

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

mjc

RULE REVIEW CHECKLIST

File No. 1592 — Docket No. 05-0009.0451

DATE RECEIVED 4-20-89 — ADOPTED W/O HEARING X

REVIEW DATE ~~4-27-89~~ 5/1/89 mjc — EMERGENCY RULE _____

DUE DATE 5-4-89 — REVISOR APPROVED _____

APPROVED 5-4-89 mjc — REVISOR DISAPPROVED _____

DISAPPROVED _____ — FILED W/SEC. OF STATE _____

WITHDRAWN _____ — RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
- 8/22/88 Date published in State Register
- yes Comments (1)

_____ ~~Petition for Adoption of a Rule (if applicable)~~

_____ ~~Board's Authorizing Resolution~~
- _____ ~~Date adopted~~

✓ Proposed Rule
- yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
- 3A.3.05 Statutory Authority
- ~~yes~~ Small Business Statement
- ~~no~~ Expenditure of public money statement
- yes Signature

✓ Statement of Need and Reasonableness (if applicable)
- yes Small Business Statement
- n/a Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- 1/27/89 Date 30/25 days before adoption
- OK Notice attached
- _____ Copy of rule or summary attached

✓ Publication in State Register
- 2/6/89 Date (30)/25 days before adoption

_____ 180-day deadline from:
- n/a Effective date of law requiring rule (14.12) (both rules)
- 3/8/89 end of comment period (§ 14.26) (rules without hearing)
- _____ ~~effective date of statutory authority (§ 14.29) (emergency rules)~~

_____ ~~Resolution Adopting~~
- _____ ~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting
- 4/7/89 Date

✓ Written requests, submissions or comments (2)

✓ Declaration of attorney
- A. Kircher Name of SAAG representing agency

_____ Notice of Submission to Atty. Gen. (if applicable)

_____ Aff. of Mailing Notice to Atty. Gen. (if applicable)

SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : May 5, 1989

TO : ANDREA MITAU KIRCHER
Special Assistant Attorney General

FROM : MARTY J. CASSERLY
Special Assistant Attorney General

PHONE : 6-9422

SUBJECT : In the Matter of the Adopted Permanent Rules Relating to Processing Charges of Discrimination

The above-referenced rule has been approved as to its legality by the Attorney General on May 4, 1989.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accoradance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

JAL:klk
Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

William Brown
Chief Administrative Law Judge
Office of Administrative Hearings

Department of Human Rights

Adopted Permanent Rules Relating to Processing Charges of Discrimination

Rules as Adopted

5000.0400 CHARGES.

Subpart 1. and 1a. [Unchanged.]

Subp. 1b. **Time for filing.** A charge must be filed within one year of an alleged unfair discriminatory practice. Filing is accomplished by delivery of the charge to the department's office before one year has elapsed. Time is computed under Minnesota Statutes, sections 645.15 and 645.151.

Subp. 2. and 2a. [Unchanged.]

Subp. 3. **Service.** A copy of the charge and a form that describes additional information requested to supplement the initial response to the charge shall be served by the commissioner upon a respondent either by personal delivery or by mail within ten days after it has been filed with the department.

Subp. 4. to 6. [Unchanged.]

5000.0500 INVESTIGATION.

Subpart 1. **Answer to charge.** A person against whom a charge has been filed shall submit to the commissioner a written answer to the charge within 20 days of receipt of the charge. The reply may contain a statement of the respondent's position and may present any evidence related to the subject matter of the charge.

Subp. 2. to 5. [Unchanged.]

5000.0900 COMPLAINT.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Service and filing.** A complaint, notice, and order for hearing shall be served upon a respondent by certified mail and filed in district court or with an administrative law judge at least ten days before the date of the hearing as

provided by Minnesota Statutes, sections 363.06, subdivision 4, paragraph (3) and 363.14, subdivision 1, and part 1400.5600.

Subp. 4. [Unchanged.]

