


# Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 4 14 TEMPORARY ~~TEMPORARY~~ Withdrawn 11-22-83

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 11-15-83
DATE FOR REVIEW _____
DATE DUE 11-22-83

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

Approved _____ Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State _____ Revisor approved _____ disapproved _____

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✓ Rule as Adopted

✓ Rule as Proposed see SR

✓ Order Adopting 11.14.83 Date misciites to section of APA

N/A 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
2. Sufficiency does not state period of effectiveness of Rule.

_____ Affidavit of Mailing Notice or rulemaking
_____ At least 30 days prior to hearing/adoption

_____ Mailing list Certificate

✓ Publication in State Register
5.16.83 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

N/A LCRAR Report or agency Affidavit

_____ Certificate of Board's Resolution Adopting Rules

_____ Order Approving Incorporation by Reference

_____ Statement of Need and Reasonableness

_____ 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

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

# STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ST. PAUL 55155

ADDRESS REPLY TO:
1100 BREMER TOWER
SEVENTH PL. AND MINNESOTA ST.
ST. PAUL, MN 55101
TELEPHONE: (612) 296-9412

December 5, 1983

RECEIVED
DEC - 8 1983
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Martha Casserly
Special Assistant Attorney General
Office of the Attorney General
204 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: Proposed Temporary Rules of the Minnesota Department of Human Rights Governing Certificates of Compliance and Public Contracts

Dear Ms. Casserly:

The Minnesota Department of Human Rights hereby withdraws the above-referenced rules which it had submitted to the Office of the Attorney General for review pursuant to 1 MCAR § 1.204. It is the intention of the Department to reconsider certain aspects of the rules and, after complying with the requirements of the Administrative Procedures Act, resubmit them to you.

Very truly yours,

CARL WARREN
Special Assistant
Attorney General

Telephone: (612) 296-7860

CW/smo

cc: Irene Gomez-Bethke, Comm'r.
Jim Robinson

Department of Human Rights

Adopted Temporary Rules Governing Certificates of Compliance and Public Contracts

Temporary Rules as Adopted

12 MCAR S 1.051 [Temporary] Certificates of compliance for public state contracts; definitions.

A. Scope. For the purposes of 12 MCAR SS 1.051 [Temporary] to 1.058 [Temporary], in addition to the terms defined in Minnesota Statutes, section 363.01, and HumRts 1 to 18, the following terms have the meanings given them.

B. Affirmative action policy. "Affirmative action policy" means a managerial objective to eliminate all barriers to employment opportunity that are not based on specific job requirements. It refers also to the identification of those barriers in the use of action-oriented programs to advance employment opportunities for women, minorities, and qualified handicapped individuals.

C. Affirmative action program. "Affirmative action program" means a coherent set of goal-oriented management policies and procedures having as their purpose the implementation of a contractor's affirmative action policy including the contractor's self-analysis of its work force and entire employment practices and policies, availability and utilization analyses, and the establishment of goals and timetables for the correction of any underutilization of women, minorities, and qualified handicapped individuals identified in the self-analysis.

D. Availability. "Availability" means the percentage of minorities and women among those persons who may reasonably be considered eligible currently or may reasonably be considered during the term of the affirmative action program.

E. Civilian labor force. "Civilian labor force" means persons 16 years old and older who were either:

1. at work during the reference week, or

2. with a job but not at work during the reference week.

"At work" means that the person did any work as a paid employee, or in his own business or profession, or on his own farm; or who worked 15 or more hours as an unpaid worker on a family farm or in a family business, during the reference week.

"With a job but not at work" means any person who did not work during the reference week but who had a job or business from which he was temporarily absent due to illness, bad weather, industrial dispute, vacation, or personal reasons.

Members of the armed forces are not included in the civilian labor force.

F. Construction work. "Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings or highways, or other changes or improvements to real property, including highways and facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

G. Contract. "Contract" means any agreement or modification of an agreement between any contracting agency and any business or firm for furnishing supplies or services or for using real or personal property, including lease arrangements. The term "services," as used in this definition includes, but is not limited to, the following services: utility, construction, transportation, research, insurance, and fund depository.

H. Contractor. "Contractor" means, unless otherwise indicated, a prime contractor or subcontractor.

I. Deficiency. "Deficiency" means an underutilization of women, minorities, or qualified handicapped employees or a failure to take corrective action to eliminate barriers to equal employment opportunity identified in the contractor's self-analysis.

J. Good faith effort. "Good faith effort" means reasonable efforts undertaken by a contractor to accomplish the goals and implement the corrections identified in the self-analysis.

K. Handicapped individual. "Handicapped individual" means

any person who has a physical or mental impairment which substantially limits one or more of the person's major life activities.

Handicapped individual does not include an alcohol or drug abuser whose current use of alcohol or drugs renders that individual a hazard to himself or others.

"Life activities" includes communication, ambulation, self-care, socialization, education, vocational training, employment, transportation, or adapting to housing. For the purpose of this item, primary attention must be given to those life activities that affect employability.

