

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

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SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : ATTORNEY GENERAL

DATE : September 26, 1989

TO : RALPH W. COREY, Merit System Supervisor
MINNESOTA MERIT SYSTEM
444 Lafayette Road

FROM : MARTHA J. CASSERLY
Special Assistant Attorney General
525 Park Street, Suite 500

PHONE : 296-6839

SUBJECT : In the Matter of the Adopted Rule Relating to Merit System (DH, DHS, and DPS)

The above-referenced rule has been approved as to its legality by the Attorney General on September 22, 1989.

Enclosed is your 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, submissions or comments along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of tne notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance 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.

MJC:bbl.AA9
Enclosures

cc: William Brown, Chief Judge
MaryAnn Hruby

FILE COPY

Department of Health

Adopted Permanent Rules Relating to Merit System

Rules as Adopted

4670.0100 DEFINITIONS.

Subpart 1. [Unchanged.]

Subp. 1a. **Affirmative action.** "Affirmative action" means a management program designed to ensure equal employment opportunity and correct past discrimination by identifying and removing barriers throughout a personnel system. Affirmative action includes special efforts to eliminate underuse of disabled persons, minorities, and women through recruitment, hiring, and advancement of these groups.

Subp. 2. to 12. [Unchanged.]

Subp. 12a. **Disability.** "Disability" means any condition or characteristic that renders a person a disabled person. A disabled person is any person who:

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

B. has a record of such an impairment; or

C. is regarded as having such an impairment.

Subp. 13. [Unchanged.]

Subp. 13a. **Discrimination.** "Discrimination" means unequal treatment, intentional or unintentional, that is based on the following protected characteristics: race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. 14. [Unchanged.]

Subp. 14a. **Disparity.** "Disparity" means the employment of fewer disabled persons, minorities, or women in the agency's work force than could reasonably be expected, based on their availability in the relevant labor area.

Subp. 15. to 17. [Unchanged.]

Subp. 17a. **Equal employment opportunity.** "Equal

employment opportunity" means the policy of basing all personnel activities solely on individual merit of applicants and employees in relation to job requirements, and without regard to race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. 17b. **Equitable compensation relationship.** "Equitable compensation relationship" means that a primary consideration in establishing, recommending, and approving total compensation is comparable work value in relationship to other employee positions within the merit system.

Subp. 18. to 20. [Unchanged.]

Subp. 21. **General adjustment.** "General adjustment" means an annual merit system recommended salary adjustment based on a review of adjustments to salaries by employers with similar and competing types of employment and trends in the Twin Cities consumer price index. The general adjustment applies to all employees on the professional and administrative, health services support, clerical, and building maintenance salary schedules whose positions are not covered by the terms and conditions of a collective bargaining agreement.

Subp. 22. to 34. [Unchanged.]

Subp. 34a. **Protected groups.** "Protected groups" means females, disabled persons, and members of the following minorities: Black, Hispanic, Asian, Pacific Islander, American Indian, or Alaskan native.

Subp. 35. to 50. [Unchanged.]

4670.0600 PROHIBITION AGAINST DISCRIMINATION.

No person shall be discriminated for or against in such matters as recruitment, examination, appointment, tenure, compensation, classification, or promotion, or in such matters as conditions, facilities, or privileges of employment because of race, color, political affiliation, creed, religion, national origin, disability where such disability does not interfere with the completion of assigned duties, age, marital status, status

with regard to public assistance, or sex. Any person aggrieved by a violation of these prohibitions may file a complaint under the provisions of Minnesota Statutes, chapter 363, or may file a discrimination complaint under the local agency's internal complaint process.

4670.0610 AFFIRMATIVE ACTION PLAN.

Each local agency shall have an affirmative action plan for employees covered by parts 4670.0100 to 4670.4300. The plan must contain:

A. a policy defining and prohibiting discriminatory harassment, including sexual harassment;

B. an internal discrimination complaint policy and procedure that includes notification of the Department of Human Services Affirmative Action Office of complaints that are brought and their resolution;

C. provision for appointment of a person to provide liaison between the local agency and the Department of Human Services Affirmative Action Office and to have responsibility for implementation of the local agency's plan; and

D. provision for participation by the local agency in an affirmative action committee and notification of the Department of Human Services Affirmative Action Office of periodic hiring goals established by the local agency, for expanded certification purposes.

These requirements may be incorporated as part of a countywide affirmative action plan or provided as an addendum to the plan.

4670.1600 WORK-OUT-OF-CLASS ASSIGNMENTS.

If an employee is expressly assigned in writing to perform all the duties of a position allocated to a higher classification that is temporarily unoccupied for reasons other than vacation or sick leave and that work exceeds 15 consecutive work days in duration, the employee so assigned shall be paid for all hours of the assignment at least at the minimum rate of pay of the salary range for the higher class or may be granted a

one step salary increase within the employee's salary range. If the assignment is to a position in a classification at an equal or lower level, the employee shall be paid for all hours of the assignment at the employee's current rate of pay. A work-out-of-class assignment is limited to no more than six months. An appointing authority may submit a written request to extend a work-out-of-class assignment for up to an additional six months, specifying the reason why the extension is necessary. A request to extend a work-out-of-class assignment must be initiated at least 15 days before the end of the initial six-month assignment. Approval of these assignments by the supervisor is required and requests for approval must be received by the supervisor within five calendar days of the assignment. Upon completion of the work-out-of-class assignment, the employee's salary shall be reduced to its previous level, notwithstanding the provisions of parts 4670.1500, subpart 1, and 4670.3530.

4670.1980 EXAMINATION RETESTING.

Applicants may apply to retake a competitive or promotional examination that is open for application on a continuous basis but may not retake an examination within 60 days of the previous test date and more than three times in a calendar year.

4670.2300 CERTIFICATION METHODS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Inadequate registers.** When the number of different names available for filling any vacancy by original appointment, promotion, or reinstatement is fewer than seven on all competitive and promotional registers combined, the appointing authority may decline certification for that vacancy and may request certification from a register, or registers, that the supervisor deems appropriate.

Subp. 6. [Unchanged.]

Subp. 7. **Expanded certification.** When the supervisor determines that a disparity exists between an agency's work force and its approved affirmative action plan, the supervisor

shall ensure to the extent possible that available eligibles who are members of the protected group as defined in part 4670.0100, subpart 34a, for which the disparity exists are certified for appointment. When fewer than three protected group eligibles for which a disparity exists would be certified under subparts 1 and 2, the supervisor shall certify additional protected group eligibles for which a disparity exists to bring the number of eligibles certified to a total of three names from each protected group. Eligibles to be certified shall be determined by examination score.

REPEALER. Minnesota Rules, part 4670.0620, is repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

SEP 22 1989

Joan Anderson Growe
Secretary of State

1:30 PM JH

APPROVED AS TO FORM AND EXECUTION
September 22 1989

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY M J Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

Department of Human Services

Adopted Permanent Rules Relating to Merit System

Rules as Adopted

9575.0010 DEFINITIONS.

Subpart 1. [Unchanged.]

Subp. 1a. **Affirmative action.** "Affirmative action" means a management program designed to ensure equal employment opportunity and correct past discrimination by identifying and removing barriers throughout a personnel system. Affirmative action includes special efforts to eliminate underuse of disabled persons, minorities, and women through recruitment, hiring, and advancement of these groups.

Subp. 2. to 13. [Unchanged.]

Subp. 13a. **Disability.** "Disability" means a condition or characteristic that renders a person a disabled person. A disabled person is a person who:

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

B. has a record of such an impairment; or

C. is regarded as having such an impairment.

Subp. 14. [Unchanged.]

Subp. 14a. **Discrimination.** "Discrimination" means unequal treatment, intentional or unintentional, that is based on the following protected characteristics: race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. 15. [Unchanged.]

Subp. 15a. **Disparity.** "Disparity" means the employment of fewer disabled persons, minorities, or women in the agency's work force than could reasonably be expected, based on their availability in the relevant labor area.

Subp. 16. to 18. [Unchanged.]

Subp. 18a. **Equal employment opportunity.** "Equal

employment opportunity" means the policy of basing all personnel activities solely on individual merit of applicants and employees in relation to job requirements, and without regard to race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. 18b. **Equitable compensation relationship.** "Equitable compensation relationship" means that a primary consideration in establishing, recommending, and approving total compensation is comparable work value in relationship to other employee positions within the merit system.

Subp. 19. to 20a. [Unchanged.]

Subp. 21. **General adjustment.** "General adjustment" means an annual merit system recommended salary adjustment based on a review of adjustments to salaries by employers with similar and competing types of employment and trends in the Twin Cities consumer price index. The general adjustment applies to all employees on the professional, support, clerical, and maintenance and trades salary schedules whose positions are not covered by the terms and conditions of a collective bargaining agreement.

Subp. 22. to 34. [Unchanged.]

Subp. 34a. **Protected groups.** "Protected groups" means females, disabled persons, and members of the following minorities: Black, Hispanic, Asian, Pacific Islander, American Indian, or Alaskan native.

Subp. 35. to 49. [Unchanged.]

9575.0020 OBJECTIVES OF COUNTY WELFARE MERIT SYSTEM.

It is the aim of the Department of Human Services of the state of Minnesota, through the establishment of the county welfare merit system, to provide appointing authorities with an effective system of personnel administration based on merit principles. Specific objectives are:

A. to C. [Unchanged.]

D. equitable pay scales for the various classes

established on the basis of equal pay for work of equal value; and

E. [Unchanged.]

9575.0090 PROHIBITION AGAINST DISCRIMINATION.

Subpart 1. **In general.** No person shall be discriminated for or against in recruitment, examination, appointment, tenure, compensation, classification, or promotion or in conditions, facilities, or privileges of employment because of race, color, political affiliation, creed, religion, national origin, disability when such disability does not interfere with the completion of assigned duties, age, marital status, status with regard to public assistance, or sex. Any person aggrieved by a violation of these prohibitions may file a complaint under the provisions of Minnesota Statutes, chapter 363, or may file a discrimination complaint under the county agency's internal complaint process.

Subp. 2. [See Repealer.]

