

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

To: Larry
Date: 11/19/82
Re: Employee Relations – State Personnel System

Notice of Intent to Adopt Rules without a Hearing

The agency verified that copies of the rules were attached to the Notice as mailed.

Chapter Thirteen of the rules relates to the withholding/payment of social security taxes for state & other public agency employees. Authority for Ch. 13 clearly lies in Minn. Stat. §355 as is stated in the first section of the chapter. Yet the Notice does not cite to this authority.

However, in view of the fact that the rules accompanied the notice, the omission of correct citation to statutory authority does not appear to constitute substantial failure to comply with the APA.

Agreed - LOS

Findings of Fact

Attorney General's rule 1 MCAR §1.203 K requires that the agency submit to the AG a "Findings of Fact and Conclusions setting forth the reasons for changes between the Rule as Proposed and the Rule as Adopted".... Further that "this document shall be signed by the person authorized to sign the Order Adopting the Rule."

There are changes in these rules but the agency has submitted no formal Findings of Fact. Rather, the changes are noted on the transmittal memo which is not signed by the person who signed the Order Adopting.

OK - we've got comments and explanations for reasons and I've approved such in the past.

Notice of Submission to the Attorney General

The notice misstates, as "20", the number of days this office will hold the rules for comment, and misstates the date of submission to the Attorney General, which was November 12 not November 10. However, because of the Thanksgiving holiday, our comment

Insignificant. Passed. - LOS

period does compute to just one day short of the period as misstated

Rules as Adopted

p. 9 .320

lines 9-12 The provision for inclusion of the "Tennesen warning" does not appear to go far enough in that there is no requirement for a statement regarding dissemination of data being collected from applicants for employment.

Ok. - can't repeal statute and compliance w/ plain provisions will be consistent w/ Pub. Pol. and D/P Pol. - LRS

p. 9, 10, 12, 14, 16, 18, 19 .321, .322, .326, .344, .354, .364, .365

All of these sections contain the permissive "may".

p. 27 .404

line 32 A comma should be inserted after "state"

.409

p. 31 This section mixes references to "a reporting unit"

lines 13, 16 with "every political subdivision"... There seems no reason for the mixing of singular and plural

p. 37 Repealer

This repealer adds two rules to those proposed to be repealed. Old .165 duplicates new .369 but there is no indication of why .2391 is repealed — and it is not in MCAR for me to check it out.

SF-00006-02

DEPARTMENT ATTORNEY GENERAL

STATE MINNESOTA

Office Memorandum

TO : BARBARA L. SUNDQUIST
Commissioner of Employee Relations

DATE: 11/29/82

ATTN : STEVEN M. GUNN, Spec. Ass't. Atty. Gen.

FROM : LARRY D. STARNS
Special Assistant
Attorney General

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State Department of Employee Relations Governing the State Personnel System

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;

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.

LDS:drw
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

(.300 (.301 AG copy?)

Department of Employee Relations

Adopted Rules Regarding the State Personnel System

Rules as Adopted

Chapter One: Scope and Definitions

2 MCAR S 2.300 Scope of the rules. Rules 2 MCAR SS 2.300-2.417 supplement and clarify the provisions of Minnesota Statutes, chapter 43A which generally affect the rights of or processes available to the general public. They also apply to state employees of the executive branch when the employees participate in any process that is available to the general public. Unless otherwise stated, these rules apply to positions in the civil service in the executive branch, the office of the Legislative Auditor, the Minnesota State Retirement System, and the Teachers Retirement Association.

2 MCAR S 2.301 Other elements of the state personnel system.

A. Commissioner. The commissioner is the chief personnel and labor relations manager for the civil service of the executive branch. The commissioner is responsible for carrying out Minnesota Statutes, chapter 43A. Personnel rules are one of several elements used to implement Minnesota Statutes, chapter 43A. Other elements are described in B., C., and D.

B. Collective bargaining agreements. Collective bargaining agreements define or describe terms and conditions of employment between the state and exclusive representatives of employees as directed under Minnesota Statutes, sections 179.61 to 179.76. Provisions of collective bargaining agreements supersede inconsistent provisions of 2 MCAR SS 2.300-2.417 for employees covered under these agreements.

C. Other employment plans. Certain plans established and approved under Minnesota Statutes, section 43A.18 define or describe terms and conditions of employment for all classified and unclassified employees in the executive branch who are not

covered by a collective bargaining agreement. Provisions of these plans supersede inconsistent provisions of 2 MCAR SS 2.300-2.417 for employees covered by these plans.

D. Administrative procedures. Certain administrative procedures adopted in accordance with Minnesota Statutes, section 43A.04, subdivision 4 define or describe employee relations programs, activities, and elements for state agency management and employees but do not directly affect the rights of or processes available to the general public.

2 MCAR S 2.302 Application. Personnel actions taken before the effective date of 2 MCAR SS 2.300-2.417 are governed by the rules that were in effect on the date when the actions were taken.

2 MCAR S 2.303 Definitions.

A. Applicability. For purposes of 2 MCAR SS 2.300-2.417, the terms defined in this rule have the meanings given them. Terms used in 2 MCAR SS 2.300-2.417 which are defined in Minnesota Statutes, section 43A.02 and 2 MCAR S 2.402 shall have the meanings there given them.

B. Affirmative action. "Affirmative action" means a management point of view that all barriers to employment opportunity that are not based on specific job requirements should be identified and removed and 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.

C. Affirmative action plan. "Affirmative action plan" means a coherent set of management policies and procedures designed to find any barriers contributing to imbalance in an agency's work force and to foster the correction of any imbalances which exist.

D. Agency subdivision. "Agency subdivision," for purposes of affirmative action, means a state hospital or 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.

E. Department. "Department" means the Department of Employee Relations, including the commissioner and the employees of the department.

F. Director. "Director" means the state director of the Equal Opportunity Division, Department of Employee Relations.

G. Emergency employee. "Emergency employee" means an employee who is appointed for no more than 30 aggregate working days in any 12-month period for any single appointing authority.

H. Employment condition. "Employment condition" means any limitation on continuous employment caused by the number of hours of work assigned to an employee, and his or her appointment status. Hours of work may be full time, part time, or intermittent. Appointment status may be unlimited, limited temporary, limited emergency, or seasonal.

I. Full-time employee. "Full-time employee" means an employee who is normally scheduled to work 80 hours in a biweekly payroll period.

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

K. Goal unit. "Goal unit" means:

1. each of the groups of classifications in an agency or agency subdivision assigned to the units defined in Minnesota Statutes, section 179.741, subdivision 1;

2. the group of employees in an agency or agency subdivision whose terms and conditions of employment are subject to the provisions of Minnesota Statutes, section 43A.18, subdivision 2;

3. the group of employees in an agency or agency subdivision whose terms and conditions of employment are subject to the provisions of Minnesota Statutes, section 43A.18, subdivision 3; or

4. the group of employees in an agency or agency subdivision whose total compensation is subject to the provisions of Minnesota Statutes, section 43A.18, subdivision 4.

~~L.~~ Handicapped person. "Handicapped person" means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. "Handicapped" does not include any individual who is an alcohol or drug abuser whose current use of alcohol or drugs prevents the individual from performing the duties of the job in question or whose employment, by reason of current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

see - transmittal memo 12A. withdraw for hear

~~M.~~ L. Intermittent employee. "Intermittent employee" means an employee who works an irregular and uncertain schedule which alternately begins, ceases, and begins again as the needs of the agency require.

~~N.~~ M. Labor force statistics. "Labor force statistics" means the estimated number of persons 16 years old or older who are working, seeking work, or unemployed at the time as determined by the most recent federal census published by the United States Department of Commerce, Bureau of the Census.

~~O.~~ N. Labor market area. "Labor market area" means a geographic area in which an employer is seeking a worker in a particular goal unit and where there is an available supply of workers employed or seeking jobs in that goal unit.

~~P.~~ O. Part-time employee. "Part-time employee" means an employee who is normally scheduled to work fewer than 80 hours in a biweekly payroll period.

~~Q.~~ P. Seasonal employee. "Seasonal employee" means an employee who is appointed for no more than ten months during any 12 consecutive months but who is expected to return to work year after year.

~~R.~~ Q. Temporary employee. "Temporary employee" means an employee who is appointed with a definite ending date. A temporary employee's term of employment may not exceed a total of 12 months in any 24-month period in any one agency.

~~S.~~ R. Timetable. "Timetable" means a prescribed reasonable time period in which affirmative action goals are expected to be

achieved.

~~T.~~ S. Underutilization. "Underutilization" means the employment in a goal unit of fewer qualified protected group members than would reasonably be expected from their workforce participation in the labor market area.

~~U.~~ T. Unlimited employee. "Unlimited employee" means an employee who is appointed with no definite ending date.

Chapter Two: Classification

2 MCAR S 2.306 Use of class titles. The title of the class is the official title of every position allocated to that class for all purposes having to do with the position. The title is used on all personnel records, payroll records, budget estimates, official records, and reports related to the position. An appointing authority may use any other working title to designate a particular position for the purposes of internal administration and in any other connection not involving the personnel processes covered by administrative procedures, statutory law, or 2 MCAR SS 2.300-2.417.

2 MCAR S 2.307 Class specifications. The commissioner shall ~~provide~~ make available for public inspection, and may amend, written class specifications for any class in the classification plan. Each class specification must include the class title, a general description of the scope of the work, and the knowledge, skills, and abilities an incumbent should possess in order to perform duties of the class. If a classification consists of only one position, the commissioner may use the position description as the class specification.

see transmittal memo. 12.B

Definitions used in class specifications are descriptive and not restrictive, indicating the kinds of positions allocated to classes, and are not to be construed as limiting in any way or modifying the power of the appointing authority to appoint, direct, and control the work of employees. Using a particular expression or illustration of duties does not exclude other duties not mentioned that are of a similar kind or quality.

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Chapter Three: Wage and Salary

2 MCAR S 2.311 Administration of the wage and salary plan.

A. Scope. Rule 2 MCAR S 2.311 applies to all classified and unclassified positions in the executive branch, the classified positions in the office of the Legislative Auditor, the Minnesota State Retirement System, and the Teachers Retirement Association, which have been assigned to salary ranges by the commissioner. The rule is conditional upon the availability of funds and authorization by the commissioner of finance.

B. Salary upon entry into civil service. Salary upon entry into civil service should usually be at the minimum rate for the classification. An appointing authority may make an appointment at the second or third step of a range or within 12 percent of the minimum rate for the class when the salary range does not contain steps. An appointing authority must receive prior authorization from the commissioner to make an appointment at or beyond the fourth step of the salary range or more than 12 percent above the minimum rate when the range does not contain steps. The commissioner may disapprove an unauthorized salary offer by an appointing authority beyond the third step of a salary range or more than 12 percent from the minimum rate. Appointments above the minimum rate must be based upon the exceptional qualifications of the candidate or the unavailability of candidates at the minimum rate. Salaries paid to current employees in the same or related classifications must also be taken into consideration.

C. Salary upon reinstatement or appointment from a reemployment list. If a former employee is reinstated or reemployed in a classification in which the employee was previously employed, the appointing authority may make the appointment at the same rate of pay the employee had been receiving at the time of his or her last separation from that classification plus any automatic adjustments that may have been made since the employee left the civil service or the classification. Appointments above this rate of pay must be

approved by the commissioner before they can take effect. Automatic adjustments include, but are not limited to, across-the-board adjustments, equity adjustments, and cost-of-living adjustments and do not include performance-related increases that the employee might have received had he or she remained in the classification.

2 MCAR S 2.312 Relocation expenses.

A. Conditions for reimbursement. An appointing authority may reimburse a person for relocation expenses associated with an initial appointment in the civil service. Authorization for relocation expenses must be made on or before the date of hire. The relocation must be completed within six calendar months unless the time period is extended, in writing, to a maximum of one year by the appointing authority.

B. Reimbursement limits. The reimbursement limit is that prescribed in the collective bargaining agreement or the compensation plan which applies to the position being filled. The appointing authority may establish lower limits for both the type and amount of reimbursement. Payment for relocation expenses may be made after the person has become an employee.

C. State not responsible for loss or damage. The state of Minnesota is not responsible for loss or damage to household goods or personal effects as a result of a relocation covered by this rule.

Chapter Four: Recruitment

2 MCAR S 2.316 Scope of competition. The commissioner shall decide whether to announce an examination on a competitive open or competitive promotional basis or both. To make this decision, the commissioner shall consider:

A. the requests of appointing authorities;

B. the provisions of collective bargaining agreements or plans established under Minnesota Statutes, section 43A.18 that could limit the opportunities of applicants from outside the civil service to receive consideration for appointment;

C. the anticipated number of qualified applicants within and outside the civil service;

D. ways to meet affirmative action goals; and

E. career opportunities and mobility for employees.

2 MCAR S 2.317 Public notice of examinations. The commissioner shall provide public notice of the opening of competitive open examinations by posting announcements on the public bulletin board at the department for at least seven days. The commissioner may publicize examination announcements in any way he or she considers appropriate to attract qualified applicants. These ways may include providing notice of announcements in newspapers or appropriate public offices.

2 MCAR S 2.318 Contents of announcements of examinations. Announcements of examinations must specify the title of the class or class option, typical job duties, components of the examination process, limitations on applicant admission, the date by which applications must be received, and the place where applications should be submitted. Announcements may contain any other information that the commissioner considers useful to attract qualified applicants.

2 MCAR S 2.319 Expenses of candidates for civil service positions. The commissioner or an appointing authority may pay travel expenses for candidates or eligibles invited to participate in oral examinations or employment interviews. In determining to pay travel expenses, the commissioner or an appointing authority will consider the availability of qualified candidates, the needs of the agency or state service, and the availability of funds. Any expenses paid are subject to the provisions of the commissioner's plan, established under Minnesota Statutes, section 43A.18, subdivision 2, regarding types and maximum amounts of reimbursement.

Chapter Five: Competitive Open Examinations

2 MCAR S 2.320 Applications. Applicants shall apply for

competitive open examinations on forms prescribed by the commissioner. The forms must be used to ask for information for use in the examination and appointment process, including an indication of applicant availability for certain geographic locations, employment conditions, or travel. The application form must contain a statement that providing false information on the application may subject the applicant to the penalty provisions of Minnesota Statutes, section 43A.39. It must also contain a statement explaining why private or confidential information is being collected and the purpose for which it is to be used and must indicate that the appointing authority has the right to verify information provided in the application.

2 MCAR S 2.321 Admissions.

A. General. The commissioner shall admit to examinations applicants whose completed applications are received at the place specified in the examination announcement on or before the specified date.

The commissioner may admit an applicant who has submitted an incomplete timely application but shall require completion of the application. The commissioner shall withdraw the applications of applicants who fail to respond to requests for information within a specified period.

B. Limited admissions. The commissioner may limit admission to those applicants who indicate their availability for geographic locations and employment conditions specified in the examination announcement.

The commissioner may announce the maximum number of candidates whose names will be placed on the list or who will be permitted to compete in any of the separate examination parts.

The commissioner may admit candidates to later examination parts in rank order of rating on the previous parts, and may invite additional candidates to complete the examination process as the need arises to create or expand an eligible list.

C. Refusal to admit to an examination. To protect the security of an examination, the commissioner may refuse to admit an applicant to an examination or examination part when the

applicant has taken the same examination or examination part within the preceding six months. In deciding whether to let an applicant repeat an examination or examination part, the commissioner shall consider the type of examination questions involved, the effect of memory and practice, the availability of untested applicants and other circumstances regarding the examination, needs of agencies, and situations of individual applicants. If the same examination or examination part is used more than once within a six-month period for the same or a different classification, an applicant who has been refused admission because of a six-month retest prohibition may submit an application and have the score he or she obtained on the previous examination or examination part apply to the subsequent examination or examination part.

The commissioner may remove from further consideration the applications of candidates who do not appear at the scheduled time or place for an examination or examination part.

D. Notice of admittance and refusal to admit. The commissioner shall notify candidates of the date, time and place for those parts of the examination process which require the candidate to appear in person.

The commissioner shall give an applicant the reasons for refusing to accept an application or to admit an applicant to an examination or examination part.

2 MCAR S 2.322 Change of application deadline or examination date. The commissioner may postpone the last date for filing applications and the date of any examination part or may cancel an examination or examination part. In these cases, the commissioner shall notify candidates of the new date or cancellation.

2 MCAR S 2.323 Administration of examinations. The commissioner will administer all examination parts at the time and place and by the personnel he or she decides most nearly meet the needs of the service.

2 MCAR S 2.324 Scoring of examinations. The commissioner shall

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decide the appropriate scientific techniques and procedures to be used to score examinations and to determine the ratings of candidates. The commissioner shall set the minimum rating for achieving eligibility considering the requirements of the class and the number of vacancies anticipated while the eligible list is in force. Final ratings of candidates will be determined by computing the earned rating on each examination part in accordance with the weights established for each part. The commissioner may require candidates to obtain a minimum rating on each examination part in order to receive a final passing rating or to pass all preceding examination parts in order to be rated on the remaining parts of the examination process. Veterans preference points will be assigned in accordance with Minnesota Statutes, section 43A.11 and applied only after a candidate has attained a final passing examination rating. Where rating procedures involve assignment of a numerical score, a score of 70 is required to pass and a score of 100 is the maximum score.

OK. Reasonable discretion -LOS

2 MCAR S 2.325 Notification of examination ratings. The commissioner shall give written notice to all candidates of their rating and must keep these ratings as official records of the department.

2 MCAR S 2.326 Explanation and appeals of examination ratings. Upon request, the commissioner shall give a candidate or his or her authorized representative an explanation of the methods used to determine an examination rating. A candidate may appeal to the commissioner in writing for reconsideration of his or her examination rating. The appeal must be received in the department within 30 calendar days of the date on the notice of examination rating and shall state the grounds for the appeal. The commissioner shall grant a review on the grounds of error, irregularity or fraud in the conduct or scoring of the examination or upon submission of additional information affecting the original rating.

If a review discloses errors, fraud, or irregularities

affecting the ratings of other candidates, the review may be extended to the ratings of those candidates.

The commissioner ~~may~~ must change the rating of a candidate if additional information affecting the original rating is submitted or if an error was made in the original rating, or ~~may~~ must order a new examination or a revision to the examination for the candidate or for all competitors if an error or irregularity occurred in the conduct or scoring of the examination.

A change made in the rating of a candidate as the result of an appeal will not affect an appointment already made in good faith as the result of original ratings.

(corrected page)

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A change made in the rating of a candidate as the result of an appeal will not affect an appointment already made in good faith as the result of original ratings.

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Chapter Seven: Establishment and Maintenance of Eligible Lists

2 MCAR S 2.341 Eligible lists. The commissioner shall keep eligible lists in accordance with Minnesota Statutes, sections 43A.11, subdivision 7 and 43A.12. If, after applying Minnesota Statutes, section 43A.11, subdivision 7, the commissioner finds that two or more candidates have identical final ratings, the commissioner shall place their names on the eligible list in descending order of the last four digits of their social security numbers with larger numbers coming first.

2 MCAR S 2.342 Reemployment lists and reinstatement. An appointing authority may directly reinstate a former permanent or probationary employee to a vacancy in the same class within three years of the former employee's separation from that class.

The commissioner shall establish and maintain a reemployment list of former permanent or probationary employees of the class who apply for reemployment within three years of separation from the class. In deciding whether to place the name of a former employee on the reemployment list, the commissioner shall consider the reemployment rating reported by the person's former appointing authority.

2 MCAR S 2.343 Duration of eligible lists. The commissioner shall decide how long competitive open and reemployment eligible lists will remain in effect. Under Minnesota Statutes, section 43A.12, a list must remain in effect for at least six months unless the class for which the examination was given is abolished.

To determine whether to abolish or continue an eligible list after six months, the commissioner shall consider the following factors: whether the examination process has changed, how many vacancies are anticipated, when the examination was last administered, how many eligibles are still available, and how often the existing eligible list has been used. If a competitive open eligible list exists for a class and the commissioner considers it necessary to establish another

competitive open list for the same class, the existing list must either be abolished or combined with the new list by placing names of all eligibles in order of their final ratings.

A candidate's eligibility begins on the date a candidate's name is placed on an eligible list and continues for the duration established by the commissioner for that eligible list except as otherwise provided in 2 MCAR SS 2.300-2.417. If it becomes necessary to abolish an eligible list before the published expiration of eligibility, the commissioner shall notify eligibles and offer them the opportunity to reapply if the examination is to be reannounced.

2 MCAR S 2.344 Removal of names from eligible lists. The commissioner may remove names from eligible lists permanently or temporarily in accordance with Minnesota Statutes, section 43A.13, subdivision 8, or in any of the following situations:

A. when the eligible has been appointed to fill a permanent position in the class;

B. when the eligible has been appointed to fill a permanent position in another class at a comparable or higher salary;

C. when the eligible fails to respond within seven days from the date of mailing to a written inquiry of the commissioner or an appointing authority about availability for appointment;

D. when the eligible declines an appointment under conditions the eligible previously indicated would be acceptable;

E. when the eligible fails to report for a scheduled employment interview or for work within the time period prescribed by an appointing authority;

F. when the eligible fails to maintain a record of current address; and

G. when the appointing authority documents that an eligible does not meet the requirements of the position or the eligible fails to successfully complete a required examination part administered following certification.

2 MCAR S 2.345 Notice of removal of names from eligible lists. The commissioner shall notify eligibles in writing when

permanently removing names in accordance with 2 MCAR S 2.344 G. and Minnesota Statutes, section 43A.13, subdivision 8.

2 MCAR S 2.346 Restoration of names to eligible lists. An eligible whose name is removed from an eligible list in accordance with 2 MCAR S 2.344 may request in writing that the commissioner restore his or her name to the list for the duration of the list. The request must state why the eligible believes his or her name should be restored to the eligible list. After reviewing the request, the commissioner may restore the eligible's name to the eligible list.

2 MCAR S 2.347 Changes in availability. Eligibles may notify the commissioner of changes in their availability at any time while the eligible list is in force.

Chapter Eight: Certification of Eligibles

2 MCAR S 2.351 Order of certification. The commissioner shall certify eligibles to vacancies from whichever eligible list he or she finds appropriate, considering any requests of an appointing authority for a specific eligible list and any obligations under collective bargaining agreements or plans established under Minnesota Statutes, section 43A.18. Eligibles shall be certified as provided in Minnesota Statutes, section 43A.13.

The commissioner shall generally certify in the following order: layoff lists; competitive promotional lists; and competitive open and reemployment lists.

2 MCAR S 2.352 Selective certification. When the commissioner is satisfied that the job-related information given by an appointing authority warrants the action, he or she may limit certification to the eligibles possessing identified special qualifications.

2 MCAR S 2.353 Incomplete and augmented certification. If certified eligibles are unavailable for hire, an appointing authority may request a new certification or request that

additional names be added to the certification. Additional names will be added in order of standing to bring the number to the maximum allowable by law. If the request to add names is made more than 30 days after the original certification date, the commissioner will provide a new certification from the eligible list.

If additional names are not available and the certification contains fewer names than authorized by law, the commissioner may decide that the remaining names certified are sufficient to provide a reasonable selection and that they constitute a complete certification. The commissioner may instead augment the incomplete certification with names from other types of eligible lists for the class or from eligible lists for classes of higher or similar compensation if the commissioner determines the examination reasonably measures the ability to perform the duties of the class for which certification is made.

2 MCAR S 2.354 Revised certification. If the rating of an eligible is changed as the result of an appeal under 2 MCAR S 2.326, and the change places the eligible's rating among those of other eligibles certified to a vacancy in accordance with Minnesota Statutes, section 43A.13, the commissioner shall add the eligible's name to that certification. At the discretion of the commissioner, the name of an eligible who has changed a statement of availability in accordance with 2 MCAR S 2.347 may be added to a certification if the change places the eligible's rating among those of other eligibles who were certified under Minnesota Statutes, section 43A.13. The addition of a name in accordance with this rule does not affect an employment offer already made.

Chapter Nine: Appointments

2 MCAR S 2.355 Appointments. Positions in the classified service must be filled by appointments from eligible lists except as otherwise provided by Minnesota Statutes, chapter 43A and 2 MCAR SS 2.300-2.417. An appointing authority may select

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an eligible from an eligible list after comparing the knowledge, skills, and abilities of the eligibles with the specific needs of the position and agency. Specific needs include meeting agency affirmative action goals.

The appointing authority is responsible for verifying all job-related information on all prospective employees for civil service positions. On or before the appointment date, the appointing authority should explain to the prospective employee his or her proposed classification title, employment status, salary, and terms and conditions of employment. The appointing authority shall submit appropriate appointment forms to the commissioner which must include the effective date of appointment. Appointments made from eligible lists are effective only on or after the date of certification.

Chapter Ten: Other Means of Filling Positions in the Civil Service

2 MCAR S 2.361 General. In addition to filling vacancies in the civil service by appointing certified eligibles, appointing authorities may make noncompetitive, qualifying, labor service, work training, internship, or unclassified appointments in accordance with Minnesota Statutes. Those appointments may be made when authorized by the commissioner or by statute and are subject to 2 MCAR SS 2.361-2.370.

2 MCAR S 2.362 Emergency appointments. An appointing authority may make an emergency appointment to meet unique and immediate needs. The appointing authority may appoint any person he or she considers qualified. Appointments are limited to 30 working days in any 12-month period by Minnesota Statutes, section 43A.15, subdivision 2.

2 MCAR S 2.363 Temporary appointments. The commissioner may approve an appointing authority's written request for a temporary appointment for:

A. filling a vacancy funded for six months or less;

B. providing an employee for a temporary project not

anticipated to last more than six months;

C. filling a vacancy created by an approved leave of absence to a maximum of one year; or

D. unusual documented instances, when an appointing authority asks to make a temporary appointment of six months or less to a position otherwise authorized for more than six months.

An appointing authority may request authorization to make a direct temporary appointment of any person he or she considers qualified in accordance with Minnesota Statutes, section 43A.15, subdivision 3. The commissioner may certify any qualified eligible from an appropriate eligible list or may authorize the appointing authority to make a direct appointment of a person he or she considers qualified or both. In making this decision, the commissioner will consider requests from the appointing authority, the anticipated length of the temporary appointment, and the number and availability of eligibles for temporary appointments.

2 MCAR S 2.364 Provisional appointments.

A. Authorizing provisional appointments. The commissioner may authorize a provisional appointment in accordance with Minnesota Statutes, section 43A.15, subdivision 4, after considering the following documentation submitted by the appointing authority:

1. an explanation of the urgent reason for filling the vacancy which makes it impractical to await results of a competitive examination;

2. a statement that there is no appropriate eligible list available or that all eligible candidates on an incomplete certification from an eligible list are unavailable or unsuitable for appointment, including a specific statement of the job-related reasons for determining an eligible to be unsuitable; and

3. a description of the nominee's qualifications in the form prescribed by the commissioner to permit examination of the nominee's qualifications to determine whether the nominee is qualified to be provisionally appointed to the position as

required by Minnesota Statutes, section 43A.15, subdivision 4.

B. Terminating provisional appointments. The appointing authority shall terminate a provisional appointment 90 days after the commissioner provides a certification from which an appointment could be made, or after six months, whichever is earlier. However, in individual cases, the commissioner may grant exceptions and extend provisional appointments in accordance with Minnesota Statutes, section 43A.15, subdivision 4, if the appointing authority documents a continued shortage of qualified eligibles.

2 MCAR S 2.365 Transfers from other public jurisdictions.

A. Permitted transfers or demotions. The commissioner may approve the transfer or voluntary demotion of an employee from another public jurisdiction if the following conditions are met:

1. the employee is currently working in the other public jurisdiction or has worked in the other public jurisdiction within the preceding year;

2. the position held by the employee in the other public jurisdiction is covered by a personnel system with competitive entry and promotion standards, comparable in duties and responsibilities to the Minnesota classifed position, and compensated at a level similar to or higher than the position to which the employee is being transferred or demoted; and

3. the employee meets the qualifications for the class to which he or she is being transferred or demoted.

B. Disallowed transfers. The commissioner shall not approve the transfer of an employee to a position funded by a grant-in-aid ~~agency~~ program from a public jurisdiction without a federally approved merit system.