The phrase "substantially limits" refers to the degree that the impairment affects employability. A handicapped individual who is likely to experience difficulty in securing, retaining, or advancing in employment would be considered substantially limited.

L. Immediate labor area. "Immediate labor area" means that geographic area from which employees and applicants may reasonably commute to the contractor's establishment. The immediate labor area may include one or more contiguous cities, counties, or Standard Metropolitan Statistical Areas or parts thereof, in which the establishment is located.

M. Minorities and women with requisite skills. "Minorities and women with requisite skills" means minorities and women who have demonstrated that they possess the skills for the job in question (for instance, through performance on another job), those who have completed training or educational programs designed to provide skills for the job in question, and those who could reasonably be expected to acquire the skills within a relatively short time after placement.

N. Minorities. "Minorities" includes:

1. Blacks (all persons having origins of any of the Black African racial groups not of Hispanic origin);

2. Hispanics (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race);

3. Asian and Pacific Islanders (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); and

4. American Indians or Alaskan Natives (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

O. Modification. "Modification" means any alteration in the terms and conditions of a contract, including supplemental agreements, amendments, and extensions.

P. Prime contractor. "Prime contractor" means any firm or business holding a contract.

Q. Promotable or transferable. "Promotable or transferable" means, within the context of developing data for availability, those employees who are currently employed in a job group or groups which serve or could serve as a source from which selections are or could be made for another job group.

R. Qualified handicapped individual. "Qualified handicapped individual" means a handicapped individual who is capable of performing a particular job with reasonable accommodation to his or her handicap.

S. Relevant recruitment area. "Relevant recruitment area" means the geographic area from which the contractor may reasonably recruit its employees. It includes at least the area from which the contractor recruits, and may include geographic areas not contiguous with the immediate labor area.

T. Subcontract. "Subcontract" means any agreement or arrangement between a contractor and any firm or business in which the parties do not stand in the relationship of an employer and an employee:

1. for furnishing supplies or services or for using real or personal property, including lease arrangements, which, in whole or in part, are necessary to the performance of any one or more contracts; or

2. under which any portion of the contractor's obligation

under any one or more contracts is performed, undertaken, or assumed.

U. Subcontractor. "Subcontractor" means any person holding a subcontract.

V. Utilization analysis. "Utilization analysis" means a comparison of the availability of minorities and women in the immediate labor area to their presence in a contractor's work force.

W. Work force analysis. "Work force analysis" means a listing of job titles, not job groups, as they appear in applicable collective bargaining agreements or payroll records ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision.

12 MCAR S 1.052 [Temporary] General provisions.

A. Purpose of rules. The purpose of 12 MCAR SS 1.051 [Temporary] to 1.058 [Temporary] is to increase employment opportunities for women, minorities, and handicapped individuals by requiring contractors and subcontractors to adopt and implement affirmative action programs approved by the commissioner.

B. Contents of affirmative action programs. The department incorporates by reference into this rule Code of Federal Regulations, title 41, sections 60-2.10 -- 60-2.30, as amended through July 1, 1982, relating to required contents of affirmative action programs of nonconstruction contractors; Code of Federal Regulations, title 41, sections 60-4.1 -- 60-4.6, as amended through July 1, 1982, relating to affirmative action programs of construction contractors; and Code of Federal Regulations, title 41, sections 60-741.6 -- 60-741.7, as amended through July 1, 1982, relating to affirmative action policies, practices, procedures for practices, and procedures for handicapped persons. The department will enforce these same provisions as if they were rules of the department.

C. Persons regulated. Rules 12 MCAR SS 1.051 [Temporary] to 1.058 [Temporary] apply to contractors and subcontractors:

1. who are doing business or desire to do business with the state; and

2. who employ more than 20 full-time employees 12 months before, or any time during performance on a state contract; and

3. where the contract amount exceeds $50,000 or is reasonably expected to exceed $50,000 in any one year.

12 MCAR S 1.053 [Temporary] Criteria for approval and implementation of affirmative action programs.

A. Nonconstruction contractors; women and minorities. Nonconstruction contractors' affirmative action programs for women and minorities must contain the following in order to be approved:

1. an equal opportunity policy statement in compliance with Code of Federal Regulations, title 41, section 60-2.20, as amended through July 1, 1982;

2. an assignment of responsibility for the program to an executive or top-management official in compliance with Code of Federal Regulations, title 41, section 60-2.22, as amended through July 1, 1982;

3. procedures for disseminating policy internally and externally in compliance with Code of Federal Regulations, title 41, section 60-2.21, as amended through July 1, 1982;

4. a work force analysis, including availability and utilization analyses in compliance with Code of Federal Regulations, title 41, section 60-2.11, as amended through July 1, 1982;

5. goals and objectives established by organizational units and job groups including timetables for completion in compliance with Code of Federal Regulations, title 41, section 60-2.12, as amended through July 1, 1982;

6. an identification of problem areas or deficiencies by organizational units and job groups in compliance with Code of Federal Regulations, title 41, section 60-2.23, as amended through July 1, 1982;

7. corrective action measures to eliminate problems and attain goals and objectives in compliance with Code of Federal

Regulations, title 41, section 60-2.24, as amended through July 1, 1982;

8. a system for monitoring compliance with the equal employment opportunity policies and with the affirmative action programs in compliance with Code of Federal Regulations, title 41, section 60-2.24, as amended through July 1, 1982; and

9. an affirmative action program for handicapped individuals in accordance with C.