5000.2250 PRESERVATION OF RECORDS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Records at educational institutions.** An educational institution shall not make inquiries; or create, maintain, or use records that are prohibited in Minnesota Statutes, section 363.03, subdivision 5, paragraph (3), except for meeting the requirements of an affirmative action plan; or meeting the reporting requirements of federal or state agencies. When these exceptions do occur, all material or information that identifies the race, color, creed, religion, national origin, sex, age, marital status, or disability of a student or person seeking to be admitted as a student to the institution, when received, must be kept secure and private. The material or information must be available only to authorized personnel for meeting affirmative action requirements or reporting requirements of federal or state agencies.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

MAY 5 1989

Joan Anderson Growe
Secretary of State JH

9:52 AM

APPROVED AS TO FORM AND LEGALITY

May 4 1989

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Casserly
SPECIAL ASSISTANT ATTORNEY GENERAL

Official Notices

Pursuant to the provisions of Minnesota Statutes § 14.10, 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 Human Rights

Enforcement Division

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Rules Governing the Processing of Charges of Discrimination and Certificates of Compliance for Public State Contracts

NOTICE IS HEREBY GIVEN that the State Department of Human Rights is seeking information or opinions from sources outside the agency in preparing to propose the amendment of the rule governing discrimination complaints and certificates of compliance for public state contracts and agreements. The adoption of the rule is authorized by *Minnesota Statutes*, section 363.05, Subdivision 1, paragraph (7), which requires the agency to adopt rules to carry out the purposes of the Minnesota Human Rights Act, and by *Minnesota Statutes*, section 363.074, which requires the commissioner to adopt rules to implement *Minnesota Statutes*, section 363.073, related to certificates of compliance.

The State Department of Human Rights requests information and opinions concerning the subject matter of the rule including the likelihood that the proposed amendments may have a quantitative or qualitative impact on small businesses as defined by *Minnesota Statutes*, section 14.115. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Burke Hilden
Minnesota Department of Human Rights
500 Bremer Tower, 7th Place and Minnesota Street
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-5666 and in person at the above address.

All statements of information and opinions about the rule shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Human Rights shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Metropolitan Council of the Twin Cities Area

Notice of Hearing in the Matter of the Proposed Adoption of Rules of the Metropolitan Council Governing Metropolitan Significance Reviews

NOTICE IS HEREBY GIVEN that the Metropolitan Council will hold a public hearing in the above-entitled matter. The subject of the hearing will be proposed new rules governing the Metropolitan Council's metropolitan significance review process. The Metropolitan Council proposes to repeal the current rules governing metropolitan significance reviews, *Minnesota Rules* parts 5700.0100 through 5700.4100, and to adopt proposed new rules, *Minnesota Rules* parts 5800.0010 through 5800.0150. The proposed new rules contain a number of changes from the current rules regarding the standards, guidelines and procedures for determining whether any proposed project is of metropolitan significance. Among the most important changes are those which do the following: modify the criteria for determining metropolitan significance by substituting the system impact standards in the plan amendment guidelines for the current physical system effects; expand the system impact criteria to include a consideration of solid waste; establish a new criterion regarding publicly subsidized projects; clarify that local governmental unit effects focus on physical effects; establish new requirements that the Chair of the Metropolitan Council make a preliminary finding of metropolitan significance and identify, at the

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.

MINNESOTA SCHOOL BOARDS ASSOCIATION

1989 CONVENTION JANUARY 19, 20, 21

Box 119 — St. Peter, Minnesota 56082

Tel. 507/931-2450 Metro 612/333-8577
Minnesota Only 800/642-4459

OFFICERS AND DIRECTORS

PRESIDENT
Thomas Adams
Mankato

VICE PRESIDENT
Idella Ziegler
Buffalo

PAST PRESIDENT
Harry Sjulson
Thief River Falls

DIRECTOR DISTRICT 1
Karen Nielsen
Winona

DIRECTOR DISTRICT 2
David Hudson
Garden City

DIRECTOR DISTRICT 3
Bob Erickson
Willmar

DIRECTOR DISTRICT 4
Arlene Bush
Bloomington

DIRECTOR DISTRICT 5
Stan Kowalski
Spring Lake Park

DIRECTOR DISTRICT 6
Tom Bertz
Roseville

DIRECTOR DISTRICT 7
Marge Kinney
Prior Lake

DIRECTOR DISTRICT 8
Judy Farmer
Minneapolis

DIRECTOR DISTRICT 9
Jean Hoffman
Princeton

DIRECTOR DISTRICT 10
Carole Severson
Brandon

DIRECTOR DISTRICT 11
Dick Brenner
Cloquet

DIRECTOR DISTRICT 12
Pat Gilstad
Blackduck

EXECUTIVE DIRECTOR
Willard Baker
St. Peter

September 7, 1988

Mr. Burke Hilden
Minnesota Dept. of Human Rights
500 Bremer Tower
7th Place and Minnesota Street
St. Paul, MN 55101

Dear Mr. Hilden:

The Minnesota School Boards Association, which represents all 435 public school districts in the State of Minnesota, is concerned about the many potential negative ramifications of the proposed amendment of the rule governing discrimination complaints and certificates of compliance for public state contracts and agreements.