2 MCAR S 2.366 Exceptional appointments. The commissioner may authorize an exceptional appointment in accordance with Minnesota Statutes, section 43A.15, subdivision 8, after considering the following documentation submitted by the appointing authority:

A. a statement that the position requires exceptional

qualifications of a scientific, professional, or expert nature;

B. a statement that the intended appointee possesses the qualifications; and

C. a statement that it is impracticable to conduct a competitive examination to select a suitable candidate.

2 MCAR S 2.367 Routine service appointments. Appointing authorities may make routine service appointments only to positions in classes determined by the commissioner to be of a routine service nature as provided in Minnesota Statutes, section 43A.15, subdivision 10. The commissioner shall give public notice as provided in 2 MCAR S 2.317 designating the routine service classes and describing the procedures used in recruiting and selecting persons for appointment.

2 MCAR S 2.368 Shortage occupation appointments. An appointing authority may make shortage occupation appointments only to positions in classes determined to be in critically short supply of qualified applicants. The commissioner shall make this determination in accordance with Minnesota Statutes, section 43A.15, subdivision 11, considering documentation regarding the unavailability of qualified applicants for positions in the class, the length of time positions in the class remain vacant, and recruiting efforts made to secure applicants for the class. The commissioner shall give public notice as provided in 2 MCAR S 2.317 designating the shortage occupation classes and describing the recruiting, qualifying examination, and referral processes to be used in filling positions in these classes.

2 MCAR S 2.369 Work training appointments. Appointing authorities may make work training appointments only to positions in work training programs approved by the commissioner. These appointments shall be of a predetermined duration.

Work training programs must include trainee recruitment and selection procedures that incorporate public notice of intent to accept applications for training.

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2 MCAR S 2.370 Internship appointments. Appointing authorities may make internship appointments only to positions in programs established in cooperation with accredited educational institutions. These appointments shall be of a predetermined duration.

The internship appointment must provide academic credit or fulfillment of academic requirements for the participating student. An appointing authority is responsible for providing information about available programs and positions to institutions and students.

Chapter Eleven: Conflict of interest

2 MCAR S 2.381 Reporting and investigating conflict of interest. A member of the public may report an alleged conflict of interest concerning a civil service employee subject to the code of ethics in Minnesota Statutes, section 43A.38 to the commissioner or the employee's appointing authority. The appointing authority shall cooperate with the commissioner in investigating complaints. If the commissioner decides that a conflict of interest exists, the commissioner shall direct the appointing authority to take action in accordance with Minnesota Statutes, section 43A.38, subdivision 7. The appointing authority shall report actions taken to the commissioner within ten calendar days.

Chapter Twelve: Statewide Affirmative Action Program

2 MCAR S 2.391 Affirmative action 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. A good faith effort minimally includes consideration of affirmative action goals on all staffing and personnel decisions.

2 MCAR S 2.392 Scope of chapter. This chapter applies to all

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agencies in the executive branch and to classified and unclassified positions of those agencies. In the event of a conflict or duplication between requirements of this chapter and federal regulations and at the request of the agency head, the commissioner may permit an agency to substitute a federally required procedure for a similar procedure otherwise required by this chapter.

2 MCAR S 2.393 Duties of the agency head. The agency head shall administer the agency's affirmative action program in compliance with existing laws, federal regulations, and state rules. The agency head is accountable for affirmative action compliance to the governor and to the commissioner.

2 MCAR S 2.394 Requirements for agency affirmative action plans.

A. For agencies with 25 or more employees. The head of each agency with 25 or more employees shall submit to the commissioner an affirmative action plan for the agency. The plan must at least:

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

2. designate 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. state the agency head's commitment to the 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. describe the methods by which the agency's affirmative action program is communicated internally and externally to employees and other interested persons;

6. describe internal procedures, which must comply with 2 MCAR S 2.395, for processing complaints of alleged discrimination from applicants, eligibles, and employees;

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7. set goals and timetables, which must be established using the standards in 2 MCAR S 2.396;

8. identify and describe methods for developing programs and program objectives designed to meet affirmative action goals;

9. describe methods of auditing, evaluating, and reporting program success, including a procedure that requires a preemployment review of all hiring decisions for goal units with unmet affirmative action goals and prereview of all layoff decisions to determine their effect on agencies' affirmative action goals and timetables; and

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

At the discretion of the agency head, the affirmative action plan may contain other provisions not in conflict with this chapter.

B. For agencies with fewer than 25 employees. The head of each agency with fewer than 25 employees shall submit to the commissioner an affirmative action plan for the agency, which must at least:

1. state the agency head's commitment to the affirmative action program;

2. state 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; and

3. describe an internal procedure, which must comply with 2 MCAR S 2.395, for processing complaints of alleged discrimination from applicants, eligibles, and employees.

2 MCAR S 2.395 Requirements for complaint procedures. In an agency's internal procedure for processing complaints of alleged discrimination from applicants, eligibles, and employees, the initial step must provide for a determination of whether the complaint is properly a discrimination complaint and, therefore, appropriate to be addressed by the internal procedure. Time limits on these determinations must be established to permit the

applicant, eligible, or employee to pursue a complaint determined to be other than a discrimination complaint through other appropriate grievance procedures in accordance with the time limits of those procedures. Complaint procedures must also provide for a final written answer within 60 days after a formal complaint is filed. Disposition of complaints must be filed with the commissioner within 30 days of final determination.

2 MCAR S 2.396 Requirements for goals and timetables.

A. General requirement. In establishing goals and timetables for affirmative action plans, agency heads shall comply with B.-F.

B. Labor force statistics. In establishing goals for affirmative action plans, agency heads shall use labor force statistics from census data when available to examine work force participation. 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. the comparability of data categories (occupational group, geographic location, handicapping condition, for example) used.

C. Formula for determining underutilization. Agency heads shall determine underutilization of protected groups using statistical formulas 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. Numerical goals. Agency heads shall establish numerical

goals for the agency and for each agency subdivision that has 25 or more employees and that is in a geographic location with a labor market area separate from that of the agency central office.

E. Basis for goals. Agency heads shall establish goals for each goal unit by protected group. The goals must be based on a comparison of the composition of the agency or agency subdivision work force with the composition of the relevant civilian labor force in an identified labor market area. If the comparison shows that a goal unit underutilizes a protected group, the agency head shall establish a goal for that group in that goal unit.

F. Timetables. Agency heads shall establish timetables for meeting goals. Timetables must be based on turnover and hire rates within each goal unit in the agency or within each agency subdivision.

2 MCAR S 2.397 Reporting requirements.

A. Quarterly reports. Agency heads with 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. Agency heads with fewer than 25 employees shall submit such a report to the commissioner semiannually. Reports are due 30 days following the close of the reporting period.

B. Biennial reports. Each agency head shall submit to the commissioner, concurrently with the agency's biennial 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.

Chapter Thirteen: Social Security Rules

2 MCAR S 2.401 Authority and scope of chapter. This chapter is promulgated under Minnesota Statutes, chapter 355, and applies to the state, any political subdivision of the state, or any coverage group to be included under the federal old age and

survivors insurance system.

2 MCAR S 2.402 Definitions.

A. Scope. The terms used in this chapter have the meanings given them in 2 MCAR S 2.402.

B. Coverage group. "Coverage group" means the grouping of positions in any political subdivision of the state as they are brought under the provisions of the federal Social Security Act, pursuant to Minnesota Statutes, chapter 355, and for which contributions for each grouping are required by law to be transmitted to the state agency.

C. Employee, employment. "Employee" and "employment" have the meanings given them in Minnesota Statutes, section 355.01.

D. Federal Insurance Contributions Act. "Federal Insurance Contributions Act" has the meaning given it in Minnesota Statutes, section 355.01.

E. Federal old age and survivors insurance. "Federal old age and survivors insurance" means the insurance system established by title II of the federal Social Security Act, United States Code, title 42, section 418.

F. Political subdivision. "Political subdivision" has the meaning given it in Minnesota Statutes, section 355.01.

G. Reportable wages. "Reportable wages" means reportable wages as provided by title II of the federal Social Security Act. "Maximum reportable wages" means maximum reportable wages as provided by title II of the federal Social Security Act.

H. Reporting unit. "Reporting unit" means the payroll record unit of a state or political subdivision.

I. Social Security Act. "Social Security Act" has the meaning given it in Minnesota Statutes, section 355.01.

J. State agency. "State agency" has the meaning given it in Minnesota Statutes, section 355.01.

K. State agreement. "State agreement" means the agreement or modification authorized by Minnesota Statutes, chapter 355, entered into between the state and the secretary of health and human services.

2 MCAR S 2.403 Employee account numbers.

A. When required. It is necessary for each covered employee of a political subdivision to have a social security account number when the political subdivision makes its first wage report for federal old age and survivors insurance.

B. Obtaining a number. Each employee shall submit his or her social security account number for the records of the reporting unit. An employee who does not have a number shall apply for a number with any field office of the Social Security Administration within seven days after beginning work for the reporting unit. However, if the employee leaves the employ of the reporting unit before the seventh day, he or she must apply for a number on or before the date of leaving. Application must be made on social security administration form SS-5.

C. Keeping one number only. An employee must not have more than one account number. Any employee whose name is changed by marriage or otherwise, or who wishes to correct information given on social security form SS-5, should report the change or correction to a field office of the Social Security Administration. The old name should be used for payroll and for wage report purposes until the change has been processed by the Social Security Administration.

D. Showing card. The political subdivision shall enter the employee's name and account number on all records, returns, reports, and claims exactly as shown on his or her account number card. If a person fails to show the card when he or she first performs services under an agreement, the political subdivision that employs the person shall ask to see the person's card.

2 MCAR S 2.404 Identification number for coverage groups. The Social Security Administration will assign an employer identification number to the state, each political subdivision of the state, and each coverage group to be included under the federal old age and survivors insurance system. If any political subdivision maintains more than one payroll record unit, a unit number will be assigned to each separate payroll

record within the coverage group. The identification number, including the unit numbers assigned to payroll record units, if any, must be entered on all reports, returns, forms, claims, and correspondence.

2 MCAR S 2.405 Employee's and employer's contribution.

A. Amount subject to deduction. The employee's contribution is measured by the amount of wages actually received on or after the effective date of the state agreement with respect to services performed in employment by the employee in a coverage group included in the agreement. After an employee has been paid the maximum reportable wages during a calendar year, additional wages paid that employee during the remainder of the calendar year are not subject to deductions for social security taxes, and no further wage contributions are required.

B. Tax rates. The contribution rates established by title II of the federal Social Security Act, United States Code, title 42, section 418, must be applied against the wages of employees within the coverage group and matched with an equal amount by the reporting unit. Taxes must be computed on the basis of the rate effective at the time the wages are actually or constructively received or paid.

C. Certain wages excepted. Wages received by an employee after the effective date of coverage for services rendered in a period before the effective date of coverage are not "wages received for employment" and are not subject to tax. Therefore, if the state agreement makes social security coverage effective January 1 of a calendar year, wages received by an employee in that calendar year for services rendered in the previous calendar year are not "wages received for employment" and are not subject to tax.

D. Records required. Any political subdivision or any employee claiming refund, credit, or abatement of any tax or interest collected shall present a detailed record to establish the validity of the claim.

E. Controls. Each political subdivision shall establish a system of controls so that no employee is taxed on wages in

excess of the maximum reportable wages as provided in United States Code, title 42, section 418, for each calendar year. These controls must be set up so that the tax will be withheld on the exact amount of the reportable wages as provided in title II of the federal Social Security Act received by an employee in a calendar year. There shall be no prorating of the year's total tax liability of the employees over the 12-month period.

F. Termination of reporting unit. Any political subdivision whose existence is terminated by reorganization, consolidation, or annexation or which is abolished by statute or other legal action shall report this fact to the state agency at the time the final report is submitted and also indicate at that time where all records and documents will be stored or maintained and the name of the person or officer responsible for the safekeeping of the records and documents.

G. Wage and tax statement. Each political subdivision shall furnish a written wage and tax statement to each individual performing service in employment as an employee in a coverage group included in the state agreement. The statement must show the following information with respect to wages paid or available for payment to the employee for the service on or after the effective date of the agreement or modification:

1. the name and identification number of the political subdivision or coverage group in which services were performed;

2. the name and account number of the employee;

3. the period covered by the statement;

4. the total amount of wages subject to contributions paid during this period; and

5. the amount of employee's contribution withheld in respect to wages.

The statement must be given to the employee not later than January 31 of the year following the calendar year covered by the statement unless the employee leaves employment in a coverage group, in which case the final statement must be given to the employee no later than 30 days after the last payment of wages is made. Federal Internal Revenue Service form W-2,

Withholding Statement, shall be used to satisfy 1.-5.

2 MCAR S 2.406 Collecting and remitting tax.

A. Responsibility for collecting. The reporting unit shall collect from each employee the amount of tax determined to be due by deducting that amount from the employee's wages when actually or constructively paid. The reporting unit shall collect the tax even if the wages are paid in a medium other than cash.

B. Schedule. After the reporting unit has provided the matching amount, the total social security contribution must be remitted to the state agency for credit to the social security contributions fund in accordance with the following schedule:

1. For each month, the social security contributions due on the wages paid must be forwarded to the state agency within the 15-day period following the end of each month beginning with July 1980. If the last day of the 15-day period is a legal holiday or a nonwork day, the social security contribution payment is due on the next work day.

2. Where the state assumes the responsibility for the matching employer social security contribution under Minnesota Statutes, section 355.46, subdivision 3, clause (b), the payments under 1. must be equal to the required employee contribution withheld only.

3. In lieu of remitting at the times indicated above, the reporting unit may remit the required social security contribution payment at the end of each payroll period or after each salary payment made to the employees. In no event may the contribution payment be made later than the times specified in 1.

4. With each contribution payment, the reporting unit shall submit a completed approved remittance form prescribed by the state agency.

5. If any monthly contribution payment is not received by the state agency within the deadlines specified in 1., the state agency shall charge interest to the reporting unit. The interest rate must be six percent a year on the contributions due for each month or part of a month from the due date, but in

no case may the interest charge be less than $5.

2 MCAR S 2.407 Submitting contributions. A political subdivision must not send social security contributions directly to the Social Security Administration, a depository bank, or a Federal Reserve Bank.

2 MCAR S 2.408 Liability for tax. The reporting unit is liable to the state agency for the employee's share of the tax whether or not the share has been withheld from the employee's wages. Nevertheless, the employee remains liable for the employee's share of the tax on all wages received by the employee not in excess of the maximum reportable wages.

2 MCAR S 2.409 Reporting unit's failure to pay state agency. If a reporting unit fails to make the social security contribution payments required by law and this chapter, the state agency may recover by bringing action in a court of competent jurisdiction against every political subdivision liable for payments. The state agency may recover either the delinquent payments due with interest of six percent a year or the minimum penalty established by this chapter, whichever is greater. Alternatively, at the state agency's request, the delinquent payments may be deducted from any other money payable to the political subdivision by any department or agency of the state.

2 MCAR S 2.410 When employer may begin deducting. The state or a political subdivision may not begin making deductions for social security taxes from the earnings of employees until the secretary of health and human services has approved the state agreement on behalf of the federal government. However, as soon as the state agreement is fully executed and approved, the political subdivision shall make the necessary deductions from earnings, retroactive to the effective date of the state agreement, so that the total contribution payments required from the effective date of the state agreement are transmitted to the state agency along with initial reports before the initial deadline determined by the state agency. The exact method and

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time of deducting retroactive contributions from employees are matters to be determined by each political subdivision individually.

2 MCAR S 2.411 Sick pay.

A. Counting sick pay as wages for social security purposes. Revisor ? clarification
Effective January 1, 1982, payments made by the state or any political subdivision to an employee absent from work because of sickness or accident disability are wages for the first six months after the last month the employee worked. Wages include payments made by third parties, such as insurance companies, under group sickness and accident policies. Payments to an employee by either the governmental unit or a third party are excluded from wages if they are made more than six months after the last month in which the employee worked.

B. Employee's contributions to sick pay plan. If an employee has contributed to a sick pay plan, the wages for social security purposes do not include that portion of the payment attributable to the employee's contribution.

C. Arrangements with party making payments. The reporting unit shall arrange to have the third party, usually an insurance company, withhold the employee contributions from the sick pay payments, remit the amount withheld to the reporting unit, and provide the wage data needed to prepare wage reports. The sick pay employee contributions, matching employer contribution, if any, and the corresponding wage data should be included on the monthly social security contribution transmittal forms with all other contributions and wages for that period.

2 MCAR S 2.412 Wage reports. Every political subdivision and coverage group included in the state agreement shall make a wage report to the state agency for each reporting period beginning with the first reporting period with respect to which the state agreement is effective until the subdivision or group files a final report as required by law.

2 MCAR S 2.413 Quarterly reports before 1981.

A. General requirement. Quarterly reporting of covered

wages paid is required for periods prior to January 1, 1981.

B. Form and coverage. The original and one duplicate copy of the consolidated quarterly payroll report must be submitted on social security administration form SSA-3963 for each reporting unit in conformity with the requirements of the secretary of health and human services. Each quarterly report must be a consolidated report, which must include all covered wages paid to personnel employed by any department, board, and commission reportable under the identification number assigned to the political subdivision or coverage group. The summary information must be shown at the bottom of page 1 of form SSA-3963.

C. Report when no wages are paid. Even though no wages are paid in a quarter, the reporting unit must file a report on form SSA-3963 with the notation "no covered wages paid" made on the body of the form.

D. Remittance. Each quarterly report must be accompanied by a check or checks made payable to "State Treasurer, Contribution Fund," or by a copy of the remittance form prescribed in 2 MCAR S 2.406 B.4. The amount of the remittance must equal the sum of both the required employer contribution of the political subdivision and the required deductions from the earnings of all personnel in the coverage group. In the payment of contributions to the state agency, the reporting unit may disregard a fractional part of a cent unless it amounts to one-half cent or more, in which case it must be increased to the nearest cent.

E. Date due. The initial quarterly reports and required remittances for the period from the effective date of coverage to the end of the quarter in which any political subdivision becomes covered under the state agreement must be transmitted so as to be received by the state agency on or before the date fixed by the state agency for the filing of these initial reports.

F. Interest on overdue reports. If any quarterly report is not received by the state agency within the respective

established deadlines, interest will be charged to the reporting unit at the rate of six percent a year on reportable contributions for each month or part of a month from the date due, but the interest charge or penalty shall not be less than $5.

2 MCAR S 2.414 Annual reports, 1981 and after.

A. General requirement. Annual reporting of covered wages is required for calendar year 1981 and for each year thereafter.

B. Coverage. Each report must be a consolidated report which must include all covered wages paid and reportable under the identification number assigned to the political subdivision. The information must be furnished on forms prescribed by the Social Security Administration.

C. Remittance. The contribution payments remitted for each calendar year pursuant to 2 MCAR S 2.405 must equal the social security contributions due on the covered wages included on the report submitted under B. Any differences must be fully explained, and the additional contributions, if any, must be remitted with the completed report.

D. Date due. Each report must be received by the state agency not later than January 31 following the year for which the report is made. Reports and contribution payments that have not been prepared in accordance with state agency rules and instructions are unacceptable and are subject to the penalties imposed by this chapter.

E. Penalties. Wage reports received after the established due date are delinquent. To cover the additional administrative costs, a penalty of $5 for the first day of the delinquency and $1 for each additional day that the report is delinquent will be assessed against the reporting unit.

F. Summary data. In addition to the wage reports required by A.-F., quarterly summary data as prescribed by federal social security regulations must be submitted in accordance with state agency instructions.

G. Combined wages from several employees. Where an employee performs services during a calendar year for the state and one

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or more political subdivisions or for two or more political subdivisions, the wages paid in any calendar year to the employee by the state and each political subdivision not in excess of the maximum reportable wages shall be reported by the state and each political subdivision, with the following exception: where the state of Minnesota pays the matching employer social security contributions tax, such as for teachers in Minnesota public schools, then only the maximum reportable wages paid to such individual in the aggregate are subject to the social security tax and reported as wages.

2 MCAR S 2.415 Adjustment reports. If the reporting unit determines that a wage report or a previously submitted adjustment report was in error, the unit shall complete an adjustment report, currently called "State's Report of Adjustments," form SSA-3964, and shall forward the original and one copy to the state agency. The following errors require that the adjustment report be completed: wages omitted from the report, not enough wages reported, excessive wages reported, wages reported in excess of the maximum reportable wages, wages shown on report for the wrong period, and wages reported for the wrong person.

The adjustment report must be submitted before the expiration of the time limitations established by the federal statute of limitations set forth in the federal Social Security Act, United States Code, title 42, sections 418 (q) and (r). The reporting unit is liable for the payment of interest on any adjustment report which is determined by the federal government to be delinquent.

2 MCAR S 2.416 Records.

A. General requirement. Every political subdivision shall keep accurate records of all wages, whether in cash or in a medium other than cash, paid or available for payment to employees of the political subdivision.

B. Forms and accounting systems. Each political subdivision shall use forms and systems of accounting that will enable the

state agency, the state agency's authorized representatives, or the agents of the secretary of health and human services to ascertain whether the social security taxes for which the political subdivision or coverage group is liable are correctly computed and paid.

C. Contents of records. The records must show with respect to each employee:

1. the name, address, and account number of the employee and any additional information required by this chapter when the employee does not show his or her social security account number card;

2. the date of each wage payment, the total amount, including any sum withheld from the total as contribution or for any other reason, and the period of services covered by the payment;

3. the amount of the wage payment which constitutes wages subject to tax; and

4. the amount of employee's contributions withheld or collected with respect to each total wage payment, and the date collected if other than the time when the payment was made.

If the total wages in 2. and the amount of the wage payment which is subject to tax in 3. are not equal, the reason for the difference must be made a matter of record.

Political subdivisions shall keep accurate records of the details of each adjustment or settlement made under any state agency instructions or rules or federal regulations.

D. Copies of documents. A political subdivision shall keep a copy of any return, report, schedule, statement, or any other documents as a part of its records.

E. Records open for inspection. All records required by this chapter and federal regulations must be kept at a convenient and safe location accessible to representatives of the secretary of health and human services and of the state agency. The records must at all times be open for inspection by these officials.

F. Retention of records. All records required by this

chapter and federal regulations must be kept for at least four years after the date when the contributions listed in the records became due or the date when the contributions were paid, whichever is later. Records required in 2 MCAR S 2.405 D. must be kept for at least four years after the date when the claim is filed. Records must not be destroyed or otherwise disposed of, even after the lapse of the four years, without the written consent required under Minnesota Statutes, section 138.17.

2 MCAR S 2.417 Administrative costs. Each department or agency of the state and each political subdivision included in the state agreement is liable for a pro rata share of the costs of administering Minnesota Statutes, chapter 355 as certified by the state agency. The amounts certified must be based upon the social security contribution tax paid or payable on wages paid to employees of the political subdivisions or coverage groups coming within the provisions of Minnesota Statutes, chapter 355. In addition to the ordinary reimbursable expenses, the state agency may charge a political subdivision for any extraordinary costs of administration relating to matters affecting that particular political subdivision.

Notwithstanding the above provisions for determining the pro rata charges, there is a minimum pro rata charge of $5 for each reporting unit that reports wages for any person during the period involved. The amounts certified are due and payable upon notice from the state agency, and all checks must be payable to "State Treasurer, State Agency Revolving Fund."

Repealer: The following personnel rules are repealed: 2 MCAR SS 2.001; 2.002; 2.003; 2.004; 2.011; 2.022; 2.023; 2.029; 2.030; 2.038; 2.039; 2.040; 2.041; 2.042; 2.044; 2.046; 2.049; 2.056; 2.061; 2.064; 2.065; 2.066; 2.067; 2.068; 2.084; 2.085; 2.088; 2.090; 2.091; 2.096; 2.118; 2.165; 2.179; 2.182; 2.198; 2.201; 2.202; 2.205; 2.208; 2.212; 2.2121; 2.215; 2.222; 2.224; ~~2.225;~~ 2.227; 2.228; 2.229; 2.230; 2.231; 2.233; 2.236; 2.237; 2.2371; 2.239; 2.2391; 2.245; 2.249; 2.2491; 2.251; 2.252; 2.255; 2.256; 2.2561; 2.258; 2.259; 2.260; 2.2601; 2.261; 2.262;

(417)

transmittal memo 12 pp

duplicates new 2.369

no indication of why this is deleted — rule is not in MCAR (Hennepin Co DIC - LOS)

1 2.263; 2.264; 2.290; 2.291; 2.292; 2.293; 2.294; 2.295.

APPROVED AS TO LEGALITY

November 29, 19 82

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry D. Jerns

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC - 9 1982
Joan Anderson Growe
Secretary of State
2:50 P.M.

Our File No. 863

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 11-12-82
DATE FOR REVIEW 11-22-82
DATE DUE [redacted] 11.29.82

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved 11/29/82 Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____ Revisor approved 11/16/82
disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed see SR.

✓ Order Adopting 11.10.82 Date + comment

✓ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency I verified that Rules as Proposed were mailed out w/Notice but see my comment re staf. authority

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

✓ Mailing list Certificate

✓ Publication in State Register
10.4.82 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

? Agency's Findings of Fact — see transmittal memo, -see my comment

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

✓ 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
misstates number of days of AG comment period. and date submitted to AG. However, because of Thanksgiving holiday, computation of time comes out to just one day short of time stated in Notice

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT EMPLOYEE RELATIONS - 3RD FLOOR SPACE CENTER BUILDING

TO : Mike Miles
Special Assistant Attorney General

DATE: 11/12/82

FROM : Mark Sundquist, Manager
Training and Development

PHONE: 296-8933

RECEIVED
NOV 12 1982
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SUBJECT: Proposed Personnel Rules

Attached is the packet of information on Personnel Rules that we are promulgating without a hearing. This material is ready for legal review by the Attorney General and includes the following:

1. Rule as Adopted (4 copies).
2. Order for Adopting (2 copies) -- Attorney General's Exhibit H-2.
3. Notice of Intent to Solicit Opinion -- Attorney General's Exhibit A.
4. Order of Notice Adopting Rule -- Attorney General's Exhibit B-2.
5. Notice of Intent to Adopt -- Attorney General's Exhibit D-2.
6. Affidavit of Mailing -- Attorney General's Exhibit F.
7. Mailing List Certificate -- Attorney General's Exhibit E.
8. Rule as Adopted -- Copy of the October 4 State Register.
9. Statement of Need and Reasonableness.
10. Written Comments for Rules and Requests for Hearing.
11. Certificate of Compliance with Rule -- Attorney General's Exhibit J.
12. Affidavit of Mailing Notice -- Attorney General's Exhibit K and L.

The following comments are this agency's response to the written comments received:

A. Definition of "Handicapped" in 2 MCAR 2.303, Section L. Comments were received from Jane Baird, Mary Hartle, Scott Rostron, Sidney Sasser, Lowell Clingman, Nancy Petraca, Judy Sanders, and Joyce Scanlon. We interpreted these comments to mean that seven of the eight individuals wanted a hearing on the definition of handicapped. Therefore, we withdrew the definition from the Rules and will schedule a hearing at a future date. We also withdrew repeal of 2 MCAR 2.225 which is the current definition of handicapped. The remainder of the proposed Rules are consistent with this old definition.

B. Comments from Paul Swenson.

1. Proposed change was incorporated.

2. The proposed change was rejected because it decreases agency flexibility and would substantially increase cost.

3. The proposed change was rejected because meeting the 30-day time frame would not be possible in all cases.

4. Although this idea does make sense, the proposed change was rejected because the established time frames could not be met in all cases. If we incorporated this suggestion, we would also need to establish sanctions for not complying as well as enforcement procedures. Either of these would not be very realistic.

5. The proposed change was rejected because it would create an administrative nightmare to redo all certifications that had already been processed.

C. Comments from Donn Escher.

1. Repeal Section.
   a. 2 MCAR 2.010 will be repealed with the proposed Rules published in the November 15 State Register.
   b. 2 MCAR 2.165; 2.2391; 2.294; and 2.295 have been added to the repeal section as a result of this comment.

2. Unclassified Appointments is to be included in the proposed Rules published in the November 15 State Register.

3. 2 MCAR 2.303I. There was no change requested.