Subp. 2a. **Affirmative action plan.** Each county agency shall have an affirmative action plan for employees covered by parts 9575.0010 to 9575.1580. The plan must contain:

A. a policy defining and prohibiting discriminatory harassment, including sexual harassment;

B. an internal discrimination complaint policy and procedure that includes notification of the Department of Human Services Affirmative Action Office of complaints that are brought and their resolution;

C. provision for appointment of a person to provide liaison between the county agency and the Department of Human Services Affirmative Action Office and to have responsibility for implementation of the local agency's plan; and

D. provision for participation by the county agency in an affirmative action committee and notification of the Department of Human Services Affirmative Action Office of periodic hiring goals established by the county agency, for expanded certification purposes.

These requirements may be incorporated as part of a county-wide affirmative action plan or provided as an addendum to the plan.

Subp. 3. [See Repealer.]

9575.0380 WORK OUT OF CLASS.

If an employee is expressly assigned in writing to perform all the duties of a position allocated to a higher classification that is temporarily unoccupied for reasons other than vacation or sick leave and that work exceeds 15 consecutive work days in duration, the employee so assigned shall be paid for all hours of the assignment at least at the minimum rate of pay of the salary range for the higher class or may be granted a one-step salary increase within the assigned employee's salary range. If the assignment is to a position in a classification at an equal or lower level, the employee shall be paid for all hours of the assignment at the employee's current rate of pay. A work out of class assignment is limited to no more than six months. An appointing authority may submit a written request to extend a work out of class assignment for up to an additional six months, specifying the reason why the extension is necessary. A request to extend a work out of class assignment must be initiated at least 15 days before the end of the initial six-month assignment. Approval of such assignments by the supervisor is required and must be received by the supervisor within five calendar days of the assignment. Upon completion of the work out of class assignment, the employee's salary shall be reduced to its previous level. This decrease is not subject to part 9575.0370 or part 9575.1180.

9575.0530 EXAMINATION RETESTING.

Applicants may apply to retake a competitive or promotional examination that is open for application on a continuous basis but may not retake an examination within 60 days of the previous test date and more than three times in a calendar year.

9575.0620 CERTIFICATION METHODS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Too few names on a certification.** When the number of different names available for filling any vacancy by original appointment, promotion, or reinstatement is fewer than seven on all competitive and promotional registers combined, the appointing authority may decline certification for that vacancy and may request certification from a register, or registers, that the supervisor deems appropriate.

Subp. 6. [Unchanged.]

Subp. 7. **Expanded certification.** When the supervisor determines that a disparity exists between an agency's work force and its approved affirmative action plan, the supervisor shall ensure to the extent possible that available eligibles who are members of the protected group as defined in part 9575.0010, subpart 34a, for which the disparity exists are certified for appointment. When fewer than three protected group eligibles for which a disparity exists would be certified under subparts 1 and 2, the supervisor shall certify additional protected group eligibles for which a disparity exists to bring the number of eligibles certified to a total of three names from each protected group. Eligibles to be certified shall be determined by examination score.

9575.0720 PROBATION REQUIRED.

A person employed by an appointing authority in any of the following ways shall serve a probationary period:

A. appointment from an eligible register other than the layoff list;

B. reinstatement of a former probationary employee or of a former permanent employee in an agency other than the last employing agency;

C. transfer of an employee between counties except when specifically waived, in writing to the merit system supervisor, by the new employing county prior to the date on which the transfer of a permanent employee becomes effective; or

D. transfer or reinstatement to a position on the

basis of eligibility from a comparable position in a similar merit system jurisdiction.

An appointing authority may effect a probationary period in an employment action in which such period is not required as specified above by writing this condition of appointment on the appointment report submitted to the merit system. In no case, however, may a probationary period be required of a permanent employee who is appointed from the layoff list.

REPEALER. Minnesota Rules, part 9575.0090, subparts 2 and 3 are repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

SEP 22 1989

Joan Anderson Growe
Secretary of State

1:30 pm

APPROVED AS TO FORM AND EXECUTION

September 22 1989

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

FILE COPY

Department of Public Safety

Adopted Permanent Rules Relating to Merit System

Rules as Adopted

7520.0100 DEFINITIONS.

Subpart 1. [Unchanged.]

Subp. 1a. **Affirmative action.** "Affirmative action" means a management program designed to ensure equal employment opportunity and correct past discrimination by identifying and removing barriers throughout a personnel system. Affirmative action includes special efforts to eliminate underuse of disabled persons, minorities, and women through recruitment, hiring, and advancement of these groups.

Subp. 2. to 12. [Unchanged.]

Subp. 12a. **Disability.** "Disability" means any condition or characteristic that renders a person a disabled person. A disabled person is any person who:

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

B. has a record of such an impairment; or

C. is regarded as having such an impairment.

Subp. 13. [Unchanged.]

Subp. 13a. **Discrimination.** "Discrimination" means unequal treatment, intentional or unintentional, that is based on the following protected characteristics: race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. 14. [Unchanged.]

Subp. 14a. **Disparity.** "Disparity" means the employment of fewer disabled persons, minorities, or women in the agency's work force than could reasonably be expected, based on their availability in the relevant labor area.

Subp. 15. to 17. [Unchanged.]

Subp. 17a. **Equal employment opportunity.** "Equal

employment opportunity" means the policy of basing all personnel activities solely on individual merit of applicants and employees in relation to job requirements, and without regard to race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. 17b. **Equitable compensation relationship.** "Equitable compensation relationship" means that a primary consideration in establishing, recommending, and approving total compensation is comparable work value in relationship to other employee positions within the merit system.

Subp. 18. to 19a. [Unchanged.]

Subp. 20. **General adjustment.** "General adjustment" means an annual merit system recommended salary adjustment based on adjustments to salaries by employers with similar and competing types of employment and trends in the Twin Cities Consumer Price Index. The general adjustment applies to all employees on the professional and clerical salary schedules whose positions are not covered by the terms and conditions of a collective bargaining agreement.

Subp. 21. to 35. [Unchanged.]

Subp. 35a. **Protected groups.** "Protected groups" means females, disabled persons, and members of the following minorities: Black, Hispanic, Asian, Pacific Islander, American Indian, or Alaskan Native.

Subp. 36. to 50. [Unchanged.]

7520.0200 STATEMENT OF POLICY AND MEANS OF EFFECTING POLICY.

Subpart 1. **Objectives.** It is the declared aim of the governor and the state Department of Public Safety of the state of Minnesota to put into full force and effect the merit principles of personnel administration. To this end the merit system council, the merit system supervisor, and the Department of Public Safety shall work toward the objectives of:

A. to C. [Unchanged.]

D. equitable pay scales for the various classes

established on the basis of equal pay for work of equal value; and

E. [Unchanged.]

Subp. 2. to 5. [Unchanged.]

7520.0350 PROHIBITION AGAINST DISCRIMINATION.

Subpart 1. **In general.** No person shall be discriminated for or against in such matters as recruitment, examination, appointment, tenure, compensation, classification, or promotion, or in such matters as conditions, facilities, or privileges of employment because of race, color, political affiliation, creed, religion, national origin, disability where the disability does not interfere with the completion of assigned duties, age, marital status, status with regard to public assistance, or sex. Any person aggrieved by a violation of these prohibitions may file a complaint under the provisions of Minnesota Statutes, chapter 363, or may file a discrimination complaint under the local agency's internal complaint process.

Subp. 2. [See Repealer.]

Subp. 2a. **Affirmative action plan.** Each local agency shall have an affirmative action plan for employees covered by parts 7520.0100 to 7520.1200. The plan must contain, at a minimum, the following:

A. a policy defining and prohibiting discriminatory harassment, including sexual harassment;

B. an internal discrimination complaint policy and procedure that includes notification of the Department of Human Services Affirmative Action Office of complaints that are brought and their resolution;

C. provision for appointment of a person to provide liaison between the local agency and the Department of Human Services Affirmative Action Office and to have responsibility for implementation of the local agency's plan; and

D. provision for participation by the local agency in an affirmative action committee and notification of the Department of Human Services Affirmative Action Office of

periodic hiring goals established by the local agency, for expanded certification purposes.

These requirements may be incorporated as part of a county-wide affirmative action plan or provided as an addendum to the plan.

Subp. 3. [See Repealer.]

7520.0680 WORK OUT OF CLASS.

If an employee is expressly assigned in writing to perform all the duties of a position allocated to a higher classification that is temporarily unoccupied for reasons other than vacation or sick leave and the work exceeds 15 consecutive work days the employee so assigned shall be paid for all hours of the assignment at least at the minimum rate of pay of the salary range for the higher class or may be granted a one step salary increase within his salary range. If the assignment is to a position in a classification at an equal or lower level the employee shall be paid for all hours of the assignment at the employee's current rate of pay. A work out of class assignment is limited to no more than six months. An appointing authority may submit a written request to extend a work out of class assignment for up to an additional six months, specifying the reason why the extension is necessary. A request to extend a work out of class assignment must be initiated at least 15 days prior to the end of the initial six month assignment. Approval of the assignments by the supervisor is required and must be received by the supervisor within five calendar days of the assignment. Upon completion of the work out of class assignment the employee's salary shall be reduced to its previous level, notwithstanding the provisions of part 7520.0670 or 12 MCAR S 2.508 D.