B. Construction contractors; women and minorities. Construction contractors' affirmative action programs for women and minorities must:

1. comply with requirements for affirmative action to insure equal employment opportunity as specified in Code of Federal Regulations, title 41, section 60-4.2(d), as amended through July 1, 1982;

2. comply with standard federal equal employment opportunity construction contract specifications as required by Code of Federal Regulations, title 41, section 60-4.3, as amended through July 1, 1982; and

3. have an affirmative action program for handicapped individuals in accordance with C.

C. All contractors; handicapped individuals. Affirmative action programs for handicapped individuals must contain affirmative action policies, practices, and procedures to employ and advance in employment qualified handicapped individuals as established in Code of Federal Regulations, title 41, sections 60-741.4 to 60-741.9, as amended through July 1, 1982. The availability and utilization analyses and the establishment of goals and timetables do not apply to handicapped applicants and employees.

D. Contents; implementation of affirmative action programs. The contents and implementation of affirmative action programs must comply with the affirmative action program requirements of the Code of Federal Regulations, title 41, sections 60-2.1 -- 60-2.32, as amended through July 1, 1982. The procedures for using certificates of compliance and evaluating good faith

efforts of contractors and subcontractors are governed by 12 MCAR SS 1.054 [Temporary] and 1.055 [Temporary].

12 MCAR S 1.054 [Temporary] Procedures for issuing certificates of compliance.

A. Information required. All businesses or firms desiring a certificate of compliance must submit to the department one of the following:

1. affirmative action programs in compliance with 12 MCAR S 1.053 [Temporary]; or

2. letters or documentation establishing compliance with a federal or local agency contract compliance ruling together with an affirmative action program for handicapped individuals.

B. Certificates issued. Except as provided in C., certificates of compliance shall be issued within 30 days after the department has received the information required in A.

C. Insufficient information. A business or firm whose submission does not meet the requirements of A. shall be notified within 15 days that its submission must be revised. The notification shall state specifically how the submission fails to meet the requirements of A. Certificates of compliance shall be issued 15 days after the department has received a revised submission which complies with A.

D. Duration of certificates. Certificates of compliance are effective for two years and shall expire on either June 30 or December 31, whichever date comes first, after the second year has elapsed.

~~E.--Certificate-required.--By-July-1,-1983,-all-contractors who-are-currently-performing-contracts-described-in-12-MCAR-S 1.052-C.-[Temporary]-must-comply-with-A.~~

12 MCAR S 1.055 [Temporary] Determination of compliance status.

A. Review of status. A contractor's compliance status shall be reviewed and determined by reviewing its employment practices and their effects.

B. General criteria for review. A contractor's compliance status shall not be determined solely by whether or not it

reaches its goals or meets its timetables. A contractor's compliance status shall be determined by reviewing the contents of its program, the extent of its adherence to the program, and its good faith efforts to make the program work toward realization of goals within the timetables set for completion.

C. Determination of good faith efforts. A contractor's good faith efforts shall be determined by whether the contractor takes decisive action where its self-analysis uncovers any of the following:

1. underutilization of women or minorities in any job group;

2. minority or female employees who move laterally or vertically at a lesser rate than nonminority or male employees;

3. a selection process which eliminates minorities or women at a higher rate than nonminority or male employees;

4. preemployment inquiries and application forms that do not satisfy state law requirements;

5. descriptions of jobs that do not accurately reflect the functions involved;

6. selection procedures that are not valid predictors of job performance;

7. disproportionately high rejection of women or minorities by hiring supervisors;

8. women, minorities, and handicapped individuals who are not participating in company-sponsored activities;

9. segregation at some facilities;

10. disparities by minority group status or sex in terms of length of service and type of job held;

11. managers, supervisors, or employees who lack interest in company equal employment opportunity policies;

12. underrepresentation of women or minorities in training or career improvement programs;

13. techniques for evaluating effectiveness of equal employment opportunity programs have not been established;

14. labor unions and subcontractors who are not aware of their responsibilities;

15. omission of the equal employment opportunity clause with purchase orders; and

16. inadequate display of equal employment opportunity posters.

D. Other factors involving good faith. Good faith efforts shall also be determined by:

1. whether a contractor submits timely compliance review reports as required by 12 MCAR S 1.056 [Temporary];

2. whether a contractor permits an on-site compliance review to be conducted;

3. whether a contractor makes available records or other information as required by 12 MCAR SS 1.051 [Temporary] to 1.058 [Temporary]; or

4. whether a contractor implements conciliation agreements.

E. Other factors which may involve good faith. Good faith efforts may also be determined by:

1. the results of an investigation of a charge of discrimination;

2. an analysis of an affirmative action program; or

3. the results of an on-site review of the contractor's compliance with its affirmative action program.