4. 2 MCAR 2.306. The proposed change was rejected because it takes away the flexibility of the class option situation which has long existed and substitutes the equivalent of separate classes with all the attendant problems of separate classes. In short, making this change would be cumbersome and would eliminate the benefit to using class options.

5. 2 MCAR 2.307. The proposed change was rejected because retaining Section D would not solve the problem. It is necessary to increase the internal efforts to coordinate classification and recruiting and examining job analysis approaches to fully resolve the problem. The agency is undertaking these measures.

6. 2 MCAR 2.311. The proposed change was rejected because we do not think that we have the statutory authority to do the change.

7. 2 MCAR 2.318 was not asking for change.

8. 2 MCAR 2.365. The proposed changes were incorporated into the revised Rules.

D. Comments from Bob Siefert. These comments were received after the deadline of the comment period and were not considered. The time frame to get changes through the Revisor's Office and then to the Attorney General precluded us from taking additional time to incorporate late comments.

If you have any questions or concerns, please contact me at your convenience.

MS:ld

Attach.

25% COTTON
FOX RIVER BOND
25% COTTON

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of the Proposed Adoption
of Rules of the State Department of Employee Relations Governing the State Personnel System

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on October 4, 1982 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 5.0412, subdivision 4 on October 1, 1982. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Personnel Rules are adopted this 10th day of November, 1982, pursuant to authority vested in me by Minnesota Statutes section 43A.04, Subd. 3.

STATE OF MINNESOTA

Barbara L. Sundquist

Barbara L. Sundquist
COMMISSIONER OF EMPLOYEE RELATIONS

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of the Proposed Adoption of Rules of the State Department of Employee Relations Governing the State Personnel System

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on October 4, 1982 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 5.0412, subdivision 4 on October 1, 1982. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, incorporating the change in 2 MCAR 2.326 at the suggestion of the Attorney General, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Personnel Rules are adopted this 5th day of November, 1982, pursuant to authority vested in me by Minnesota Statutes section 43A.04, Subd. 3.

STATE OF MINNESOTA

Barbara L. Sundquist

Barbara L. Sundquist
COMMISSIONER OF EMPLOYEE RELATIONS

Department of Employee Relations

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Personnel Administration

Notice is hereby given that the State Department of Employee Relations is seeking information or opinions from sources outside the agency in preparing to repeal existing rules and promulgate new rules governing personnel administration. The promulgation of these rules is based on the recodification of Minn. Stat. ch. 43 and is authorized by Minn. Stat. § 43A.04, subd. 3 (Supp. 1981), which requires the agency to promulgate rules "to implement the provisions of Chapter 43A which directly affect the rights of or processes available to the general public." The rules will include processes for determining the extent of competition for filling vacancies, recruiting applicants, conducting open competitive examinations, ranking candidates and maintaining competitive open eligible lists; certification and appointment of eligibles from competitive open eligible lists, the method for making noncompetitive and qualifying appointments and the process for designating temporary positions in the unclassified service and making appointments to the unclassified service. They will also include rules governing the statewide affirmative action program, relocation expenses and other authorized employee expenses and procedures for administering the code of ethics. The rules may also include other processes covered in Chapter 43A.

The State Department of Employee Relations requests information and comments concerning the subject matter of these

rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Mark Sundquist
3rd Floor Space Center Building
444 Lafayette Raod
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at (612)296-8933 and in person at the above address.

All statements of information and comment shall be accepted until June 4, 1982. Any written material received by the State Department of Employee Relations shall become part of the record in the event that the rules are promulgated.

Barbara Sundquist

BARBARA SUNDQUIST
Commissioner
Department of Employee Relations

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of the Proposed Adoption of Rules of the State Department of Employee Relations Governing the State Personnel System	ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 1st day of October, 1982 that a Notice of Intent to Adopt Rules Without Public Hearing in the above entitled matter be given to all persons who have registered their names with the State Department of Employee Relations for that purpose and be published in the State Register.

STATE OF MINNESOTA

Barbara L. Sundquist

Barbara L. Sundquist
COMMISSIONER OF EMPLOYEE RELATIONS

PROPOSED RULES PRINTED IN STATE REGISTER

October 4, 1982

Department of Employee Relations

Proposed Adoption of Rules Regarding the State Personnel System

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the State Department of Employee Relations proposes to adopt the above entitled rules without a public hearing. The Commissioner has determined that the proposed adoption of these rules is non-controversial in nature and has elected to follow the procedures set forth in Minnesota Statutes § 15.0412, Subd. 4H (1980) for adoption of non-controversial rules.

Persons interested in these rules shall have thirty (30) days to submit comments on the proposed adoption of these rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven (7) or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In requesting a hearing, individuals are asked to identify the specific rules they are concerned about. Failure to identify the specific rules will not preclude the individual from requesting a hearing. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes § 5.0412, Subds. 4-4f.

Persons who wish to submit comments or a written request for a public hearing, should submit such comments or requests to:

Mark L. Sundquist
3rd Floor Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101
296-8933

6

Authority for the adoption of these rules is contained in Minnesota Statutes 43A.04, Subd. 3. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Mark Sundquist upon request.

7

Upon adoption of the final rules without a public hearing, the proposed rules Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General or wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mark Sundquist.

8.

Barbara L. Sundquist

Barbara L. Sundquist
Commissioner
Department of Employee Relations

Note — rules were mailed with this notice as per phone call w/ Mark Sundquist 11/15/82 JVW

In the Matter of the Proposed Adoption of Rules of the State Department of Employee Relations Governing the State Personnel System

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Jean Brezinski, being first duly sworn deposes and say:

That on the 1st day of October, 1982, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names by placed on File with the State Department of Employee Relations for the purpose of receiving notice of the proposed adoption of rules by this agency.

Jean Brezinski
Jean Brezinski

Subscribed and sworn to before me
this 1st day of October, 1982.
Christine F. Goodwill

CHRISTINE F. GOODWILL
NOTARY PUBLIC - MINNESOTA
DAKOTA COUNTY
MY COMMISSION EXPIRES NOV. 18, 19

STATE OF MINESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption
of Rules of the State Department of
Employee Relations Governing the State
Personnel System

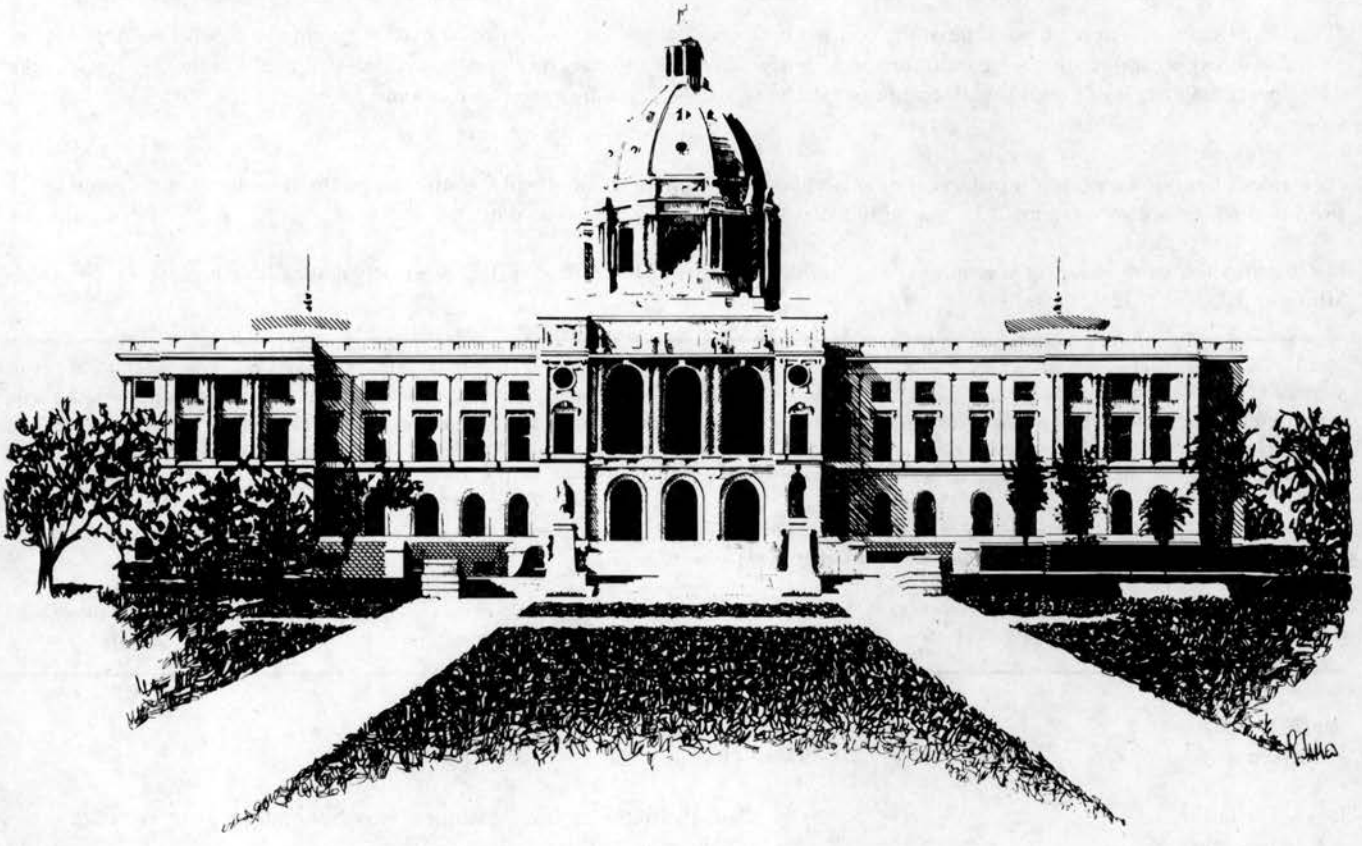
I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the State Department of Employee Relations for the purpose of receiving notice of the proposed adoption of rules by this agency is accurate and complete as of 9:00 A.M., this 1st day of October, 1982.

Mark L Sundquist

Mark L. Sundquist
Training & Development Manager

STATE REGISTER

STATE OF MINNESOTA



VOLUME 7, NUMBER 14

October 4, 1982

Pages 461-512

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 7		
15	Monday Sept 27	Monday Oct 4	Monday Oct 11
16	Monday Oct 4	Monday Oct 11	Monday Oct 18
17	Monday Oct 11	Monday Oct 18	Monday Oct 25
18	Monday Oct 18	Monday Oct 25	Monday Nov 1

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 15.051. Publication is weekly, on Mondays, with an index issue in September. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $130.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $3.25 per copy.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

Albert H. Quie
Governor

James J. Hiniker, Jr.
Commissioner
Department of Administration

Stephen A. Ordahl
Director
State Register and
Public Documents Division

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State Register Index Editor

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Circulation Manager

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CONTENTS

MCAR AMENDMENTS AND ADDITIONS

Listing for Issue 14 464

PROPOSED RULES

Employee Relations Department

State Personnel System [notice of intent to adopt rules without a public hearing] 465

ADOPTED RULES

State Board of Education (State Board for Vocational Education) Vocational-Technical Division

Adopted Amendments to Rules Governing Adult Supplementary Licenses 481

Revenue Department Income Tax Division

Adopted Rule Relating to Subtraction for Interest on United States Government Obligations 481

Natural Resources Department Commissioner's Order No. 2130

Regulations for Hunting in Camp Ripley during 1982 482

Natural Resources Department Commissioner's Order No. 2131

Regulations for the Taking and Possession of Turtles and Tortoises in the Inland Waters of the State of Minnesota, Superseding Commissioner's Order No. 1943 483

Natural Resources Department Commissioner's Order No. 2132

Regulations Governing the Taking of Fish from the Minnesota-South Dakota Boundary Waters, Superseding Commissioner's Order No. 2053 484

Natural Resources Department Commissioner's Order No. 2133

Regulations Relating to the Taking of Whitefish, Tullibees and Herring by Netting for Private Use, Superseding Commissioner's Order No. 2108 486

TAX COURT

State of Minnesota, County of Nobles. Tax Court, Regular Division. Roy E. & Dorothy Nasers, Jr., Appellants, v. The Commissioner of Revenue, Appellee. Docket No. 3208. Findings of Fact, Conclusions of Law and Order for Judgment. Order dated September 20, 1982 494

STATE CONTRACTS

Minnesota Housing Finance Agency

Construction or Rehabilitation under the Medium Density Homeownership Program 498

Minnesota Waste Management Board

Sites to be Included in an Inventory of Preferred Areas for Commercial Hazardous Waste Processing Facilities 498

OFFICIAL NOTES

Energy, Planning and Development Department

Current and Projected Residential Energy Costs, by Region and State 499

Minnesota State Retirement System

Regular Meeting, Board of Directors 505

Labor and Industry Department Workers' Compensation Rehabilitation Services

Outside Opinion Sought Regarding Proposed Rules Governing Qualified Rehabilitation Consultants and Rehabilitation Vendors 505

State Designer Selection Board

Meeting Notice 505

Errata

..... 506

Administration Department State Register and Public Documents Division

Statement of Ownership, Management and Circulation 507

NOTICE

How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION.** Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
Issues 40-51, inclusive
Issue 52, cumulative for 1-52

The listings are arranged in the same order as the table of contents of the MCAR.

MCAR AMENDMENTS AND ADDITIONS

TITLE 2 ADMINISTRATION

Part 2 Employee Relations Department

2 MCAR §§ 2.300-2.303, 2.306-2.307, 2.311-2.312, 2.316-2.326, 2.341-2.347, 2.351-2.355, 2.361-2.370, 2.381, 2.391-2.397, 2.401-2.417 (proposed) 465

2 MCAR §§ 2.001-2.004, 2.011, 2.022-2.023, 2.029-2.030, 2.038-2.042, 2.044, 2.046, 2.049, 2.056, 2.061, 2.064-2.068, 2.084-2.085, 2.088, 2.090-2.091, 2.096, 2.118, 2.179, 2.182, 2.198, 2.201-2.202, 2.205, 2.208, 2.212, 2.2121, 2.215, 2.222, 2.224-2.225, 2.227-2.231, 2.233, 2.236-2.237, 2.2371, 2.239, 2.245, 2.249, 2.2491, 2.251-2.252, 2.255-2.256, 2.2561, 2.258-2.260, 2.2601, 2.261-2.264, 2.290-2.293 (proposed repeal) 465

TITLE 5 EDUCATION

Part 1 Education Department

5 MCAR §§ 1.0782, 1.0786, 1.0791 (adopted) 481

TITLE 13 TAXATION

Part 1 Revenue Department

13 MCAR § 1.6007 (adopted) 481

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Employee Relations

Proposed Rules Regarding the State Personnel System

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Department of Employee Relations proposes to adopt the above entitled rules without a public hearing. The commissioner has determined that the proposed adoption of these rules is non-controversial in nature and has elected to follow the procedures set forth in Minnesota Statutes § 15.0412, subd. 4H (1980) for adoption of non-controversial rules.

Persons interested in these rules shall have thirty (30) days to submit comments on the proposed adoption of these rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven (7) or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In requesting a hearing, individuals are asked to identify the specific rules they are concerned about. Failure to identify the specific rules will not preclude the individual from requesting a hearing. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes § 15.0412, subds. 4-4f.

Persons who wish to submit comments or a written request for a public hearing, should submit such comments or requests to:

Mark L. Sundquist
3rd Floor Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101
296-8933

Authority for the adoption of these rules is contained in Minnesota Statutes 43A.04, subd. 3. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Mark Sundquist upon request.

Upon adoption of the final rules without a public hearing, the proposed rules notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

this material to the Attorney General or wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mark Sundquist.

Barbara L. Sundquist, Commissioner
Department of Employee Relations

Rules as Proposed (all new material)

Chapter One: Scope and Definitions

2 MCAR § 2.300 Scope of the rules. Rules 2 MCAR §§ 2.300-2.417 supplement and clarify the provisions of Minnesota Statutes, chapter 43A which generally affect the rights of or processes available to the general public. They also apply to state employees of the executive branch when the employees participate in any process that is available to the general public. Unless otherwise stated, these rules apply to positions in the civil service in the executive branch, the office of the Legislative Auditor, the Minnesota State Retirement System, and the Teachers Retirement Association.

2 MCAR § 2.301 Other elements of the state personnel system.

A. Commissioner. The commissioner is the chief personnel and labor relations manager for the civil service of the executive branch. The commissioner is responsible for carrying out Minnesota Statutes, chapter 43A. Personnel rules are one of several elements used to implement Minnesota Statutes, chapter 43A. Other elements are described in B., C., and D.

B. Collective bargaining agreements. Collective bargaining agreements define or describe terms and conditions of employment between the state and exclusive representatives of employees as directed under Minnesota Statutes, sections 179.61 to 179.76. Provisions of collective bargaining agreements supersede inconsistent provisions of 2 MCAR §§ 2.300-2.417 for employees covered under these agreements.

C. Other employment plans. Certain plans established and approved under Minnesota Statutes, section 43A.18 define or describe terms and conditions of employment for all classified and unclassified employees in the executive branch who are not covered by a collective bargaining agreement. Provisions of these plans supersede inconsistent provisions of 2 MCAR §§ 2.300-2.417 for employees covered by these plans.

D. Administrative procedures. Certain administrative procedures adopted in accordance with Minnesota Statutes, section 43A.04, subdivision 4 define or describe employee relations programs, activities, and elements for state agency management and employees but do not directly affect the rights of or processes available to the general public.

2 MCAR § 2.302 Application. Personnel actions taken before the effective date of 2 MCAR §§ 2.300-2.417 are governed by the rules that were in effect on the date when the actions were taken.

2 MCAR § 2.303 Definitions.

A. Applicability. For purposes of 2 MCAR §§ 2.300-2.417, the terms defined in this rule have the meanings given them. Terms used in 2 MCAR §§ 2.300-2.417 which are defined in Minnesota Statutes, section 43A.02 and 2 MCAR § 2.402 shall have the meanings there given them.

B. Affirmative action. "Affirmative action" means a management point of view that all barriers to employment opportunity that are not based on specific job requirements should be identified and removed and 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.

C. Affirmative action plan. "Affirmative action plan" means a coherent set of management policies and procedures designed to find any barriers contributing to imbalance in an agency's work force and to foster the correction of any imbalances which exist.

D. Agency subdivision. "Agency subdivision," for purposes of affirmative action, means a state hospital or 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.

E. Department. "Department" means the Department of Employee Relations, including the commissioner and the employees of the department.

F. Director. "Director" means the state director of the Equal Opportunity Division, Department of Employee Relations.

G. Emergency employee. "Emergency employee" means an employee who is appointed for no more than 30 aggregate working days in any 12-month period for any single appointing authority.

H. Employment condition. "Employment condition" means any limitation on continuous employment caused by the number of hours of work assigned to an employee, and his or her appointment status. Hours of work may be full time, part time, or intermittent. Appointment status may be unlimited, limited temporary, limited emergency, or seasonal.

I. Full-time employee. "Full-time employee" means an employee who is normally scheduled to work 80 hours in a biweekly payroll period.

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

K. Goal unit. "Goal unit" means:

1. each of the groups of classifications in an agency or agency subdivision assigned to the units defined in Minnesota Statutes, section 179.741, subdivision 1;

2. the group of employees in an agency or agency subdivision whose terms and conditions of employment are subject to the provisions of Minnesota Statutes, section 43A.18, subdivision 2;

3. the group of employees in an agency or agency subdivision whose terms and conditions of employment are subject to the provisions of Minnesota Statutes, section 43A.18, subdivision 3; or

4. the group of employees in an agency or agency subdivision whose total compensation is subject to the provisions of Minnesota Statutes, section 43A.18, subdivision 4.

L. Handicapped person. "Handicapped person" means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. "Handicapped" does not include any individual who is an alcohol or drug abuser whose current use of alcohol or drugs prevents the individual from performing the duties of the job in question or whose employment, by reason of current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

M. Intermittent employee. "Intermittent employee" means an employee who works an irregular and uncertain schedule which alternately begins, ceases, and begins again as the needs of the agency require.

N. Labor force statistics. "Labor force statistics" means the estimated number of persons 16 years old or older who are working, seeking work, or unemployed at the time as determined by the most recent federal census published by the United States Department of Commerce, Bureau of the Census.

O. Labor market area. "Labor market area" means a geographic area in which an employer is seeking a worker in a particular goal unit and where there is an available supply of workers employed or seeking jobs in that goal unit.

P. Part-time employee. "Part-time employee" means an employee who is normally scheduled to work fewer than 80 hours in a biweekly payroll period.

Q. Seasonal employee. "Seasonal employee" means an employee who is appointed for no more than ten months during any 12 consecutive months but who is expected to return to work year after year.

R. Temporary employee. "Temporary employee" means an employee who is appointed with a definite ending date. A temporary employee's term of employment may not exceed a total of 12 months in any 24-month period in any one agency.

S. Timetable. "Timetable" means a prescribed reasonable time period in which afffirmative action goals are expected to be achieved.

T. Underutilization. "Underutilization" means the employment in a goal unit of fewer qualified protected group members than would reasonably be expected from their workforce participation in the labor market area.

U. Unlimited employee. "Unlimited employee" means an employee who is appointed with no definite ending date.

Chapter Two: Classification

2 MCAR § 2.306 Use of class titles. The title of the class is the official title of every position allocated to that class for all purposes having to do with the position. The title is used on all personnel records, payroll records, budget estimates, official records, and reports related to the position. An appointing authority may use any other working title to designate a particular position for the purposes of internal administration and in any other connection not involving the personnel processes covered by administrative procedures, statutory law, or 2 MCAR §§ 2.300-2.417.

2 MCAR § 2.307 Class specifications. The commissioner shall provide, and may amend, written class specifications for any class in the classification plan. Each class specification must include the class title, a general description of the scope of the work, and

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the knowledge, skills, and abilities an incumbent should possess in order to perform duties of the class. If a classification consists of only one position, the commissioner may use the position description as the class specification.

Definitions used in class specifications are descriptive and not restrictive, indicating the kinds of positions allocated to classes, and are not to be construed as limiting in any way or modifying the power of the appointing authority to appoint, direct, and control the work of employees. Using a particular expression or illustration of duties does not exclude other duties not mentioned that are of a similar kind or quality.

Chapter Three: Wage and Salary

2 MCAR § 2.311 Administration of the wage and salary plan.

A. Scope. Rule 2 MCAR § 2.311 applies to all classified and unclassified positions in the executive branch, the classified positions in the office of the Legislative Auditor, the Minnesota State Retirement System, and the Teachers Retirement Association, which have been assigned to salary ranges by the commissioner. The rule is conditional upon the availability of funds and authorization by the commissioner of finance.

B. Salary upon entry into civil service. Salary upon entry into civil service should usually be at the minimum rate for the classification. An appointing authority may make an appointment at the second or third step of a range or within 12 percent of the minimum rate for the class when the salary range does not contain steps. An appointing authority must receive prior authorization from the commissioner to make an appointment at or beyond the fourth step of the salary range or more than 12 percent above the minimum rate when the range does not contain steps. The commissioner may disapprove an unauthorized salary offer by an appointing authority beyond the third step of a salary range or more than 12 percent from the minimum rate. Appointments above the minimum rate must be based upon the exceptional qualifications of the candidate or the unavailability of candidates at the minimum rate. Salaries paid to current employees in the same or related classifications must also be taken into consideration.

C. Salary upon reinstatement or appointment from a reemployment list. If a former employee is reinstated or reemployed in a classification in which the employee was previously employed, the appointing authority may make the appointment at the same rate of pay the employee had been receiving at the time of his or her last separation from that classification plus any automatic adjustments that may have been made since the employee left the civil service or the classification. Appointments above this rate of pay must be approved by the commissioner before they can take effect. Automatic adjustments include, but are not limited to, across-the-board adjustments, equity adjustments, and cost-of-living adjustments and do not include performance-related increases that the employee might have received had he or she remained in the classification.

2 MCAR § 2.312 Relocation expenses.

A. Conditions for reimbursement. An appointing authority may reimburse a person for relocation expenses associated with an initial appointment in the civil service. Authorization for relocation expenses must be made on or before the date of hire. The relocation must be completed within six calendar months unless the time period is extended, in writing, to a maximum of one year by the appointing authority.

B. Reimbursement limits. The reimbursement limit is that prescribed in the collective bargaining agreement or the compensation plan which applies to the position being filled. The appointing authority may establish lower limits for both the type and amount of reimbursement. Payment for relocation expenses may be made after the person has become an employee.

C. State not responsible for loss or damage. The state of Minnesota is not responsible for loss or damage to household goods or personal effects as a result of a relocation covered by this rule.

Chapter Four: Recruitment

2 MCAR § 2.316 Scope of competition. The commissioner shall decide whether to announce an examination on a competitive open or competitive promotional basis or both. To make this decision, the commissioner shall consider:

A. the requests of appointing authorities;

B. the provisions of collective bargaining agreements or plans established under Minnesota Statutes, section 43A.18 that could limit the opportunities of applicants from outside the civil service to receive consideration for appointment;

C. the anticipated number of qualified applicants within and outside the civil service;

D. ways to meet affirmative action goals; and

E. career opportunities and mobility for employees.

2 MCAR § 2.317 Public notice of examinations. The commissioner shall provide public notice of the opening of competitive open examinations by posting announcements on the public bulletin board at the department for at least seven days. The

commissioner may publicize examination announcements in any way he or she considers appropriate to attract qualified applicants. These ways may include providing notice of announcements in newspapers or appropriate public offices.

2 MCAR § 2.318 Contents of announcements of examinations. Announcements of examinations must specify the title of the class or class option, typical job duties, components of the examination process, limitations on applicant admission, the date by which applications must be received, and the place where applications should be submitted. Announcements may contain any other information that the commissioner considers useful to attract qualified applicants.

2 MCAR § 2.319 Expenses of candidates for civil service positions. The commissioner or an appointing authority may pay travel expenses for candidates or eligibles invited to participate in oral examinations or employment interviews. In determining to pay travel expenses, the commissioner or an appointing authority will consider the availability of qualified candidates, the needs of the agency or state service, and the availability of funds. Any expenses paid are subject to the provisions of the commissioner's plan, established under Minnesota Statutes, section 43A.18, subdivision 2, regarding types and maximum amounts of reimbursement.

Chapter Five: Competitive Open Examinations

2 MCAR § 2.320 Applications. Applicants shall apply for competitive open examinations on forms prescribed by the commissioner. The forms must be used to ask for information for use in the examination and appointment process, including an indication of applicant availabiliity for certain geographic locations, employment conditions, or travel. The application form must contain a statement that providing false information on the application may subject the applicant to the penalty provisions of Minnesota Statutes, section 43A.39. It must also contain a statement explaining why private or confidential information is being collected and the purpose for which it is to be used and must indicate that the appointing authority has the right to verify information provided in the application.

2 MCAR § 2.321 Admissions.

A. General. The commissioner shall admit to examinations applicants whose completed applications are received at the place specified in the examination announcement on or before the specified date.

The commissioner may admit an applicant who has submitted an incomplete timely application but shall require completion of the application. The commissioner shall withdraw the applications of applicants who fail to respond to requests for information within a specified period.

B. Limited admissions. The commissioner may limit admission to those applicants who indicate their availability for geographic locations and employment conditions specified in the examination announcement.

The commissioner may announce the maximum number of candidates whose names will be placed on the list or who will be permitted to compete in any of the separate examination parts.

The commissioner may admit candidates to later examination parts in rank order of rating on the previous parts, and may invite additional candidates to complete the examination process as the need arises to create or expand an eligible list.

C. Refusal to admit to an examination. To protect the security of an examination, the commissioner may refuse to admit an applicant to an examination or examination part when the applicant has taken the same examination or examination part within the preceding six months. In deciding whether to let an applicant repeat an examination or examination part, the commissioner shall consider the type of examination questions involved, the effect of memory and practice, the availability of untested applicants and other circumstances regarding the examination, needs of agencies, and situations of individual applicants. If the same examination or examination part is used more than once within a six-month period for the same or a different classification, an applicant who has been refused admission because of a six-month retest prohibition may submit an application and have the score he or she obtained on the previous examination or examination part apply to the subsequent examination or examination part.

The commissioner may remove from further consideration the applications of candidates who do not appear at the scheduled time or place for an examination or examination part.