REPEALER. Minnesota Rules, part 7520.0350, subparts 2 and 3, are repealed.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

SEP 22 1989

Joan Anderson Growe
Secretary of State

JH

1:30 pm

APPROVED AS TO FORM AND EXECUTION

September 22 1989

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY M J Caseley
SPECIAL ASSISTANT ATTORNEY GENERAL

Health
4670.0100 - 46), 2300

MJC

RULE REVIEW CHECKLIST

File No. 1623

Docket No. 05000900859

DATE RECEIVED 9-8-89
9-18-89

ADOPTED W/O HEARING ✓

REVIEW DATE 9-17-89

EMERGENCY RULE _____

DUE DATE 9-22-89

To: Revisor: 8-12-89

REVISOR APPROVED ✓

APPROVED 9.22.89-MJC

REVISOR DISAPPROVED _____

DISAPPROVED _____

FILED W/SEC. OF STATE 9-22-89

WITHDRAWN _____

RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
- Jan 30, 1989 Date published in State Register
- _____ Comments

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

_____ Board's Authorizing Resolution
- _____ Date adopted

✓ Proposed Rule
- ✓ Revisor's Certificate

_____ Notice of Intent to Adopt Rule
- 144.071 Statutory Authority
- no Small Business Statement
- yes Expenditure of public money statement
- yes Signature

✓ Statement of Need and Reasonableness (if applicable)
- _____ Small Business Statement
- _____ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
- July 13, 1989 Date (30)/25 days before adoption
- yes Notice attached
- _____ Copy of rule or summary attached additional mailing also made

✓ Publication in State Register
- July 17, 1989 Date (30)/25 days before adoption

_____ 180-day deadline from:
- _____ Effective date of law requiring rule (14.12) (both rules)
- ✓ 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
- August 25 1989 Date

_____ ~~Written requests, submissions or comments~~

_____ Declaration of attorney
- Gail Olson Name of SAAG representing agency

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

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

Human Services
9575.0010 - 9575.0720

MJC

RULE REVIEW CHECKLIST

File No. 1623 Docket No. 05 0009 0859

DATE RECEIVED 9-8-89 ADOPTED W/O HEARING ✓

REVIEW DATE 9-18-89 EMERGENCY RULE _____

DUE DATE 9-22-89 To Revisor: 8-12-89

REVISOR APPROVED ✓

APPROVED _____ 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)
Jan. 30, 1989 Date published in State Register
none Comments

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

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

✓ Proposed Rule
✓ Revisor's Certificate

_____ Notice of Intent to Adopt Rule
256.012 Statutory Authority
NO Small Business Statement
Yes Expenditure of public money statement
Yes Signature

✓ Statement of Need and Reasonableness (if applicable)
_____ Small Business Statement
_____ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
July 12, 1989 Date 30/25 days before adoption
Yes Notice attached
_____ Copy of rule or summary attached
additional mailing also made

✓ Publication in State Register
July 17, 1989 Date 30/25 days before adoption

_____ 180-day deadline from:
_____ Effective date of law requiring rule (14.12) (both rules)
✓ 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
August 23, 1989 Date

_____ ~~Written requests, submissions or comments~~

_____ Declaration of attorney
Gail Olson Name of SAAG representing agency

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

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

Public Safety
7520.0100 -
7520.0680

MJC

RULE REVIEW CHECKLIST

File No. 1623 Docket No. 05 0009 0859

DATE RECEIVED 9-8-89 ADOPTED W/O HEARING ✓

REVIEW DATE 9-18-89 ~~9-17-89~~ EMERGENCY RULE _____

DUE DATE 9-22-89

REVISOR APPROVED ✓

APPROVED _____ 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)
Jan. 30, 1989 Date published in State Register
_____ Comments

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

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

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
12.22 Statutory Authority
100 Small Business Statement
yes Expenditure of public money statement
yes Signature

✓ Statement of Need and Reasonableness (if applicable)
_____ Small Business Statement
_____ Fees - § 16A.128

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
July 13, 1989 Date (30)/25 days before adoption
yes Notice attached
✓ Copy of rule or summary attached

✓ Publication in State Register
July 17, 1989 Date (30)/25 days before adoption

_____ 180-day deadline from:
_____ Effective date of law requiring rule (14.12) (both rules)
✓ 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
August 31, 1989 Date

_____ ~~Written requests, submissions or comments~~

✓ Declaration of attorney
Hal Keon Name of SAAG representing agency

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

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

Department of Human Services

Adopted Permanent Rules Relating to Medical Assistance Hospice Care Services

The rules proposed and published at *State Register*, Volume 13, Number 21, pages 1224-1229, November 21, 1988 (13 S.R. 1224) are adopted as proposed.

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.

Board of Animal Health

Notice of Quarterly Meeting

A quarterly meeting of the Board of Animal Health has been scheduled for Tuesday, February 28, 1989 at the Board of Animal Health offices, 90 W. Plato Blvd., St. Paul, Minnesota 55107. The meeting will begin at 9:30 a.m.

Information about this meeting may be obtained by calling the Board office at 612-296-5000.

Dated: 17 January 1989

Thomas J. Hagerty, DVM
Executive Secretary

Departments of Human Services, Health and Public Safety

Notice of Intent to Solicit Outside Information or Opinions Regarding Proposed Merit System Rules Governing Definitions, Objectives of the Merit System, Work Out of Class, Examination Retesting, Certification Methods, Probationary Periods and Prohibition Against Discrimination

NOTICE IS HEREBY GIVEN that the State Departments of Human Services, Health, and Public Safety are seeking information or opinions from sources outside the agencies in preparing to propose amendments to the Merit System rules governing definitions, objectives of the Merit System, work out of class, examination retesting, certification methods, probationary periods and prohibition against discrimination. The amendments to the rules are authorized by *Minnesota Statutes*, sections 256.012, 144.071 and 12.22, subd. 3, which permits the Merit System to establish rules to provide local and county appointing authorities with an effective system of personnel administration based on merit principles. The amendments would provide for new definitions for "affirmative action," "disabled," "discrimination," "disparity," "equal employment opportunity," and "protected groups"; an amendment to the definition of "general adjustment" and deletion of the definition of "salary adjustment"; new language to include equitable pay scales based on comparable work values to the objectives of the Merit System; new language to allow for extensions of work out of class appointments; new language to clarify Merit System retest policies; deletion of language to clarify when probationary periods must be served; new language to clarify when counties have received an incomplete certification and to correct a reference to a rule; and amendments to clarify the prohibition against discrimination and the information to be included in a local or county affirmative action plan.

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.

The State Departments of Human Services, Health and Public Safety request information and opinions concerning the subject matter of the rules. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements of information and comment should be addressed to:

Ralph W. Corey
Minnesota Merit System
Human Services Building
444 Lafayette Road
St. Paul, Minnesota 55155-3822

Oral statements will be received during regular business hours over the telephone by Ralph Corey at (612) 296-3996 and in person at the above address.

All statements of information and opinions 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 Minnesota Merit System 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.

Dated: 20 January 1989

Ralph W. Corey
Merit System Supervisor

Department of Human Services

Division for Persons with Developmental Disabilities

Notice of Solicitation of Outside Information or Opinions Regarding Proposed Amendments to *Minnesota Rules*, Parts 9525.0015 to 9525.0165 (Commonly referred to as Rule 185)

NOTICE IS HEREBY GIVEN that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose the adoption of amendments to the rule governing case management services to persons with mental retardation. The adoption of the rule is authorized by *Minnesota Statutes*, section 256B.503 and 256B.092. Parts 9525.0015 to 9525.0165 were effective July 28, 1986.

Amendments being prepared by the department will allow for greater flexibility in the provision of case management services while making the case management process more efficient for both the consumer of services and the case manager.

The State Department of Human Services requests information and opinions concerning the subject matter of the rule. 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: Chris Kiefer, Rules Division, 2nd Floor South, 444 Lafayette Road, St. Paul, Minnesota 55155-3816. Oral statements will be received during regular business hours by Chris Kiefer at (612) 297-1461 and in person at the above address.

All statements of information and opinions 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 Services 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.

Dated: 24 January 1989

Chris Kiefer
DHS Rules Division

State Board of Investment

Official Notice of Special Meeting of the State Board of Investment

The State Board of Investment will hold a special meeting on Wednesday, February 8, 1989, at 8:30 a.m. in Room 118, State Capitol, Saint Paul, MN.

Department of Human Services

Proposed Permanent Rules Relating to Merit System

Rules as Proposed

9575.0010 DEFINITIONS.

Subpart 1. [Unchanged.]

Subp. 1a. **Affirmative action.** "Affirmative action" means a management program designed to ensure equal employment opportunity and correct past discrimination by identifying and removing barriers throughout a personnel system. Affirmative action includes special efforts to eliminate underuse of disabled persons, minorities, and women through recruitment, hiring, and advancement of these groups.

Subp. 2. to 13. [Unchanged.]

Subp. 13a. **Disability.** "Disability" means a condition or characteristic that renders a person a disabled person. A disabled person is a person who:

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

B. has a record of such an impairment; or

C. is regarded as having such an impairment.

Subp. 14. [Unchanged.]

Subp. 14a. **Discrimination.** "Discrimination" means unequal treatment, intentional or unintentional, that is based on the following protected characteristics: race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. 15. [Unchanged.]

Subp. 15a. **Disparity.** "Disparity" means the employment of fewer disabled persons, minorities, or women in the agency's work force than could reasonably be expected, based on their availability in the relevant labor area.

Subp. 16. to 18. [Unchanged.]

Subp. 18a. **Equal employment opportunity.** "Equal

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employment opportunity" means the policy of basing all personnel activities solely on individual merit of applicants and employees in relation to job requirements, and without regard to race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. ~~18a.~~ 18b. **Equitable compensation relationship.** "Equitable compensation relationship" means that a primary consideration in establishing, recommending, and approving total compensation is comparable work value in relationship to other employee positions within the merit system.

Subp. 19. to 20a. [Unchanged.]

Subp. 21. **General adjustment.** "General adjustment" means ~~the~~ an annual merit system recommended salary adjustment based on ~~a salary survey or~~ a review of ~~consumer price index changes.~~ adjustments to salaries by employers with similar and competing types of employment and trends in the Twin Cities consumer price index. The general adjustment applies to all employees on the professional, support, clerical, and maintenance and trades salary schedules whose positions are not covered by the terms and conditions of a collective bargaining agreement.

Subp. 22. to 34. [Unchanged.]

Subp. 34a. **Protected groups.** "Protected groups" means females, disabled persons, and members of the following minorities: Black, Hispanic, Asian, Pacific Islander, American Indian, or Alaskan native.

Subp. 35. to 49. [Unchanged.]

9575.0020 OBJECTIVES OF COUNTY WELFARE MERIT SYSTEM.

It is the aim of the Department of Human Services of the state of Minnesota, through the establishment of the county welfare merit system, to provide appointing authorities with an effective system of personnel administration based on merit principles. Specific objectives are:

A. to C. [Unchanged.]

D. equitable pay scales for the various classes

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established on the basis of equal pay for ~~equal~~ work of equal value; and

E. [Unchanged.]

9575.0090 PROHIBITION AGAINST DISCRIMINATION.

Subpart 1. **In general.** No person shall be discriminated for or against in recruitment, examination, appointment, tenure, compensation, classification, or promotion or in conditions, facilities, or privileges of employment because of race, color, political affiliation, creed, religion, national origin, ~~physical~~ disability when such disability does not interfere with the completion of assigned duties, age, marital status, status with regard to public assistance, or sex. Any person aggrieved by a violation of these prohibitions may file a complaint under the provisions of Minnesota Statutes, chapter 363, or may file a discrimination complaint under the county agency's internal complaint process.