F. Notification of deficiencies. If the department determines that a contractor has failed to exercise good faith efforts, the department shall notify the contractor by first-class mail identifying the nature of the deficiency and stating specifically the corrective action measures necessary for eliminating the deficiency. The contractor shall have 15 days to reply to the notice of deficiency. If necessary, the department may enter into a conciliation agreement with a contractor to correct deficiencies.

G. Lack of good faith efforts. A certificate of compliance shall not be reissued to a contractor that fails to exercise good faith efforts.

12 MCAR S 1.056 [Temporary] Submission of compliance reports.

A. Construction contractors; monthly reports. Each

construction contractor shall submit a monthly utilization report. The report shall state for each state project during the month in question:

1. total hours of employment on the project;

2. total hours of employment of women;

3. total hours of employment of minorities;

4. total hours of training;

5. total hours of training provided to women; and

6. total hours of training provided to minorities.

B. Construction contractors; semiannual reports. Construction contractors shall also submit semiannual compliance reports of their affirmative action programs for nonconstruction personnel. These compliance reports shall contain the same information, be submitted at the same time, and contain the same documents as required for nonconstruction contractors in C.

C. Nonconstruction contractors; semiannual reports. Nonconstruction contractors shall submit semiannual compliance reports. The report shall include the following data, by job group, race, sex, and disability: total employment applicants, total applicants interviewed, total applicants tested, total applicants hired, total employees promoted, total employees demoted, total employees transferred, total employees laid off, total employees recalled from layoff, total employees terminated, total employees receiving company-sponsored training, and total employed by company.

D. Minimizing duplication of reports. The department shall attempt, to the fullest extent possible, to minimize the burden of duplication of reports and efforts of federal and local contract compliance agencies by:

1. utilizing forms and standards similar to those used by federal equal employment opportunity programs;

2. accepting forms and reports prepared for federal or local agencies where the information contained in them is sufficient for 12 MCAR SS 1.051 [Temporary] to 1.058 [Temporary]; and

3. minimizing duplication of programs and procedures.

12 MCAR S 1.057 [Temporary] Procedures for compliance review.

The department incorporates by reference into this rule the requirements of Code of Federal Regulations, title 41, section 60-60, subparts B and C, as amended through July 1, 1982. The department will enforce these provisions as if they were rules of the department.

12 MCAR S 1.058 [Temporary] Duties of contracting agencies.

A. Cooperation with commissioner. Each agency shall cooperate with the commissioner in the performance of his or her responsibilities under Minnesota Statutes, section 363.073. Cooperation includes the responsibility to ensure that contractors are cognizant of their obligations under Minnesota Statutes, section 363.073 and the rules relating to that statute.

B. Information provided to contractors. Each agency shall include in each contract the contractor's obligation and requirements to comply with Minnesota Statutes, section 363.073, and provide documentation describing the law and rules pertaining to the law and the specific criteria by which an affirmative action plan will be approved or rejected.

C. Information provided to department. Each contracting agency shall provide any information which comes to its attention that indicates the contractor is not in compliance with Minnesota Statutes, section 363.073.

D. Contract clause required. Each contract must contain an affirmative action clause which should state the intention of the agency to carry out its responsibility for requiring affirmative action by its contractors and specific language outlining consequences for failure to implement the contractor's affirmative action plan or make a good faith effort to do so.

E. Submission of bidders list. The contracting agency shall submit to the department a list of prospective bidders prior to the opening of a contractor's bid to ensure compliance with Minnesota Statutes, section 363.073.

F. Contractor's list from department. The department shall furnish each agency with a list of currently certified

contractors every 60 days to ensure compliance with Minnesota Statutes, section 363.073.

G. Agency's duty to provide information to commissioner. Each contracting agency shall provide the commissioner or his designee with any information or assistance the commissioner deems necessary to seek compliance with Minnesota Statutes, section 363.073 and rules adopted pursuant to it.

H. Copy of statute and rules to be furnished. Each contracting agency shall provide each bidder with a copy of Minnesota Statutes, section 363.073 and the rules adopted pursuant to it.

I. Bid specifications, modifications, and subcontracts; incorporation of statutory and rule requirements. Each contracting agency shall include the following paragraph in all bid specifications and modifications:

"It is hereby agreed between the parties that Minnesota Statutes, section 363.073 is incorporated into any contract between these parties based upon this specification or any modification of it. The bidder acknowledges receipt of a copy of Minnesota Statutes, section 363.073 and 12 MCAR SS 1.051 [Temporary] to 1.058 [Temporary]."

This paragraph must also be included in all subcontracts, and the contractor shall provide a copy of Minnesota Statutes, section 363.073 and 12 MCAR SS 1.051 [Temporary] to 1.058 [Temporary] to each subcontract bidder.

Temporary repealer. During the period that 12 MCAR SS 1.051 [Temporary] to 1.058 [Temporary] are effective, the following rules are suspended: HumRts 6, 7, 12, 14, 15, 52, and 53.