The submission of data every six months would seem to be a cumbersome and unnecessary exercise, particularly in light of the fact that school districts hire most of their staff in September for the entire school year. The composition of this staff would not change significantly until the next school year. Much of the reporting also appears to overlap data required by the Department of Education's Title IX Compliance Department. We are also aware that school districts will be required to submit staff, assignment, and degree data to the Integrated Data Base, the new state-wide computer system, beginning with the 1989-90 school year. It would seem that these reports should be coordinated to avoid duplication.

The school district's responsibility to determine if a contractor with whom it does business qualifies under the statute must be clarified. This is especially true in outstate areas where the range of contractors is minimal and in districts who do business with firms from out of state. Are there a competitive number of contractors (i.e. milk, bakery, portable classrooms, buses, bleachers, scoreboards, uniforms, etc.) who have affirmative action plans in force and have certificates of compliance?

Supply and demand problems also seem to be at issue. Historically, secondary teachers have been predominantly male and elementary teachers have been predominantly female. Does the Department go to the extent of saying that a district must hire female secondary teachers to reflect the number of female secondary students? Further, it would seem that the supply of minority and handicapped professionals could very likely fall short of demand. Political subdivisions would be competing for a limited number of professionals.

It is not clear to us where handicapped individuals fit into the proposed amendment of the rule. We would encourage clarification in this area.

Compliance with M.S. 363.073 will be time consuming and expensive for school districts. While the MSBA fully supports affirmative action, it has always opposed mandates in which districts are given little direction and no opportunity for input. Will the Department of Human Rights take the responsibility for training local staffs to properly complete this task? If so, will input be requested from political subdivisions? If so, would there be a sufficient time frame allowed so that this input could have an impact on this process? If political subdivisions are not allowed this input, who is responsible for determining what "proper compliance" will entail?

The potential withholding of aids (penalties) by the Department of Human Rights for districts found to be in non-compliance is another issue that warrants attention. Since school districts work closely with the Minnesota Department of Education, we think that it would be appropriate that we work with that agency in this regard. The Department of Education has a greater understanding of how local educational institutions work and the variations from location to location. Since the Department of Education is already empowered with this type of punitive power, and has both a Title IX and an Affirmative Action Section, it would seem both logical and efficient that this agency handle such penalties.

The final issue that I would like to address is the appeal process for non-compliance. It is unclear to us as to what this process is; we would hope to see clarification in this area as well.

In summary, the Minnesota School Boards Association is concerned about the impact that the proposed amendment will have on school districts. Please feel free to give me a call with any questions you may have in this regard.

Sincerely,

Carol J. Ries

Carol J. Ries
Assistant Director of
Management Services

CJR:sh

cc: Rudy Perpich, Governor
Dr. Ruth Randall, Commissioner of Education
Jim Pehler, Chair, Senate Education Committee
Bob McEachern, Chair, House Education Committee

RECEIVED
MN DEPT OF HUMAN RIGHTS
1988 SEP -8 PM 12:56

Department of Human Rights

Proposed Permanent Rules Relating to Processing Charges of Discrimination

Rules as Proposed

5000.0400 CHARGES.

Subpart 1. and 1a. [Unchanged.]

Subp. 1b. **Time for filing.** A charge must be filed within ~~300 days~~ one year of an alleged unfair discriminatory practice. Filing is accomplished by delivery of the charge to the department's office ~~on or~~ before ~~the 300th day~~ one year has elapsed. Time is computed under Minnesota Statutes, sections 645.15 and 645.151.

Subp. 2. and 2a. [Unchanged.]

Subp. 3. **Service.** A copy of the charge and a form that describes additional information requested to supplement the initial response to the charge shall be served by the commissioner upon a respondent either by personal delivery or by ~~certified~~ mail within ~~five~~ ten days after it has been filed with the department.