Subp. 2. [See Repealer.]

Subp. 2a. **Affirmative action plan.** Each county agency shall have an affirmative action plan for employees covered by parts 9575.0010 to 9575.1580. The plan must contain:

A. a policy defining and prohibiting discriminatory harassment, including sexual harassment;

B. an internal discrimination complaint policy and procedure that includes notification of the Department of Human Services Affirmative Action Office of complaints that are brought and their resolution;

C. provision for appointment of a person to provide liaison between the county agency and the Department of Human Services Affirmative Action Office and to have responsibility for implementation of the local agency's plan; and

D. provision for participation by the county agency in an affirmative action committee and notification of the Department of Human Services Affirmative Action Office of periodic hiring goals established by the county agency, for expanded certification purposes.

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These requirements may be incorporated as part of a county-wide affirmative action plan or provided as an addendum to the plan.

Subp. 3. [See Repealer.]

9575.0380 WORK OUT OF CLASS.

If an employee is expressly assigned in writing to perform all the duties of a position allocated to a higher classification that is temporarily unoccupied for reasons other than vacation or sick leave and that work exceeds 15 consecutive work days in duration, the employee so assigned shall be paid for all hours of the assignment at least at the minimum rate of pay of the salary range for the higher class or may be granted a one-step salary increase within the assigned employee's salary range. If the assignment is to a position in a classification at an equal or lower level, the employee shall be paid for all hours of the assignment at the employee's current rate of pay. A work out of class assignment ~~may be proposed only if the duration of the vacancy is anticipated to be less than six months.~~ is limited to no more than six months. An appointing authority may submit a written request to extend a work out of class assignment for up to an additional six months, specifying the reason why the extension is necessary. A request to extend a work out of class assignment must be initiated at least 15 days before the end of the initial six-month assignment. Approval of such assignments by the supervisor is required and must be received by the supervisor within five calendar days of the assignment. Upon completion of the work out of class assignment, the employee's salary shall be reduced to its previous level. This decrease is not subject to part 9575.0370 or part 9575.1180.

9575.0530 EXAMINATION RETESTING.

Applicants may apply to retake a competitive or promotional examination that is open for application on a continuous basis but may not retake an examination within 60 days of the previous test date and more than three times in a calendar year.

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9575.0620 CERTIFICATION METHODS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Too few names on a certification.** When the number of different names available for filling any vacancy by original appointment, promotion, or reinstatement is fewer than ~~15~~ seven on ~~a~~ all competitive ~~certification or seven on a~~ and promotional ~~certification, and there are fewer than three different names on all~~ registers combined, the appointing authority may decline certification for that vacancy and may request certification from a register, or registers, that the supervisor deems appropriate.

Subp. 6. [Unchanged.]

Subp. 7. **Expanded certification.** When the supervisor determines that a disparity exists between an agency's work force and its approved affirmative action plan, the supervisor shall ensure to the extent possible that available eligibles who are members of the protected group as defined in ~~Minnesota Statutes, section 43A.02, subdivision 33~~ part 9575.0010, subpart 34a, for which the disparity exists are certified for appointment. When fewer than three protected group eligibles for which a disparity exists would be certified under subparts 1 and 2, the supervisor shall certify additional protected group eligibles for which a disparity exists to bring the number of eligibles certified to a total of three names from each protected group. Eligibles to be certified shall be determined by examination score.

9575.0720 PROBATION REQUIRED.

A person employed by an appointing authority in any of the following ways shall serve a probationary period:

A. appointment from an eligible register other than the layoff list~~, and except appointment under 9575.1500~~;

B. reinstatement of a former probationary employee or of a former permanent employee in an agency other than the last employing agency;

C. transfer of an employee between counties except

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when specifically waived, in writing to the merit system supervisor, by the new employing county prior to the date on which the transfer of a permanent employee becomes effective; or

D. transfer or reinstatement to a position on the basis of eligibility from a comparable position in a similar merit system jurisdiction.

An appointing authority may effect a probationary period in an employment action in which such period is not required as specified above by writing this condition of appointment on the appointment report submitted to the merit system. In no case, however, may a probationary period be required of a permanent employee who is appointed from the layoff list.

REPEALER. Minnesota Rules, part 9575.0090, subparts 2 and 3 are repealed.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Merit System

AGENCY: Department of Human Services

MINNESOTA RULES: Chapter 9575

The attached rules are approved for publication
in the State Register

Kathleen M. Traxler
Assistant Revisor

Department of Health

Proposed Permanent Rules Relating to Merit System

Rules as Proposed

4670.0100 DEFINITIONS.

Subpart 1. [Unchanged.]

Subp. 1a. **Affirmative action.** "Affirmative action" means a management program designed to ensure equal employment opportunity and correct past discrimination by identifying and removing barriers throughout a personnel system. Affirmative action includes special efforts to eliminate underuse of disabled persons, minorities, and women through recruitment, hiring, and advancement of these groups.

Subp. 2. to 12. [Unchanged.]

Subp. 12a. **Disability.** "Disability" means any condition or characteristic that renders a person a disabled person. A disabled person is any person who:

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

B. has a record of such an impairment; or

C. is regarded as having such an impairment.

Subp. 13. [Unchanged.]

Subp. 13a. **Discrimination.** "Discrimination" means unequal treatment, intentional or unintentional, that is based on the following protected characteristics: race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. 14. [Unchanged.]

Subp. 14a. **Disparity.** "Disparity" means the employment of fewer disabled persons, minorities, or women in the agency's work force than could reasonably be expected, based on their availability in the relevant labor area.

Subp. 15. to 17. [Unchanged.]

Subp. 17a. **Equal employment opportunity.** "Equal

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employment opportunity" means the policy of basing all personnel activities solely on individual merit of applicants and employees in relation to job requirements, and without regard to race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. 17b. **Equitable compensation relationship.** "Equitable compensation relationship" means that a primary consideration in establishing, recommending, and approving total compensation is comparable work value in relationship to other employee positions within the merit system.

Subp. 18. to 20. [Unchanged.]

Subp. 21. **General adjustment.** "General adjustment" means ~~the~~ an annual merit system recommended salary adjustment based on a ~~salary survey or a~~ review of ~~consumer price index changes under part 4670.1200~~ adjustments to salaries by employers with similar and competing types of employment and trends in the Twin Cities consumer price index. The general adjustment applies to all employees on the professional and administrative, health services support, clerical, and building maintenance salary schedules whose positions are not covered by the terms and conditions of a collective bargaining agreement.

Subp. 22. to 34. [Unchanged.]

Subp. 34a. **Protected groups.** "Protected groups" means females, disabled persons, and members of the following minorities: Black, Hispanic, Asian, Pacific Islander, American Indian, or Alaskan native.

Subp. 35. to 50. [Unchanged.]

4670.0600 PROHIBITION AGAINST DISCRIMINATION.

No person shall be discriminated for or against in such matters as recruitment, examination, appointment, tenure, compensation, classification, or promotion, or in such matters as conditions, facilities, or privileges of employment because of race, color, political affiliation, creed, religion, national origin, ~~physical~~ disability where such disability does not

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interfere with the completion of assigned duties, age, marital status, status with regard to public assistance, or sex. Any person aggrieved by a violation of these prohibitions may file a complaint under the provisions of Minnesota Statutes, chapter 363, or may file a discrimination complaint under the local agency's internal complaint process.

4670.0610 ~~POLITICAL OPINIONS; DISCRIMINATION~~ AFFIRMATIVE ACTION PLAN.

~~No person shall be discriminated for or against as provided in part 4670.0600 because of his political opinions or affiliations within the limitations imposed by part 4670.0500, nor shall discrimination occur because of any other nonmerit factor. Any person aggrieved by a violation of a prohibited discrimination that does not come within the jurisdiction of Minnesota Statutes, chapter 363 may file a complaint with the supervisor setting forth the basis of his belief that an act or threat or promise of an act of discrimination occurred and identifying by name and position the person alleged to have committed such act or threat or promise of an act of discrimination.~~ Each local agency shall have an affirmative action plan for employees covered by parts 4670.0100 to 4670.4300. The plan must contain:

A. a policy defining and prohibiting discriminatory harassment, including sexual harassment;

B. an internal discrimination complaint policy and procedure that includes notification of the Department of Human Services Affirmative Action Office of complaints that are brought and their resolution;

C. provision for appointment of a person to provide liaison between the local agency and the Department of Human Services Affirmative Action Office and to have responsibility for implementation of the local agency's plan; and

D. provision for participation by the local agency in an affirmative action committee and notification of the Department of Human Services Affirmative Action Office of

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periodic hiring goals established by the local agency, for expanded certification purposes.

These requirements may be incorporated as part of a countywide affirmative action plan or provided as an addendum to the plan.

4670.1600 WORK-OUT-OF-CLASS ASSIGNMENTS.

If an employee is expressly assigned in writing to perform all the duties of a position allocated to a higher classification that is temporarily unoccupied for reasons other than vacation or sick leave and that work exceeds 15 consecutive work days in duration, the employee so assigned shall be paid for all hours of the assignment at least at the minimum rate of pay of the salary range for the higher class or may be granted a one step salary increase within the employee's salary range. If the assignment is to a position in a classification at an equal or lower level, the employee shall be paid for all hours of the assignment at the employee's current rate of pay. A work-out-of-class assignment ~~may be proposed only if the duration of the vacancy is anticipated to be less~~ is limited to no more than six months. An appointing authority may submit a written request to extend a work-out-of-class assignment for up to an additional six months, specifying the reason why the extension is necessary. A request to extend a work-out-of-class assignment must be initiated at least 15 days before the end of the initial six-month assignment. Approval of these assignments by the supervisor is required and requests for approval must be received by the supervisor within five calendar days of the assignment. Upon completion of the work-out-of-class assignment, the employee's salary shall be reduced to its previous level, notwithstanding the provisions of ~~part~~ parts 4670.1500, subpart 1, and ~~part~~ 4670.3530.

4670.1980 EXAMINATION RETESTING.

Applicants may apply to retake a competitive or promotional examination that is open for application on a continuous basis but may not retake an examination within 60 days of the previous

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test date and more than three times in a calendar year.