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

AR0316

agency: Department of Human Rights

Division:

Agency Contact: James Robinson, Supervisor
Compliance Unit

Rule Numbers: 12 MCAR SS 1.051-1.058

Title: Certificates of Compliance for Public Contracts

Type of Rules: Temporary

Incorporations by Reference: None
Rule Number: Material Incorporated:

Duplication of Statutory Language: None
Rule Number: Statutory Section Duplicated:

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Susan M. Voigt
Assistant Revisor
Phone: 296-0956
Date: November 17, 1983

STATE OF MINNESOTA

DEPARTMENT OF HUMAN RIGHTS

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Department of Human Rights Governing Certificate of Compliance for Public State Contracts

ORDER ADOPTING TEMPORARY RULES

The above-entitled matter was published in the State Register on May 16, 1983, as proposed temporary rules pursuant to Minnesota Statutes Section 15,0412, Subdivision 5. Interested and affected persons were afforded an opportunity to submit written data and views within 20 days of the publication date. No such data or views were submitted. After modifying the proposed temporary rules in the manner stated in the Findings of Fact and Conclusions of Law in this matter dated November 9, 1983, and determining that with said modification the above-captioned rules are needed and reasonable.

NOW THEREFORE, IT IS ORDERED that these rules identified as temporary rules governing Certificates of Compliance for Public State Contracts, are adopted this 14th day of November, 1983, pursuant to authority vested in me by the Minnesota Statutes Section 363.075.

STATE OF MINNESOTA

Irene Gomez-Bitzke

COMMISSIONER OF HUMAN RIGHTS

State of Minnesota
Department of Human Rights

In the Matter of the
Proposed Adoption of
Temporary Rules of
the Minnesota Department
of Human Rights Govern-
ing Approval and Implemen-
tation of Affirmative
Action Programs by State
Contractors

ORDER FOR PUBLICATION
OF TEMPORARY RULES

IT IS ORDERED this 2nd day of May 1983 that the proposed temporary rules in the above entitled matter be published in the State Register.

STATE OF MINNESOTA

Irene Gimey-Bethke

COMMISSIONER OF THE
DEPARTMENT OF HUMAN RIGHTS

# Department of Human Rights

## Proposed Temporary Rules Governing Certificates of Compliance and Public Contracts

### Request for Public Comment

Notice is hereby given that the Department of Human Rights has proposed the following temporary rules for the purpose of implementing the provisions of Laws of 1981, Ch. 326, Sec. 1, the certificate of compliance program.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rule for 20 days immediately following publication of this material in the *State Register*. All submissions must be in writing and addressed to:

James Robinson, Supervisor
Compliance Unit
Department of Human Rights
5th Floor, Bremer Tower
St. Paul, Minnesota 55101

The temporary rules may be revised on the basis of data and views received. Any written material received will become part of the record and will be submitted to the Attorney General.

May 2, 1983

Irene Gomez-Bethke
Commissioner of Human Rights

### Temporary Rules as Proposed (all new material)

12 MCAR § 1.051 [Temporary] Certificates of compliance for public state contracts; definitions.

A. Scope. For the purposes of 12 MCAR §§ 1.051 [Temporary] to 1.058 [Temporary], in addition to the terms defined in Minnesota Statutes, section 363.01, and HumRts 1 to 18, the following terms have the meanings given them.

B. Affirmative action policy. "Affirmative action policy" means a managerial objective to eliminate all barriers to employment opportunity that are not based on specific job requirements. It refers also to the identification of those barriers in the use of action-oriented programs to advance employment opportunities for women, minorities, and qualified handicapped individuals.

C. Affirmative action program. "Affirmative action program" means a coherent set of goal-oriented management policies and procedures having as their purpose the implementation of a contractor's affirmative action policy including the contractor's self-analysis of its work force and entire employment practices and policies, availability and utilization analyses, and the establishment of goals and timetables for the correction of any underutilization of women, minorities, and qualified handicapped individuals identified in the self-analysis.

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E. Civilian labor force. "Civilian labor force" means persons 16 years old and older who were either:

1. at work during the reference week, or

2. with a job but not at work during the reference week.

"At work" means that the person did any work as a paid employee, or in his own business or profession, or on his own farm; or who worked 15 or more hours as an unpaid worker on a family farm or in family business, during the reference week.

"With a job but not at work" means any person who did not work during the reference week but who had a job or business from which he was temporarily absent due to illness, bad weather, industrial dispute, vacation, or personal reasons.

Members of the armed forces are not included in the civilian labor force.

F. Construction work. "Construction work" means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings or highways, or other changes or improvements to real property, including highways and

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.

facilities providing utility services. The term also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

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Handicapped individual does not include an alcohol or drug abuser whose current use of alcohol or drugs renders that individual a hazard to himself or others.

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3. Asian and Pacific Islanders (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); and

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Q. Promotable or transferable. "Promotable or transferable" means, within the context of developing data for availability, those employees who are currently employed in a job group or groups which serve or could serve as a source from which selections are or could be made for another job group.

R. Qualified handicapped individual. "Qualified handicapped individual" means a handicapped individual who is capable of performing a particular job with reasonable accommodation to his or her handicap.

