisory definitions and the definition of the term supervisory as such definitions are currently understood and used for other purposes. See Attachment D.

2 MCAR § 2.2124 Definition of "Goal". A goal must be numerically related to the labor market availability and the current state agency work force by occupational category in order to be measurable. The definition used is reasonable in that it is the commonly accepted definition for purposes of affirmative action.

2 MCAR § 2.2125 Definition of "Handicapped". Minn. Stat. § 43.15, subd. 1, includes "handicapped" as one of the protected groups to be covered in the State's affirmative action program. The statute does not define "handicapped." It is therefore necessary to define the term in rules. The proposed definition is reasonable as it is essentially the same definition as used in Federal law for purposes of achieving compliance with the Rehabilitation Act of 1973, Sections 503 and 504. 29 U.S.C. 706 Par. 7, as amended by Public Law 95-602 (1978). Section 503 requires affirmative action in employing the handicapped by both public and private employers who employ persons to work under a contract or subcontract with any Federal department or agency for the procurement of goods or non-personal services. This requirement is intended to accommodate the disabled by eliminating physical and systemic barriers which have traditionally deterred the progress of otherwise qualified disabled and handicapped persons. Certain state agencies are subject to these requirements as parties to contracts with federal agencies. The limitations regarding individuals who are currently alcohol or drug abusers is also consistent with the federal statutory definition at 29 U.S.C. 706 Par. 7, as amended by Public Law 95-602 (1978). One of the purposes of the statewide affirmative action plan is to provide a preference in employment to members of protected groups through expanded certification lists when there is underutilization. Minn. Stat. § 43.15, subd. 5 (1978). It is not reasonable to assume that the Minnesota Legislature in passing Minn. Stat. § 43.15, subds. 1 and 5 meant to give preference in employment to individuals who are currently alcohol or drug abusers.

2 MCAR § 2.2128 Definition of "Labor Force Statistics". Minn. Stat. § 43.15, subd. 2 (c) requires the inclusion of goals as part of a statewide affirmative action program. The definition is reasonable in that it is the same as the definition used by the U.S. Department of Labor in preparing census data by occupational category.

2 MCAR § 2.2129 Definition of "Labor Market Area". This definition is reasonable as it identifies the geographic area in which state agencies must compete with other employers to attract workers.

2 MCAR § 2.251 Definition of "Protected Group". The term has been included for reference purposes only.

2 MCAR § 2.2612 Definition of "Timetable". Minn. Stat. § 43.15, subd. 2 (c) requires that timetables be part of an affirmative action program. Establishing a time period for review and action is essential for monitoring program results. This makes the proposed definition both necessary and reasonable.

2 MCAR § 2.264 Definition of "Underutilization". It is reasonable to base affirmative action goals and timetables on the lack of employed protected group members when such members are available in the labor market area to ameliorate effects of past discrimination.

2 MCAR § 2.290 Policy. The inclusion of a policy statement is necessary to reaffirm the State's commitment to affirmative action and to comply with the provisions of Minn. Stat. § 43.15, subd. 2 which requires that the Statewide Affirmative Action Program include a statement of general goals and policies. The rule is reasonable because it outlines the general goal of the State and the methods by which the goal is to be achieved.

2 MCAR § 2.291 Scope. This rule is necessary to establish that the remainder of this chapter specifically covers all employees of the executive branch, notwithstanding 2 MCAR § 2.004. This coverage is required by Minn. Stat. § 43.15, subd. 1. This rule and the coverage it clarifies is reasonable because

it meets the requirements of the law. It also provides equity for all executive branch employees regardless of civil service status or employing agency. To prevent undue administrative burden, it is reasonable to include a provision that allows the Commissioner to permit agencies covered by federal requirements that parallel or conflict to some extent with these rules to substitute requirements of the federal agency for the requirements of these rules.

2 MCAR § 2.292 Responsibilities and accountabilities of the Agency Head. Minn. Stat. § 43.15, subd. 3 requires the head of each agency to prepare and implement an affirmative action program. The agency head is further required by § 43.15, subd. 2 to periodically report to the Governor and the Legislature on the implementation of the agency's affirmative action plan. This statutory accountability affirms that the responsibility for affirmative action is that of the agency head. It is essential to the success of an affirmative action program that responsibility be vested with individuals who have sufficient status and authority to carry out the requirements of the program. It is then reasonable to assign the responsibility for affirmative action to the agency head. The agency head is the top executive and the individual within the agency with the status and authority to carry out the tasks necessary to ensure success of the program.