4670.2300 CERTIFICATION METHODS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Inadequate registers.** When the number of different names available for filling any vacancy by original appointment, promotion, or reinstatement is fewer than ~~15~~ seven on ~~a~~ all competitive ~~certification-or-seven-on-a~~ and promotional ~~certification,-and-there-are-fewer-than-three-different-names-on-all~~ registers combined, the appointing authority may decline certification for that vacancy and may request certification from a register, or registers, that the supervisor deems appropriate.

Subp. 6. [Unchanged.]

Subp. 7. **Expanded certification.** When the supervisor determines that a disparity exists between an agency's work force and its approved affirmative action plan, the supervisor shall ensure to the extent possible that available eligibles who are members of the protected group as defined in ~~Minnesota Statutes,-section-43A.02,-subdivision-33~~ part 4670.0100, subpart 34a, for which the disparity exists are certified for appointment. When fewer than three protected group eligibles for which a disparity exists would be certified under subparts 1 and 2, the supervisor shall certify additional protected group eligibles for which a disparity exists to bring the number of eligibles certified to a total of three names from each protected group. Eligibles to be certified shall be determined by examination score.

REPEALER. Minnesota Rules, part 4670.0620, is repealed.

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Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Merit System

AGENCY: Department of Health

MINNESOTA RULES: Chapter 4670

The attached rules are approved for publication
in the State Register

Kathleen M. Traxler
Assistant Revisor

Department of Public Safety

Proposed Permanent Rules Relating to Merit System

Rules as Proposed

7520.0100 DEFINITIONS.

Subpart 1. [Unchanged.]

Subp. 1a. **Affirmative action.** "Affirmative action" means a management program designed to ensure equal employment opportunity and correct past discrimination by identifying and removing barriers throughout a personnel system. Affirmative action includes special efforts to eliminate underuse of disabled persons, minorities, and women through recruitment, hiring, and advancement of these groups.

Subp. 2. to 12. [Unchanged.]

Subp. 12a. **Disability.** "Disability" means any condition or characteristic that renders a person a disabled person. A disabled person is any person who:

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

B. has a record of such an impairment; or

C. is regarded as having such an impairment.

Subp. 13. [Unchanged.]

Subp. 13a. **Discrimination.** "Discrimination" means unequal treatment, intentional or unintentional, that is based on the following protected characteristics: race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. 14. [Unchanged.]

Subp. 14a. **Disparity.** "Disparity" means the employment of fewer disabled persons, minorities, or women in the agency's work force than could reasonably be expected, based on their availability in the relevant labor area.

Subp. 15. to 17. [Unchanged.]

Subp. 17a. **Equal employment opportunity.** "Equal

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employment opportunity" means the policy of basing all personnel activities solely on individual merit of applicants and employees in relation to job requirements, and without regard to race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. 17b. **Equitable compensation relationship.** "Equitable compensation relationship" means that a primary consideration in establishing, recommending, and approving total compensation is comparable work value in relationship to other employee positions within the merit system.

Subp. 18. to 19a. [Unchanged.]

Subp. 20. **General adjustment.** "General adjustment" means ~~the~~ an annual merit system recommended salary adjustment based on ~~a salary survey~~ adjustments to salaries by employers with similar and competing types of employment and trends in the Twin Cities Consumer Price Index. The general adjustment applies to all employees on the professional and clerical salary schedules whose positions are not covered by the terms and conditions of a collective bargaining agreement.

Subp. 21. to 35. [Unchanged.]

Subp. 35a. **Protected groups.** "Protected groups" means females, disabled persons, and members of the following minorities: Black, Hispanic, Asian, Pacific Islander, American Indian, or Alaskan Native.

Subp. 36. to 50. [Unchanged.]

7520.0200 STATEMENT OF POLICY AND MEANS OF EFFECTING POLICY.

Subpart 1. **Objectives.** It is the declared aim of the governor and the state Department of Public Safety of the state of Minnesota to put into full force and effect the merit principles of personnel administration. To this end the merit system council, the merit system supervisor, and the Department of Public Safety shall work toward the objectives of:

A. to C. [Unchanged.]

D. equitable pay scales for the various classes

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established on the basis of equal pay for ~~equal~~ work of equal value; and

E. [Unchanged.]

Subp. 2. to 5. [Unchanged.]

7520.0350 PROHIBITION AGAINST DISCRIMINATION.

Subpart 1. **In general.** No person shall be discriminated for or against in such matters as recruitment, examination, appointment, tenure, compensation, classification, or promotion, or in such matters as conditions, facilities, or privileges of employment because of race, color, political affiliation, creed, religion, national origin, ~~physical~~ disability where the disability does not interfere with the completion of assigned duties, age, marital status, status with regard to public assistance, or sex. Any person aggrieved by a violation of these prohibitions may file a complaint under the provisions of Minnesota Statutes, chapter 363, or may file a discrimination complaint under the local agency's internal complaint process.

Subp. 2. [See Repealer.]

Subp. 2a. **Affirmative action plan.** Each local agency shall have an affirmative action plan for employees covered by parts 7520.0100 to 7520.1200. The plan must contain, at a minimum, the following:

A. a policy defining and prohibiting discriminatory harassment, including sexual harassment;

B. an internal discrimination complaint policy and procedure that includes notification of the Department of Human Services Affirmative Action Office of complaints that are brought and their resolution;

C. provision for appointment of a person to provide liaison between the local agency and the Department of Human Services Affirmative Action Office and to have responsibility for implementation of the local agency's plan; and

D. provision for participation by the local agency in an affirmative action committee and notification of the Department of Human Services Affirmative Action Office of

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periodic hiring goals established by the local agency, for expanded certification purposes.

These requirements may be incorporated as part of a county-wide affirmative action plan or provided as an addendum to the plan.

Subp. 3. [See Repealer.]

7520.0680 WORK OUT OF CLASS.

If an employee is expressly assigned in writing to perform all the duties of a position allocated to a higher classification that is temporarily unoccupied for reasons other than vacation or sick leave and the work exceeds 15 consecutive work days the employee so assigned shall be paid for all hours of the assignment at least at the minimum rate of pay of the salary range for the higher class or may be granted a one step salary increase within his salary range. If the assignment is to a position in a classification at an equal or lower level the employee shall be paid for all hours of the assignment at the employee's current rate of pay. A work out of class assignment ~~may be proposed only if the duration of the vacancy is anticipated to be less~~ is limited to no more than six months. An appointing authority may submit a written request to extend a work out of class assignment for up to an additional six months, specifying the reason why the extension is necessary. A request to extend a work out of class assignment must be initiated at least 15 days prior to the end of the initial six month assignment. Approval of the assignments by the supervisor is required and must be received by the supervisor within five calendar days of the assignment. Upon completion of the work out of class assignment the employee's salary shall be reduced to its previous level, notwithstanding the provisions of part 7520.0670 or 12 MCAR S 2.508 D.

REPEALER. Minnesota Rules, part 7520.0350, subparts 2 and 3, are repealed.

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by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Merit System

AGENCY: Department of Public Safety

MINNESOTA RULES: Chapter 7520

The attached rules are approved for publication
in the State Register

Kathleen M. Traxler
Assistant Revisor

Department of Health

In the Matter of the Proposed Adoption of the Rule of the State Department of Health Governing Definitions, Prohibition Against Discrimination/Affirmative Action Plan, Work Out of Class, Examination Retesting, and Certification Methods (Minnesota Rules, parts 4670.0100, 4670.0600, 4670.0610, 4670.0620, 4670.1600, 4670.1980 and 4670.2300).

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Health intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, (1) section 144.071.

All persons have 30 days or until 4:30 p.m. on August 16, 1989 in (2) which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

(4) Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) 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. (7) If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

(5) Comments or written requests for a public hearing must be submitted to: Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

(8) The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

(11) A free copy of the rule is available upon request from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

(11) The Minnesota Merit System rules apply to all positions funded in whole or in part by federal grants-in-aide requiring a merit system of personnel administration. The rules cover such areas as classification of positions, compensation, recruitment and examination, certification and appointment, leaves of absence, separation, tenure and reinstatement, and, in general, provide standards for agencies to follow so as to ensure compliance with the Federal Standards for a Merit System of Personnel Administration (5 CFR Part 900).

(11) If adopted, the proposed changes to part 4670.0100 would provide new definitions for several terms applicable to affirmative action and equal opportunity. Other proposals in this part include amendment of the definition of "general adjustment." Part 4670.0600 is amended to include "political affiliation" as a prohibited basis for discrimination, to broaden the meaning of the term "disability" to include both mental and physical impairments, and to add a reference to the internal discrimination complaint process. New language is being proposed to part 4670.0610 which requires that counties establish an affirmative action plan containing five requirements which would apply to all employees covered by Merit System rules, and outdated language on political affiliation in this same part is being deleted. Another proposal is to delete part 4670.0620, which has outdated language on complaint procedures. Amendments to part 4670.1600 provide for extensions of work out of class assignments of up to one year. An amendment to 4670.1980 provides for a policy on examination retesting. Amendments to part 4670.2300 clarify when an agency may request a related eligible list and substitute the rule definition for "protected groups" for the statutory definition.

(12) 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 rule has been prepared and is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822 upon request.

(13) Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

(9) If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 adopted rule, must submit the written request to Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

Date: 6-26-89

SISTER MARY MADONNA ASHTON
COMMISSIONER OF HEALTH

Department of Human Services

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Definitions, Objectives, Prohibition Against Discrimination/ Affirmative Action Plan, Work Out of Class, Examination Retesting, Certification Methods and Probationary Periods (Minnesota Rules, parts 9575.0010, 9575.0020, 9575.0090, 9575.0380, 9575.0530, 9575.0620 and 9575.0720).

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 256.012.

All persons have 30 days or until 4:30 p.m. on August 16, 1989 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request 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 agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

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

(11) A free copy of the rule is available upon request from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

(11) The Minnesota Merit System rules provide for a system of personnel administration for 74 county welfare and human service agencies. The rules apply to all positions and employees engaged in the administration of community social services or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel administration. The rules cover such areas as classification of positions, compensation, recruitment and examination, certification and appointment, leaves of absence, separation, tenure and reinstatement, and, in general, provide standards for agencies to follow so as to ensure compliance with the Federal Standards for a Merit System of Personnel Administration (5 CFR Part 900).