S. Relevant recruitment area. "Relevant recruitment area" means the geographic area from which the contractor may reasonably recruit its employees. It includes at least the area from which the contractor recruits, and may include geographic areas not contiguous with the immediate labor area.

T. Subcontract. "Subcontract" means any agreement or arrangement between a contractor and any firm or business in which the parties do not stand in the relationship of an employer and an employee:

1. for furnishing supplies or services or for using real or personal property, including lease arrangements, which, in whole or in part, are necessary to the performance of any one or more contracts; or

2. under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken, or assumed.

U. Subcontractor. "Subcontractor" means any person holding a subcontract.

V. Utilization analysis. "Utilization analysis" means a comparison of the availability of minorities and women in the immediate labor area to their presence in a contractor's work force.

W. Work force analysis. "Work force analysis" means a listing of job titles, not job groups, as they appear in applicable collective bargaining agreements or payroll records ranked from the lowest paid to the highest paid within each department or other similar organizational unit including departmental or unit supervision.

**12 MCAR § 1.052 [Temporary] General provisions.**

A. Purpose of rules. The purpose of 12 MCAR §§ 1.051 [Temporary] to 1.058 [Temporary] is to increase employment opportunities for women, minorities, and handicapped individuals by requiring contractors and subcontractors to adopt and implement affirmative action programs approved by the commissioner.

B. Contents of affirmative action programs. The department incorporates by reference into this rule Code of Federal Regulations, title 41, sections 60-2.10—60-2.30, as amended through July 1, 1982, relating to required contents of affirmative action programs of nonconstruction contractors; Code of Federal Regulations, title 41, sections 60-4.1—60-4.6, as amended through July 1, 1982, relating to affirmative action programs of construction contractors; and Code of Federal Regulations, title 41, sections 60-741.6—60-741.7, as amended through July 1, 1982, relating to affirmative action policies, practices, procedures for practices, and procedures for handicapped persons. The department will enforce these same provisions as if they were rules of the department.

C. Persons regulated. Rules 12 MCAR §§ 1.051 [Temporary] to 1.058 [Temporary] apply to contractors and subcontractors:

1. who are doing business or desire to do business with the state; and

2. who employ more than 20 full-time employees 12 months before, or any time during performance on a state contract; and

3. where the contract amount exceeds $50,000 or is reasonably expected to exceed $50,000 in any one year.

**12 MCAR § 1.053 [Temporary] Criteria for approval and implementation of affirmative action programs.**

A. Nonconstruction contractors; women and minorities. Nonconstruction contractors' affirmative action programs for women and minorities must contain the following in order to be approved:

1. an equal opportunity policy statement in compliance with Code of Federal Regulations, title 41, section 60-2.20, as amended through July 1, 1982;

2. an assignment of responsibility for the program to an executive or top-management official in compliance with Code of Federal Regulations, title 41, section 60-2.22, as amended through July 1, 1982;

3. procedures for disseminating policy internally and externally in compliance with Code of Federal Regulations, title 41, section 60-2.21, as amended through July 1, 1982;

4. a work force analysis, including availability and utilization analyses in compliance with Code of Federal Regulations, title 41, section 60-2.11, as amended through July 1, 1982;

5. goals and objectives established by organizational units and job groups including timetables for completion in compliance with Code of Federal Regulations, title 41, section 60-2.12, as amended through July 1, 1982;

6. an identification of problem areas or deficiencies by organizational units and job groups in compliance with Code of Federal Regulations, title 41, section 60-2.23, as amended through July 1, 1982;

7. corrective action measures to eliminate problems and attain goals and objectives in compliance with Code of Federal Regulations, title 41, section 60-2.24, as amended through July 1, 1982;

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8. a system for monitoring compliance with the equal employment opportunity policies and with the affirmative action programs in compliance with Code of Federal Regulations, title 41, section 60-2.24, as amended through July 1, 1982; and

9. an affirmative action program for handicapped individuals in accordance with C.

B. Construction contractors; women and minorities. Construction contractors' affirmative action programs for women and minorities must:

1. comply with requirements for affirmative action to insure equal employment opportunity as specified in Code of Federal Regulations, title 41, section 60-4.2(d), as amended through July 1, 1982;

2. comply with standard federal equal employment opportunity construction contract specifications as required by Code of Federal Regulations, title 41, section 60-4.3, as amended through July 1, 1982; and

3. have an affirmative action program for handicapped individuals in accordance with C.

C. All contractors; handicapped individuals. Affirmative action programs for handicapped individuals must contain affirmative action policies, practices, and procedures to employ and advance in employment qualified handicapped individuals as established in Code of Federal Regulations, title 41, sections 60-741.4 to 60-741.9, as amended through July 1, 1982. The availability and utilization analyses and the establishment of goals and timetables do not apply to handicapped applicants and employees.

D. Contents; implementation of affirmative action programs. The contents and implementation of affirmative action programs must comply with the affirmative action program requirements of the Code of Federal Regulations, title 41, sections 60-2.1—60-2.32, as amended through July 1, 1982. The procedures for using certificates of compliance and evaluating good faith efforts of contractors and subcontractors are governed by 12 MCAR §§ 1.054 [Temporary] and 1.055 [Temporary].