D. Notice of admittance and refusal to admit. The commissioner shall notify candidates of the date, time and place for those parts of the examination process which require the candidate to appear in person.

The commissioner shall give an applicant the reasons for refusing to accept an application or to admit an applicant to an examination or examination part.

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2 MCAR § 2.322 Change of application deadline or examination date. The commissioner may postpone the last date for filing applications and the date of any examination part or may cancel an examination or examination part. In these cases, the commissioner shall notify candidates of the new date or cancellation.

2 MCAR § 2.323 Administration of examinations. The commissioner will administer all examination parts at the time and place and by the personnel he or she decides most nearly meet the needs of the service.

2 MCAR § 2.324 Scoring of examinations. The commissioner shall decide the appropriate scientific techniques and procedures to be used to score examinations and to determine the ratings of candidates. The commissioner shall set the minimum rating for achieving eligibility considering the requirements of the class and the number of vacancies anticipated while the eligible list is in force. Final ratings of candidates will be determined by computing the earned rating on each examination part in accordance with the weights established for each part. The commissioner may require candidates to obtain a minimum rating on each examination part in order to receive a final passing rating or to pass all preceding examination parts in order to be rated on the remaining parts of the examination process. Veterans preference points will be assigned in accordance with Minnesota Statutes, section 43A.11 and applied only after a candidate has attained a final passing examination rating. Where rating procedures involve assignment of a numerical score, a score of 70 is required to pass and a score of 100 is the maximum score.

2 MCAR § 2.325 Notification of examination ratings. The commissioner shall give written notice to all candidates of their rating and must keep these ratings as official records of the department.

2 MCAR § 2.326 Explanation and appeals of examination ratings. Upon request, the commissioner shall give a candidate or his or her authorized representative an explanation of the methods used to determine an examination rating. A candidate may appeal to the commissioner in writing for reconsideration of his or her examination rating. The appeal must be received in the department within 30 calendar days of the date on the notice of examination rating and shall state the grounds for the appeal. The commissioner shall grant a review on the grounds of error, irregularity or fraud in the conduct or scoring of the examination or upon submission of additional information affecting the original rating.

If a review discloses errors, fraud, or irregularities affecting the ratings of other candidates, the review may be extended to the ratings of those candidates.

The commissioner may change the rating of a candidate if additional information affecting the original rating is submitted or if an error was made in the original rating, or may order a new examination or a revision to the examination for the candidate or for all competitors if an error or irregularity occurred in the conduct or scoring of the examination.

A change made in the rating of a candidate as the result of an appeal will not affect an appointment already made in good faith as the result of original ratings.

Chapter Seven: Establishment and Maintenance of Eligible Lists

2 MCAR § 2.341 Eligible lists. The commissioner shall keep eligible lists in accordance with Minnesota Statutes, sections 43A.11, subdivision 7 and 43A.12. If, after applying Minnesota Statutes, section 43A.11, subdivision 7, the commissioner finds that two or more candidates have identical final ratings, the commissioner shall place their names on the eligible list in descending order of the last four digits of their social security numbers with larger numbers coming first.

2 MCAR § 2.342 Reemployment lists and reinstatement. An appointing authority may directly reinstate a former permanent or probationary employee to a vacancy in the same class within three years of the former employee's separation from that class.

The commissioner shall establish and maintain a reemployment list of former permanent or probationary employees of the class who apply for reemployment within three years of separation from the class. In deciding whether to place the name of a former employee on the reemployment list, the commissioner shall consider the reemployment rating reported by the person's former appointing authority.

2 MCAR § 2.343 Duration of eligible lists. The commissioner shall decide how long competitive open and reemployment eligible lists will remain in effect. Under Minnesota Statutes, section 43A.12, a list must remain in effect for at least six months unless the class for which the examination was given is abolished.

To determine whether to abolish or continue an eligible list after six months, the commissioner shall consider the following factors: whether the examination process has changed, how many vacancies are anticipated, when the examination was last administered, how many eligibles are still available, and how often the existing eligible list has been used. If a competitive open eligible list exists for a class and the commissioner considers it necessary to establish another competitive open list for the same class, the existing list must either be abolished or combined with the new list by placing names of all eligibles in order of their final ratings.

A candidate's eligibility begins on the date a candidate's name is placed on an eligible list and continues for the duration established by the commissioner for that eligible list except as otherwise provided in 2 MCAR §§ 2.300-2.417. If it becomes

necessary to abolish an eligible list before the published expiration of eligibility, the commissioner shall notify eligibles and offer them the opportunity to reapply if the examination is to be reannounced.

2 MCAR § 2.344 Removal of names from eligible lists. The commissioner may remove names from eligible lists permanently or temporarily in accordance with Minnesota Statutes, section 43A.13, subdivision 8, or in any of the following situations:

A. when the eligible has been appointed to fill a permanent position in the class;

B. when the eligible has been appointed to fill a permanent position in another class at a comparable or higher salary;

C. when the eligible fails to respond within seven days from the date of mailing to a written inquiry of the commissioner or an appointing authority about availability for appointment;

D. when the eligible declines an appointment under conditions the eligible previously indicated would be acceptable;

E. when the eligible fails to report for a scheduled employment interview or for work within the time period prescribed by an appointing authority;

F. when the eligible fails to maintain a record of current address; and

G. when the appointing authority documents that an eligible does not meet the requirements of the position or the eligible fails to successfully complete a required examination part administered following certification.

2 MCAR § 2.345 Notice of removal of names from eligible lists. The commissioner shall notify eligibles in writing when permanently removing names in accordance with 2 MCAR § 2.344 G. and Minnesota Statutes, section 43A.13, subdivision 8.

2 MCAR § 2.346 Restoration of names to eligible lists. An eligible whose name is removed from an eligible list in accordance with 2 MCAR § 2.344 may request in writing that the commissioner restore his or her name to the list for the duration of the list. The request must state why the eligible believes his or her name should be restored to the eligible list. After reviewing the request, the commissioner may restore the eligible's name to the eligible list.

2 MCAR § 2.347 Changes in availability. Eligibles may notify the commissioner of changes in their availability at any time while the eligible list is in force.

Chapter Eight: Certification of Eligibles

2 MCAR § 2.351 Order of certification. The commissioner shall certify eligibles to vacancies from whichever eligible list he or she finds appropriate, considering any requests of an appointing authority for a specific eligible list and any obligations under collective bargaining agreements or plans established under Minnesota Statutes, section 43A.18. Eligibles shall be certified as provided in Minnesota Statutes, section 43A.13.

The commissioner shall generally certify in the following order: layoff lists; competitive promotional lists; and competitive open and reemployment lists.

2 MCAR § 2.352 Selective certification. When the commissioner is satisfied that the job-related information given by an appointing authority warrants the action, he or she may limit certification to the eligibles possessing identified special qualifications.

2 MCAR § 2.353 Incomplete and augmented certification. If certified eligibles are unavailable for hire, an appointing authority may request a new certification or request that additional names be added to the certification. Additional names will be added in order of standing to bring the number to the maximum allowable by law. If the request to add names is made more than 30 days after the original certification date, the commissioner will provide a new certification from the eligible list.

If additional names are not available and the certification contains fewer names than authorized by law, the commissioner may decide that the remaining names certified are sufficient to provide a reasonable selection and that they constitute a complete certification. The commissioner may instead augment the incomplete certification with names from other types of eligible lists for the class or from eligible lists for classes of higher or similar compensation if the commissioner determines the examination reasonably measures the ability to perform the duties of the class for which certification is made.

2 MCAR § 2.354 Revised certification. If the rating of an eligible is changed as the result of an appeal under 2 MCAR § 2.326, and the change places the eligible's rating among those of other eligibles certified to a vacancy in accordance with Minnesota Statutes, section 43A.13, the commissioner shall add the eligible's name to that certification. At the discretion of the commissioner, the name of an eligible who has changed a statement of availability in accordance with 2 MCAR § 2.347 may be

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added to a certification if the change places the eligible's rating among those of other eligibles who were certified under Minnesota Statutes, section 43A.13. The addition of a name in accordance with this rule does not affect an employment offer already made.

Chapter Nine: Appointments

2 MCAR § 2.355 Appointments. Positions in the classified service must be filled by appointments from eligible lists except as otherwise provided by Minnesota Statutes, chapter 43A and 2 MCAR §§ 2.300-2.417. An appointing authority may select an eligible from an eligible list after comparing the knowledge, skills, and abilities of the eligibles with the specific needs of the position and agency. Specific needs include meeting agency affirmative action goals.

The appointing authority is responsible for verifying all job-related information on all prospective employees for civil service positions. On or before the appointment date, the appointing authority should explain to the prospective employee his or her proposed classification title, employment status, salary, and terms and conditions of employment. The appointing authority shall submit appropriate appointment forms to the commissioner which must include the effective date of appointment. Appointments made from eligible lists are effective only on or after the date of certification.

Chapter Ten: Others Means of Filling Positions in the Civil Service

2 MCAR § 2.361 General. In addition to filling vacancies in the civil service by appointing certified eligibles, appointing authorities may make noncompetitive, qualifying, labor service, work training, internship, or unclassified appointments in accordance with Minnesota Statutes. Those appointments may be made when authorized by the commissioner or by statute and are subject to 2 MCAR §§ 2.361-2.370.

2 MCAR § 2.362 Emergency appointments. An appointing authority may make an emergency appointment to meet unique and immediate needs. The appointing authority may appoint any person he or she considers qualified. Appointments are limited to 30 working days in any 12-month period by Minnesota Statutes, section 43A.15, subdivision 2.

2 MCAR § 2.363 Temporary appointments. The commissioner may approve an appointing authority's written request for a temporary appointment for:

A. filling a vacancy funded for six months or less;

B. providing an employee for a temporary project not anticipated to last more than six months;

C. filling a vacancy created by an approved leave of absence to a maximum of one year; or

D. unusual documented instances, when an appointing authority asks to make a temporary appointment of six months or less to a position otherwise authorized for more than six months.

An appointing authority may request authorization to make a direct temporary appointment of any person he or she considers qualified in accordance with Minnesota Statutes, section 43A.15, subdivision 3. The commissioner may certify any qualified eligible from an appropriate eligible list or may authorize the appointing authority to make a direct appointment of a person he or she considers qualified or both. In making this decision, the commissioner will consider requests from the appointing authority, the anticipated length of the temporary appointment, and the number and availability of eligibles for temporary appointments.

2 MCAR § 2.364 Provisional appointments.

A. Authorizing provisional appointments. The commissioner may authorize a provisional appointment in accordance with Minnesota Statutes, section 43A.15, subdivision 4, after considering the following documentation submitted by the appointing authority:

1. an explanation of the urgent reason for filling the vacancy which makes it impractical to await results of a competitive examination;

2. a statement that there is no appropriate eligible list available or that all eligible candidates on an incomplete certification from an eligible list are unavailable or unsuitable for appointment, including a specific statement of the job-related reasons for determining an eligible to be unsuitable; and

3. a description of the nominee's qualifications in the form prescribed by the commissioner to permit examination of the nominee's qualifications to determine whether the nominee is qualified to be provisionally appointed to the position as required by Minnesota Statutes, section 43A.15, subdivision 4.

B. Terminating provisional appointments. The appointing authority shall terminate a provisional appointment 90 days after the commissioner provides a certification from which an appointment could be made, or after six months, whichever is earlier. However, in individual cases, the commissioner may grant exceptions and extend provisional appointments in accordance with Minnesota Statutes, section 43A.15, subdivision 4, if the appointing authority documents a continued shortage of qualified eligibles.

2 MCAR § 2.365 Transfers from other public jurisdictions.

A. Permitted transfers or demotions. The commissioner may approve the transfer or voluntary demotion of an employee from another public jurisdiction if the following conditions are met:

1. the employee is currently working in the other public jurisdiction or has worked in the other public jurisdiction within the preceding year;

2. the position held by the employee in the other public jurisdiction is covered by a personnel system with competitive entry and promotion standards, comparable in duties and responsibilities to the Minnesota classified position, and compensated at a level similar to or higher than the position to which the employee is being transferred or demoted; and

3. the employee meets the qualifications for the class to which he or she is being transferred or demoted.

B. Disallowed transfers. The commissioner shall not approve the transfer of an employee to a grant-in-aid agency from a public jurisdiction without a federally approved merit system.

2 MCAR § 2.366 Exceptional appointments. The commissioner may authorize an exceptional appointment in accordance with Minnesota Statutes, section 43A.15, subdivision 8, after considering the following documentation submitted by the appointing authority:

A. a statement that the position requires exceptional qualifications of a scientific, professional, or expert nature;

B. a statement that the intended appointee possesses the qualifications; and

C. a statement that it is impracticable to conduct a competitive examination to select a suitable candidate.

2 MCAR § 2.367 Routine service appointments. Appointing authorities may make routine service appointments only to positions in classes determined by the commissioner to be of a routine service nature as provided in Minnesota Statutes, section 43A.15, subdivision 10. The commissioner shall give public notice as provided in 2 MCAR § 2.317 designating the routine service classes and describing the procedures used in recruiting and selecting persons for appointment.

2 MCAR § 2.368 Shortage occupation appointments. An appointing authority may make shortage occupation appointments only to positions in classes determined to be in critically short supply of qualified applicants. The commissioner shall make this determination in accordance with Minnesota Statutes, section 43A.15, subdivision 11, considering documentation regarding the unavailability of qualified applicants for positions in the class, the length of time positions in the class remain vacant, and recruiting efforts made to secure applicants for the class. The commissioner shall give public notice as provided in 2 MCAR § 2.317 designating the shortage occupation classes and describing the recruiting, qualifying examination, and referral processes to be used in filling positions in these classes.

2 MCAR § 2.369 Work training appointments. Appointing authorities may make work training appointments only to positions in work training programs approved by the commissioner. These appointments shall be of a predetermined duration.

Work training programs must include trainee recruitment and selection procedures that incorporate public notice of intent to accept applications for training.

2 MCAR § 2.370 Internship appointments. Appointing authorities may make internship appointments only to positions in programs established in cooperation with accredited educational institutions. These appointments shall be of a predetermined duration.

The internship appointment must provide academic credit or fulfillment of academic requirements for the participating student. An appointing authority is responsible for providing information about available programs and positions to institutions and students.

Chapter Eleven: Conflict of interest

2 MCAR § 2.381 Reporting and investigating conflict of interest. A member of the public may report an alleged conflict of interest concerning a civil service employee subject to the code of ethics in Minnesota Statutes, section 43A.38 to the commissioner or the employee's appointing authority. The appointing authority shall cooperate with the commissioner in investigating complaints. If the commissioner decides that a conflict of interest exists, the commissioner shall direct the appointing authority to take action in accordance with the Minnesota Statutes, section 43A.38, subdivision 7. The appointing authority shall report actions taken to the commissioner within ten calendar days.

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Chapter Twelve: Statewide Affirmative Action Program

2 MCAR § 2.391 Affirmative action 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. A good faith effort minimally includes consideration of affirmative action goals on all staffing and personnel decisions.

2 MCAR § 2.392 Scope of chapter. This chapter applies to all agencies in the executive branch and to classified and unclassified positions of those agencies. In the event of a conflict or duplication between requirements of this chapter and federal regulations and at the request of the agency head, the commissioner may permit an agency to substitute a federally required procedure for a similar procedure otherwise required by this chapter.

2 MCAR § 2.393 Duties of the agency head. The agency head shall administer the agency's affirmative action program in compliance with existing laws, federal regulations, and state rules. The agency head is accountable for affirmative action compliance to the governor and to the commissioner.

2 MCAR § 2.394 Requirements for agency affirmative action plans.

A. For agencies with 25 or more employees. The head of each agency with 25 or more employees shall submit to the commissioner an affirmative action plan for the agency. The plan must at least:

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

2. designate 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. state the agency head's commitment to the 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. describe the methods by which the agency's affirmative action program is communicated internally and externally to employees and other interested persons;

6. describe internal procedures, which must comply with 2 MCAR § 2.395, for processing complaints of alleged discrimination from applicants, eligibles, and employees;

7. set goals and timetables, which must be established using the standards in 2 MCAR § 2.396;

8. identify and describe methods for developing programs and program objectives designed to meet affirmative action goals;

9. describe methods of auditing, evaluating, and reporting program success, including a procedure that requires a preemployment review of all hiring decisions for goal units with unmet affirmative action goals and prereview of all layoff decisions to determine their effect on agencies' affirmative action goals and timetables; and

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

At the discretion of the agency head, the affirmative action plan may contain other provisions not in conflict with this chapter.

B. For agencies with fewer than 25 employees. The head of each agency with fewer than 25 employees shall submit to the commissioner an affirmative action plan for the agency, which must at least:

1. state the agency head's commitment to the affirmative action program;

2. state 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; and

3. describe an internal procedure, which must comply with 2 MCAR § 2.395, for processing complaints of alleged discrimination from applicants, eligibles, and employees.

2 MCAR § 2.395 Requirements for complaint procedures. In an agency's internal procedure for processing complaints of alleged discrimination from applicants, eligibles, and employees, the initial step must provide for a determination of whether the complaint is properly a discrimination complaint and, therefore, appropriate to be addressed by the internal procedure. Time limits on these determinations must be established to permit the applicant, eligible, or employee to pursue a complaint determined to be other than a discrimination complaint through other appropriate grievance procedures in accordance with the

time limits of those procedures. Complaint procedures must also provide for a final written answer within 60 days after a formal complaint is filed. Disposition of complaints must be filed with the commissioner within 30 days of final determination.

2 MCAR § 2.396 Requirements for goals and timetables.

A. General requirement. In establishing goals and timetables for affirmative action plans, agency heads shall comply with B.-F.

B. Labor force statistics. In establishing goals for affirmative action plans, agency heads shall use labor force statistics from census data when available to examine work force participation. 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. the comparability of data categories (occupational group, geographic location, handicapping condition, for example) used.

C. Formula for determining underutilization. Agency heads shall determine underutilization of protected groups using statistical formulas 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. Numerical goals. Agency heads shall establish numerical goals for the agency and for each agency subdivision that has 25 or more employees and that is in a geographic location with a labor market area separate from that of the agency central office.

E. Basis for goals. Agency heads shall establish goals for each goal unit by protected group. The goals must be based on a comparison of the composition of the agency or agency subdivision work force with the composition of the relevant civilian labor force in an identified labor market area. If the comparison shows that a goal unit underutilizes a protected group, the agency head shall establish a goal for that group in that goal unit.

F. Timetables. Agency heads shall establish timetables for meeting goals. Timetables must be based on turnover and hire rates within each goal unit in the agency or within each agency subdivision.

2 MCAR § 2.397 Reporting requirements.

A. Quarterly reports. Agency heads with 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. Agency heads with fewer than 25 employees shall submit such a report to the commissioner semiannually. Reports are due 30 days following the close of the reporting period.

B. Biennial reports. Each agency head shall submit to the commissioner, concurrently with the agency's biennial 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.

Chapter Thirteen: Social Security Rules

2 MCAR § 2.401 Authority and scope of chapter. This chapter is promulgated under Minnesota Statutes, chapter 355, and applies to the state, any political subdivision of the state, or any coverage group to be included under the federal old age and survivors insurance system.

2 MCAR § 2.402 Definitions.

A. Scope. The terms used in this chapter have the meanings given them in 2 MCAR § 2.402.

B. Coverage group. "Coverage group" means the grouping of positions in any political subdivision of the state as they are

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brought under the provisions of the federal Social Security Act, pursuant to Minnesota Statutes, chapter 355, and for which contributions for each grouping are required by law to be transmitted to the state agency.

C. Employee, employment. "Employee" and "employment" have the meanings given them in Minnesota Statutes, section 355.01.

D. Federal Insurance Contributions Act. "Federal Insurance Contributions Act" has the meaning given it in Minnesota Statutes, section 355.01.

E. Federal old age and survivors insurance. "Federal old age and survivors insurance" means the insurance system established by title II of the federal Social Security Act, United States Code, title 42, section 418.

F. Political subdivision. "Political subdivision" has the meaning given it in Minnesota Statutes, section 355.01.

G. Reportable wages. "Reportable wages" means reportable wages as provided by title II of the federal Social Security Act. "Maximum reportable wages" means maximum reportable wages as provided by title II of the federal Social Security Act.

H. Reporting unit. "Reporting unit" means the payroll record unit of a state or political subdivision.

I. Social Security Act. "Social Security Act" has the meaning given it in Minnesota Statutes, section 355.01.

J. State agency. "State agency" has the meaning given it in Minnesota Statutes, section 355.01.

K. State agreement. "State agreement" means the agreement or modification authorized by Minnesota Statutes, chapter 355, entered into between the state and the secretary of health and human services.

2 MCAR § 2.403 Employee account numbers.

A. When required. It is necessary for each covered employee of a political subdivision to have a social security account number when the political subdivision makes its first wage report for federal old age and survivors insurance.

B. Obtaining a number. Each employee shall submit his or her social security account number for the records of the reporting unit. An employee who does not have a number shall apply for a number with any field office of the Social Security Administration within seven days after beginning work for the reporting unit. However, if the employee leaves the employ of the reporting unit before the seventh day, he or she must apply for a number on or before the date of leaving. Application must be made on social security administration form SS-5.

C. Keeping one number only. An employee must not have more than one account number. Any employee whose name is changed by marriage or otherwise, or who wishes to correct information given on social security form SS-5, should report the change or correction to a field office of the Social Security Administration. The old name should be used for payroll and for wage report purposes until the change has been processed by the Social Security Administration.

D. Showing card. The political subdivision shall enter the employee's name and account number on all records, returns, reports, and claims exactly as shown on his or her account number card. If a person fails to show the card when he or she first performs services under an agreement, the political subdivision that employs the person shall ask to see the person's card.

2 MCAR § 2.404 Identification number for coverage groups. The Social Security Administration will assign an employer identification number to the state, each political subdivision of the state, and each coverage group to be included under the federal old age and survivors insurance system. If any political subdivision maintains more than one payroll record unit, a unit number will be assigned to each separate payroll record within the coverage group. The identification number, including the unit numbers assinged to payroll record units, if any, must be entered on all reports, returns, forms, claims, and correspondence.

2 MCAR § 2.405 Employee's and employer's contribution.

A. Amount subject to deduction. The employee's contribution is measured by the amount of wages actually received on or after the effective date of the state agreement with respect to services performed in employment by the employee in a coverage group included in the agreement. After an employee has been paid the maximum reportable wages during a calendar year, additional wages paid that employee during the remainder of the calendar year are not subject to deductions for social security taxes, and no further wage contributions are required.

B. Tax rates. The contribution rates established by title II of the federal Social Security Act, United States Code, title 42, section 418, must be applied against the wages of employees within the coverage group and matched with an equal amount by the reporting unit. Taxes must be computed on the basis of the rate effective at the time the wages are actually or constructively received or paid.

C. Certain wages excepted. Wages received by an employee after the effective date of coverage for services rendered in a period before the effective date of coverage are not "wages received for employment" and are not subject to tax. Therefore, if the state agreement makes social security coverage effective January 1 of a calendar year, wages received by an employee in that calendar year for services rendered in the previous calendar year are not "wages received for employment" and are not subject to tax.

D. Records required. Any political subdivision or any employee claiming refund, credit, or abatement of any tax or interest collected shall present a detailed record to establish the validity of the claim.

E. Controls. Each political subdivision shall establish a system of controls so that no employee is taxed on wages in excess of the maximum reportable wages as provided in United States Code, title 42, section 418, for each calendar year. These controls must be set up so that the tax will be withheld on the exact amount of the reportable wages as provided in title II of the federal Social Security Act received by an employee in a calendar year. There shall be no prorating of the year's total tax liability of the employees over the 12-month period.

F. Termination of reporting unit. Any political subdivision whose existence is terminated by reorganization, consolidation, or annexation or which is abolished by statute or other legal action shall report this fact to the state agency at the time the final report is submitted and also indicate at that time where all records and documents will be stored or maintained and the name of the person or officer responsible for the safekeeping of the records and documents.

G. Wage and tax statement. Each political subdivision shall furnish a written wage and tax statement to each individual performing service in employment as an employee in a coverage group included in the state agreement. The statement must show the following information with respect to wages paid or available for payment to the employee for the service on or after the effective date of the agreement or modification:

1. the name and identification number of the political subdivision or coverage group in which services were performed;
2. the name and account number of the employee;
3. the period covered by the statement;
4. the total amount of wages subject to contributions paid during this period; and
5. the amount of employee's contribution withheld in respect to wages.

The statement must be given to the employee not later than January 31 of the year following the calendar year covered by the statement unless the employee leaves employment in a coverage group, in which case the final statement must be given to the employee no later than 30 days after the last payment of wages is made. Federal Internal Revenue Service form W-2, Withholding Statement, shall be used to satisfy 1.-5.

2 MCAR § 2.406 Collecting and remitting tax.

A. Responsibility for collecting. The reporting unit shall collect from each employee the amount of tax determined to be due by deducting that amount from the employee's wages when actually or constructively paid. The reporting unit shall collect the tax even if the wages are paid in a medium other than cash.

B. Schedule. After the reporting unit has provided the matching amount, the total social security contribution must be remitted to the state agency for credit to the social security contributions fund in accordance with the following schedule:

1. For each month, the social security contributions due on the wages paid must be forwarded to the state agency within the 15-day period following the end of each month beginning with July 1980. If the last day of the 15-day period is a legal holiday or a nonwork day, the social security contribution payment is due on the next work day.

2. Where the state assumes the responsibility for the matching employer social security contribution under Minnesota Statutes, section 355.46, subdivision 3, clause (b), the payments under 1. must be equal to the required employee contribution withheld only.

3. In lieu of remitting at the times indicated above, the reporting unit may remit the required social security contribution payment at the end of each payroll period or after each salary payment made to the employees. In no event may the contribution payment be made later than the times specified in 1.

4. With each contribution payment, the reporting unit shall submit a completed approved remittance form prescribed by the state agency.

5. If any monthly contribution payment is not received by the state agency within the deadlines specified in 1., the state agency shall charge interest to the reporting unit. The interest rate must be six percent a year on the contributions due for each month or part of a month from the due date, but in no case may the interest charge be less than $5.

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2 MCAR § 2.407 Submitting contributions. A political subdivision must not send social security contributions directly to the Social Security Administration, a depository bank, or a Federal Reserve Bank.

2 MCAR § 2.408 Liability for tax. The reporting unit is liable to the state agency for the employee's share of the tax whether or not the share has been withheld from the employee's wages. Nevertheless, the employee remains liable for the employee's share of the tax on all wages received by the employee not in excess of the maximum reportable wages.

2 MCAR § 2.409 Reporting unit's failure to pay state agency. If a reporting unit fails to make the social security contribution payments required by law and this chapter, the state agency may recover by bringing action in a court of competent jurisdiction against every political subdivision liable for payments. The state agency may recover either the delinquent payments due with interest of six percent a year or the minimum penalty established by this chapter, whichever is greater. Alternatively, at the state agency's request, the delinquent payments may be deducted from any other money payable to the political subdivision by any department or agency of the state.

2 MCAR § 2.410 When employer may begin deducting. The state or a political subdivision may not begin making deductions for social security taxes from the earnings of employees until the secretary of health and human services has approved the state agreement on behalf of the federal government. However, as soon as the state agreement is fully executed and approved, the political subdivision shall make the necessary deductions from earnings, retroactive to the effective date of the state agreement, so that the total contribution payments required from the effective date of the state agreement are transmitted to the state agency along with initial reports before the initial deadline determined by the state agency. The exact method and time of deducting retroactive contributions from employees are matters to be determined by each political subdivision individually.

2 MCAR § 2.411 Sick pay.

A. Counting sick pay as wages. Effective January 1, 1982, payments made by the state or any political subdivision to an employee absent from work because of sickness or accident disability are wages for the first six months after the last month the employee worked. Wages include payments made by third parties, such as insurance companies, under group sickness and accident policies. Payments to an employee by either the governmental unit or a third party are excluded from wages if they are made more than six months after the last month in which the employee worked.

B. Employee's contributions to sick pay plan. If an employee has contributed to a sick pay plan, the wages for social security purposes do not include that portion of the payment attributable to the employee's contribution.