(11) If adopted, the proposed changes to part 9575.0010 would provide new definitions for several terms applicable to affirmative action and equal opportunity. Other proposals in this part include amendment of the definition of "general adjustment." Part 9575.0020 is amended to provide language that clarifies that pay scales be established on the basis of equal pay for work of equal value. Part 9575.0090 is amended to include "political affiliation" as a prohibited basis for discrimination, to broaden the meaning of the term "disability" to include both mental and physical impairments, and to add a reference to the internal discrimination complaint process. In this same part, outdated language on political affiliation and complaint procedures is being deleted and new language is being added which requires that counties establish an affirmative action plan containing five requirements which would apply to all employees covered by Merit System rules. Amendments to part 9575.0380 provide for extensions of work out of class assignments of up to one year. An amendment to part 9575.0530 provides for a policy on examination retesting. Amendments to part 9575.0620 clarify when an agency may request a related eligible list and substitute the rule definition for "protected groups" for the statutory definition. An amendment to part 9575.0720 is proposed to make the language consistent with other rules relating to probationary periods.

(12) 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 rule has been prepared and is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822 upon request.

(13) Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

⑦ If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 adopted rule, must submit the written request to Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

Date: 6-26-89

Sandra Gardebring

SANDRA S. GARDEBRING
COMMISSIONER OF HUMAN SERVICES

Department of Public Safety

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Safety Governing Definitions, Objectives, Prohibition Against Discrimination/ Affirmative Action Plan, Work Out of Class, Examination Retesting, Certification Methods and Probationary Periods (Minnesota Rules, parts 7520.0100, 7520.0200, 7520.0350, 7520.0680, 9575.0530, 9575.0620 and 9575.0720).

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Public Safety intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota (1) Statutes, section 12.22, subd. 3.

(2) All persons have 30 days or until 4:30 p.m. on August 16, 1989 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

(4) Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. (6) 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. (7) If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

(5) Comments or written requests for a public hearing must be submitted to: Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

(8) The proposed rule may be modified if the modifications are supported by data and views submitted to the agency and do not result in a substantial change in the proposed rule as noticed.

(11) A free copy of the rule is available upon request from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

(11) The Minnesota Merit System rules apply to positions in 22 local and county emergency management agencies funded in whole or in part by federal grants-in-aid requiring a merit system of personnel administration. The rules cover such areas as classification of positions, compensation, recruitment and examination, certification and appointment, leaves of absence, separation, tenure and reinstatement, and, in general, provide standards for agencies to follow so as to ensure compliance with the Federal Standards for a Merit System of Personnel Administration (5 CFR Part 900).

(11) If adopted, the proposed changes to part 7520.0100 would provide new definitions for several terms applicable to affirmative action and equal opportunity. Amendments are also proposed to the definition of "general adjustment." Part 7520.0200 is amended to provide for the establishment of pay scales on the basis of equal pay for work of equal value. Part 7520.0350 is amended to include "political affiliation" as a prohibited basis for discrimination, to broaden the meaning of the term "disability" to include both mental and physical impairments, and to add a reference to the internal discrimination complaint process. In this same part, outdated language on political affiliation and complaint procedures is being deleted and new language is being added which requires that counties establish an affirmative action plan containing five requirements which would apply to all employees covered by Merit System rules. Amendments to part 7520.0680 provide for extensions of work out of class assignments of up to one year.

(11) Minnesota Rules, part 7520.0200, subp. 2 makes Minnesota Rules, parts 9575.0400-9575.1300 which are the rules of the Department of Human Services Merit System applicable to county and local emergency management agencies. The proposed changes to Minnesota Rules, parts 9575.0530, 9575.0620, and 9575.0720 would then apply to local and county emergency management agencies. An amendment to 9575.0530 provides for a policy on examination retesting. Amendments to part 9575.0620 clarify when an agency may request a related eligible list and substitute the rule definition for "protected groups" for the statutory definition. An amendment to part 9575.0720 is proposed to make the language consistent with other rules relating to probationary periods. A copy of the Human Services Notice is attached.

(12) 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 rule has been prepared and is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822 upon request.

(13) Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

(9) If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 adopted rule, must submit the written request to Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

Date: 6-26-89

Rudy Perpich

RUDY PERPICH
GOVERNOR

Department of Human Services

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Definitions, Objectives, Prohibition Against Discrimination/ Affirmative Action Plan, Work Out of Class, Examination Retesting, Certification Methods and Probationary Periods (Minnesota Rules, parts 9575.0010, 9575.0020, 9575.0090, 9575.0380, 9575.0530, 9575.0620 and 9575.0720).

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 256.012.

All persons have 30 days or until 4:30 p.m. on August 16, 1989 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request 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 agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

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

A free copy of the rule is available upon request from Palph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

The Minnesota Merit System rules provide for a system of personnel administration for 74 county welfare and human service agencies. The rules apply to all positions and employees engaged in the administration of community social services or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel administration. The rules cover such areas as classification of positions, compensation, recruitment and examination, certification and appointment, leaves of absence, separation, tenure and reinstatement, and, in general, provide standards for agencies to follow so as to ensure compliance with the Federal Standards for a Merit System of Personnel Administration (5 CFR Part 900).

If adopted, the proposed changes to part 9575.0010 would provide new definitions for several terms applicable to affirmative action and equal opportunity. Other proposals in this part include amendment of the definition of "general adjustment." Part 9575.0020 is amended to provide language that clarifies that pay scales be established on the basis of equal pay for work of equal value. Part 9575.0090 is amended to include "political affiliation" as a prohibited basis for discrimination, to broaden the meaning of the term "disability" to include both mental and physical impairments, and to add a reference to the internal discrimination complaint process. In this same part, outdated language on political affiliation and complaint procedures is being deleted and new language is being added which requires that counties establish an affirmative action plan containing five requirements which would apply to all employees covered by Merit System rules. Amendments to part 9575.0380 provide for extensions of work out of class assignments of up to one year. An amendment to part 9575.0530 provides for a policy on examination retesting. Amendments to part 9575.0620 clarify when an agency may request a related eligible list and substitute the rule definition for "protected groups" for the statutory definition. An amendment to part 9575.0720 is proposed to make the language consistent with other rules relating to probationary periods.

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 rule has been prepared and is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822 upon request.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

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Date: 6-26-89

Sandra Gardebring

SANDRA S. GARDEBRING
COMMISSIONER OF HUMAN SERVICES

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE SANDRA S. GARDEBRING
COMMISSIONER OF HUMAN SERVICES

BEFORE SISTER MARY MADONNA ASHTON
COMMISSIONER OF HEALTH

BEFORE RUDY PERPICH
GOVERNOR

IN THE MATTER OF THE PROPOSED ADOPTION OF

RULES OF THE MINNESOTA MERIT SYSTEM GOVERNING DEFINITIONS, OBJECTIVES OF THE MERIT SYSTEM, PROHIBITION AGAINST DISCRIMINATION, WORK OUT OF CLASS, EXAMINATION RETESTING, CERTIFICATION METHODS AND PROBATION REQUIRED

STATEMENT OF NEED AND REASONABLENESS

I. The following considerations constitute the regulatory authority upon which the above-cited rule amendments are based:

1. Federal law requires that in order for Minnesota to be eligible to receive grant-in-aid funds for its various human services, public health and public safety programs, it must establish and maintain a merit system for personnel administration.[1] See, e.g. 42 USC Ch. 62.

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1 Also see sections of the United States Code and Code of Federal regulations cited herein where the following programs have statutory or regulatory requirement for the establishment and maintenance of personnel standards on a merit basis:
Aid to Families With Dependent Children - "AFDC" [42 USC sec. 602 (a) (5)]
Food Stamps [7 USC sec. 2020 (e) (B)]
Medical Assistance - "MA" [42 USC sec. 1396 (a) (4) (A)]
Aid to the Blind [42 USC sec. 1202 (a) (5) (A)]
Aid to the Permanently and Totally Disabled [42 USC sec. 1352 (a) (5) (A)]
Aid to the Aged, Blind or Disabled [42 USC sec. 1382 (a) (5) (A)]
State and Community Programs on Aging [42 USC sec. 3027 (a) (4)]
Adoption Assistance and Foster Care [42 USC 671 (a) (5)]
Old-Age Assistance [42 USC 302 (a) (5) (A)]
National Health Planning and Resources Development, Public Health, Service Act [42 USC 300m-1 (b) (4) (B)]
Child Welfare Services [45 CFR 1392.49 (c)]
Emergency Management Assistance [44 CFR 302.5]

2. Pursuant such congressional action the ice of Personnel Management, acting under authority transferred to the United States Civil Service Commission from the Departments of Health, Education and Welfare, Labor, and Agriculture by the Intergovernmental Personnel Act (IPA) of 1970 and subsequently transferred on January 1, 1979, to the Office of Personnel Management by the Reorganization Plan Number Two of 1978, promulgated the Standards for a Merit System of Personnel Administration codified at 5 CFR Part 900, Subpart F, which imposes on the State of Minnesota general requirements for a merit system of personnel administration in the administration of the federal grant-in-aid programs. (See, Footnote 1 Supra.)

3. Under the aforementioned grant-in-aid programs the State of Minnesota, through its appropriate agencies, is the grantee of federal programs and administrative funds and, accordingly, the State is under an affirmative obligation to insure that such monies are properly and efficiently expended in compliance with the applicable federal standards. Those standards require that in order for the agencies under the Minnesota Merit System to be eligible to receive federal grant-in-aid funds the Minnesota Merit System rules must specifically include, among other things, an active recruitment, selection and appointment program, current classification and compensation plans, training, retention on the basis of performance, and fair nondiscriminatory treatment of applicants and employees with due regard to their privacy and constitutional rights (codified at 5 CFR sec. 900.603).

4. In conformance with 5 CFR Part 900, Subpart F, the Minnesota Legislature enacted Minn Stat., sec. 12.22 subd. 3, sec. 144.071 and sec. 256.012,[2] which respectively authorize the Governor, the Commissioner of Health, and the Commissioner of Human Services to adopt necessary methods of personnel administration for implementing merit systems within their individual agencies. Collectively, the resulting programs are referred to as the "Minnesota Merit System".