Subp. 4. to 6. [Unchanged.]

5000.0500 INVESTIGATION.

Subpart 1. **Answer to charge.** A person against whom a charge has been filed ~~may~~ shall submit to the commissioner ~~an~~ a written answer to the charge within 20 days of receipt of the charge. The reply may contain a statement of the respondent's position and may present any evidence related to the subject matter of the charge.

Subp. 2. to 5. [Unchanged.]

5000.0900 COMPLAINT.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Service and filing.** A complaint, notice, and order for hearing shall be served upon a respondent by certified

Approved by Revisor

mail and filed in district court or with an administrative law judge at least ten days before the date of the hearing as provided by Minnesota Statutes, ~~section~~ sections 363.06, subdivision 4, paragraph (3)~~,~~ and 363.14, subdivision 1, and part 1400.5600.

Subp. 4. [Unchanged.]

5000.2250 PRESERVATION OF RECORDS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Records at educational institutions.** An educational institution shall not make inquiries; or create, maintain, or use records that are prohibited in Minnesota Statutes, section 363.03, subdivision 5, paragraph (3), except for meeting the requirements of an affirmative action plan; or meeting the reporting requirements of federal or state agencies. When these exceptions do occur, all material or information that identifies the race, color, creed, religion, national origin, sex, age, marital status, or disability of a student or person seeking to be admitted as a student to the institution, when received, must be kept secure and private. The material or information must be available only to authorized personnel for meeting affirmative action requirements or reporting requirements of federal or state agencies.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Processing Charges of Discrimination

AGENCY: Department of Human Rights

MINNESOTA RULES: Chapter 5000

The attached rules are approved for publication in the State Register

Kathleen M. Traxler
Assistant Revisor

State of Minnesota
Department of Human Rights
January 25, 1989

Proposed Rule Changes for Case Processing

In the matter of the Proposed Adoption of Rules of the State Department of Human Rights Governing the Processing of Discrimination Charges:

STATEMENT OF NEED AND REASONABLENESS

Minnesota Statutes, section 363.05, subdivision 1, paragraph (7), requires the commissioner to adopt rules to effectuate the purposes of chapter 363, the Human Rights Act. Under this authority the commissioner is proposing amendments to the rules related to the filing, processing and disposition of charges including Minnesota Rules, parts 5000.0050 to 5000.2400.

In drafting these amendments the department has considered their potential impact on small businesses. In two of the three proposed amendments the rule is being changed to correctly reflect statutory amendments passed by the state legislature in 1987 and 1988. The legislature provided no opportunity for the department to have less stringent requirements for small business. However, the rule changes will have no adverse impact on the operations of small businesses in the state. The proposed change in part 5000.0400 was, in part, intended to assist employers in developing relevant and timely responses to charges of discrimination.

Amendments to parts 5000.0400, 5000.0500, and 5000.0900 are necessary in order to make the department's procedures consistent with statutory amendments passed in the 1987 and 1988 legislative sessions. The creation of part 5000.2250, subpart 4, was necessary to resolve an inconsistency between requirements related to record keeping at educational institutions proscribed by Minnesota Statutes, section 363.03, subdivision 5(3), and the requirements of other statutes and governmental regulations related to affirmative action plans which require these institutions to gather and maintain such information.

Part 5000.0400 CHARGES

Subp. 1b. **Time for filing.** This rule has been amended to conform to the 1988 amendments to Minnesota Statutes, section 363.06, subdivision 3. The statute now stipulates that a charge can be filed within one full year of the occurrence of an alleged discriminatory act instead of the previous limitation to

300 days. The present rule permits charges to be filed within a period of only 300 days after the alleged discriminatory act took place whereas the proposed rule acknowledges the current statutory limitation of one year.

Subp. 3. **Service.** This subpart has been amended to conform to the requirements in the 1987 amendments to Minnesota Statutes, section 363.06, subdivision 1. The statute requires the commissioner to serve a copy of the charge in person or by mail within ten days of its filing along with a form for use in responding to the charge. The rule is reasonable because it stays within the limits imposed by the statute and provides for a procedure whereby respondents are informed immediately about the relevant type of information the department will need in assessing the response to the charge. This procedure will assist both the department and the respondent in bringing cases to their conclusion as efficiently as possible.