C. Arrangements with party making payments. The reporting unit shall arrange to have the third party, usually an insurance company, withhold the employee contributions from the sick pay payments, remit the amount withheld to the reporting unit, and provide the wage data needed to prepare wage reports. The sick pay employee contributions, matching employer contribution, if any, and the corresponding wage data should be included on the monthly social security contribution transmittal forms with all other contributions and wages for that period.

2 MCAR § 2.412 Wage reports. Every political subdivision and coverage group included in the state agreement shall make a wage report to the state agency for each reporting period beginning with the first reporting period with respect to which the state agreement is effective until the subdivision or group files a final report as required by law.

2 MCAR § 2.413 Quarterly reports before 1981.

A. General requirement. Quarterly reporting of covered wages paid is required for periods prior to January 1, 1981.

B. Form and coverage. The original and one duplicate copy of the consolidated quarterly payroll report must be submitted on social security administration form SSA-3963 for each reporting unit in conformity with the requirements of the secretary of health and human services. Each quarterly report must be a consolidated report, which must include all covered wages paid to personnel employed by any department, board, and commission reportable under the identification number assigned to the political subdivision or coverage group. The summary information must be shown at the bottom of page 1 of form SSA-3963.

C. Report when no wages are paid. Even though no wages are paid in a quarter, the reporting unit must file a report on form SSA-3963 with the notation "no covered wages paid" made on the body of the form.

D. Remittance. Each quarterly report must be accompanied by a check or checks made payable to "State Treasurer, Contribution Fund," or by a copy of the remittance form prescribed in 2 MCAR § 2.406 B.4. The amount of the remittance must equal the sum of both the required employer contribution of the political subdivision and the required deductions from the earnings of all personnel in the coverage group. In the payment of contributions to the state agency, the reporting unit may disregard a fractional part of a cent unless it amounts to one-half cent or more, in which case it must be increased to the nearest cent.

E. Date due. The initial quarterly reports and required remittances for the period from the effective date of coverage to the end of the quarter in which any political subdivision becomes covered under the state agreement must be transmitted so as to be received by the state agency on or before the date fixed by the state agency for the filing of these initial reports.

F. Interest on overdue reports. If any quarterly report is not received by the state agency within the respective established deadlines, interest will be charged to the reporting unit at the rate of six percent a year on reportable contributions for each month or part of a month from the date due, but the interest charge or penalty shall not be less than $5.

2 MCAR § 2.414 Annual reports, 1981 and after.

A. General requirement. Annual reporting of covered wages is required for calendar year 1981 and for each year thereafter.

B. Coverage. Each report must be a consolidated report which must include all covered wages paid and reportable under the identification number assigned to the political subdivision. The information must be furnished on forms prescribed by the Social Security Administration.

C. Remittance. The contribution payments remitted for each calendar year pursuant to 2 MCAR § 2.405 must equal the social security contributions due on the covered wages included on the report submitted under B. Any differences must be fully explained, and the additional contributions, if any, must be remitted with the completed report.

D. Date due. Each report must be received by the state agency not later than January 31 following the year for which the report is made. Reports and contribution payments that have not been prepared in accordance with state agency rules and instructions are unacceptable and are subject to the penalties imposed by this chapter.

E. Penalties. Wage reports received after the established due date are delinquent. To cover the additional administrative costs, a penalty of $5 for the first day of the delinquency and $1 for each additional day that the report is delinquent will be assessed against the reporting unit.

F. Summary data. In addition to the wage reports required by A.-F., quarterly summary data as prescribed by federal social security regulations must be submitted in accordance with state agency instructions.

G. Combined wages from several employees. Where an employee performs services during a calendar year for the state and one or more political subdivisions or for two or more political subdivisions, the wages paid in any calendar year to the employee by the state and each political subdivision not in excess of the maximum reportable wages shall be reported by the state and each political subdivision, with the following exception: where the state of Minnesota pays the matching employer social security contributions tax, such as for teachers in Minnesota public schools, then only the maximum reportable wages paid to such individual in the aggregate are subject to the social security tax and reported as wages.

2 MCAR § 2.415 Adjustment reports. If the reporting unit determines that a wage report or a previously submitted adjustment report was in error, the unit shall complete an adjustment report, currently called "State's Report of Adjustments," form SSA-3964, and shall forward the original and one copy to the state agency. The following errors require that the adjustment report be completed: wages omitted from the report, not enough wages reported, excessive wages reported, wages reported in excess of the maximum reportable wages, wages shown on report for the wrong period, and wages reported for the wrong person.

The adjustment report must be submitted before the expiration of the time limitations established by the federal statute of limitations set forth in the federal Social Security Act, United States Code, title 42, sections 418 (q) and (r). The reporting unit is liable for the payment of interest on any adjustment report which is determined by the federal government to be delinquent.

2 MCAR § 2.416 Records.

A. General requirement. Every political subdivision shall keep accurate records of all wages, whether in cash or in a medium other than cash, paid or available for payment to employees of the political subdivision.

B. Forms and accounting systems. Each political subdivision shall use forms and systems of accounting that will enable the state agency, the state agency's authorized representatives, or the agents of the secretary of health and human services to ascertain whether the social security taxes for which the political subdivision or coverage group is liable are correctly computed and paid.

C. Contents of records. The records must show with respect to each employee:

1. the name, address, and account number of the employee and any additional information required by this chapter when the employee does not show his or her social security account number card;

2. the date of each wage payment, the total amount, including any sum withheld from the total as contribution or for any other reason, and the period of services covered by the payment;

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3. the amount of the wage payment which constitutes wages subject to tax; and

4. the amount of employee's contributions withheld or collected with respect to each total wage payment, and the date collected if other than the time when the payment was made.

If the total wages in 2. and the amount of the wage payment which is subject to tax in 3. are not equal, the reason for the difference must be made a matter of record.

Political subdivisions shall keep accurate records of the details of each adjustment or settlement made under any state agency instructions or rules or federal regulations.

D. Copies of documents. A political subdivision shall keep a copy of any return, report, schedule, statement, or any other documents as a part of its records.

E. Records open for inspection. All records required by this chapter and federal regulations must be kept at a convenient and safe location accessible to representatives of the secretary of health and human services and of the state agency. The records must at all times be open for inspection by these officials.

F. Retention of records. All records required by this chapter and federal regulations must be kept for at least four years after the date when the contributions listed in the records become due or the date when the contributions were paid, whichever is later. Records required in 2 MCAR § 2.405 D. must be kept for at least four years after the date when the claim is filed. Records must not be destroyed or otherwise disposed of, even after the lapse of the four years, without the written consent required under Minnesota Statutes, section 138.17.

2 MCAR § 2.417 Administrative costs. Each department or agency of the state and each political subdivision included in the state agreement is liable for a pro rata share of the costs of administering Minnesota Statutes, chapter 355 as certified by the state agency. The amounts certified must be based upon the social security contribution tax paid or payable on wages paid to employees of the political subdivisions or coverage groups coming within the provisions of Minnesota Statutes, chapter 355. In addition to the ordinary reimbursable expenses, the state agency may charge a political subdivision for any extraordinary costs of administration relating to matters affecting that particular political subdivision.

Notwithstanding the above provisions for determining the pro rata charges, there is a minimum pro rata charge of $5 for each reporting unit that reports wages for any person during the period involved. The amounts certified are due and payable upon notice from the state agency, and all checks must be payable to "State Treasurer, State Agency Revolving Fund."

Repealer: The following personnel rules are repealed: 2 MCAR §§ 2.001; 2.002; 2.003; 2.004; 2.011; 2.022; 2.023; 2.029; 2.030; 2.038; 2.039; 2.040; 2.041; 2.042; 2.044; 2.046; 2.049; 2.056; 2.061; 2.064; 2.065; 2.066; 2.067; 2.068; 2.084; 2.085; 2.088; 2.090; 2.091; 2.096; 2.118; 2.179; 2.182; 2.198; 2.201; 2.202; 2.205; 2.208; 2.212; 2.2121; 2.215; 2.222; 2.224; 2.225; 2.227; 2.228; 2.229; 2.230; 2.231; 2.233; 2.236; 2.237; 2.2371; 2.239; 2.245; 2.249; 2.2491; 2.251; 2.252; 2.255; 2.256; 2.2561; 2.258; 2.259; 2.260; 2.2601; 2.261; 2.262; 2.263; 2.264; 2.290; 2.291; 2.292; 2.293.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

State Board of Education (State Board for Vocational Education) Vocational-Technical Division

Adopted Amendments to Rules Governing Adult Supplementary Licenses

The rules as proposed and published at *State Register*, Volume 6, Number 49, Pages 2226-2228, June 7, 1982 (6 S.R. 2226) are adopted as proposed.

Department of Revenue Income Tax Division

Adopted Rule Relating to Subtraction for Interest on United States Government Obligations (13 MCAR § 1.6007)

The rule proposed and published at *State Register*, Volume 6, Number 48, pages 2014-2018, May 31, 1982 (6 S.R. 2014) is adopted with the following modifications.

Rule as Adopted

13 MCAR § 1.6007 Subtraction for interest on United States government obligations. Minnesota Statutes, section 290.01, subdivision 20, clause (b) (1) allows an individual taxpayer, an estate, or a trust to subtract the amount of interest earned on certain obligations of the United States government from federal adjusted gross income. To qualify for this subtraction, the obligation must meet the following conditions:

B. The obligation must be an obligation of the United States of America, whether through an agency, authority, commission, or instrumentality of the United States, and must be exempt from state taxation under federal law. This means that the full faith and credit of the United States must be pledged to the payment of the underlying obligation.

13 MCAR § 1.6007 E., EXHIBIT I

Exempt Obligations Listed by Name of Security

Name of Security	Agency	Authority
7. Federal Farm Credit Banks consolidated systemwide ~~bond~~ bonds and notes	Federal Land Banks, Federal Intermediate Credit Banks	as amended through 1-1-82 12 USC §§ 2055, 2079, and 2134

13 MCAR § 1.6007 E., EXHIBIT IV

Organizations Which Generally Issue Taxable Obligations

NOTICE: This listing is only a guide and is not conclusive on the issue of the taxable status of an obligation. Each obligation issued by a listed agency must be separately analyzed according to A.-D.

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Name of Organization	Types of Securities	Authority
19. Student Loan Marketing Assocation	Bonds and notes	as amended through 1-1-82 20 USC § 1087-2

Department of Natural Resources Commissioner's Order No. 2130

Regulations for Hunting in Camp Ripley during 1982

Pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, hereby prescribe the following regulations for hunting in Camp Ripley during 1982.

Section 1. WEAPONS. All persons hunting within Camp Ripley shall use a bow and arrow. Bows must have a pull of no less than 40 pounds at or before full draw. The bow may not be drawn, held or released by a mechanical device. Arrow heads for big game hunting must be made of all steel barbless design, the blade or blades of hicarbon steel not less than one inch wide for single two edge blade and not less than three inch circumference for three or more blades, minimum weight of all types of 110 grain. Provided, that arrow heads with blades of mill tempered spring steel containing a plastic core or ferrule conforming to the above dimensions, and with a minimum weight of 90 grain may be used. All arrow heads used shall be kept sharp. Arrows carrying poison or explosives shall not be used.

Sec. 2. DEER SEASON AND QUOTA. Camp Ripley shall be open for the taking of any deer by bow and arrow during the following two weekends: October 23 and 24, and October 30 and 31, 1982, from one-half hour before sunrise to sunset each day, according to the following provisions:

Subdivision 1. Each hunter must have a valid Minnesota bow and arrow hunting license and a permit validated for the Camp Ripley Archery Hunt. No other person will be permitted in Camp Ripley.

Subd. 2. No more than 1,500 hunters will be permitted to hunt during each of the two weekends.

Subd. 3. Persons wishing to hunt must apply as follows:

a. Applications shall be made by parties comprised of from one to six members.

b. Each member of a party shall submit an official application obtained by writing Archery Hunt, RR#4, Box 19A, Little Falls, MN 56345.

c. All applications from a party must be completely and correctly filled out and submitted in one envelope to Archery Hunt, RR#4, Box 19A, Little Falls, MN 56345 on or before September 24, 1982.

d. All members of a party will be selected or none will be selected.

e. One member of each party shall submit a stamped self-addressed return envelope with their applications. A valid permit, maps, and instructions for all party members shall be returned in the self-addressed envelope on or about October 15, 1982.

f. No person may apply for more than one weekend.

g. No person may apply more than once and permits are not transferable.

Sec. 3. COYOTES. Coyotes may be taken in Camp Ripley without limit by the same means and at any time that deer may be taken. Only persons lawfully hunting deer within Camp Ripley may take coyotes.

Sec. 4. SPECIAL REGULATIONS.

Subdivision 1. Hunters shall enter and leave Camp Ripley only by way of the southeast railroad gate and only between the hours of 6:00 p.m. Friday and 8:00 p.m. Sunday for each of the two weekends beginning 6:00 p.m. Friday, October 22, 1982.

Subd. 2. Each hunter must register at the Department of Natural Resources (DNR) checkpoint prior to hunting.

Subd. 3. Hunters will be permitted beyond the DNR checkpoint only between one hour before sunrise and one hour after sunset, or as otherwise authorized by an agent of the commissioner.

Subd. 4. No firearms may be transported on any person or in any vehicle into Camp Ripley except by permit.

Subd. 5. Off-road vehicles such as trail-bikes, motor bikes, all-terrain vehicles and snowmobiles shall not be permitted in Camp Ripley during the hunting season established by this order. All other vehicles are restricted to operating only on designated roads.

Subd. 6. No person or vehicle shall pass beyond any road or trail barrier, gate, or warning sign.

Subd. 7. Vehicles in line overnight at the checkpoint must be occupied. Archers must stay with their vehicles.

Subd. 8. No fires are permitted anywhere in the hunting areas, except in emergencies.

Subd. 9. When being transported, bows must be unstrung or completely contained in a case or contained in the trunk of a car with the trunk door closed. While in the field, bows must be unstrung or cased between one-half hour after sunset and one hour before sunrise.

Subd. 10. Maximum speed limit on roads in the hunting areas is 35 mph or as otherwise posted.

Subd. 11. Hunters will be given 1982 maps of Camp Ripley by the DNR before hunting in Camp Ripley. No person shall enter any area which is indicated on the map as being closed, except for the road from the southeast gate through the checkpoint to the open hunting area. Maps issued in any year previous to 1982 are not valid for purposes of determining which areas are closed. Violators of this subdivision or Subd. 6 will be required to surrender their permit and their bow will be seized.

Subd. 12. Archers shall not pursue wounded deer into restricted or closed areas. Attempts to retrieve wounded or dead deer from a closed area requires prior approval of and must be accompanied by an agent of the Commissioner.

Subd. 13. No person shall destroy or remove any Camp Ripley property.

Subd. 14. No deer shall be removed from Camp Ripley or be transported beyond the DNR checkpoint until registered.

Subd. 15. The Commissioner may close the season without prior notice for any reason deemed necessary.

Subd. 16. No permanent tree stands may be erected, and no artificial stands are to be left up overnight.

Subd. 17. No wild animals other than deer and coyotes as permitted by this order shall be taken in Camp Ripley at any time.

Subd. 18. No licensed archer shall occupy any elevated deer stand between sunset and one hour before sunrise.

Subd. 19. Except as specifically authorized none of the provisions of this order shall be construed as modifying or superseding any order establishing game refuges within the state nor as permitting the taking of any wild animals within such refuges or within state parks.

Dated at Saint Paul, Minnesota, this 20th day of September, 1982.

Joseph N. Alexander, Commissioner
Department of Natural Resources

Department of Natural Resources Commissioner's Order No. 2131

Regulations for the Taking and Possession of Turtles and Tortoises in the Inland Waters of the State of Minnesota, Superseding Commissioner's Order No. 1943

Pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, hereby prescribe the following regulations for the taking and possession of turtles and tortoises in the inland waters of the State of Minnesota.

Section 1. LICENSES.

a. Any person permitted by law to take fish by angling may take, possess, buy, sell and transport a limit of 10 legal-sized turtles and tortoises in any manner except by the use of commercial harvesting gear described in Section 4 or by the use of explosives, drugs, poisons, lime and other deleterious substances.

b. An resident holding a license provided under Minnesota Statutes Section 98.46, subd. 5(6), may take, possess, transport and sell turtles without limit.

Sec. 2. PERMITS.

a. Permits for the purpose of taking turtles and tortoises with the aid of artificial lights as described in Commissioner's Order 2059, Sec. 3, "Class A" or its successor may be issued by the Commissioner or his authorized agent.

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b. Live snapping turtles (Chelydra serpentina) may be exported to another state or foreign country only under permit issued by the Commissioner or his authorized agent.

Sec. 3. SPECIES SIZE LIMIT.

Snapping turtles of the species Chelydra serpentina may not be possessed at a size where the dorsal surface of the carapace or shell measures less than ten (10) inches across at its most narrow point.

Sec. 4. GEAR.

a. Turtles and tortoises may be taken under commercial license by means of turtle traps, turtle hooks, and commercial fishing nets (Sec. 6.e.).

b. Turtle hooks are hand-held devices consisting of a rigid pole with hooks attached to one end which facilitates capturing turtles beneath the surface of the water.

c. Turtle traps that are constructed of webbing shall be of mesh size not less than three and one-half (3-½) inches bar measure or seven (7) inches extension measure. Traps constructed of wire mesh shall have at least one square opening in the top panel measuring at least four (4) inches on a side and one of the same dimension near the bottom in each of the side panels.

d. Unattended fishing lines set for taking turtles are prohibited.

Sec. 5. SEASON.

Turtles and tortoises may be taken, possessed, transported and sold at any time.

Sec. 6. OPERATIONS.

a. Traps must be set in water shallow enough to place the top no deeper than three (3) inches below the water surface.

b. Traps shall be checked and serviced at intervals not exceeding 48 hours.

c. No licensee may operate more than 40 traps.

d. When in use, each trap shall have affixed a metal tag, visible from above, bearing the name, address and license number of the operator. Such tag shall be of metal and shall be of dimensions no less than two and one-half (2-½) inches in length by five-eighths (⅝) inches in width.

e. Snapping turtles taken incidental to inland commercial fishing operations may be possessed and sold in excess of a limit of ten (10) provided the operator is a holder of a license provided for in Minnesota Statutes Section 98.46, subd. 5(6).

Sec. 7. REPORTING.

All licensees under Minnesota Statutes Section 98.46, Subd. 5(6) shall report to the Director of the Division of Fish and Wildlife, at the time of license renewal or March 1, whichever comes first, on forms to be furnished by the Director, the numbers and pounds of turtles and tortoises taken by species and the number (by species) returned to the water and other such information as may be specified. Licensees who purchase turtles for resale or for processing and resale shall keep a correct and complete book record in the English language of all transactions and activities covered in his license in accordance with provisions of Section 98.51, Subd. 2, of Minnesota Statutes.

Sec. 8. SUCCESSION.

Commissioner's Order No. 1943 is hereby superseded.

Dated at Saint Paul, Minnesota, this 14th day of September, 1982.

Joseph N. Alexander, Commissioner
Department of Natural Resources

Department of Natural Resources Commissioner's Order No. 2132

Regulations Governing the Taking of Fish from the Minnesota-South Dakota Boundary Waters, Superseding Commissioner's Order No. 2053

Pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, hereby prescribe the following regulations for the taking of fish from the Minnesota-South Dakota boundary waters hereinafter described.

Section 1. LICENSES.

The provisions of this order shall apply to residents of South Dakota or Minnesota holding resident fishing licenses from their respective states and residents of other states holding nonresident fishing licenses issued by either the State of South Dakota or the State of Minnesota. Such licensees may take fish in any of those waters covered by this order. Any lawful holder of a resident or nonresident angling license from the State of South Dakota, having lawfully taken fish in the Minnesota-South Dakota boundary waters, may land therewith on the Minnesota side of said waters, and may transport such fish with him to the State of South Dakota by the most convenient, practicable route over the following described highways or roads or parts thereof in the State of Minnesota: All of U.S. Highway No. 75 and all highways or roads lying between U.S. Highway 75 and the Minnesota-South Dakota boundary.

Sec. 2. SPECIES—SEASON—LIMIT.

The species of fish listed below may be taken in the Minnesota-South Dakota boundary waters by angling during the time specified for each species, except that wherever a prescribed closing date falls on a Saturday, the season shall be extended through the following Sunday. All dates are inclusive. The number of each species which may be taken in any one day and which may be possessed at any one time shall be as specified.

Species	Open Season	Daily and Possession Limits
Walleyed Pike and Saugers	Saturday nearest May 1 to last day in February	6
Great Northern Pike and Pickerel	Saturday nearest May 1 to last day in February	6
Large and Small Mouthed Black Bass	Saturday nearest May 1 to last day in February	6
Crappies	Continuous	30
Sunfish and Bluegills	Continuous	30
Rock Bass	Continuous	20
Bullheads	Continuous	100
Perch	Continuous	50
Catfish	Continuous	8
Sturgeon	Continuous	1
Carp, Buffalofish, Sheepshead, Suckers, Redhorse, Dogfish, Eelpout, Garfish and White Bass (Striped)	Continuous	No Limits

Sec. 3. OPERATIONS.

a. The taking of fish by spearing or archery is prohibited, except that carp, buffalofish, sheepshead, suckers, redhorse, dogfish, eelpout, and garfish may be taken by spearing or archery from the Saturday nearest May 1 to November 30, inclusive, except that whenever the closing date falls on a Saturday, the season shall extend through the following Sunday, between sunrise and sunset each day and possessed without limit. No person shall have in possession on or near the water or ice any spear, spring gaff, or bow and arrow at any time, except during the open season for spearing and archery.

b. The taking of fish by spearing from or within a dark house is prohibited.

c. No person shall permit a shelter house to remain on the ice after March 5. Residents of Minnesota and South Dakota angling from fish houses shall comply with the law of their respective states relating to licensing and identification of fish houses. Residents of other states shall comply with the law relating thereto of the state in which they hold nonresident licenses.

d. The taking of fish by means of a set line is prohibited.

e. No person shall use or operate in angling more than two lines, nor more than three hooks on each line.

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f. When oxygen levels are reduced to the point of endangering fish life and the waters are posted to indicate that liberalized fishing is in effect, the following regulations shall apply:

The taking of fish without limit by hook and line (six lines maximum), snagging, spears, dip nets, and legal minnow seines is allowed within the dates identified on the posted sign. Commissioner's Order 1689 shall not apply.

g. This order shall not apply to the taking of minnows, which shall be governed by the laws and regulations of the state in which the minnows are taken.

Sec. 4. AREA.

a. These regulations shall apply to all those parts of Lake Hendricks, Big Stone Lake, Lake Traverse, Mud Lake and the Bois de Sioux River, which constitute the Minnesota-South Dakota boundary waters. The taking and possession of fish of any species covered by this order from said waters is prohibited except as herein permitted or as otherwise expressly authorized pursuant to law.

Sec. 5. SUCCESSION.

Commissioner's Order No. 2053 is hereby superseded.

Dated at Saint Paul, Minnesota, this 14th day of September, 1982.

Joseph N. Alexander, Commissioner
Department of Natural Resources

Department of Natural Resources Commissioner's Order No. 2133

Regulations Relating to the Taking of Whitefish, Tullibees and Herring by Netting for Private Use, Superseding Commissioner's Order No. 2108

Pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, hereby prescribe the following regulations for the taking of whitefish, tullibees and herring by netting for private use:

Section 1. Subject to the conditions and restrictions hereinafter prescribed, the waters hereinafter listed in each of the nine schedules shall be open during the season designated in such schedule, to the taking of the species of fish designated for such waters by netting. The names of bodies of water refer to lakes unless otherwise specified. The abbreviations "S," "T," and "R," refer to sections, townships and ranges, respectively, within the designated counties.

SCHEDULE I. All bodies of water listed under this schedule shall be open from November 5 to November 28, 1982, inclusive, provided that no net or any part thereof shall be set in any water deeper than six feet, measured from the lake bottom to the top surface of the water or ice.

County	Lake	Whitefish & Tullibees	Herring
AITKIN, CROW WING and MILLE LACS:	Mille Lacs	x	
CROW WING, AITKIN and MILLE LACS:	Mille Lacs (See Aitkin, Crow Wing and Mille Lacs Counties).		
MILLE LACS, AITKIN and CROW WING:	Mille Lacs (See Aitkin, Crow Wing and Mille Lacs Counties).		

SCHEDULE II. All bodies of water listed under this schedule shall be open from November 5 to December 12, 1982, inclusive, provided that no net or any part thereof shall be set in any water deeper than six feet, measured from the lake bottom to the top surface of the water or ice.