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2 See also Minn. Stat., secs. 393.07 (5), 256.01 (4), 393.07 (3) and 256.011.

5. Pursuant t uch statutory authority those ite agencies have adopted comprehensive administrative rules which regulate administration of the Minnesota Merit System.[3]

6. The Minnesota Supreme Court has upheld the Authority of the Commissioner of Human Services and by implication that of the Commissioner of Health and the Governor to promulgate personnel rules and regulations. The Court quashed a writ of mandamus brought by the Hennepin County Welfare Board against the county auditor in attempting to force payment of salaries in excess of the maximum rates established by the Director of Social Welfare.[4] State ex rel. Hennepin County Welfare Board and another v. Robert F. Fitzsimmons, et. al., 239 Minn. 407, 420, 58 N.W. 2d 882, (1953). The court stated:

> .....It is clear that the Director of Social Welfare was clearly right in adopting and promulgating a merit plan which includes initial, intervening, and maximum rates of pay for each class of position of the county welfare board system included within the plan and that plan so adopted was binding upon all county welfare boards within the state .....In our opinion the federal and state acts, properly construed, provide that the Federal Security Administrator as well as the Director of Social Welfare shall have authority to adopt rules and regulations with respect to the selection, tenure of office and compensation of personnel within initial, intervening and maximum rates of pay but shall have no authority or voice in the selection of any particular person for a position in the state welfare program nor the determination of his tenure of office and individual compensation.

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3 Minnesota Rules, parts 9575.0010 to 9575.1580, parts 7520.0100 to 7520.1200, and parts 4670.0100 to 4670.4300.

4 "Director of Social Welfare" was the former title of the Commissioner of Human Services.

7. The above cited proposed rule amendments are promulgated in accordance with the provisions of applicable Minnesota statutes and expressly guarantee the rights of public employers and Minnesota Merit System employees in conformance with the terms of the state's Public Employment Labor Relations Act (Minn. Stat. secs. 179.61 - 179.77).

II. The justifications establishing the need for and the reasonableness of the specific substantive provisions of the proposed rules, all of which concern the Minnesota Merit System operation, are as follows:

A. Definitions

Minnesota Rules, parts 9575.0010; 4670.0100 and 7520.0100

Amendments are being proposed to these rules providing new or amended definitions for terms that have a meaning specific to the Merit System rules. Six amendments are proposed to 9575.0010, 4670.0100 and 7520.0100 providing definitions for the following terms: "Affirmative action," "Disability," "Discrimination," "Disparity," "Equal employment opportunity" and "Protected groups." All of these terms either already appear elsewhere in current Merit System rule language or are included in other proposed Merit System rule amendments referred to in this statement of need and reasonableness.

The terms "Disparity" and "Protected group" are contained in amendments to 9575.0620 Subp. 7 and 4670.2300 Subp. 7 that were proposed and adopted in 1988. Those subparts provide for the expanded certification of members of protected groups (women, disabled and minorities) in the event an agency has a disparity between its work force and its affirmative action goals for protected group members. Given the significance of this change in Merit System certification methods, it is necessary to define in rule language what constitutes a disparity as well as the makeup of protected groups. The certification of names from eligible

registers is an extremely significant function of the Merit System. The terms "disparity" and "protected group," in some instances, actually change the manner in which certifications are made. The proposed definition for "disparity" is similar to the definition for that term in the Equal Employment Opportunity/Affirmative Action glossary section of the Affirmative Action Manual maintained by the Equal Opportunity Division in the state Department of Employee Relations and has a base in Title VII of the Civil Rights Act. The proposed definition for "protected group" is identical to the definition in Minnesota Statutes, section 43A.02, subdivision 33 except that the reference to Vietnam era veterans who are no longer a protected group has been deleted. Therefore, the proposed language for these terms is reasonable and it is also a reasonable approach to have these terms added to the list of definitions contained in the Merit System rules.

Current language contained in 9575.0090, 7520.0350 and 4670.0600 and proposed new rule provisions identified as 9575.0090 Subp. 2, 7520.0350 Subp. 2 and 4670.0610 use the terms "Affirmative action," "Disability" and "Discrimination." As with the previous two proposed definitions, these are significant terms that justify their being defined. The Minnesota Merit System and the Department of Human Services have both had long standing commitments to affirmative action. For many years, local Merit System agencies have been required to adopt an affirmative action plan and conduct business in compliance with its provisions. While it is obvious that Merit System rules do promote positive affirmative action efforts, it is necessary that the rules define what is meant by affirmative action. The proposed definition is similar in wording to the definition of this term in the EEO/AA glossary section of the Affirmative Action manual glossary in the state Department of Employee Relations and the objective of affirmative action as stated in Minnesota Statutes, Section 43A.01 Subd. 2. It also has a base in Title VII of the Civil Rights Act. The proposed language therefore is reasonable and it is likewise reasonable that a basic policy of the Merit System such as affirmative action be defined in the rules. Since disabled persons are considered a protected group as contained in the

definition of that ı, the conditions that must ex for a person to be considered disabled must be defined in the rules. The proposed Merit System definition of "disability" is reasonable since it is identical to the same definition in the Minnesota Human Rights Act (Minnesota Statutes, Section 363.01 Subd. 25). Likewise the rules contain prohibitions against discrimination but the rules have never defined what constitutes discrimination. It is therefore necessary to define the term "discrimination" in rule language. The proposed definition is reasonable because it is almost identical to the one in the state Department of Employee Relation's Affirmative Action manual except that it is somewhat more inclusive since it also lists protected characteristics.

It is proposed to amend 9575.0010, 4670.0100 and 7520.0100 to include a definition for "Equal employment opportunity." One of the objectives of the Merit System currently contained in rule language is to provide "fair and equal opportunity" for persons to compete for positions and promotions solely on the basis of merit and fitness. For years, Merit System stationary and envelopes have proclaimed us to be "an equal opportunity employer." Equal employment opportunity is a basic principle of all public personnel systems. It is closely associated with the proposed definition for affirmative action, which includes the term "equal employment opportunity," in that a positive program of affirmative action leads to the practice of equal employment opportunity in all areas of employment. For these reasons, there is a need to define in rule language what is meant by equal employment opportunity. The proposed definition is reasonable because it is almost identical to the same definition contained in the Affirmative Action manual glossary in the state Department of Employee Relations.

It should be mentioned that the proposed definitions for "Disparity," "Protected group," "Affirmative action," "Disability," "Discrimination" and "Equal employment opportunity" were developed with considerable input, review and approval from the

Affirmative Action Director for the Department of Human Services. The Director proposed specific definitional language, reviewed these proposed definitions with Merit System staff and agreed to their appropriateness.

The next proposed amendment to 9575.0010, 4670.0100 and 7520.0100 amends the current rule definition for "General adjustment." Every year the Merit System recommends a general salary adjustment for all Merit System employees not covered by the terms and conditions of a collective bargaining agreement. In the past, during even-numbered years, the amount of the recommended adjustment was determined exclusively by the change in the Twin City Consumer Price Index over a one year period. This is no longer the case and what is happening with the Twin City Consumer Price Index is only one consideration used in calculating the recommended general salary adjustment for employees. Also in the past, during odd-numbered years, the Merit System conducted a broad-based salary survey, the results of which were used to adjust the salary ranges of Merit System classifications. The survey and its results, however, had nothing whatsoever to do with a recommended salary adjustment for employees. The definition for which amendments are being proposed only relates to salary adjustments for employees and not adjustments to salary ranges. The principal factor upon which the Merit System recommended general adjustment is based is adjustments granted by other public employers, including the State of Minnesota, to employees performing work similar to work performed by Merit System employees. Trends in the Twin City Consumer Price Index which generally reflect the pattern of wage adjustments are also considered but not to the same extent as the adjustments themselves. The amendment being proposed to this definition is necessary to eliminate any reference to irrelevant considerations and to clarify the factors on which the annual recommended salary adjustment is based. Other rule parts such as 9575.0320 Subp. 3a.; 4670.1200 Subp. 3a and 7520.0620 Subp. 3a. clearly establish that general salary adjustments for employees

are based on adjust ts to salary levels by employe with similar and competing types of employment and on trends in the Twin City consumer price index. The proposed amendment is a reasonable approach to establishing consistency between rule parts.

B. Objectives

Minnesota Rules, parts 9575.0020 and 7520.0200

An amendment is proposed to these rules that changes the primary basis on which the Merit System establishes salary ranges for its classifications from one of "equal pay for equal work" to one of "equal pay for work of equal value." For years, the Merit System, as well as most other public employers, developed and adjusted salary ranges for classes by comparing them to what other jurisdictions were paying people performing identical or almost identical work. In 1984, the Legislature passed Minnesota Statutes, Section 471.991-471.999 also known as the Local Government Pay Equity Act. That act requires political subdivisions and the Minnesota Merit System to establish equitable compensation relationships between classes of positions based on their comparable work value as determined by the results of a job evaluation study. The underlying principle of comparable worth is that employees occupying positions whose comparable work values are identical or similar should be paid within salary ranges that are identical or similar. For example, if an electrician position and a plumber position have identical comparable work values, the employees in those positions should be paid within the same salary range even though, obviously, the work they do is not remotely similar. After passage of the Local Government Pay Equity Act, the Merit System conducted a job evaluation study of all Merit System classes of positions to determine the comparable work value of each class. Since then, adjustments to Merit System compensation plans have been dictated principally by the comparable work value of classes of positions. Even with comparable worth, there will be occasions when recruiting difficulties for a particular class will dictate that the labor market

for that kind of work be surveyed and an adjustment be made to the salary ranges for the class in order that the Merit System remain competitive in salary when recruiting to fill positions in that class. However, adjustments to salary ranges based on labor market conditions are of secondary importance to adjustments based on comparable work values. Given that the doctrine of comparable worth is mandated by statute, it is not only reasonable but necessary to emphasize in rule language that the Merit System objective in developing pay scales for classes is to provide equal pay based on work of equal value.

C. Prohibition Against Discrimination

Minnesota Rules, parts 9575.0090, 4670.0600-4670.0620 and 7520.0350

Three amendments are proposed to 9575.0090 Subp. 1, 4670.0600 and 7520.0350 Subp. 1. The first adds "political affiliation" to the list of items protected from discrimination. The proposed definition of the term "Discrimination" provides that political affiliation is a protected characteristic. Also, the proposed definition for "Equal employment opportunity" provides that political affiliation be disregarded when conducting personnel activities. It is necessary and reasonable to include political affiliation as a condition to be protected from discrimination in order to be consistent between rule parts.