2 MCAR § 2.293 Requirements for agency affirmative action plans. This rule is necessary to establish minimum standards which all agencies must meet to ensure program consistency throughout the executive branch. With this approach, the State, which is perceived by its citizens as a single employer, may carry out and report the success of a uniform Statewide Affirmative Action Program. The rule implements the requirement of Minn. Stat. § 43.15, subd. 1 which establishes a statewide program and which further states that

"individual agency affirmative action plans adopted pursuant to the statewide program shall be in accordance with adopted rules". It also implements Minn. Stat. 43.15, subd. 2(b) and (c) which require the Commissioner to establish standards for agency affirmative action plans and goals and timetables for the state civil service.

The standards set forth in this rule are reasonable because they are a composite of federal enforcement agency requirements which govern the activities of one or more state agencies. Conformance with these standards not only allows uniformity throughout the state executive branch, but ensures that agencies will meet the requirements of the various federal agencies which regulate their activities and/or funding. The requirements also are reasonable inasmuch as they are established on a general basis to permit maximum flexibility for state agencies to adapt them to their individual management needs with a minimum of administrative overhead.

Specifically, §§ 2.293 A (1,3,4,5) and 2.293 B(1) are necessary to ensure adequate communication of each agency's affirmative action program and individuals covered by the affirmative action plan to its employees and those individuals or organizations with whom it does business.

§§ 2.293 A(2) is necessary to clearly identify those persons responsible and accountable for affirmative action activities and to delineate their responsibilities. Such a requirement is reasonable to ensure the success of any good management program. Much consideration was given also to whether or not these designations should include a mandated affirmative action committee in each agency. The decision was made not to mandate such a committee but to leave the formation of one to the discretion of the individual agency heads.

It is reasonable not to mandate these committees from four different perspectives: dilution of accountability, variation in management styles, the risk of stressing means at the expense of ends, and lack of capacity to monitor committee action. Broad-based input into an agency's affirmative action plan is highly desirable but can be achieved in diverse ways, and each agency head should be free to select the most effective structure for implemeting affirmative action in the respective agency. Whatever the structure, it is the intent of these rules to underline the personal responsibility of each agency head for leading an effective affirmative action effort, and no internal structure can be allowed to dilute or mask this reality. Since the responsibility is clearly placed, it is reasonable to allow the responsible person to carry it in a manner consistent with her/his preferred and best management style. For some this would necessitate a standing committee; for others it would not. Further, it is important to reaffirm that outcomes are the focus of affirmative action, not means. It is reasonable to require sufficient structure to insure effective monitoring of agency effort, but unreasonable to attempt to dictate means as well as ends to the accomplishment of statewide affirmative action goals. Finally, while the department could mandate a committee structure, it could not effectively monitor, support or enforce the activities and recommendations of such a committee in each agency. It is not reasonable to require activities for which accountability cannot be assured; this merely creates an illusion of compliance rather than a force for effective change. The omission of a requirement for an affirmative action committee in each agency, however, should in no way be construed to imply a prohibition against such a structure.

§ 2.293 A(7), (8), and (9) are necessary because, as with any good management program, specific results - oriented objectives and action steps must be established for achieving the goals of the program. It is further necessary to identify those procedures which will be used to evaluate the success of those objectives and action steps.

It is especially necessary to require each agency to include a procedure for pre-employment review of all hiring decisions for positions in occupational categories with unmet affirmative action goals. Access to positions in the work force is the initial and most important step in the process of eliminating barriers to equal employment opportunity. The hiring decision must be scrutinized before, not after, commitments to prospective employees are made if corrective action to meet goals becomes necessary.

§§ 2.293 A(6) and 2.293 B(3) are necessary to provide for a due process handling of complaints of disparate treatment from individual members of protected groups.

These rules are reasonable because they are designed to allow aggrieved employees to revert to the grievance procedure in 2 MCAR §§ 2.176-2.179 or in applicable union contracts should the complaint be determined not to be related to affirmative action concerns. This eliminates the possibility of an employee missing the time limits for filing a grievance under a more appropriate grievance procedure. The rules also provide reasonable time limitations for making and reporting determinations on the merits of affirmative action grievances. These time limitations are designed to balance the needs of aggrieved employees for timely redress and the needs of state executives for a reasonable amount of time to study the issues, weigh alternatives and arrive at equitable conclusions.