County	Lake	Whitefish & Tullibees	Herring
AITKIN:			
	Round, S. 9, 10, 15, 16, T. 48, R.24	x	
	Big Sandy, T. 49, R. 23, 24; T. 50, R. 23, 24	x	
BECKER:			
	Little Bemidji, T. 142, R. 39, S. 23, 24, 25, 26	x	
	Buffalo, T. 140, R. 40, 41; T. 141, R. 40	x	
	Cotton, T. 139, 140, R. 40	x	

Curfman, T. 138, R. 41	x	
Detroit, T. 138, 139, R. 41	x	
Big Elbow, T. 142, R. 38, 39	x	
Big Floyd, T. 139, R. 41	x	
Long, T. 138, 139, R. 41	x	
Many Point, T. 141, R. 38; T. 142, R. 38, 39	x	
Maud, T. 138, R. 42	x	
Melissa, T. 138, R. 41	x	
Net (Burnett), S. 17, 18, 19, 20, T. 142, R. 40	x	
Pike, T. 142, R. 38	x	
Round, T. 141, R. 38, 39	x	
Sally, T. 138, R. 41	x	
Strawberry, T. 141, 142, R. 40	x	x
BECKER and CLEARWATER:		
Moore, S. 5, T. 142, R. 38; S. 32, T. 143, R. 38	x	
BECKER and MAHNOMEN:		
Tulaby, T. 142, 143, R. 39	x	
White Earth, T. 142, 143, R. 40	x	
BECKER and OTTER TAIL:		
Graham, T. 137, 138, R. 40	x	
Murphy, S. 6, T. 137, R. 39; S. 31, T. 138, R. 39	x	
BELTRAMI:		
Beltrami, T. 148, R. 32, 33	x	
Big, T. 146, 147, R. 31	x	
Blackduck, T. 149, R. 31	x	
Big Buzzle, T. 148, R. 35	x	x
Carr, T. 146, R. 33	x	
Deer, T. 148, R. 34	x	
Gilstead, T. 148, 149, R. 30	x	
Grant, T. 146, 147, R. 34	x	x
Kitchie, T. 146, 147, R. 30	x	
Marquette, T. 146, R. 30	x	
Movil, T. 147, 148, R. 33	x	
Rabideau, T. 148, R. 30	x	
Big Turtle, T. 148, R. 33	x	
Little Turtle, T. 148, R. 33	x	
Turtle River Lake, T. 147, 148, R. 32	x	
BELTRAMI and CLEARWATER:		
Clearwater, T. 149, R. 35, 36	x	
BELTRAMI and HUBBARD:		
Plantaganette, T. 145, R. 33, 34; T. 146, R. 33	x	
CARLTON:		
Big Hanging Horn, T. 46, R. 19	x	
CASS:		
Baby, T. 140, 141, R. 29	x	
Big Bass, T. 140, R. 26, S. 27, 28, 34	x	x
Blackwater, T. 140, R. 29, S. 25, 26, 34, 35, 36	x	
Boy, T. 142, R. 27, 28	x	

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Crooked, T. 144, R. 31	x	
Upper Gull, T. 135, R. 29	x	
Hattie, T. 138, 139, R. 29	x	
Howard, T. 141, R. 31	x	x
Inguadona, T. 140, 141, R. 27	x	
Kerr, T. 140, R. 29		x
Leavitt, T. 139, R. 25, 26	x	
Mann, T. 140, 141, R. 29	x	
Margaret (Kilpatrick), T. 135, R. 29	x	
Pillager, T. 133, 134, R. 30	x	x
Pine Mountain, T. 138, R. 30; T. 139, R. 30, 31	x	
Big Portage, T. 139, R. 30	x	x
Portage, T. 141, R. 31		x
Pug Hole Lake, S. 2, 3, 10, T. 140, R. 26	x	x
Lower Sucker (Big Sucker), T. 144, R. 30; T. 145, R. 29, 30	x	
Swift, T. 142, R. 27	x	
Big Thunder, T. 140, R. 26	x	
Lower Trelipe, T. 141, R. 27	x	
Upper Trelipe, T. 140, R. 26, 27; T. 141, R. 27	x	x
Wabedo, T. 140, R. 28	x	
Washburn, T. 139, 140, R. 26	x	
Wilson Bay, T. 134, R. 29, 30	x	
Woman, T. 140, R. 28, 29; T. 141, R. 28, 29	x	
CASS and CROW WING:		
Gull, T. 134, R. 29, 30; T. 135, R. 29	x	
Roosevelt, T. 138, 139, R. 26	x	
Roy, T. 135, R. 29	x	
CASS and HUBBARD:		
Steamboat, T. 144, R. 31, 32	x	
CASS and ITASCA:		
Willow, T. 54, R. 27; T. 142, R. 25; T. 143, R. 25		x
Little Winnibigoshish, T. 145, R. 26, 27; T. 146, R. 26, 27, except those portions within one-fourth mile of river channels.		x
CLEARWATER and BECKER:		
Moore (See Becker and Clearwater Counties).		
CLEARWATER and BELTRAMI:		
Clearwater (See Beltrami and Clearwater Counties).		
CROW WING:		
Bass, T. 137, R. 28	x	
Black Bear, T. 46, R. 29, 30; T. 47, R. 29, 30	x	x
Clear, T. 137, R. 28		x
Eagle, T. 45, R. 29	x	x
Fox, East, T. 138, R. 27	x	
Fox, West, T. 138, R. 27	x	
Kimble, T. 137, R. 28	x	x
Ossawinamakee (Long), T. 136, 137, R. 28	x	
Lower South Long, T. 44, R. 29, 30	x	
Mitchell, T. 138, R. 27	x	
Nisswa, T. 135, R. 29	x	
Pelican, T. 135, R. 27, 28; T. 136, R. 27, 28	x	x
Round, T. 134, R. 28, 29; T. 135, R. 28, 29	x	
Serpent, T. 46, R. 28, 29		x
Star, T. 137, R. 28	x	

CROW WING and CASS:		
Gull (See Cass and Crow Wing Counties).		
Roosevelt (See Cass and Crow Wing Counties).		
Roy (See Cass and Crow Wing Counties).		
HUBBARD:		
Benedict, T. 142, R. 32	x	x
Channel between Potato and Eagle Lakes, S. 22, T. 141, R. 35	x	
Channel between Fifth and Sixth Crow Wing Lakes, S. 20, T. 140, R. 33	x	
Channel between Sixth and Seventh Crow Wing Lakes, S. 15, 22, T. 140, R. 33	x	
Channel between Seventh and Eighth Crow Wing Lakes, S. 12, 13, 14, T. 140, R. 33	x	
Ninth Crow Wing, T. 140, 141, R. 32	x	
Eleventh Crow Wing, T. 141, R. 32	x	x
Fish Hook, T. 140, R. 34, 35	x	
Gilmore, T. 141, R. 34	x	
Hay Creek, only that portion in S. 9, 16, 17, 18, T. 141, R. 35	x	
Island, T. 141, R. 35	x	
Kabekona, T. 142, R. 32; T. 143, R. 32, 33	x	x
Oak (Mud), S. 27, T. 143, R. 32	x	
Steel, T. 140, 141, R. 32	x	
Tripp, T. 139, R. 32	x	x
HUBBARD and BELTRAMI:		
Plantaganette (See Beltrami and Hubbard Counties).		
HUBBARD and CASS:		
Steamboat (See Cass and Hubbard Counties).		
ITASCA:		
Ball Club, T. 144, R. 25, 26; T. 145, R. 26	x	
Big Balsam, S. 4, 5, 6, 8, 9, T. 58, R. 24; S. 31, 32, T. 59, R. 24	x	
Bass, north basin and Snyder Bay to the narrows, T. 56, R. 26	x	
Bass, Little, T. 55, 56, R. 26	x	
Bello, T. 60, R. 26, 27	x	
Bowstring, T. 146, R. 25, 26; T. 147, R. 25, 26	x	
Crooked, T. 57, R. 23, 24; T. 58, R. 24	x	
Cut-Foot-Sioux, T. 146, 147, R. 27	x	
Deer, S. 14, 15, 22, 23, 24, 25, 26, 27, 28, 34, T. 62, R. 24	x	
Deer, T. 56, R. 26, 27; T. 57, R. 26, 27	x	
Fawn, T. 57, R. 26	x	
Graves, T. 58, R. 26	x	
Third Hanson, S. 18, 13, T. 57, R. 24, 25	x	x
Hartley, T. 59, R. 23	x	x
Island, T. 150, R. 28	x	
Jessie, T. 147, 148, R. 25	x	
Jessie, Little, T. 147, R. 25		x
Johnson, T. 59, 60, R. 26	x	x
Leighton, S. 3, T. 54, R. 27; S. 34, 35, T. 55, R. 27	x	
Loon, S. 21, 22, T. 55, R. 26	x	x
Nashwauk, S. 7, 18, T. 57, R. 23; S. 12, 13, T. 57, R. 24		x
Pickerel, T. 62, R. 24	x	
Pokegama, T. 54, R. 25, 26; T. 55, R. 25, 26	x	x

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Round, T. 148, R. 27, 28	x	x
Rush Island, T. 148, R. 26	x	
Big Sand, T. 147, 148, R. 26	x	
Big Spring, T. 148, R. 25	x	
Sugar (Siseebakwet), T. 54, R. 26	x	x
Swan, T. 55, R. 22, 23; T. 56, R. 22, 23	x	x
Little Too Much, T. 148, R. 25; T. 59, R. 27	x	
Trout, T. 55, 56, R. 24	x	x
Turtle, Big, T. 59, R. 26, 27; T. 60, R. 26, 27	x	x
Turtle, Little, T. 59, R. 27; T. 148, R. 25	x	
Twin Lakes, T. 56, R. 23, 24	x	
ITASCA and CASS:		
Willow (See Cass and Itasca Counties).		
Little Winnibigoshish (See Cass and Itasca Counties).		
KANDIYOHI:		
Green, T. 120, R. 33, 34, T. 121, R. 33, 34	x	
LAKE:		
Farm, S. 3, 4, T. 62, R. 11; S. 33, 34, T. 63, R. 11	x	
Moose, T. 64, R. 9, except the narrows between Moose and Newfound Lakes.	x	
Newfound, T. 64, R. 9, except the narrows between Newfound and Sucker Lakes and Moose and Newfound Lakes.	x	
Ojibway (Upper Twin, Twin), S. 7, 18, T. 63, R. 9; S. 11, 12, 13, 14, T. 63, R. 10		x
MAHNOMEN:		
McCraney, S. 25, 26, T. 143, R. 40	x	
Snyder (Snider), T. 143, R. 39, 40	x	
MAHNOMEN and BECKER:		
Tulaby (See Becker and Mahnomen Counties).		
White Earth (See Becker and Mahnomen Counties).		
MEEKER and STEARNS:		
Koronis, T. 121, 122, R. 32	x	
OTTER TAIL and BECKER:		
Graham (See Becker and Otter Tail Counties).		
Murphy (See Becker and Otter Tail Counties).		
ST. LOUIS:		
Bear Island, T. 61, R. 13		x
Ely, T. 57, 58, R. 17		x
Leander, T. 60, R. 19		x
Prairie, T. 50, R. 20	x	
St. Mary's, T. 57, R. 17	x	x
Shagawa, T. 63, R. 12	x	x
Side, T. 60, R. 21	x	
STEARNS and MEEKER:		
Koronis (See Meeker and Stearns Counties).		
STEARNS and TODD:		
Big Birch, T. 126, R. 32; T. 127, R. 32, 33	x	
Big Sauk, T. 126, 127, R. 34	x	
TODD and STEARNS:		
Big Birch (See Stearns and Todd Counties above).		
Big Sauk (See Stearns and Todd Counties above).		

SCHEDULE III. All bodies of water listed under this schedule shall be open from October 15 to December 12, 1982, inclusive, provided that no net or any part thereof shall be set in any water deeper than six feet, measured from the lake bottom to the top surface of the water or ice.

County	Lake	Whitefish & Tullibees	Herring
CASS and HUBBARD:			
	Leech, including Kabekona Bay and all other bays, T. 141, R. 29, 31; T. 142, R. 28, 29, 30, 31, 32; T. 143, R. 28, 29, 30, 31; T. 144, R. 28, 29, 30	x	
COOK:			
	Caribou, T. 65, R. 1E	x	
	Deer, S. 4, 5, T. 64, R. 1E; S. 32, 33, T. 65, R. 1E	x	
	Flour, T. 64, R. 1E, 1W	x	x
	East Pike, T. 65, R. 2E, 3E	x	x
	Pike, T. 61, R. 2W	x	
	Poplar, T. 64, R. 1W	x	
	Winchell, T. 64, R. 2W, 3W		x
HUBBARD and CASS:			
	Leech, including Kabekona Bay and all other bays (See Cass and Hubbard Counties).		
KOOCHICHING and ST. LOUIS:			
	Kabetogama, T. 69, R. 19, 20, 21, 22; T. 70, R. 21, 22	x	
	Rainy, T. 69, R. 18, 19; T. 70, R. 18, 19, 20, 21, 22; T. 71, R. 20, 21, 22, 23, 24	x	
LAKE:			
	Basswood, T. 64, 65, R. 9, 10, 11	x	x
	Isabella, T. 61, R. 8; T. 62, R. 7, 8	x	
	Silver Island, T. 60, R. 6; T. 61, R. 6, 7	x	
LAKE and ST. LOUIS:			
	Fall, T. 63, R. 11, 12; T. 64, R. 11	x	x
	White Iron, T. 62, R. 11, 12; T. 63, R. 11	x	
LAKE OF THE WOODS and ROSEAU:			
	Lake of the Woods	x	
ROSEAU and LAKE OF THE WOODS:			
	Lake of the Woods (See Lake of the Woods and Roseau Counties).		
ST. LOUIS:			
	Crane, T. 67, R. 16, 17	x	
	Namakan, T. 68, R. 17, 18; T. 69, R. 17, 18, 19, except the narrows between Namakan and Sand Point Lakes.	x	
	Sand Point, T. 67, R. 16, 17; T. 68, R. 16, 17; T. 69, R. 17, except the narrows between Sand Point and Namakan Lakes and Sand Point and Little Vermilion Lakes.	x	
ST. LOUIS and KOOCHICHING:			
	Kabetogama (See Koochiching and St. Louis Counties).		
	Rainy (See Koochiching and St. Louis Counties).		
ST. LOUIS and LAKE:			
	Fall (See Lake and St. Louis Counties).		
	White Iron (See Lake and St. Louis Counties).		

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SCHEDULE IV. All bodies of water listed under this schedule shall be open from November 12 to December 12, 1982, inclusive, provided that no net or any part thereof shall be set in any water deeper than six feet, measured from the lake bottom to the top surface of the water or ice.

County	Lake	Whitefish & Tullibees	Herring
DOUGLAS:			
	Burgans, T. 127, 128, R. 37	x	
	Carlos, T. 128, 129, R. 37	x	
	Ida, T. 129, 130, R. 38	x	
	Latoka, T. 128, R. 38	x	
	LeHomme Dieu, T. 128, 129, R. 37	x	
	Miltonka, T. 129, 130, R. 37, 38	x	
	Victoria, T. 128, R. 37	x	
DOUGLAS and TODD:			
	Osakis, T. 128, R. 35, 36; T. 129, R. 35	x	
TODD and DOUGLAS:			
	Osakis (See Douglas and Todd Counties above).		

SCHEDULE V. All bodies of water listed under this schedule shall be open from November 5 to December 12, 1982, inclusive, and it shall be permissible to set portions of nets into water deeper than six feet, provided that one end of the net is set in water no deeper than six feet, measured from the lake bed to the top surface of the water or ice.

County	Lake	Whitefish & Tullibees	Herring
BECKER:			
	Acorn, T. 138, R. 40	x	
	Ice Cracking, T. 141, R. 38, 39	x	
BELTRAMI:			
	Sandy, T. 149, R. 35	x	x
BELTRAMI and CASS:			
	Cass, T. 145, R. 30, 31; T. 146, R. 30, 31	x	
CASS:			
	Jack, T. 141, 142, R. 30		x
CASS and BELTRAMI:			
	Cass (See Beltrami and Cass Counties).		
HUBBARD:			
	Long, T. 139, 140, R. 34	x	x
ITASCA:			
	Maple, T. 60, R. 27	x	
	Big Too Much, T. 148, R. 25	x	x
	Big Wabana, T. 57, R. 25		x

SCHEDULE VI. All bodies of water listed under this schedule shall be open from October 15 to December 5, 1982, inclusive, and it shall be permissible to set portions of nets into water deeper than six feet, provided that one end of the net is set in water no deeper than six feet, measured from the lake bed to the top surface of the water or ice.

County	Lake	Whitefish & Tullibees	Herring
BELTRAMI:			
	Upper Red, only that portion outside the Red Lake Indian Reservation, T. 153, R. 31, 32, 33, 34; T. 154, R. 30, 31, 32, 33, 34; T. 155, R. 30, 31, 32	x	
CASS and ITASCA:			
	Winnibigoshish, T. 145, R. 27, 28, 29; T. 146, R. 27, 28, 29; T. 147, R. 27, 28	x	
ITASCA and CASS:			
	Winnibigoshish (See Cass and Itasca Counties above).		

SCHEDULE VII. All bodies of water listed under this schedule shall be open from November 19 to December 12, 1982, inclusive, provided that no net or any part thereof shall be set in any water deeper than six feet, measured from the lake bottom to the top surface of the water or ice.

County	Lake	Whitefish & Tullibees	Herring
OTTER TAIL:			
	Crystal, T. 136, R. 42	x	
	Fish, T. 137, R. 42	x	
	Franklin, T. 136, 137, R. 42	x	
	Jewett, T. 134, R. 43	x	
	Leaf, Middle, T. 134, R. 38	x	
	Leaf, West, T. 134, R. 38	x	
	Lida, T. 135, 136, R. 42	x	
	Lizzie, T. 136, 137, R. 42	x	
	Big Pelican, T. 137, R. 42, 43	x	
	Pine, Big, T. 136, 137, R. 38	x	
	Pine, Little, T. 136, R. 39; T. 137, R. 38, 39	x	
	Stalker, T. 132, R. 41	x	
	Star, T. 135, R. 40, 41; T. 136, R. 41	x	
	Wimer, T. 137, R. 40	x	

SCHEDULE VIII. All bodies of water listed under this schedule shall be open from November 19 to December 12, 1982, inclusive, and it shall be permissible to set portion of nets into water deeper than six feet, provided that one end of the net is set in water no deeper than six feet, measured from the lake bed to the top surface of the water or ice.

County	Lake	Whitefish & Tullibees	Herring
OTTER TAIL:			
	East Leaf, T. 134, R. 37, 38	x	
	Long, T. 134, R. 42, 43	x	

SCHEDULE IX. All bodies of water listed under this schedule shall be open at the specific times listed for each lake to the taking of the species of fish designated by netting, provided that no net or any part thereof shall be set in any water deeper than six feet, measured from the lake bottom to the top surface of the water or ice.

County	Lake	Whitefish & Tullibees	Herring
BECKER:			
	Straight, T. 140, R. 36, S. 6, 7, 17, 18, 20—Dates open from December 3, 1982 to January 30, 1983.	x	
CASS:			
	Ten Mile, T. 140, R. 30, 31; T. 141, R. 30, 31—Dates open from November 5, 1982 to January 30, 1983.	x	x
DOUGLAS:			
	Rachel, T. 127, R. 39—Dates open from December 3, 1982 to December 30, 1982.		x
ITASCA:			
	Oxhide, S. 11, 13, 1. 56, R. 23—Dates open from December 10, 1982 to January 30, 1983.	x	
	Reilley (O'Reilly), T. 56, R. 24, S. 5, 6—Dates open from December 10, 1982 to January 30, 1983.		x

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

ST. LOUIS:

Vermilion, T. 61, R. 16; T. 62, R. 14, 15, 16, 17; T. 63, R. 15, 16, 17, 18—
All except Pike Bay, south and west of a north-south line at narrowest portion between Echo Point and Punchers Point, S. 19, 30, T. 52, R. 15—
Dates open from October 22, 1982 to November 11, 1982. x

Sec. 2. Fish taken hereunder shall be taken only in the manner authorized by law. No such fish shall be sold or bought.

Sec. 3. No net used in the taking of fish hereunder shall be set after sunset nor raised before sunrise. All nets used in the taking of fish hereunder shall be set by the licensee and shall be lifted by the licensee at least once each 24 hours. No person shall use more than one net or any net exceeding 100 feet in length or three feet in width. The size of the mesh of whitefish or tullibee nets shall not be less than 3½ inches, extension measure, and of herring nets not less than 1¾ inches, extension measure.

No net shall be set within 50 feet of another net. Each gill net shall have a metal tag bearing the name and address of the licensee attached on one end of the float line near the first float. Such tag shall be of a minimum size of 2½ inches by ⅝ inch and shall be provided by the owner or operator of such net. One end of the net shall have a pole, stake, or buoy projecting at least two feet above the surface of the water or ice.

Sec. 4. All waters except those herein described are closed to such taking of fish. Any species of fish that are not permitted to be taken under this regulation must be returned to the water immediately, except that any rough fish caught in such a net may be retained and no carp shall be returned to the water.

Sec. 5. If, upon investigation, the director of fish and wildlife finds that the taking of fish in any waters hereunder results or may result in injury to game fish populations, he may declare such waters closed to such taking of fish by posting notice thereof at not less than three places which he may deem suitable therefor on the shore of such waters or at entrances thereto, and thereupon this order shall forthwith be suspended and become inoperative as to such waters, and the taking of fish in such waters as authorized by this order shall be unlawful.

Sec. 6. No person shall have in possession any fishing equipment except the nets prescribed herein while performing any of the operations authorized by this order.

Dated at Saint Paul, Minnesota, this 20th day of September, 1982.

Joseph N. Alexander, Commissioner
Department of Natural Resources

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota
County of Nobles

Tax Court
Regular Division

Roy E. & Dorothy Nasers, Jr.,

Appellants,

v.

The Commissioner of Revenue,

Appellee.

Docket No. 3208

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER FOR JUDGMENT

Order Dated: September 20, 1982.

The above matter was submitted to the Minnesota Tax Court, Carl A. Jensen presiding, on the basis of a Stipulation of Facts and Briefs of the parties.

William T. Hedeen of Brecht, Hedeen, Huges & Wiltrout, appeared on behalf of Appellants.

Paul R. Kempainen, Special Assistant Attorney General, appeared on behalf of Appellee.

Syllabus

Non-business expenses are allowed as deductions only in proportion to the amount that the gross income reportable in Minnesota bears to the gross income from all sources except for certain specific exceptions provided in the statutes which are not in dispute here.

Findings of Fact

1. The Appellants, Roy E. and Dorothy Nasers, Jr., are cash basis, calendar year taxpayers who were during 1978 (the taxable year at issue herein) residents of Minnesota living at Route #3, Box 66, Worthington, Minnesota.

2. During the year 1978, the Appellant Roy Nasers, Jr. was a shareholder in an Iowa corporation known as Nasers, Incorporated (hereinafter, "Nasers, Inc."). For both federal and Iowa income tax purposes Nasers, Inc. was, during 1978, an electing small business corporation. However, Nasers, Inc. was not an electing small business corporation for Minnesota state income tax purposes.

3. For the year 1978, Appellant Roy Nasers, Jr., had attributed to him for federal income tax purposes a total of $61,556 as his pro rata share of the income of Nasers, Inc. However, none of this amount was actually distributed to Appellant in 1978, and the Appellant received no dividends from the corporation. On his 1978 federal income tax return Roy Nasers, Jr. properly included this item of $61,556 in arriving at his federal adjusted gross income.

4. On his original 1978 Minnesota Income Tax Return, Roy Nasers, Jr. reported his federal adjusted gross income without making any adjustment for the $61,556, representing his undistributed pro rata share of the income of Nasers, Inc. Appellant also claimed his share of the investment and jobs credits of Nasers, Inc.

5. On or about February 29, 1980, the Appellants filed an Amended Minnesota Income Tax Return for the year 1978, claiming a total refund of $9,081. On this amended return Appellants sought to adjust their Minnesota taxable income by subtracting the $61,556 item as undistributed income from a non-Minnesota small business corporation, and by disclaiming the previously claimed investment and jobs credits. Appellants' explanation on their amended return read as follows:

Taxpayer erroneously included his distributable share from an Iowa Sub S corp. which has not made the election for MN tax purposes. He received no dividends from this corporation.

He also deducted his share of invest. credit & jobs credit from this corp.

Non-Mn Sub S Income	(61,556)
Invest. Tax Credit	2,357
Jobs Credit	2,552
Net reduction in taxable income	56,647

6. Upon audit, the Department of Revenue determined that Appellants were entitled, under Minn. Stat. § 290.01, subd. 20(c)(1), to subtract the $61,556 item in arriving at their 1978 Minnesota gross income. The Department of Revenue also agreed with the Appellants that they were not entitled to a deduction for their share of Nasers, Inc.'s investment and job credits and those deductions were disallowed. However, the Department of Revenue also determined that, under Minn. Stat. § 290.18, subd. 1(2), and as a result of the above mentioned adjustments to their 1978 Minnesota gross income, the Appellants' itemized deductions for certain non-business expenses had to be reduced in proportion equal to what their redetermined Minnesota gross income was to their gross income from all sources. This resulted in 53.82% of Appellants' itemized deductions for medical and interest expenses being disallowed for Minnesota income tax purposes. However, all of Appellants' itemized deductions for taxes and contributions were allowed as being directly allocable to Minnesota.

7. As a result of the above mentioned audit the Commissioner of Revenue issued his Order dated August 25, 1980, allowing a 1978 refund to Appellants of $7,033, plus interest, out of the $9,081 claimed by the Appellants on their amended return.

8. The Appellants have taken a timely appeal from the Commissioner's Order.

9. Non-business expenses are allowed as deductions only in proportion to the amount that the gross income reportable in Minnesota bears to the gross income from all sources except for certain specific exceptions provided in the statutes which are not in dispute here.

10. The Order of the Commissioner dated August 25, 1980 should be affirmed.

Conclusions of Law

1. Non-business expenses are allowed as deductions only in proportion to the amount that the gross income reportable in Minnesota bears to the gross income from all sources except for certain specific exceptions provided in the statutes which are not in dispute here.

2. The Order of the Commissioner of Revenue dated August 25, 1980 is hereby affirmed.

By the Court
Carl A. Jensen, Judge
Minnesota Tax Court

Dated: September 20, 1982.

Memorandum

This is rather a peculiar situation. The Appellant is a resident of Minnesota and has a corporation in Iowa. The corporation has elected to be treated as a small business corporation for federal tax purposes and also for Iowa tax purposes. This means that for federal and Iowa income tax reporting the income from the Iowa corporation is reported by the Appellant as his personal income.

Appellant did not elect to be treated as a small business corporation under Minnesota law, so he does not report any income from the Iowa corporation unless it distributes dividends or until the stock or the corporation is sold. The corporation did not issue any dividends. If the corporation is sold by the Appellant for exactly his cost basis in its property plus the income that he has reported for federal income tax purposes, it would appear that the Appellant would have no capital gain and would not have to report any income for federal tax purposes. It would also appear that he would not have to report any income for Iowa tax purposes. If he were still a resident of Minnesota, it would then appear that he would have to report in his Minnesota income a different amount either as a capital gain or ordinary income.

Although he reported ordinary income of $61,556 on his federal tax return, he only reported $21,008 as income from the small business corporation for Iowa tax purposes because it appears from his Iowa tax return that he had a net operating loss carry-over from 1977 in the amount of $40,548, which for some reason or other was not available for federal tax purposes.

If he was not a resident of Minnesota when he sold the Iowa corporation, he apparently would never have had to pay any Minnesota income tax on the income that he had received from this Iowa corporation, although he was a Minnesota resident at the time the income was earned. In other words, although he chose to avoid federal and Iowa corporate income taxes, he was able to avoid Minnesota personal income tax. Although this does not have a direct bearing on the decision in this case, it does point up some of the problems involved in allowing persons to elect to have the same corporation treated differently for federal tax purposes and for state tax purposes.

Also, the Appellant makes the point that if he is not allowed to take the deductions in full at this time, he would not be able to take them at a later time when a dividend or a sale of the corporation was made, so he would be losing the percentage of the current non-business deductions that the Commissioner has disallowed. As indicated above, if he is not a resident of Minnesota at that time, he would not report any income to Minnesota and it might very well be that he would not report any income in any other state. If Appellant had chosen to elect to have the corporation treated as a small business corporation in Minnesota, he would have been entitled to all of the deductions in Minnesota but he also would have paid much higher Minnesota income taxes.

Minnesota Statutes (1978) Section 290.18 reads in part as follows:

TAXABLE NET INCOME, ADJUSTED GROSS INCOME; COMPUTATION. Subdivision 1. Taxable net income. The taxable net income shall, . . . be computed by deducting from the gross income assignable to this state under section 290.17 deductions of the kind permitted by section 290.09 in accordance with the following provisions.

* * * * *

(2) *That proportion of such deductions, so far as not connected with and allocable against the production or receipt of such gross income assignable to this state and so far as not connected with and allocable against the production or receipt of gross income assignable to other states or countries, . . . shall be allowed which the taxpayer's gross income from sources within this state,* as determined under section 290.17, clauses (1), (2), (3), and (5), *bears to his gross income from all sources,* . . . provided that taxes of the kind deductible under section 290.09, subdivision 4, shall, so far as within the description of deductions deductible under this clause, be deductible in their entirety if paid to the State of Minnesota, or any of its subdivisions authorized to impose such taxes, and thereupon be excluded in making the computation of deductions, as in this clause provided. (Emphasis added.)

Minnesota Income Tax Regulation 2018(1)(b) amplifies explanation of this statute as follows:

2018(1) DEDUCTIONS ALLOWABLE IN COMPUTING TAXABLE NET INCOME.

In computing taxable net income (except in so far as M.S.A. 290.19 is applicable) the extent to which deductions permitted by M.S.A. 290.09 will be allowed shall be determined as follows:

* * * * *

(b) Non-business expenses. There are some deductions ordinarily allowable under the provisions of M.S.A. 290.09 which are not connected with and allocable against the production or receipt of gross income. Examples of such deductions are *sickness and personal injury expenses, non-business interest*, non-business losses and non-business bad debts. *Such non-business deductions are allowable to the extent of the ratio which the taxpayer's gross income from sources within this State bears to his gross income from all sources.* For example, a taxpayer having a total gross income of $10,000, $5,000 of which was assignable without Minnesota as business income earned in other states, would be allowed to claim as a deduction one-half of his nonbusiness deductions in the computation of his taxable net income assignable to this State. There is one exception to this rule, however, and that is in the case of taxes of the kind deductible under M.S.A. 290.09, Subd. 4. Such taxes are deductible in their entirety if paid to the State of Minnesota or any of its subdivisions authorized to impose such taxes. (Emphasis added.)

The statute and the regulation clearly provide that an individual's non-business expense deductions are allowable only in that proportion which his Minnesota gross income bears to his total gross income.

The correctness of this result finds additional support in a law review article by Professor Henry Rottschaefer published not long after the Minnesota income tax was first adopted in 1933. In Rottschaefer, *The Minnesota State Income Tax,* 18 Minn. L. Rev. 93, 156 (1934), Professor Rottschaefer wrote about section 24(b) of the act, which was the predecessor to the current Minn. Stat. Section 290.18, subd. 1(2), as follows:

When, and in so far as, taxable net income is determined by an allocation of gross income, there will have to be a correlative restriction on the deductions permitted to be taken under section 13. This is the purpose of section 24. The basic principle is that such deductions are allowable to the extent that they are connected with and allocable against the production or receipt of the gross income assignable to this state. . . . There are, however, certain deductions not connected with or allocable against the production or receipt of any income, neither against that assignable to this state nor against that assignable to another state or country. *The deduction for medical costs for caring for the health of the taxpayer and his family is an instance. The statute (section 24(b)) imposes a limit on the extent to which such item is deductible from gross income assignable to this state in computing the taxable net income. Only that proportion thereof can be deducted which the gross income assignable to this state bears to the taxpayer's gross income from both within and without the state.* If, for example, two-thirds of a taxpayer's gross income were assignable to Minnesota, then he could deduct two-thirds of such medical costs in computing his taxable net income. . . . The theory back of requiring such apportionment with respect to such deductions is that they are a charge against a person's entire income, not merely that assignable to this state. (Emphasis added.)