Part 5000.0500 INVESTIGATIONS

Subpart 1. **Answer to charge.** This rule has been amended to conform to the requirements in the 1987 amendments to Minnesota Statutes, section 363.06, subdivision 1. The statute now requires that respondents file a written response to the charge within 20 days of receipt of the charge. The change in the rule is reasonable because it requires only what the statute itself now requires in this context. No other changes have been made to this rule beyond what the legislature has mandated.

Part 5000.0570 REOPENING CERTAIN CASES

Subpart 1. **Request.** This subpart has been changed to include part 5000.0550 among those types of terminations for which a case can be considered for reopening. Part 5000.0550 prescribes the suspension of processing a charge when a charging party has indicated an intent to bring a private civil action. This change is needed because the present rules do not provide for reopening of charges when the related civil action has been dismissed without prejudice. The addition is reasonable because, in general, the rules already provide for reopening cases that have been terminated; and, in particular, the reinstitution of a charge after a civil action is dismissed without prejudice is acknowledged in Minnesota Statutes, section 363.14, subdivision 1, paragraph (3), clause (c).

Part 5000.0900 COMPLAINT

Subp.3. **Service and filing.** This rule has been amended to accommodate the state legislature's 1988 amendments to Minnesota Statutes, section 363.14, subdivision 1, which grants the commissioner the option of filing a complaint directly in district court. The change is reasonable because it is restricted to the amendments to the statute and nothing has been changed with regard to how the respondent is notified.

part 5000.2250 PRESERVATION OF RECORDS

Subp. 4. **Records at educational institutions.** In Minnesota Statutes, section 363.03, subdivision 5(3), educational institutions are proscribed from eliciting or keeping information on "the race, color, creed, religion, national origin, sex, age, marital status or disability of a person seeking admission, except as permitted by the rules of the department."

This rule is needed to provide those exceptions so that educational institutions can collect and keep such records when required to do so by state or federal agencies, or in pursuit of the aims of their own affirmative action programs. This rule is reasonable because it recognizes the legitimate needs of educational institutions to create and maintain such records while at the same time ensuring that gathering such information will be otherwise consistent with the requirements and purposes of Minnesota Statutes, chapter 363.

In the Matter of the Proposed Adoption
of the Rule of the State Department of Human Rights
Governing Processing Charges of Discrimination

AFFIDAVIT OF
MAILING THE
NOTICE OF INTENT
TO ADOPT A
RULE WITHOUT
A PUBLIC
HEARING AND
CERTIFICATE OF
MAILING LIST

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Burke Hilden, being sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the state department of human right's mailing list is accurate, complete, and current as of this 27th day of January, 1989.

That on the 27th day of January, 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Intent to Adopt a Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Burke Hilden

Burke Hilden

Management Analyst

Title

Subscribed and sworn to before me
this 27th day of January, 1989.

Joyce L. Manney

JOYCE L. MANNEY
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES OCTOBER 7, 1989

Department of Transportation

Petition of the City of St. Paul for a Variance from State Aid Standards for Street Width

NOTICE IS HEREBY GIVEN that the City Council of the City of Saint Paul has made a written request to the Commissioner of Transportation pursuant to *Minnesota Rules* § 8820.3300 for a variance from minimum standards as they apply to a proposed construction project on Prior Avenue between Summit Avenue and Marshall Avenue.

The request is for a variance from *Minnesota Rules* for State Aid Operations § 8820.9912 adopted pursuant to *Minnesota Statutes* Chapter 161 and 162, so as to permit a street width of 32 feet with parking on one side instead of the required street width of 34 feet with parking on one side.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated: 23 January 1989

Leonard W. Levine
Commissioner

Official Notices continued on page 1926

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, 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 25 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 the modifications are supported by the data and views submitted.**

If, during the 30-day comment period, 25 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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Human Rights

Proposed Permanent Rules Relating to Processing Charges of Discrimination

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Human Rights intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedures Act for adopting rules without a public hearing in *Minnesota Statutes,* sections 14.22 to 14.28. The Department of Human Rights has the authority to promulgate rules related to case processing as granted in *Minnesota Statutes,* section 363.05, subdivision 1, paragraph (7).

All persons have 30 days from the date of this notice to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

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.