The procedures outlined in § 2.293 A(7) are designed to meet the requirements of various federal enforcement agencies and to provide standardization of methodology. They also are designed to permit flexibility in data collection to cover cases where more specific data is attainable such as for faculty, by particular discipline rather than as a group, or where standard data may not be available such as for Vietnam era Veterans until publication of the 1980 census data. For example, prior to publication of 1980 census data, in the case of Vietnam era Veterans, a 5.69% affirmative action goal has been set for each agency's work force based on State Veteran's Administration data indicating that this percentage approximates the total percent of Vietnam era Veterans in the state.

Numerical goals, and timetables for achieving them, are an integral part of affirmative action programs. This rule is needed to establish general standards to be followed in the state civil service for identifying underutilization of protected groups and for setting goals to correct any underutilization, i.e., to reach parity between the numbers of protected group employees and the numbers of qualified protected group workers in the external labor force.

§ 2.293 A (10) is reasonable because the law in Minn. Stat. § 43.15, subd. 2, requires that agencies be provided with forms to be used in the preparation of their agency affirmative action plan, and a summary transmittal form would provide a check point for each agency as well as for the Equal Opportunity Division that no important element of the plan requirements has been overlooked. (See Attachment E.)

§ 2.293 subdivision B exempts agencies with fewer than 25 employees from developing full scale affirmative action plans. This variation in requirements is reasonable because such agencies have so few employees and so little turnover that the imposition of other requirements detailed in § 2.293A would result in no meaningful objectives and would only add additional paperwork to the otherwise useful reporting of goals and timetable requirements imposed on these small agencies. Further, statistical computations of goals and timetables are unnecessary in small agencies because underutilization is more readily apparent. This exemption covers 44 agencies with a total of 237 employees, 7/10 of 1% of the 32,525 employees in the executive branch of state government. Of these 44 agencies, only 9 have 10 or more employees and 26 have fewer than 5. A list of the 44 agencies with the number of employees in each is appended as Attachment F.

The standards outlined in § 2.293B are repetitious of those portions contained in § 2.293A which do not add to administrative burden but which are necessary to provide protection for the individual employee and to establish an agency commitment to the affirmative action program.

2 MCAR § 2.294 Affirmative action plan review. Minn. Stat. § 43.15, subd. 3 requires agency heads to annually submit the agency's affirmative action plan to the Commissioner. A review of each agency's affirmative action plan is necessary to ensure that all plans are consistent with state law, rule, and policy. The time limits expressed in this section are a necessary management device and are reasonable in that they correspond with the beginning of the fiscal year and the time when managers plan and develop other agency objectives. They provide time to consider results of previous reporting periods when making a new commitment to govern subsequent efforts.

The Commissioner of Employee Relations has delegated the authority and responsibility to review and approve agency affirmative action plans to the State Director of Equal Employment Opportunity in accord with Minn. Stat. § 43.15, subd. 1 which permits such delegation. It is then reasonable that the State Director of Equal Employment Opportunity be designated in this rule as the recipient and approval authority of agency affirmative action plans.

2 MCAR § 2.295 Reporting requirements. The establishment of reporting procedures are required by Minn. Stat. § 43.15, subd. 2. Internal reporting systems are necessary on a prescribed scheduled basis to monitor the results of affirmative action efforts so needed corrective action can be taken. A quarterly reporting interval was chosen for agencies with 25 or more employees and a semi-annual reporting interval was chosen for agencies with fewer than 25 employees because it is reasonable to assume that sufficient turnover and opportunity for hiring protected group members would occur in that amount of time to provide managers with data upon which to assess progress towards meeting goals and, if necessary, to implement corrective action. It is reasonable to allow agencies 30 days in which to submit their reports when considering the amount of data which must be collected and verified for these reports.

§ 2.295D is required by Minn. Stat. § 43.15, subd. 2(B). Since all agency goals and management programs are reviewed when biennial budgets are submitted, it is reasonable to require agency affirmative action reports to be submitted to the Governor and the Legislature simultaneously with their budget requests.

ATTACHMENT E
AFFIRMATIVE ACTION PLAN
Fiscal Year ____
For

_____
(Agency or Agency Subdivision)

1. This annual review revealed underutilization of the following protected group(s) in the following occupational categories: (Check each category apporpriate)

OCCUPATIONAL CATEGORIES	PROTECTED GROUPS			
	WOMEN	MINORITIES	HANDICAPPED	VETERANS
Unclassified				
Management				
Professional-S				
Professional				
Technical-S				
Technical				
Crafts-S				
Crafts				
Office-S				
Office				
Operative-S				
Operative				
Laborer-S				
Laborer				
Service-S				
Service				

2. This annual plan is and will be posted at the following central location so that every employee is aware of the agency's commitments in affirmative action for the year.