See also the case of *Spratt v. Hatfield,* 267 Minn. 535, 127 N.W.2d 545 (1964), where the underlying factual situation showed that a taxpayer's non-business deductions have always been allowable only to the extent that his gross income is taxable by Minnesota. While that point was not directly at issue in *Spratt v. Hatfield*, it was apparently agreed to by all parties in that case as being the state of the law.

It appears that the Iowa corporation and the Appellant will have to keep separate accounts for the treatment given to the income realized by the Iowa corporation for federal and state tax purposes, but it would appear quite likely that there could be confusion in subsequent years which might be multiplied if for some of those years Appellant did elect to have the corporation treated as a small business corporation in Minnesota and had not so elected for other years. It appears to us that the legislature might very well consider greater conformity with federal law in this area.

C.A.J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Minnesota Housing Finance Agency

Notice of Request for Proposals for Construction or Rehabilitation under the Medium Density Homeownership Program

The Minnesota Housing Finance Agency (MHFA) is requesting proposals for the new construction or substantial rehabilitation of attached, for-sale housing developments under the Medium Density Homeownership Program.

The purpose of the program is to stimulate the construction of moderately priced, energy efficient, for-sale housing. Federal statutes require that all units be sold to moderate income, first-time buyers. Approximately $30 million in mortgage funds will be available for the program. Proposals will be selected in cities throughout the state where a market can be demonstrated. The agency will provide a forward commitment agreement for end mortgage loan financing for each unit selected and approved for construction.

The minimum and maximum forward commitment for any one development will be 12 and 40 units, respectively. The maximum purchase price of any unit will be $70,000 statewide with the maximum income requirement to be determined when bonds are sold and the interest rate established. The anticipated mortgage interest rate is 12% to 13% with a 30-year term. Certain buydown provisions will be allowed.

Applicants are encouraged to work with city officials to coordinate ways in which local regulations and ordinances can be modified to reduce costs. All proposed development sites must be zoned residential at time of application (substantial rehab proposals exempt).

The agency strongly encourages applications from qualified minority developers and development teams with meaningful minority involvement.

A letter of intent to submit an application must be sent to MHFA by November 1, 1982. All applications must be delivered to the agency no later than 5:00 p.m., Monday, November 15, 1982, or mailed by certified mail and postmarked on or before November 15, 1982. Anyone delivering an application to the agency must request a receipt. Late applications will not be considered.

In Minneapolis and St. Paul only substantial rehabilitation proposals will be considered.

A Developer's Packet containing information and materials needed to submit an application may be obtained from the Minnesota Housing Finance Agency, Suite 200, 333 Sibley Street, St. Paul, Minnesota 55101, or by calling (612) 297-3294 and/or (612) 297-3295.

Minnesota Waste Management Board

Notice of Request for Proposals for Sites to Be Included in an Inventory of Preferred Areas for Commercial Hazardous Waste Processing Facilities

The Minnesota Waste Management Board is compiling an inventory of preferred sites for commercial hazardous waste processing facilities as required by Chapter 564, Minnesota Laws 1980. In compiling the inventory the board wishes to consider sites of existing hazardous waste processing facilities, sites of existing facilities which could be converted to use as hazardous waste processing facilities, and sites at which a hazardous waste processing facility is proposed to be constructed. Such facilities might include, but would not be limited to, incinerators, wastewater treatment facilities, solvent recycling facilities, and transfer and storage facilities.

The board will consider proposals from firms, local governments and state agencies. Submission of such proposals will in no way constitute an obligation to convert existing facilities to hazardous waste processing use. All proposals received will be on the public record. Consideration of a proposal will not obligate the board to include the site proposed in its preferred inventory.

Written proposals must be received at the board's Crystal offices by Oct. 13, 1982. Proposals should include data demonstrating that the proposed site meets the criteria developed by the board to evaluate sites or should give reasons why the proposed site should be exempted from meeting some of the criteria. Proposals should be addressed to:

Minnesota Waste Management Board
ATTN: Sharon Decker
Thorson Building
7323 58th Avenue North
Crystal, MN 55428
Telephone: (612) 536-0816

Interested parties may obtain further information from Sharon Decker at the above telephone number.

Sept. 24, 1982

Robert G. Dunn
Chairman

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Energy, Planning and Development

Current and Projected Residential Energy Costs, by Region and State

In fulfillment of Minnesota Statutes, Chapter 116H, section 129, subdivision 1, the Assistant Commissioner For Energy, Department of Energy, Planning and Development hereby certifies the following current and projected average residential energy prices. Sample surveys of energy utilities and distributors were used to estimate regional average prices for 1981-82 (Table 1). Sampling errors of these surveys are given in Table 1A. Ten year forecasts of residential energy prices are given in Tables 2 and 3.

These prices are to be used with discretion. All numbers are regional or statewide averages, and, therefore, do not take into account differences in tariff structures among individual utilities and distributors, nor advantages that some purchasers obtain through quantity discounts. If the user finds these current levels of prices to be higher or lower than actual unit energy prices, as documented by their most recent energy bill, the forecasts can be adjusted by applying the changes in prices between years provided in Tables 2 and 3, to an appropriate base for that locality.

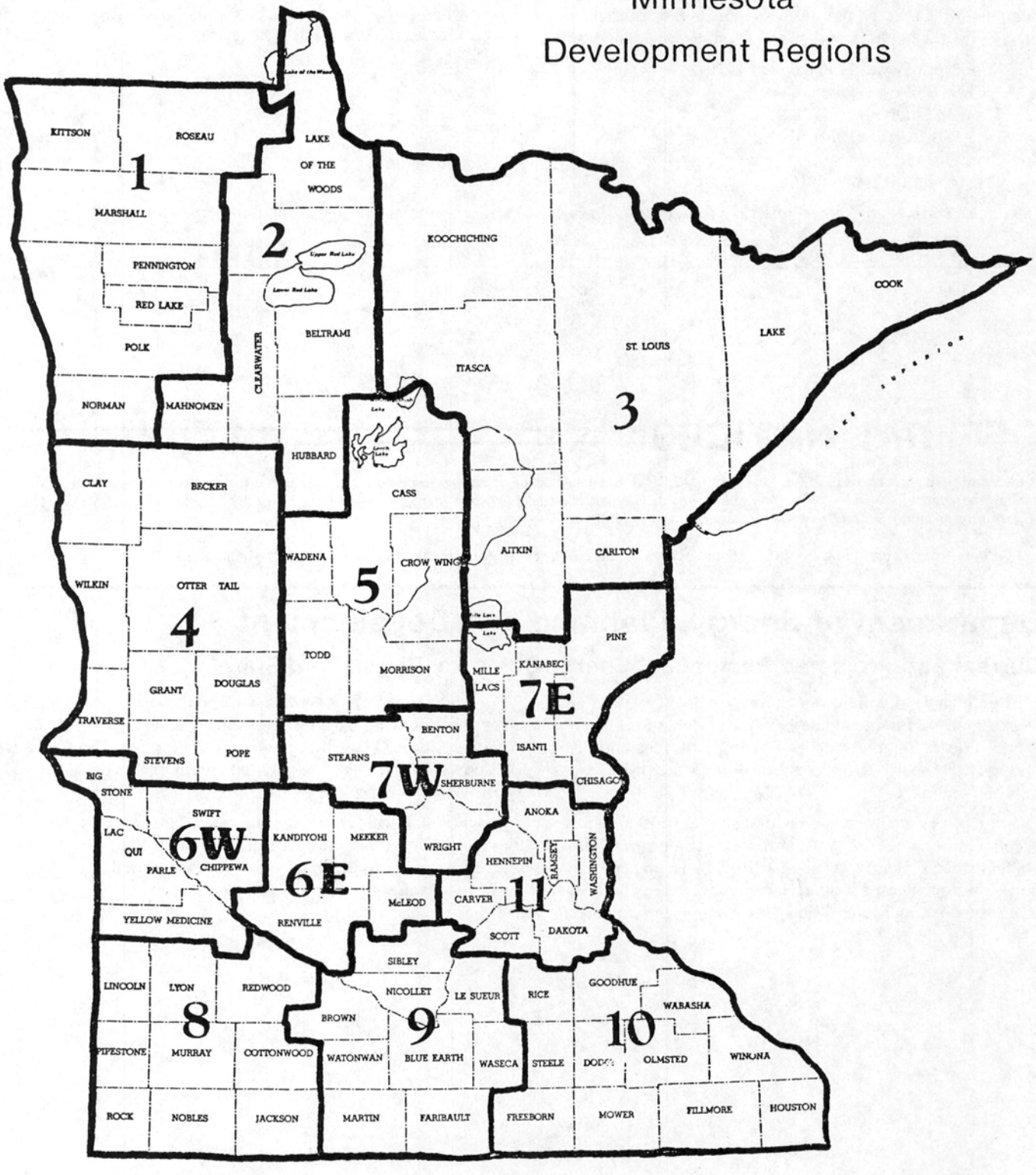
Minnesota
Development Regions
KITTSON
ROSEAU
LAKE OF THE WOODS
1
MARSHALL
2
KOOCHICHING
PENNINGTON
RED LAKE
POLK
CLEARWATER
BELTRAMI
ITASCA
ST. LOUIS
LAKE
COOK
3
NORMAN
MAHNOMEN
HUBBARD
CASS
CLAY
BECKER
WADENA
CROW WING
AITKIN
CARLTON
5
WILKIN
OTTER TAIL
4
TODD
MORRISON
MILLE LACS
KANABEC
PINE
7E
GRANT
DOUGLAS
TRAVERSE
BENTON
ISANTI
STEVENS
POPE
STEARNS
7W
SHERBURNE
CHISAGO
BIG STONE
SWIFT
ANOKA
LAC QUI PARLE
6W
CHIPPEWA
KANDIYOHI
MEEKER
WRIGHT
HENNEPIN
RAMSEY
WASHINGTON
6E
McLEOD
CARVER
11
YELLOW MEDICINE
RENVILLE
SCOTT
DAKOTA
SIBLEY
LINCOLN
LYON
REDWOOD
NICOLLET
LE SUEUR
RICE
GOODHUE
WABASHA
8
BROWN
9
10
PIPESTONE
MURRAY
COTTONWOOD
WATONWAN
BLUE EARTH
WASECA
STEELE
DODGE
OLMSTED
WINONA
ROCK
NOBLES
JACKSON
MARTIN
FARIBAULT
FREEBORN
MOWER
FILLMORE
HOUSTON

Table 1. Average Residential Energy Prices, by Region and State, Heating Season 1981-1982

Region	Natural Gas[a] $/1000 cubic feet		Electricity[a] ¢/kwh		Fuel Oil[b] $/gallon	Propane[b] ¢/gallon
	NSH	SH	NSH	SH		
1	6.91	6.37	4.72	3.93	1.162	67.1
2	6.32	5.67	5.28	4.27	1.244	68.4
3	6.15	5.55	5.47	4.53	1.211	70.4
4	5.92	5.42	4.77	4.28	1.159	65.7
5	4.61	4.29	5.74	4.90	1.154	71.3
6E	4.38	4.02	5.49	4.25	1.109	62.3
6W	4.79	4.47	5.11	4.11	1.092	61.2
7E	5.57	4.68	5.59	4.96	1.150	74.4
7W	4.59	4.29	5.82	4.48	1.110	67.3
8	5.47	4.57	4.60	3.58	1.099	56.7
9	4.46	4.07	6.00	4.59	1.071	60.2
10	5.25	4.30	5.96	4.72	1.140	64.4
11	4.62	4.31	5.69	4.08	1.160	63.7
State	4.79	4.52	5.57	4.31	1.134	65.1

SH = Space Heating
NSH = Non-spaceheating

a/ Winter prices calculated from rate schedules submitted by utilities to the Minnesota Public Service Commission; space heating requirements bias prices towards the lowest rate block of residential rate schedules. Price differences between regions are caused in part by some natural gas utilities having instituted flat rates for non-spaceheating as well as spaceheating, and others changing from declining block to inverted block rate schedules. Electric rate schedules used in this study do not take into account dual fuel rates or a utilities' separate water and/or light schedules. Non-spaceheating consumption from the Northern States Power Company, "Residential Electricity Use Study, Minnesota 1979," St. Paul, Minnesota, adjusted for efficiency improvements.

b/ Prices from the Department of Energy, Planning and Development, Energy Division, Residential Fuel Price Surveys, Heating Season 1981-82.

Table 1A. Standard Errors of Sample Prices,
Residential Fuel Price Survey Heating Season 1981-82

Region	Natural Gas $/1000 cubic feet		Electricity ¢/kwh		Fuel Oil ¢/gallon	LPG ¢/gallon
	NSH	SH	NSH	SH		
1	.2	.3	.4	.3	1.5	.5
2	.4	.2	.3	.3	1.8	.7
3	.1	.2	.7	.7	1.2	1.3
4	.5	.4	.2	.2	1.2	2.3
5	.4	.4	.2	.2	2.9	1.1
6E	.0	.0	.3	.3	1.6	1.2
6W	.4	.1	.3	.2	1.0	1.1
7E	.4	.3	.2	.3	1.6	1.1
7W	.1	.1	.1	.1	1.6	1.5
8	.3	.1	.3	.3	1.5	.7
9	.1	.0	.2	.2	.7	2.4
10	.2	.1	.5	.3	2.7	2.0
11	.4	.2	.1	.1	1.8	2.8
State	.2	.1	.2	.2	.4	.7
Total No. of Samples	86		246		125	123

Table 2. Projected State Average Residential Prices for Fuel Oil, Propane Natural Gas, and Electric, Including Inflation, Heating Season 1981-92

	State Average Prices in Current Dollars										
	1981-82	1982-83	1983-84	1984-85	1985-86	1986-87	1987-88	1988-89	1989-90	1990-91	1991-92
#2 Fuel Oil a/ $/gallon	1.13	1.11	1.22	1.36	1.49	1.63	1.77	1.94	2.11	2.30	2.49
Propane b/ $/gallon	0.65	0.69	0.76	0.86	0.96	1.07	1.16	1.35	1.46	1.59	1.72
Natural Gas c/ $/1000 cubic feet	4.52	5.55	6.07	7.27	8.50	9.22	9.97	10.83	11.80	12.85	13.91
Electric ¢/kwh d/ -Spaceheating	4.31	4.87	5.07	5.27	5.49	5.74	6.07	6.42	6.73	7.03	7.37
-Non-Spaceheating	5.57	6.29	6.56	6.81	7.09	7.42	7.84	8.29	8.69	9.08	9.52
Inflation-GNP implicit price deflator e/ (Annual Rates)	7.8	6.4	6.4	6.8	7.1	6.8	6.7	6.7	6.7	6.6	6.3

a/ Assumes OPEC production levels will range between 17.5-18.0 million barrels per day and an intended long term pricing strategy of real price increases amounting to 2.8% annually beginning in 1984 and extending through 1990.

b/ Historical relationships between crude oil and LPG in terms of price per million BTU content are continued into the future.

c/ Assuming wellhead price deregulation by 1985 according to the Natural Gas Policy Act of 1978 and deactivation of the price escalator clauses in existing natural gas contracts.

d/ Includes increased operating costs and carrying costs of building additional capacity.

e/ Data Resources, Inc., U. S. Long Term Review, Summer 1982, Lexington, (Trendlong 0682), p. 1.21; determined for the heating season by taking the average between two calendar years.

Table 3. Projected Residential Electricity Prices
by Region, Including Inflation, 1982-1992

Region	Type of Heating	Actual	Projections									
		1982	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992
							¢/kwh					
1	Non-Space	4.72	5.28	5.76	6.18	6.51	6.73	7.08	7.67	8.29	8.65	9.07
	Space	3.93	4.40	4.80	5.15	5.43	5.62	5.91	6.40	6.92	7.22	7.57
2	Non-Space	5.28	5.85	6.32	6.68	6.90	6.99	7.34	7.92	8.53	8.93	9.36
	Space	4.27	4.73	5.11	5.40	5.58	5.65	5.93	6.40	6.90	7.22	7.57
3	Non-Space	5.47	5.79	6.06	6.27	6.36	6.36	6.72	6.78	7.18	7.54	7.99
	Space	4.53	4.79	5.02	5.19	5.26	5.26	5.56	5.89	6.24	6.55	6.94
4	Non-Space	4.77	5.33	5.85	6.34	6.66	6.80	7.12	7.60	8.11	8.43	8.83
	Space	4.28	4.78	5.25	5.69	5.98	6.11	6.39	6.82	7.28	7.57	7.93
5	Non-Space	5.74	6.13	6.49	6.75	6.83	6.78	7.13	7.52	7.94	8.33	8.81
	Space	4.90	5.23	5.53	5.75	5.81	5.77	6.07	6.41	6.76	7.09	7.50
6E	Non-Space	5.49	6.00	6.48	6.93	7.21	7.33	7.77	8.15	8.56	8.92	9.41
	Space	4.25	4.64	5.01	5.36	5.57	5.66	6.00	6.29	6.60	6.88	7.26
6W	Non-Space	5.11	5.62	6.08	6.52	6.85	7.06	7.48	8.02	8.60	8.95	9.42
	Space	4.11	4.52	4.89	5.25	5.52	5.69	6.03	6.47	6.94	7.23	7.61
7E	Non-Space	5.59	6.06	6.55	6.85	6.89	6.81	7.19	7.60	8.02	8.41	8.90
	Space	4.96	5.38	5.81	6.08	6.11	6.04	6.38	6.74	7.11	7.45	7.89
7W	Non-Space	5.82	6.27	6.65	6.89	6.89	6.71	7.15	7.48	7.83	8.18	8.63
	Space	4.48	4.83	5.13	5.32	5.32	5.18	5.52	5.77	6.04	6.31	6.66
8	Non-Space	4.60	4.98	5.34	5.71	6.03	6.27	6.49	6.86	7.25	7.56	7.99
	Space	3.58	3.88	4.16	4.45	4.70	4.89	5.07	5.36	5.67	5.91	6.24
9	Non-Space	6.00	6.49	6.93	7.35	7.64	7.76	8.22	8.61	9.03	9.41	9.78
	Space	4.59	4.97	5.31	5.63	5.85	5.94	6.29	6.59	6.91	7.20	7.49
10	Non-Space	5.96	6.33	6.62	6.86	7.04	7.11	7.59	7.97	8.38	8.77	9.26
	Space	4.72	5.02	5.25	5.44	5.59	5.65	6.03	6.33	6.65	6.96	7.35
11	Non-Space	5.69	6.05	6.28	6.39	6.31	6.06	6.53	6.80	7.09	7.39	7.79
	Space	4.08	4.34	4.50	4.58	4.52	4.34	4.67	4.86	5.07	5.28	5.57

Minnesota State Retirement System
Regular Meeting, Board of Directors

Notice of Meeting

The regular bi-monthly meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, October 15, 1982, at 9:00 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

Department of Labor and Industry
Workers' Compensation Rehabilitation Services

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Qualified Rehabilitation Consultants and Rehabilitation Vendors

Notice is hereby given that the Workers' Compensation Rehabilitation Services, Department of Labor and Industry, is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing qualified rehabilitation consultant qualifications, standards for performance, services and fees, and revocation procedures for qualified rehabilitation consultants/rehabilitation vendors. The promulgation of these rules is authorized by Minnesota Statutes § 176.102, subds. 10 and 12, which requires the agency to promulgate rules relating to qualified rehabilitation consultants and any other rules necessary to implement Minn. Stat. § 176.102.

The State Department of Labor and Industry requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Gladys Westberg, Director
Rehabilitation Services
Workers' Compensation Division
Department of Labor and Industry
444 Lafayette Road
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours or over the telephone at (612) 297-2684 and in person at the above address.

All statements of information and comments shall be accepted until November 1, 1982. Any written material received by Workers' Compensation Rehabilitation Services shall become part of the record in the event that the Rules are promulgated.

Russell B. Swanson,
Commissioner of Labor and Industry

State Designer Selection Board

Notice of Meeting

The State Designer Selection Board will meet on Monday, October 11, 1982 and Monday, October 18, 1982 at 10:00 a.m. in Room G-10, State Administration Building, St Paul.

Errata

The following changes are to be made in Pollution Control Agency's Proposed Amendment of Agency Procedural Rules, Volume 7, Number 11, September 13, 1982:

At 7 S.R. 314, 6 MCAR § 4.3001 K.: Change "~~(i)~~" to "~~(l)~~".

At 7 S.R. 316, 6 MCAR § 4.3005 G.: Paragraph G. should read: "G. Notice of agenda. At least ten days prior to the regular meeting, the director shall mail a copy of the agenda to every member of the agency, to each person directly affected by a decision of the agency on an agenda matter, and to each person the director deems appropriate in the circumstances. The agenda for a regular meeting must be available for public inspection in the agency offices at least ten days prior to the regular meeting for which the agenda has been prepared."

At 7 S.R. 316, 6 MCAR § 4.3006 Declaration of emergency., strike out "MPCA 4".

At 7 S.R. 317, 6 MCAR § 4.3007 Variences., strike out "MPCA 6".

At 7 S.R. 318, 6 MCAR § 4.3007 A.7.a., change to read: "a general description of the materials handled or processed by the applicant ~~which~~ that are pertinent to the subject application, and a statement of the nature and quantity of the materials being discharged, emitted, or disposed of, and ~~which~~ that can reasonably be expected to be discharged, emitted, or disposed of~~,~~ during the period of the proposed variance, and proposed methods for the control of ~~such~~ these materials:"

At 7 S.R. 321, change "6 MCAR § 4.3001" to read "6 MCAR § 4.3011".

At 7 S.R. 322, 6 MCAR § 4.3013 A., the last sentence should read: "The certifier may withdraw ~~such~~ the records or information if such an option is available ~~to him~~.

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(Required by 39 U.S.C. 3685)

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MN Dept. of Employee Relations
3rd Floor, Space Center Bldg.
444 Lafayette Road
St. Paul, Minn. 55101

STATE OF MINNESOTA
DEPARTMENT OF EMPLOYEE RELATIONS

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES REGARDING THE STATE'S PERSONNEL PROGRAM

STATEMENT OF NEED AND REASONABLENESS

During the last two legislative sessions, a number of significant changes were made in Minnesota's merit system statute. The 1980 Minnesota Legislature "sunsetted" many provisions of Minnesota's civil service law. The sunsetted provisions were to be repealed July 1, 1981 unless the 1981 Legislature acted to reinstate these provisions. In response to this legislation, the Governor commissioned a Task Force to analyze Minnesota's personnel law and practices in examining and referral, total compensation, classification, work force size, turnover, training, affirmative action, labor relations and general personnel management practices. Reports were prepared and recommendations were made to the Governor and to the Commissioner of the Department of Employee Relations (DOER) in the fall of 1980 which provided direction for improvement in Minnesota's personnel management system.

During the fall and winter of 1980-81, the Legislative Commission on Employee Relations (LCER) directed its staff and consultants to conduct an interim study of Minnesota's civil service system. This study was designed to identify specific areas in the merit system statute which, in the judgment of the LCER, required legislative attention in 1981. This effort produced substantial changes in the state's personnel management system during the 1981 legislative session. Laws of 1981, Chapter 210 was signed into law on May 15, 1981 and was effective July 1, 1981. This Act repealed and replaced all of the previous civil service statutes (Minn. Stat. § 43) with a new Chapter 43A. This act removed all statutory language which established salary rates and other terms and conditions of employment and stipulated that these items be included either in collective bargaining agreements or in the various statutorily authorized plans which govern terms and conditions of employment for employees not covered by a collective bargaining agreement. Minn. Stat. § 43A.04, subd. 3 changes the scope of personnel rules to cover only those provisions of Chapter 43A which directly affect the rights of or processes available to the general public.

Rather than update the existing rules to correspond to law, it was decided to totally rewrite the personnel rules in order to accomplish the following:

1. To delete material no longer appropriately the subject of rule because it is now covered exclusively in collective bargaining agreements and/or plans established pursuant to Minn. Stat. § 43A.18. The rules promulgated under Chapter 43 will be abolished as the new rules are promulgated.

2. To delete material more appropriately the subject of administrative procedures pursuant to Minn. Stat. § 43A.04, subd. 4 because it affects only the State's relationship to employees in areas not appropriate to collective bargaining or it deals exclusively with the internal management of the Department or other agencies.

3. To delete material no longer required in rule because it is now adequately covered in statutes.

4. To add or revise rules or portions of rules to implement changes in law resulting from the enactment of Chapter 43A or changes to other laws such as the Minnesota Data Practices Act.

5. To organize the rules parallel to the organization of the personnel law which sequentially follows the employment process for job applicants.

6. To revise rules to permit better administration of the rules and the State's personnel program and to delete archaic or unworkable provisions which have fallen into disuse.

7. To make revisions for clarity, simplicity and consistency with language used in Chapter 43A.

The authority of the Department of Employee Relations to promulgate, amend and adopt these rules is Minn. Stat. § 43A.04, subd. 3.

1. 2 MCAR § 2.300 Scope of the rules. This rule specifies the purpose and scope of these rules. Minn. Stat. § 43A.04, subd. 3 requires that rules be promulgated to cover or implement provisions of Minn. Stat. ch. 43A which generally affect the rights of or processees available to the general public. The general public has the right to know who and what are covered by these rules.

2. 2 MCAR § 2.301 Other elements implementing the state personnel system. The State personnel management program is a comprehensive system of rules, administrative procedures, plans and collective bargaining agreements. Personnel rules are but one of the components of the personnel management system. To reduce confusion and eliminate inaccurate assumptions, the general public needs to understand the scope and place of personnel rules in the system.

3. 2 MCAR § 2.302 Application. This rule clarifies which rules govern actions at particular points in time. It eliminates confusion so the system can be administered efficiently and effectively. This rule prevents retroactive administration of the rules.

4. 2 MCAR § 2.303 Definitions. Terms used in the context of the rules that have unique meanings need to be defined so that individuals can fully comprehend the rules.

5. 2 MCAR § 2.306 Use of class titles. This rule requires the use of official class titles in formal personnel actions. It is necessary to have this rule because the State of Minnesota currently uses over 2,000 class titles. It is impossible to be familiar with all informal and working titles for similar positions. The required use of official titles reduces errors and delays in personnel transactions. The rule is reasonable because DOER disseminates information about positions and class titles widely, and access to official titles is conveniently available to agencies and to the public. In addition, this rule provides appointing authorities with the flexibility to use working titles for internal administrative purposes.

6. 2 MCAR § 2.307 Class specifications. This rule requires the Commissioner to make information about State job classes available to the public and defines the material to be included in these specifications. The rule is needed to help applicants, counselors, teachers, research personnel, and the general public obtain information available on each class relative to the duties performed and knowledge and skills required. The rule does not require an exhaustive description of work performed in each class but provides a general guide to the duties which may be performed or assigned by State supervisors.

   The rule permits the use of individual position descriptions as class specifications for single position classes. While summary descriptions of positions assist the public in obtaining an overall view of the nature of work performed in large classes, the individual position description represents a better source of information about a single position class. No purpose will be served by making the additional effort to prepare an abstract summary of a single position class.

7. 2 MCAR § 2.311 Administration of the wage and salary plan. This rule establishes salary provisions for new employees and individuals who return to state employment. The rule is needed to help prospective applicants determine their interest in state employment. It is reasonable because it limits the autonomy of appointing authorities to set salaries and provides consistency across agency lines, while giving latitude and flexibility to appointing authorities. The rule provides flexibility by permitting the Commissioner to approve appointments at a higher rate based upon recommendations from appointing authorities regarding the exceptional qualifications of a candidate or the unavailability of candidates at the minimum salary rate. (The limits included in the rule have been used for several years with few problems.)