**12 MCAR § 1.054 [Temporary] Procedures for issuing certificates of compliance.**

A. Information required. All businesses or firms desiring a certificate of compliance must submit to the department one of the following:

1. affirmative action programs in compliance with 12 MCAR § 1.053 [Temporary]; or

2. letters or documentation establishing compliance with a federal or local agency contract compliance ruling together with an affirmative action program for handicapped individuals.

B. Certificates issued. Except as provided in C., certificates of compliance shall be issued within 30 days after the department has received the information required in A.

C. Insufficient information. A business or firm whose submission does not meet the requirements of A. shall be notified within 15 days that its submission must be revised. The notification shall state specifically how the submission fails to meet the requirements of A. Certificates of compliance shall be issued 15 days after the department has received a revised submission which complies with A.

D. Duration of certificates. Certificates of compliance are effective for two years and shall expire on either June 30 or December 31, whichever date comes first, after the second year has elapsed.

E. Certificate required. By July 1, 1983, all contractors who are currently performing contracts described in 12 MCAR § 1.052 C. [Temporary] must comply with A.

**12 MCAR § 1.055 [Temporary] Determination of compliance status.**

A. Review of status. A contractor's compliance status shall be reviewed and determined by reviewing its employment practices and their effects.

B. General criteria for review. A contractor's compliance status shall not be determined solely by whether or not it reaches its goals or meets its timetables. A contractor's compliance status shall be determined by reviewing the contents of its program, the extent of its adherence to the program, and its good faith efforts to make the program work toward realization of goals within the timetables set for completion.

C. Determination of good faith efforts. A contractor's good faith efforts shall be determined by whether the contractor takes decisive action where its self-analysis uncovers any of the following:

1. underutilization of women or minorities in any job group;

2. minority or female employees who move laterally or vertically at a lesser rate than nonminority or male employees;

3. a selection process which eliminates minorities or women at a higher rate than nonminority or male employees;

4. preemployment inquiries and application forms that do not satisfy state law requirements;

5. descriptions of jobs that do not accurately reflect the functions involved;
6. selection procedures that are not valid predictors of job performance;
7. disproportionately high rejection of women or minorities by hiring supervisors;
8. women, minorities, and handicapped individuals who are not participating in company-sponsored activities;
9. segregation at some facilities;
10. disparities by minority group status or sex in terms of length of service and type of job held;
11. managers, supervisors, or employees who lack interest in company equal employment opportunity policies;
12. underrepresentation of women or minorities in training or career improvement programs;
13. techniques for evaluating effectiveness of equal employment opportunity programs have not been established;
14. labor unions and subcontractors who are not aware of their responsibilities;
15. omission of the equal employment opportunity clause with purchase orders; and
16. inadequate display of equal employment opportunity posters.

D. Other factors involving good faith. Good faith efforts shall also be determined by:

1. whether a contractor submits timely compliance review reports as required by 12 MCAR § 1.056 [Temporary];
2. whether a contractor permits an on-site compliance review to be conducted;
3. whether a contractor makes available records or other information as required by 12 MCAR §§ 1.051 [Temporary] to 1.058 [Temporary]; or
4. whether a contractor implements conciliation agreements.

E. Other factors which may involve good faith. Good faith efforts may also be determined by:

1. the results of an investigation of a charge of discrimination;
2. an analysis of an affirmative action program; or
3. the results of an on-site review of the contractor's compliance with its affirmative action program.

F. Notification of deficiencies. If the department determines that a contractor has failed to exercise good faith efforts, the department shall notify the contractor by first-class mail identifying the nature of the deficiency and stating specifically the corrective action measures necessary for eliminating the deficiency. The contractor shall have 15 days to reply to the notice of deficiency. If necessary, the department may enter into a conciliation agreement with a contractor to correct deficiencies.

G. Lack of good faith efforts. A certificate of compliance shall not be reissued to a contractor that fails to exercise good faith efforts.

**12 MCAR § 1.056 [Temporary] Submission of compliance reports.**

A. Construction contractors; monthly reports. Each construction contractor shall submit a monthly utilization report. The report shall state for each state project during the month in question:

1. total hours of employment on the project;
2. total hours of employment of women;
3. total hours of employment of minorities;
4. total hours of training;
5. total hours of training provided to women; and
6. total hours of training provided to minorities.

B. Construction contractors; semiannual reports. Construction contractors shall also submit semiannual compliance reports of their affirmative action programs for nonconstruction personnel. These compliance reports shall contain the same information, be submitted at the same time, and contain the same documents as required for nonconstruction contractors in C.

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C. Nonconstruction contractors; semiannual reports. Nonconstruction contractors shall submit semiannual compliance reports. The report shall include the following data, by job group, race, sex, and disability: total employment applicants, total applicants interviewed, total applicants tested, total applicants hired, total employees promoted, total employees demoted, total employees transferred, total employees laid off, total employees recalled from layoff, total employees terminated, total employees receiving company-sponsored training, and total employed by company.