Any person may make a written request for a public hearing on the rule within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Department of Human Rights will proceed pursuant to *Minnesota Statutes,* sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Burke Hilden
Department of Human Rights
500 Bremer Tower
7th Place and Minnesota Street
St. Paul, Minnesota 55101
(612) 296-5666

The proposed rules may be modified if the modifications are supported by data and views submitted to the department and do not result in a substantial change in the proposed rules as noticed.

A copy of the proposed rules is published below. Additional copies may be obtained by contacting Burke Hilden.

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 Burke Hilden upon request.

You are hereby advised, pursuant to *Minnesota Statutes,* sections 14.115, "Small business consideration in rulemaking," that the proposed rules have no negative effect on small businesses. The obligations of small businesses remain the same under the Human Rights Act and the rules that implement it whether or not the proposed rules changes listed below are adopted.

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General or who wish to receive a copy of the rule as adopted, must submit a written request to Burke Hilden.

Stephen W. Cooper, Commissioner
Department of Human Rights

Rules as Proposed

5000.0400 CHARGES.

Subpart 1. and 1a. [Unchanged.]

Subp. 1b. **Time for filing.** A charge must be filed within ~~300 days~~ one year of an alleged unfair discriminatory practice. Filing is accomplished by delivery of the charge to the department's office ~~on or~~ before ~~the 300th day~~ one year has elapsed. Time is computed under *Minnesota Statutes,* sections 645.15 and 645.151.

Subp. 2. and 2a. [Unchanged.]

Subp. 3. **Service.** A copy of the charge and a form that describes additional information requested to supplement the initial response to the charge shall be served by the commissioner upon a respondent either by personal delivery or by ~~certified~~ mail within ~~five~~ ten days after it has been filed with the department.

Subp. 4. to 6. [Unchanged.]

5000.0500 INVESTIGATION.

Subpart 1. **Answer to charge.** A person against whom a charge has been filed ~~may~~ shall submit to the commissioner ~~an~~ a written answer to the charge within 20 days of receipt of the charge. The reply may contain a statement of the respondent's position and may present any evidence related to the subject matter of the charge.

Subp. 2. to 5. [Unchanged.]

5000.0900 COMPLAINT.

Subpart 1. and 2. [Unchanged.]

Subp. 3. **Service and filing.** A complaint, notice, and order for hearing shall be served upon a respondent by certified mail and filed in district court or with an administrative law judge at least ten days before the date of the hearing as provided by *Minnesota Statutes,* ~~section~~ sections 363.06, subdivision 4, paragraph (3)~~,~~ and 363.14, subdivision 1, and part 1400.5600.

Subp. 4. [Unchanged.]

5000.2250 PRESERVATION OF RECORDS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Records at educational institutions.** An educational institution shall not make inquiries; or create, maintain, or use records that are prohibited in *Minnesota Statutes*, section 363.03, subdivision 5, paragraph (3), except for meeting the requirements of an affirmative action plan; or meeting the reporting requirements of federal or state agencies. When these exceptions do occur, all material or information that identifies the race, color, creed, religion, national origin, sex, age, marital status, or disability of a student or person seeking to be admitted as a student to the institution, when received, must be kept secure and private. The material or information must be available only to authorized personnel for meeting affirmative action requirements or reporting requirements of federal or state agencies.

Board of Podiatric Medicine

Proposed Permanent Rules Relating to License Renewal Fees for Podiatrists

Notice of Intent to Adopt a Rule Amendment Without a Public Hearing, Notice of Intent to Adopt a Rule Amendment With a Public Hearing If 25 or More Persons Request a Hearing, and Notice of Intent to Cancel Hearing If Fewer Than 25 Persons Request a Hearing

I. EXPLANATION OF ALTERNATIVE NOTICES

The Minnesota Board of Podiatric Medicine (hereinafter "Board") is hereby giving notice of its intent to adopt a rule amendment without a public hearing under the noncontroversial rulemaking procedure of *Minnesota Statutes* §§ 14.22 to 14.28 (1988). However, in case 25 or more persons request a hearing, thus necessitating that one be held pursuant to *Minnesota Statutes* § 14.25 (1988), and in order to expedite the rulemaking process should that occur, the Board is at the same time hereby giving notice of the hearing on the proposed rule amendment pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1988). The hearing will be cancelled if 25 or more people do not request that one be held. The comment period will close on March 8, 1989. There will be 16 days before the scheduled hearing date. This 16-day period will give interested persons ample time to contact the Board to find out whether the hearing will be cancelled and to plan accordingly.