8. 2 MCAR § 2.312 Relocation expenses. Minn. Stat. § 43A.04, subd. 3e requires a rule on "conditions under which moving and other expenses may be authorized and paid prior to appointment to persons who have accepted state employment." This rule establishes the parameters for authorizing and paying relocation expenses and also requires that authorization be made on or before the date of hire to prevent retroactive bargaining. It is reasonable to expect that all negotiations of this type will be resolved before the employment decision is made. This rule also establishes a reasonable time period in which relocation must be completed, but provides for an extension of this time period under unique circumstances. To ensure fairness, the reimbursement limits for relocation are the same for current and new employees. The rule also provides an appointing authority flexibility to reduce the level of reimbursement so the appointing authority is not limited to all or an nothing proposition.

9. 2 MCAR § 2.316 Scope of competition. This rule identifies the criteria that the Commissioner will use to decide if an examination will be announced on a competitive open or competitive promotional basis. This rule is necessary to limit the authority of the Commissioner by forcing the Department of Employee Relations to publicly identify and communicate the criteria for making this decision. It is reasonable to provide this information so the public will know why they may not be able to participate in some selection processes. The criteria are reasonable because they provide a balance among the needs of appointing authorities, the provisions of collective bargaining agreements and plans established under Minn. Stat. § 43A.18, the number of qualified candidates inside and outside the civil service, affirmative action goals, and mobility opportunities for employees.

10. 2 MCAR § 2.317 Public notice of examinations. This rule implements the directives of Minn. Stat. § 43A.10, subd. 5, which requires public notice for competitive open examinations. It is reasonable to ensure public notice in order to recruit an adequate supply of qualified candidates. The rule also complies with the basic principles of a merit system of personnel selection which require open competition and public information about job opportunities. The provisions of this rule are essentially the same as previous personnel rules that have been in effect for several years. A minimum of seven (7) days posting is reasonable because it provides sufficient time for interested persons to become aware of examination announcements and/or job openings without placing undue time restrictions or delays on the remainder of the selection process. Incorporating a provision for use of a variety of means of publicizing examination announcements is necessary and reasonable because it allows the Commissioner to use the most effective and efficient methods of communication available at the time and to adapt them to focus on a targeted audience.

11. 2 MCAR § 2.318 Contents ● announcements of examinations ● This rule specifies the content of exam announcements. It is reasonable because it forces DOER to include adequate information on exam announcements so that prospective applicants can adequately assess their chances of success in the examination process and can decide whether to apply for listed jobs. This provision of the rules is essentially the same as previous personnel rules that have been in effect for several years.

12. 2 MCAR § 2.319 Expenses of candidates for civil service positions. The Commissioner or an appointing authority may pay travel expenses for candidates or eligibles invited to participate in oral examinations or employment interviews. Since all agencies use the Commissioner's Plan to pay travel expenses of employees not covered by collective bargaining agreements; therefore, it is reasonable to use the provisions of this plan to cover the travel expenses of candidates. This rule is needed to ensure that all candidates receive equal treatment across agency lines.

13. 2 MCAR § 2.320 Applications. This rule requires standardized forms to be used to apply for examinations. Without standardization it would be virtually impossible to administer the selection process, due to the large number of examinations and applications. The information required on the application form is necessary in order to determine candidate qualifications and to appropriately certify eligibles to vacant positions. It is reasonable to force DOER to provide the public with a description of the application form and its contents along with a statement of the importance, effects and private or confidential nature of the information collected. The provisions of this rule are essentially the same as previous personnel rule that has been in effect for several years.

14. 2 MCAR § 2.321 Admissions.

A. General. This rule is necessary to define ~~the~~ conditions under which candidates are admitted to examinations and to specify when applications may be withdrawn by the Commissioner. It provides that applicants must meet standard application requirements, but gives the Commissioner flexibility to accept incomplete applications if candidates later provide the needed information. The rule is reasonable because it gives the Commissioner flexibility and authority to withdraw an application if the applicant refuses to provide sufficient application data. This ensures consistency among candidates which provides an efficient selection process.

B. Limited admissions. This rule permits the Commissioner to limit admission to those applicants willing to work in specific geographic areas and under specific employment conditions of anticipated vacancies. It also permits the Commissioner to limit the number of candidates admitted to subsequent examination parts. This provision is reasonable because it balances the interest of individual applicants and the needs of state agencies. It reduces the time and effort needed to complete the exam process by eliminating those applicants for whom no appointment opportunities would ever exist (i.e., those wishing to work in locations or employment conditions where positions do not now or never will exist or those scoring too low on an examination part to have any hope of ever being referred).

C. Refusal to admit to an examination. This rule protects the security of examinations by permitting the Commissioner to refuse admission to an applicant who has taken all or part of an exam within the preceding six months and to withdraw applications of candidates who fail to appear for examination. It is both necessary and reasonable to prohibit individuals from retaking tests at any time because retesting would enable them to practice and "learn the test", which would provide an advantage for the applicant over other applicants and would reduce the validity of the examination. This rule gives the Commissioner the flexibility to determine the effects of retesting in a shorter period of time so that the applicant is not adversely affected if examination circumstances do not warrant it.

D. Notice of admittance and refusal to admit. This rule requires that applicants be notified of the date, time and place of an examination or examination part and requires the Commissioner to provide a written statement on the reasons for refusing to accept an application or to admit an applicant. It is necessary and reasonable to inform the public of the information DOER will provide applicants regarding their admittance or rejection. It is reasonable to force DOER to spell out reasons why applicants are not accepted or admitted.

15. 2 MCAR § 2.322 Change of application deadline or examination date. This rule defines the Commissioner's authority to change dates for filing applications and/or cancelling examinations or exam parts. The rule is necessary to allow the Commissioner to adapt the selection process to current or changing conditions. It eliminates the need to follow a rigid process once that process becomes inefficient or unnecessary. The provisions of this rule are essentially the same as a previous personnel rule which has been in effect for several years.

16. 2 MCAR § 2.323 Administration of examinations. This rule tells the public that the Commissioner has the authority to select the time, place and personnel to administer the examinations. Public notice of this authority is necessary to reduce appeals on the exam process which will reduce the cost and time of administering examinations.

17. 2 MCAR § 2.324 Scoring of examinations. This rule establishes and communicates the procedures that will be used to score examinations. The rule is necessary and reasonable because it forces DOER to follow standardized procedures in scoring examinations. It provides public information regarding how test scores are derived and the effects of the scoring procedures on applicants. It indicates when veteran's preference points are applied according to Minn. Stat. § 43A.11.

18. 2 MCAR § 2.325 Notification of examination ratings. This rule specifies that all candidates must receive written notice of their ratings and that DOER must keep this information on file. The rule is both necessary and reasonable because it forces DOER to provide candidates with written notice. Candidates have a right to know their test results and that this information is an official record of the department. This rule is essentially the same as a previous personnel rule in effect for several years.

19. 2 MCAR § 2.326 Explanation and appeals of examination ratings. This rule establishes a thirty (30) day time limit for candidate appeals of examination results and provides a remedy if errors are found. The rule is necessary in order to give candidates a due process procedure to challenge their examination ratings. The thirty (30) day limit is reasonable because it provides ample opportunity for a candidate to determine whether an error was made and to initiate the appeal process. This rule also provides that a change in a rating as the result of an appeal will not affect an appointment already made in good faith as a result of original ratings. To make such a change would create hardship for the appointing authority and would be unfair to the selected candidate.

20. 2 MCAR § 2.341 Eligible lists. This rule prescribes the order in which names appear on eligible lists and establishes an objective tie-breaking procedure. Minn. Stat. § 43A.13 specifies the number of names that can be certified for a position. A consistent procedure is needed to rank candidates with identical scores. The use of the last four digits of the social security number as the tie-breaking approach is reasonable because the method is objective and that can easily be documented.

21. 2 MCAR § 2.342 Reemployment lists and reinstatement. This rule defines "reinstatement" as the return of a former employee to a position in the same class within three years of separation. It defines "reemployment list" as the names of individuals who have applied to be placed on that list within three years of separation from that class. The public has a right to know that reinstatement or reemployment are alternatives to competitive open examinations for filling vacant positions.

22. 2 MCAR § 2.343 Duration of eligible lists. The Commissioner has authority to establish the length of time that eligible lists remain in effect beyond the six months required by statute. This rule is necessary because it establishes and communicates the criteria that the Commissioner uses to determine how long an eligible list will remain in effect. It also establishes the criteria and conditions for abolishing or combining lists. It requires the Commissioner to notify individuals whose names appear on lists that will be abolished and invite them to reapply if the exam is announced again. This rule is reasonable because it forces DOER to follow a specific set of criteria and to communicate specific actions to affected parties.

23. 2 MCAR § 2.344 Removal of names from eligible lists. This rule defines conditions under which a candidate's name may be removed from an eligible list. An accurate, up-to-date list makes the selection process easier and faster; therefore, it is necessary to remove from eligible lists names of individuals who are no longer interested in or available for employment. If names are not removed, agencies waste time contacting people who have no interest in employment. This rule makes candidates aware of their specific responsibilities for remaining on eligible lists.

24. 2 MCAR § 2.345 Notice of removal of names from eligible lists. This rule is both necessary and reasonable to protect the rights of eligibles by requiring the Commissioner to notify them in writing when they are permanently removed from an eligible list.

25. 2 MCAR § 2.346 Restoration of names to eligible lists. This rule establishes a procedure for individuals who have been removed from eligible lists to request that their names be restored. It is necessary and reasonable to provide a mechanism to correct errors in removing names from eligible lists.

26. 2 MCAR § 2.347 Changes in availability. This rule informs eligibles that they may update the status of their availability by notifying the Commissioner. It is necessary and reasonable to communicate this right to eligibles so that they may increase their possibilities of finding a job.

27. 2 MCAR § 2.351 Order of certification. The Commissioner has the authority to select the most appropriate eligible list when certifying candidates for vacancies. The rule is necessary because it provides the order of certification used by the Commissioner and requires the Commissioner to consider requests of an appointing authority and/or any obligation under collective bargaining agreements or plans established under Minn. Stat. § 43A.18. The rule is reasonable because it forces DOER to follow specific procedures and also communicates to the public the process and procedures or priority listing of eligible lists.

28. 2 MCAR § 2.352 Selective certification. This rule authorizes the Commissioner to certify only those eligible who have specific skills documented by an appointing authority as being essential and unique to a position or need of a state agency. Some positions require unique skills, knowledge or abilities that are not common to the general class; therefore, it is necessary and reasonable to screen out individuals who do not have these qualifications because they would be unable to perform the duties of the position without substantial training time and expense.

29. 2 MCAR § 2.353 Incomplete and augmented certification. This rule provides for flexible administration of the certification process in order to assist agencies in securing a reasonable number of eligibles to make appointments to fill vacancies without undue delays. It allows the Commissioner to refer more names to an agency when those originally referred were unavailable rather than supplying a completely new certification. This is necessary to ensure that interested eligibles already interviewed and under appointment consideration may continue to be eligible for appointment. Establishment of a 30 day limit on this provision is necessary and reasonable to balance the interests and rights of agencies and eligibles already referred and interested in employment with those eligibles who may subsequently be added to eligible lists for referral through a continuous testing process.

    The rule also provides procedures to follow if there are insufficient eligibles available to make a complete certification. This is necessary because labor market conditions periodically make it impossible to supply a complete certification in occupations and/or geographic areas where few eligibles are available. In such cases, it is reasonable to establish alternative strategies for the Commissioner to use in referring eligibles to agencies. The provisions of this rule were previously included in old Personnel rule 2 MCAR § 2.084 section 5C, D and E.

30. 2 MCAR § 2.354. Revised certification. This rule provides for the addition of eligibles to certifications already made when the eligibles' scores or availability have been changed. It is reasonable to require the referral of eligibles whose scores are changed through the due process appeal procedures of 2 MCAR § 2.326. It is also reasonable to permit the Commissioner discretion in referring eligibles who have themselves decided to change their availability since the Commissioner must balance their interests with the needs and interests of the State service for optimum administrative efficiency in the job filling process. Provisions of this rule were previously included in old Personnel rule 2 MCAR § 2.067.

31. 2 MCAR § 2.355 Appointments. This rule expands on statutory language contained in M.S. § 43A.14 and M.S. 43A.15(1). It establishes the appointing authority's responsibility to verify application data, explain specific terms and conditions of employment to prospective employees and submit appropriate appointment forms. This rule precludes appointment from an eligible list prior to the date of certification to prevent selection of candidates prior to implementation of established certification procedures. It is necessary to clarify who is responsible for verifying application information and communicating to new employees specific terms and conditions of employment. It is also necessary to inform the public that application data on prospective employees will be verified. Since appointing authorities have direct contact with prospective employees, they are in the best position to perform this function.

32. 2 MCAR § 2.361 General. Minn. Stat. § 43A.04, subd. 3b requires rules on "the process for effecting noncompetitive and qualifying appointments". This rule identifies for the public the types of appointments that can be made without competition. This rule provides continuity for the specific rules that follow and helps the public understand the various methods of appointment to State jobs.

33. 2 MCAR § 2.362 Emergency appointments. This rule communicates to the public that these short-term appointments are noncompetitive in nature due to unique and immediate needs of an agency and that an appointing authority may appoint anyone who is considered qualified.

34. 2 MCAR § 2.363 Temporary appointments. This rule establishes and communicates the situations under which temporary appointments are appropriate and the criteria the Commissioner uses in approving temporary appointments. The Commissioner may authorize an appointing authority to appoint anyone who is qualified or may certify qualified eligibles from an appropriate list. This approach balances the needs and interests of appointing authorities and eligibles. The criteria are designed to clearly communicate that temporary appointments are, in fact, temporary and not a vehicle for subverting the normal selection process.

35. 2 MCAR § 2.364 Provisional appointments. This rule establishes and communicates the documentation an appointing authority must submit and the criteria that the Commissioner uses in approving a provisional appointments. Public notice of provisional appointment procedures is necessary because Minn. Stat. § 43A.15, subd. 4 gives the Commissioner the power to authorize a probationary appointment of a provisional appointee who has performed satisfactorily for at least sixty (60) days. The criteria used for selection are designed to comply with merit system principles and are compatible with the state selection process. The provisions of this rule are essentially the same as a previous personnel rule that has been in effect for several years.

36. 2 MCAR § 2.365 Transfers from other public jurisdictions. This rule establishes criteria the Commissioner uses in exercising his/her discretionary authoritiy to allow transfers from other public jurisdictions. It limits the authority of the Commissioner. The criteria are compatible with merit system principles and the state selection process.

37. 2 MCAR § 2.366 Exceptional appointments. The Commissioner has discretionary authority to authorize a probationary appointment of a person possessing exceptional qualifications needed by an agency to fill a particular position. This rule establishes and communicates the criteria and procedures used to review and authorize or deny these appointments. The criteria are compatible with merit system principles and the state selection process.

38. 2 MCAR § 2.367 Routine service appointments. This rule requires public notice of the designation of classes which will be included as routine service. It is both necessary and reasonable to require DOER to designate these classes and to provide public information regarding the selection processes used to fill positions in these classes.

39. 2 MCAR § 2.368 Shortage occupation appointments. This rule establishes and communicates criteria and procedures to be used in making shortage occupation appointments. The criteria are compatible with merit system principles and the selection process. It is both necessary and reasonable to require DOER to designate these classes and to provide public information regarding the selection processes used to fill positions in these classes.

40. 2 MCAR § 2.369 Work-training appointments. This rule authorizes appointing authorities to make work-training appointments only to positions in specific work-training programs approved by the Commissioner. It provides for public notice of intent to accept applications for entry into approved training programs. The rule is necessary because successful completion of a work training program can lead directly to probationary appointment. Therefore, it is reasonable to maintain selection procedures that are compatible with a merit philosophy and our selection process.

41. 2 MCAR § 2.370 Internship appointments. This rule specifies that interns must be associated with formal academic programs. Internships are designed to be practical applications of academic learning and must be directly associated with academic programs.

42. 2 MCAR § 2.391 Affirmative action. This rule outlines the general goals of affirmative action and the methods by which the goals are to be achieved. 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. § 43A.19, subd. 1 which require that the Statewide Affirmative Action Program include a statement of general goals and policies.

43. 2 MCAR § 2.392 Scope of chapter. This rule is necessary to establish that the remainder of this chapter covers all of the executive branch. This rule is reasonable because it meets the requirements of the law. 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 with these rules to substitute requirements of the federal agency for the requirements of these rules.

44. 2 MCAR 2.393 Duties of the agency head. Minn. Stat. § 43A.19, subd. 2 requires the head of each agency to prepare and implement an affirmative action program. The agency head is further required by Minn. Stat. § 43A.19, subd. 1 to periodically report to the Governor and the Legislature on the implementation of the agency's affirmative action plan. To ensure success of an affirmative action program, responsibility must 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's top executive.

45. 2 MCAR 2.394 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 requirements of Minn. Stat. § 43A.19, subds. 1 and 2 which establish a statewide program and which further state that "the head of each agency in the executive branch shall prepare and implement an agency affirmative action plan consistent with this section and rules promulgated in section 43A.04, subd. 3." It also implements Minn. Stat. § 43A.19, subd. 1(b) which requires the Commissioner to establish standards for agency affirmative action plans, goals and timetables.

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. Conformity with these standards not only allow uniformity throughout the state executive branch, but ensure that agencies will meet the requirements of various federal agencies which regulate their activities. In addition, these requirements are reasonable because they are general in nature which allows agencies maximum flexibility to adapt them to meet individual management needs.

Specifically, Minn. Stat. §§ 2.394 A (1,3,4,5) and 2.394 B(1) are needed to communicate to employees and the public the content of each agency's affirmative action program and individuals covered by it.

2 MCAR § 2.394 A(2) is necessary to clearly identify persons accountable for affirmative action activities and to delineate their responsibilities. Such a requirement is reasonable to ensure the success of any good management program. Consideration was given to designating an 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 each agency head. It is reasonable not to require committees in all agencies for four reasons: dilution of accountability, variation in management styles, the risk of stressing means at the expense of ends, and lack of capability to monitor committee action. Appointing authorities should

be free to designate affirmative action committees or select other effective structures to implement the affirmative action program in their agencies. Whatever the structure, it is the intent of these rules to emphasize the responsibility of each agency head to lead an effective affirmative action effort.

2 MCAR § 2.394 A(8) and (9) are necessary because specific measureable objectives and action steps must be established for achieving the goals of the program. It is necessary to identify the procedures which will be used to evaluate the success of the objectives and action steps.

It is reasonable to require each agency to include a procedure for pre-employment review of all hiring decisions for positions in goal units with unmet affirmative action goals. Access to positions in the work force is the first and most important step in the process of eliminating barriers to equal employment opportunity. The decision to hire must take into account affirmative action goals.

2 MCAR § 2.394 A(10) is reasonable because the law in Minn. Stat. § 43A.19, subd. 1(b) requires that agencies be provided with procedures, standards and forms to be used in the preparation of their affirmative action plans. A summary transmittal form provides a check list for each agency and for the Equal Opportunity Division so that no important element of the plan's requirements is overlooked.

2 MCAR § 2.394B exempts agencies with fewer than 25 employees from developing full scale affirmative action plans. This variation in requirements is needed for agencies that have few employees and little turnover. Further, statistical computations of goals and timetables are unnecessary in small agencies because underutilization is more readily apparent. This exemption covers 35 agencies with a total of 199 employees, .0657% of the 30,164 employees in the executive branch of state government.

The standards outlined in 2 MCAR § 2.394, subd. B are repetitious of those portions contained in 2 MCAR § 2.394, subd. A 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.

46. 2 MCAR 2.395 Requirements for complaint procedures. This rule is needed to provide for due process in handling complaints of disparate treatment from individual members of protected groups.

This rule is reasonable because it allows aggrieved employees to use the grievance procedure included in the Commissioner's Plan established under Minn. Stat. § 43A.18 or in applicable union contracts should the complaint be unrelated 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. This rule also provides reasonable time limits for determining and reporting the merits of affirmative action grievances. These time limits balance the needs of aggrieved employees for timely redress with the needs of state executives for a reasonable amount of time to study the issues, weigh alternatives and arrive at equitable conclusions.

47. 2 MCAR § 2.396 Requirements for goals and timetables. The procedures outlined in 2 MCAR § 2.396 are designed to meet the requirements of various federal enforcement agencies and to standardize 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 9% affirmative action goal has been set for each agency's work force based on State Veteran's Administration and United States Veterans 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 establishes general standards for identifying underutilization of protected groups and for setting goals to reach parity between the numbers of protected group employees and the numbers of qualified protected group workers in the external labor force.

48. 2 MCAR 2.397 Reporting requirements. Reporting procedures are required by Minn. Stat. § 43A.19, subd. 1(c). Internal reporting systems on a prescribed schedule are needed to monitor the results of affirmative action efforts so needed corrective action can be taken. Quarterly reporting was chosen for agencies with 25 or more employees, and semi-annual reporting was chosen for agencies with fewer than 25 employees. 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 to assess progress towards meeting goals and, if necessary, to take corrective action. Agencies need 30 days to collect, verify and submit their reports.

49. 2 MCAR § 2.397 Biennial reports. 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 with their budget requests.

50. Social Security rules. Minnesota Statutes, Chapter 355, permits the State to enter into an Agreement with the Federal Government to extend social security coverage to state and local governmental employees in Minnesota. In accordance with Section 218 of the Federal Social Security Act, such agreement was entered into. While the State's responsibilities and direction are provided by federal law, federal regulations, state law and the State Social Security Agreement, Minn. Stat. § 355.05 permits the Department of Employee Relations to promulgate rules applicable to other state departments, local governmental units and state and local governmental employees.

The proposed social security rules replace 2 MCAR § 2.198 and incorporate the latest changes in Federal Social Security Law covering definition of wages, contribution rates, maximum wage limits, and depositing due dates.

51. 2 MCAR 2.401 Authority and scope of chapter. This is intended to provide all affected agencies and individuals with the statutory authority for the rules that follow concerning social security coverage for state and local governmental employees.

52. 2 MCAR 2.402 Definitions. Terms that relate to Social Security matters must conform to their legal definitions. This rule provides legal definitions of these words and phrases.

53. 2 MCAR 2.403 Employee account numbers. The Agreement between the State of Minnesota and the Secretary of Health and Human Services requires the State to report covered wages paid to state and local governmental employees under the social security account number assigned by Social Security Administration. To fulfill its responsibilities in reporting, the State needs rules concerning the employee social security account number. The requirements set forth in these rules are identical to those required by the Social Security Administration of private enterprise.

54. 2 MCAR 2.404 Identification number for coverage groups. This rule informs political subdivisions that Social Security Administration assigns a separate identification number to each reporting unit for reporting social security wages. This number must be entered on all of the reporting units documents involving social security.

55. 2 MCAR § 2.405 Employee's and employer's contribution. Federal law and Regulations of the Secretary of Treasury which govern the Federal Insurance Contribution Act do not apply to local governmental units. Therefore, this rule is needed to direct local governmental unit regarding employee and employer contribution rates, controls and records, and employee statements.

56. 2 MCAR § 2.406 Collecting and remitting tax. This rule details the employer's responsibility in deducting employee social security contributions. It includes the time period for taking the deduction, the employer matching of such deduction, and time and form used in remitting the deduction to the State. Since neither federal law nor the Secretary's regulations apply to local governments, the state agency rules must provide the authority, direction and penalties to ensure compliance with the State Agreement.

57. 2 MCAR 2.407 Submitting contributions. All employers, including governmental units, receive from the Internal Revenue Service instructions for depositing withheld federal income taxes and FICA taxes. FICA instructions apply only to private enterprise. While the instructions often include a statement that the FICA directions do not apply to governmental units, this statement is sometimes overlooked. Invaribly some governmental units deposit their Social Security contributions with a depository bank or the Federal Reserve Bank. This rule is, therefore, included to alert the governmental unit not to make such deposits. If it does make such deposits, the unit can be assessed interest on the delinquent payment to this office.

58. 2 MCAR § 2.408 Liability for tax. Other sections of these rules direct local governmental units to withhold required Social Security employee contributions. This rule states that the units are responsible for contributions whether or not they are withheld. Similarly employees remain liable for their contributions even if the employer fails to withhold them from their earnings.

59. 2 MCAR § 2.409 Reporting unit's failure to pay state agency. This section re-states the actions available to the state agency to collect or recover delinquent contributions (including interest) from political subdivisions.

60. 2 MCAR § 2.410 When employer may begin deducting. The effective date of a political subdivision's Social Security coverage is defined by State law and requires an agreement between the state and the federal government. This section is needed to direct political subdivisions when to begin deductions from earnings.

61. 2 MCAR § 2.411 Sick pay. Public law 97-123, enacted by the U.S. Congress on December 29, 1981, provides that sick pay (even when paid by a third party) shall be considered wages for social security purposes. Federal law and Internal Revenue regulations apply and provide direction only to private enterprise. The provisions contained in these rules are similar to legal requirements for private enterprise.

62. 2 MCAR § 2.412 Wage reports. The federal Social Security law and the State Agreement require the State to submit periodic wage reports covering the political subdivisions included in the State Agreement. This section requires each political subdivision to submit its wage report to the state agency so that the State may submit its report.

63. 2 MCAR § 2.413 Quarterly reports before 1981. Federal social security reporting requirements changed from quarterly to annual reporting on January 1, 1981. Since Social Security coverage under federal law can be retroactive for up to five years, this rule provides for quarterly reports that may be required from some politial subdivisions for periods before 1981.

64. 2 MCAR § 2.414 Annual reports, 1981 and after. This rule provides direction to political subdivisions for reporting social security wages for calendar year 1981 and thereafter. It states the period covered by each report, the employees to be included, the due date for submitting the completed report and the penalty assessed for failing to meet the established due date. The terms of the State Agreement with the Secretary of Health and Human Services provide similar direction and due dates for the State. Therefore, to fulfill the State's obligations, the state must receive the wage reports from the local government within the periods established by these rules.

65. 2 MCAR § 2.415 Adjustment reports. Because there will be some errors in the wage reports submitted to the state agency by the reporting units, this rule provides direction about errors that need to be corrected and time limits for making corrections.

66. 2 MCAR § 2.416 Records. The State Social Security Agreement requires the State to maintain certain records and requires that employees covered by the Agreement be given periodic written statements. Since the State does not maintain a record of all the information required by the State Agreements, political subdivisions must retain certain records so that individual employee wage payments can be verified, if needed. The local governmental unit is also directed to issue employee statements by designated due dates.

67. 2 MCAR § 2.417 Administrative costs. This rule provides DOER with funds to continue operations by operating from a revolving fund. State law permits DOER to recover its administrative expenses by billing each reporting unit a prorated share. This rule, therefore, establishes the basis for the prorated billing and the period for each billing. This rule carries out the intent of the Legislature to administer this program without appropriated funds.

68. Repealer. Personnel rules based on Minn. Stat. § 43 are being repealed because they are redundant and/or obsolete. They are being replaced by the new set of rules which are consistent with Minn. Stat. § 43A.

In the Matter of the Proposed Adoptions of Rules of the State Department of Employee Relations Governing the State Personnel System.

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Steven M. Gunn, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedures Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

Dated: November ___, 1982.

STEVEN M. GUNN
Special Assistant
Attorney General

(612) 296-6590

In the Matter of the Proposed Adoption of Rules of the State Department of Employee Relations Governing the State Personnel System

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Dawn Walker, being first duly sworn, deposes and says:

That on the 12th day of November, 1982, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Dawn M Walker

Subscribed and sworn to before me
this 12th day of November, 1982.

Christine F. Goodwill

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

STATE OF MINNESOTA

DEPARTMENT OF EMPLOYEE RELATIONS

In the Matter of the Proposed Adoption of Rules of the State Department of Employee Relations Governing the State Personnel System

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this date November 10, 1982, for review as to form and legality. Pursuant to 1 MCAR # 1.206 B., the Attorney General will not approve the rules for at least 20 calendar days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, Saint Paul, Minnesota 55155, telephone (612) 296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after publication in the State Register and before submission to the Attorney General, you may contact Mark L. Sundquist, 3rd Floor Space Center Building, 444 Lafayette Road, St. Paul 55101.

Barbara L. Sundquist

Barbara L. Sundquist
COMMISSIONER OF EMPLOYEE RELATIONS