_____

3. This annual plan contains an internal procedure for processing complaints of alleged discrimination from employees, and each employee has been apprised of this procedure as well as our agency's affirmative action goals for this fiscal year.

_____ _____
Affirmative Action Officer Date

4. This annual plan contains clear designations of those persons and groups responsible for implementing the attached affirmative action plan as well as my personal statement of commitment to achieving the goals and timetables described herein.

_____ _____
Agency Head Date

5. This annual plan meets the rules governing affirmative action, Chapter 20: 2 MCAR 2.290-2.299, and contains goals and timetables as well as methods for achieving them which are reasonable and sufficiently aggressive to deal with the identified disparities.

_____ _____
Equal Opportunity Division Date

ATTACHMENT F

State Agencies with Fewer Than 25 Employees

Unit	Number of Employees*
Abstractor's Board of Examiners	0
Board of Accountancy	3
Board of Architecture, Engineering Land Surveying and Landscape Architecture	7
Arts Board	17
Barber Examiners Board	3
Council on Black Minnesotans	0
Boxing Board	1
Capitol Area Architectural & Planning Board	2
Board of Chiropractic Examiners	1
Board of Cosmotology	13
Board of Dentistry	4
Board of Electricity	21
East Central Community College Service Center	11
Ethical Practices Board	6
Council for the Handicapped	11
Hearing Examiners Office	24
Higher Education Facilities Authority	2
Indian Affairs Intertribal Board	8
Office of the Lieutenant Governor	9
Board of Medical Examiners	10
Municipal Board	4
Board of Nursing	17
Board of Nursing Home Administrators	1
Oak Park Heights Correctional Facility	1
Ombudsman for Corrections	9
Board of Optometry	1
Peace Officers Standards & Training Board	11
Board of Pharmacy	7
Board of Podiatry	0
Board of Psychology	1
Public Employment Relations Board	1
Public Utilities Commission	0
Sentencing Guidelines Commission	8
Southern Minnesota River Basin Board	0
Council for Spanish Speaking People	3
Tax Court	6
Transportation Regulation Board	0
Board of Veterinary Medicine	1
Voyagers National Park Citizens Commission	2
Waste Management Board	4
Board of Watch-Making Examiners	0
Water Planning Board	7
Water Resources Board	0
44 Units	237

*As of July 15, 1980.

STATEMENT OF COMPLIANCE WITH

RULEMAKING PROCEDURES

I, Special Assistant Attorney General Andrea Mitau Kircher, do hereby declare that I have examined the proposed rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

ANDREA MITAU KIRCHER
Special Assistant
Attorney General

Dated: February 20, 1981.

STATE OF MINNESOTA
Department of Employee Relations

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Governing the Statewide Affirmative Action Program.

AFFIDAVIT OF MAILING NOTICE OF SUBMITTAL TO ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I hereby certify that on the 23rd day of February, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, I served the attached Notice of Transmittal to Attorney General by depositing in the United States Mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage paid to all persons at the addresses listed on the attached list of persons who requested notice that the hearing record has been submitted to the Attorney General.

Jean Brezinski
Jean Brezinski

Subscribed and sworn to before me,
this 23 day of February, 1981.

Lorraine Pfeiffer
Lorraine Pfeiffer
Notary Public

LORRAINE C. PFEIFFER
NOTARY PUBLIC—MINNESOTA
DAKOTA COUNTY
My Commission Expires Sept. 28, 1985

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of the Proposed Adoption of the Rules Governing the Statewide Affirmative Action Program.

NOTICE OF TRANSMITTAL TO ATTORNEY GENERAL

TO ALL INTERESTED PERSONS:

Pursuant to your request and in accordance with Minnesota Statutes, Section 15.0412, Subdivision 4 and Rule HE 102:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Attorney General's Office on February 23, 1981 for review as to form and legality. Pursuant to Rule AttyGen 305, any person may question the legality of the above-captioned rules within ten (10) days after receipt of the rule by the Attorney General. Thereafter, the Office of the Attorney General shall conduct its review. If you desire to question the legality of the above-captioned rules, you should direct your comments to the Attorney General's Office, G-25 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155, telephone (612) 296-7030.

If you are interested in determining what changes, if any, were made in the rules after the hearing and before submission to the Attorney General, you may contact Patrick Halvorsen, Director of Planning and Evaluation, telephone (612) 296-4349 or Catherine Warrick, Equal Opportunity Director, telephone (612) 296-8933, Department of Employee Relations, 3th Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101.

Barbara L. Sundquist
Commissioner of Employee Relations