II. NOTICE OF INTENT TO ADOPT A RULE AMENDMENT WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Minnesota Board of Podiatric Medicine (hereinafter "Board") proposes to adopt the above-captioned rule amendment without a public hearing unless 25 or more persons submit written requests for a public hearing. The Board has determined that the changes will be noncontroversial in nature and has elected to follow the procedures set forth in *Minnesota Statutes* §§ 14.22 to 14.28 (1988).

Interested persons shall have 30 days from the date this notice is published in the *State Register* to submit comments in support of or in opposition to the proposed rule amendment. The 30 days will expire on March 8, 1989. Comment is encouraged. Each comment should identify the portion of the proposed rule amendment being addressed, the reason for the comment, and any change proposed to the rule amendment by the comment. The proposed rule amendment may be modified if the modifications are supported by the data and views submitted to the Board and do not result in a substantial change in the proposed language.

In addition to submitting comments, interested persons may request in writing during the 30-day comment period that a hearing be held on the proposed rule amendment. Any person requesting a hearing should state his or her name, address, and telephone number and is encouraged to identify the portion of the proposed rule amendment addressed, the reason for the request, and any changes to the proposed rule amendment. A public hearing will be held only if 25 or more persons submit in writing requests for a hearing on the proposed rule amendment or a portion thereof by March 8, 1989. If a hearing is required, it will be held in accordance with the provisions of *Minnesota Statutes* §§ 14.131 to 14.20 (1988) and the hearing notice provided below.

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.

STATE OF MINNESOTA

DEPARTMENT OF HUMAN RIGHTS

In the Matter of the Proposed Adoption
of the Rule of the State Department of Human Rights
Governing Processing Charges of Discrimination

FINDINGS OF FACT,
CONCLUSIONS, AND
ORDER ADOPTING
RULE WITHOUT
A PUBLIC HEARING

Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on February 6th, 1989 and was sent by United States mail to all persons on the list maintained by the department pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on January 27th, 1989. The statement of need and reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. The department received one request for a public hearing. Therefore, the department did not receive request for a public hearing from 25 or more persons which were not withdrawn.

No requests for notice of submission to the attorney general were received by the department.

Based on the comments and evidence in the record before the department, I find the following:

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as the rule of the state department of human rights governing processing charges of discrimination is adopted this 7th day of April 1989, pursuant to authority vested in me by Minnesota Statutes, section 363.05, subdivision 1, paragraph (7).

Stephen W. Cooper, Commissioner
Department of Human Rights

Department of Human Rights

Proposed Permanent Rules Relating to Processing Charges of Discrimination

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Department of Human Rights intends to adopt the above-entitled rule without a public hearing following ;the procedures set set forth in the Administrative Procedures Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The Department of Human Rights has the authority to promulgate rules related to case processing as granted in Minnesota Statutes, section 363.05, subdivision 1, paragraph (7).

All persons have 30 days from the date of this notice to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Department of Human Rights will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Burke Hilden
Department of Human Rights
500 Bremer Tower
7th Place and Minnesota Street
St. Paul, Minnesota 55101
(612) 296-5666

The proposed rules may be modified if the modifications are supported by data and views submitted to the department and do not result in a substantial change in the proposed rules as noticed.

A copy of the proposed rules is published below. Additional copies may be obtained by contacting Burke Hilden.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Burke Hilden upon request.

You are hereby advised, pursuant to Minnesota Statutes, sections 14.115, "Small business consideration in rulemaking," that the proposed rules have no negative effect on small businesses. The obligations of small businesses remain the same under the Human Rights Act and the rules that implement it whether or not the proposed rules changes listed below are adopted.

If no hearing is required, upon adoption of the rules, the rules and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the rule as adopted, must submit a written request to Burke Hilden.

Stephen W. Cooper, Commissioner
Department of Human Rights

Rules as Proposed

5000.0400 CHARGES

Subpart 1. and 1a. [Unchanged.]

Subp.1b. **Time for filing.** A charge may be filed within ~~300 days~~ one year of an alleged unfair discriminatory practice. Filing is accomplished by delivery of the charge to the department's office ~~on or before the 300th day~~ one year has elapsed. Time is computed in accordance with Minnesota Statutes, sections 645.15, and 645.151.