D. Minimizing duplication of reports. The department shall attempt, to the fullest extent possible, to minimize the burden of duplication of reports and efforts of federal and local contract compliance agencies by:

1. utilizing forms and standards similar to those used by federal equal employment opportunity programs;

2. accepting forms and reports prepared for federal or local agencies where the information contained in them is sufficient for 12 MCAR §§ 1.051 [Temporary] to 1.058 [Temporary]; and

3. minimizing duplication of programs and procedures.

**12 MCAR § 1.057 [Temporary] Procedures for compliance review.**

The department incorporates by reference into this rule the requirements of Code of Federal Regulations, title 41, section 60-60, subparts B and C, as amended through July 1, 1982. The department will enforce these provisions as if they were rules of the department.

**12 MCAR § 1.058 [Temporary] Duties of contracting agencies.**

A. Cooperation with commissioner. Each agency shall cooperate with the commissioner in the performance of his or her responsibilities under Minnesota Statutes, section 363.073. Cooperation includes the responsibility to ensure that contractors are cognizant of their obligations under Minnesota Statutes, section 363.073 and the rules relating to that statute.

B. Information provided to contractors. Each agency shall include in each contract the contractor's obligation and requirements to comply with Minnesota Statutes, section 363.073, and provide documentation describing the law and rules pertaining to the law and the specific criteria by which an affirmative action plan will be approved or rejected.

C. Information provided to department. Each contracting agency shall provide any information which comes to its attention that indicates the contractor is not in compliance with Minnesota Statutes, section 363.073.

D. Contract clause required. Each contract must contain an affirmative action clause which should state the intention of the agency to carry out its responsibility for requiring affirmative action by its contractors and specific language outlining consequences for failure to implement the contractor's affirmative action plan or make a good faith effort to do so.

E. Submission of bidders list. The contracting agency shall submit to the department a list of prospective bidders prior to the opening of a contractor's bid to ensure compliance with Minnesota Statutes, section 363.073.

F. Contractor's list from department. The department shall furnish each agency with a list of currently certified contractors every 60 days to ensure compliance with Minnesota Statutes, section 363.073.

G. Agency's duty to provide information to commissioner. Each contracting agency shall provide the commissioner or his designee with any information or assistance the commissioner deems necessary to seek compliance with Minnesota Statutes, section 363.073 and rules adopted pursuant to it.

H. Copy of statute and rules to be furnished. Each contracting agency shall provide each bidder with a copy of Minnesota Statutes, section 363.073 and the rules adopted pursuant to it.

I. Bid specifications, modifications, and subcontracts; incorporation of statutory and rule requirements. Each contracting agency shall include the following paragraph in all bid specifications and modifications:

"It is hereby agreed between the parties that Minnesota Statutes, section 363.073 is incorporated into any contract between these parties based upon this specification or any modification of it. The bidder acknowledges receipt of a copy of Minnesota Statutes, section 363.073 and 12 MCAR §§ 1.051 [Temporary] to 1.058 [Temporary]."

This paragraph must also be included in all subcontracts, and the contractor shall provide a copy of Minnesota Statutes, section 363.073 and 12 MCAR §§ 1.051 [Temporary] to 1.058 [Temporary] to each subcontract bidder.

Temporary repealer. During the period that 12 MCAR §§ 1.051 [Temporary] to 1.058 [Temporary] are effective, the following rules are suspended: HumRts 6, 7, 12, 14, 15, 52, and 53.

STATE OF MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Department of Human Rights Governing Certificates of Compliance for Public State Contracts

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter was published in the State Register on May 16, 1983, as a proposed temporary rule pursuant to Minnesota Statutes Section 15.0412, subdivision 5. After affording interested and affected persons an opportunity to submit written data and views within twenty days of the publication date, and after reviewing and considering this matter, I find the following:

FINDINGS OF FACT

1. Except for 12 MCAR § 1.054E, the above-captioned rules are needed and reasonable.

2. 12 MCAR § 1.054E should be deleted because it would require all state contractors to comply to the new regulations immediately. This would include state contractors who currently hold valid certificates which have been issued within the last twelve months. Since certidicates of compliance expire one year after they are issued, section 1.054E would have the effect of requiring these contractors to reapply before their current certificate expires. It is the intention of the Department that current certificate holders apply for certificates under the above-captioned rules only after their present certificates expire.

Based upon these Findings of Fact I make the following:

CONCLUSIONS

1. Except for 12 MCAR § 1.054E, the above-captioned rules should be adopted.

2. 12 MCAR § 1.054E should be deleted.

Dated: November 9, 1983.

STATE OF MINNESOTA

Irene Gomez-Bethke

IRENE GOMEZ-BETHKE, Commissioner
Department of Human Rights

STATE OF MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

In the Matter of the Proposed Adoption of Rules of the State of Minnesota Department of Human Rights Governing Certificate of Compliance for Public State Contracts.

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Carl Warren, do hereby declare that I have examined the rules and all related documents and that, based upon my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed.

Dated: November 15, 1983

Carl Warren
Special Assistant
Attorney General