Subpart 2. and 2a. [Unchanged.]

Subp. 3. **Service.** A copy of the charge and a form that describes additional information requested to supplement the initial response to the charge shall be served by the commissioner upon a respondent either by personal delivery or by ~~certified~~ mail within ~~five~~ ten days after it has been filed with the department.

Subp. 4. to 6. [Unchanged.]

5000.0500 INVESTIGATION

Subpart 1. **Answer to charge.** Any person against whom a charge has been filed ~~may~~ shall submit to the commissioner an a written answer to the charge within 20 days of receipt of the charge. The reply may contain a statement of the respondent's position and may present any evidence related to the subject matter of the charge.

Subp. 2. to 5. [Unchanged.]

5000.0900 COMPLAINT

Subpart 1. and 2. [Unchanged.]

Subp.3. **Service and filing.** A complaint, notice, and order for hearing shall be served upon a respondent by certified mail and filed in district court or with an administrative law judge at least ten days before the date of the hearing on the complaint as provided by Minnesota Statutes, ~~section~~ sections section 363.06, subdivision 4, paragraph (3), and 363.14, subdivision 1, and part 1400.5600.

Subp. 4. [Unchanged.]

5000.2250 PRESERVATION OF RECORDS

Subpart 1. to 3. [Unchanged.]

Subp.4. **Records at educational institutions.** An educational institution shall not make inquiries, create, maintain or utilize records that are prohibited in Minnesota Statutes 363.03, subdivision 5 (3), except for meeting the requirements of an affirmative action plan, or meeting the reporting requirements of federal or state agencies. When these exceptions do occur, all materials or information that identifies the race, color, creed, religion, national origin, sex, age, marital status or disability of a student or person seeking to be admitted as a student to the institution, when received, must be kept secure and private, available only to authorized personnel for the purposes of meeting affirmative action requirements or the reporting requirements of federal or state agencies.

PROPOSED RULE CHANGE FOR THE MINNESOTA COLLEGE ADMISSION FORM

Part 5000.2250 PRESERVATION OF RECORDS

Subdp.4 Recordkeeping at educational institutions. An educational institution shall not make inquiries, create, maintain or utilize records that are prohibited in Minnesota Statutes 363.03, subdivision 5 (3), except for meeting the requirement of an affirmative action plan, or meeting the reporting requirements of federal or state agencies. When these exceptions do occur, all materials or information that identify the race, color, creed, religion, national origin, sex, age, marital status or disability of a student or person seeking to be admitted a student to the institution, when received, must be kept secure and confidential, available only to authorized personnel.

In the Matter of the Adoption
of the Rule of the State
Department of Human Rights
Governing processing charges
of discrimination.

DECLARATION OF COUNSEL

I, ANDREA MITAU KIRCHER, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and the Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit client code is 0451.

Dated: April 6, 1989.

A M Kircher

ANDREA MITAU KIRCHER
Special Assistant
Attorney General

K.cb4

portunity for partici-
tivities.
may offer to handi-
physical education
vities that are sepa-
from those offered to
students only if sepa-
ıtiation is consistent
nents of § 104.34 and
ed handicapped stu-
opportunity to com-
or to participate in
ot separate or differ-

and adult education

hich this subpart ap-
s a preschool educa-
rogram or activity or
n program or activity
asis of handicap, ex-
ıandicapped persons
or activity and shall
t the needs of such
ining the aid, bene-
o be provided under
tivity.

ucation programs.

that operates a pri-
or secondary educa-
not, on the basis of
e a qualified handi-
om such program if
with minor adjust-
ded an appropriate
ned in § 104.33(b)(1),
nt's program.
to which this section
charge more for the
ppropriate education
ersons than to non-
sons except to the
additional charge is
bstantial increase in
nt.
o which this section
tes special education
erate such programs
h the provisions of
36. Each recipient to
applies is subject to
§§ 104.34, 104.37, and

Subpart E—Postsecondary Education

§ 104.41 Application of this subpart.

Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 104.42 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Assistant Secretary to be available.

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 104.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 104.6(b), the recipient may invite applicants for admission to indicate whether and to what extent they are handicapped, *Provided,* That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (b)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

§ 104.43 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transporta-