The second amendment allows a person who believes he or she has been aggrieved by an alleged violation of any prohibited characteristic to file a discrimination complaint under the provisions of a county agency's internal complaint process. This avenue of appeal would be an alternative to a complaint filed with the Minnesota Department of Human Rights under the provisions of Chapter 363. Proposed new language for these rules provides that there shall be an affirmative action plan for each Merit System agency. One of the requirements for each such plan is

that the agency esl ish an internal discriminatio mplaint policy and procedure. Assuming that proposed language will be adopted, it naturally follows that it is both reasonable and necessary to inform employees they have the right to use that internal complaint procedure as an avenue of appeal for their complaint instead of the Human Rights Department.

The last amendment proposed to 9575.0090 Subp. 1, 4670.0620 and 7520.0350 Subp. 1 deletes the word "physical" in referring to a disability. The proposed definition for "Disability" includes both physical and mental impairments in its definition and it is improper to refer only to physical disabilities in the rule language. The definition for "Disability" contained in Minn. Stat., Section 363.01, Subd. 25 refers to both physical and mental impairments.

An amendment is proposed to delete Subparts 2 and 3 of 9575.0090, current language in 4670.0610 and Subparts 2 and 3 of 7520.0350. One's political affiliation will be a protected characteristic with two avenues of appeal if the proposed amendments to 9575.0090 Subp. 1, 4670.0600 and 7520.0350 Subp. 1 are adopted. There is then no need to refer to discrimination based on political affiliation elsewhere in the rules. Current language in 9575.0090 Subparts 2 and 3, 4670.0620 and 7520.0350 Subparts 2 and 3 deals with complaints of alleged discrimination in matters outside of protected characteristics. It prescribes involvement by both staff of the Merit System office and the Merit System Council in the complaint process. There are several reasons for the proposed amendment to delete these rule parts and subparts. Since at least 1974 there has not been a single instance of a complaint of alleged discrimination being filed under these rule provisions. It is difficult to envision a complaint alleging violation of a prohibited discrimination that could not be filed under the provisions of Chapter 363 or, alternately, under an agency's internal complaint process. Merit System agencies that are unionized have collective bargaining agreements that must contain grievance procedures. Anyone with a grievance or complaint involving provisions of the contract must use the

grievance procedure All local units of government e some form of grievance procedure available to all employees. Merit System employees in unionized agencies whose complaint does not involve a labor contract provision and Merit System employees in non-union agencies have access to local government grievance procedures with their complaints. This approach is reasonable since deleting these parts will not reduce the availability of any Merit System employee to have his/her complaint heard and decided. These parts are clearly unnecessary and experience over the past fifteen years would show them to be not viable as well.

An amendment is proposed to these rules that includes entirely new language identified as 9575.0090 Subp. 2a., 4670.0610 and 7520.0350 Subp. 2a. This subpart requires that all local Merit System agencies adopt a minimum of five basic affirmative action requirements to serve as an affirmative action plan for employees in those agencies. It also provides that these requirements may either be included as part of a county-wide affirmative action plan or be provided as an addendum to such a plan.

For the past ten years, Merit System agencies have been required to comply with the existing Merit System affirmative action plan in carrying out their personnel responsibilities. The five basic affirmative action requirements contained in the proposed amendment were a part of that plan. In many cases it was the only affirmative action plan that existed in local governmental jurisdictions. The Federal Standards for a Merit System of Personnel Administration include a requirement for "assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed, age or handicap and with proper regard for their privacy and constitutional rights as citizens." It goes on to say that this includes compliance with the federal equal employment opportunity and nondiscrimination laws. This requirement was a principal reason why a Merit System affirmative action plan existed. Under Minnesota Statutes, section 363.073, as

amended by Laws of Minnesota 1988, chapter 660, section 8, all contractors with more than 20 full-time employees (including counties) must have an affirmative action plan approved by the Commissioner of Human Rights. All counties were required to submit a county-wide affirmative action plan to the Department of Human Rights. If the plan met Department of Human Rights requirements, the county would be issued a certificate of compliance by that department. However, the requirements of the Department of Human Rights did not include those principles proposed in this amendment as a condition for issuing a certificate of compliance to a county. The Department of Human Services does not want to require counties to maintain a separate affirmative action plan for their Merit System agency in addition to a county-wide affirmative action plan for all other departments. On the other hand, the department feels strongly that there is a need for these requirements to continue to be maintained and complied with by county Merit System agencies. Appropriate county personnel were informed in meetings with Department of Human Services Affirmative Action and Merit System office personnel that they were expected to maintain these requirements for their Merit System agency either as a part of their county-wide affirmative action plan or as an addendum to that plan. As of this time, the department is not aware of any counties that have refused to comply with the department's request to incorporate these requirements as part of their county affirmative action plan. However, on a couple of occasions, the question was raised as to why the county Merit System agency was being asked to comply with requirements that were not necessary to approval of county-wide affirmative action plan by the Department of Human Rights. Staff members from the Department of Human Services Affirmative Action and Merit System offices discussed this matter with legal counsel who stressed the need to incorporate the requirements into rule language, granting them the force and effect of law and avoiding a possible substantive legal problem. Then, if noncompliance should occur, the county Merit System agency becomes liable for sanctions available to the Department of Human Services through the Merit System rules. The

requirements are n onerous and do not require the unty Merit System agencies to do something they have not been required to do in the past. Therefore, it is reasonable that they be incorporated in the rules to guarantee that Merit System agencies will continue to administer the personnel function within the spirit and intent of an affirmative action management program.

D. Work Out of Class

Minnesota Rules, parts 9575.0380, 4670.1600 and 7520.0680

An amendment is proposed to these rules providing for the extension of a work out of class assignment for up to an additional six months upon request of a county agency and for specific reasons. For the past ten years, the Merit System rules have provided for work out of class assignments limited in duration to six months. Most public personnel systems, including the State of Minnesota system, provide for work out of class assignments. In the Merit System, the vast majority of such assignments have been utilized to fill in behind an employee who is absent from the agency on an approved leave of absence. In these instances, six months adequately covers such an absence.

The Department of Human Services has embarked on an ambitious project which will affect the positions of Merit System employees engaged in the administration of public assistance programs in the counties. It involves implementing, in all counties, a system known as the MAXIS project. Briefly, MAXIS is a new statewide automated eligibility system now being developed for all Minnesota's major public assistance programs. The system will assist counties in determining client eligibility, dispensing benefits and providing case management reporting support for Food Stamps, Aid to Families with Dependent Children (AFDC) and aspects of General Assistance (GA) and Medical Assistance (MA). During the implementation and conversion phases of the project, it is likely that counties may have to assign higher level functions to workers on a temporary basis. The current rule limits

such work out of c s assignments to a maximum of months. It is anticipated that some counties may need to extend such appointments beyond six months. There will no doubt be an increase in time spent by public assistance workers in intake responsibilities because of the combined application form to be used with MAXIS (one 33 page application for multiple programs). Some of the personnel changes made necessary by the implementation of MAXIS may result in the permanent upgrading of certain positions but counties want adequate time to evaluate their own specific situations. Counties are free to determine for themselves how best to organize to administer the system. A member of the Merit System staff served on a personnel subcommittee of a County Operations and Policy Committee dealing, in part, with personnel issues that need to be addressed during the implementation and conversion phases of MAXIS. Several county staff indicated it would be extremely helpful during this period of time if the Merit System would allow for work out of class assignments of longer than six months.

The Department of Human Services initiative to implement the MAXIS system will significantly affect the way in which public assistance programs are administered in the counties. The Merit System has an obligation to assist both the department and Merit System county agencies in whatever way it can to make the transition to MAXIS as efficient and effective as possible. One such way is to allow for longer work out of class assignments as proposed by this amendment. Given the needs as perceived by county personnel, the amendment is necessary to provide agencies with the time they need to evaluate their organizational structure and determine if it is indeed the best in terms of delivering services via the MAXIS system. The rules already provide for work out of class assignments of six months or less. It is a reasonable approach to amend the existing rule to allow for the extension of such assignments for up to one year, thereby accommodating the needs of some counties during their period of implementation and conversion to the MAXIS system. It is highly unlikely there would be any other situations, not associated with MAXIS, that would justify a work out of class assignment beyond six months.

E. Examination esting

Minnesota Rules, parts 9575.0530 and 4670.1980 (Under the provisions of 7520.0200 Subp. 2, the Department of Human Service rules, parts 9575.0400 to 9575.1300 also apply to the Department of Public Safety's county and local agencies.)
Two new rules are being proposed to place in rule language the Merit System's examination retesting policy as it applies to open continuous examinations. Open continuous examinations are those that are open for application on a year around basis. The Merit System keeps 31 such examinations open on a competitive basis (open to the general public) and another 18 such examinations open on a promotional basis (open to current Merit System employees). The proposed new rules are necessary in order to prohibit an applicant from retaking an open continuous examination he/she had failed within sixty days of the previous testing date and to prohibit an applicant from taking the same open continuous examination more than three times during a calendar year. This is a current long standing policy of the Merit System and is printed on both listings of open continuous competitive and promotional examinations.

All public personnel jurisdictions have some kind of retest policy that applies to all job applicants. For instance, the state of Minnesota requires that applicants wait six months before repeating an examination, which means the applicant can only take the same examination twice a year. The Merit System listings of open continuous examinations provide the job applicant with information indicating the minimum qualifications of education and experience to compete in the examination and, in the case of written tests, the content areas to be covered in the examination. Upon request, the Merit System also provides applicants with a breakdown of their test scores indicating which content areas of the examination gave them problems. These matters represent reasonable accommodation to job applicants. However, unlimited retesting goes beyond reasonableness. Persons working in public personnel jurisdictions who are involved in the testing process

are all agreed tha llowing unlimited retesting cr es a practice effect involving the recall of test items. Obviously, with unrestricted retesting, there will be applicants who qualify for appointment primarily on the basis of their power of recall rather than on the depth and breadth of their knowledge of the examination content areas. This would conflict with merit principles that base the selection and promotion of employees on their relative ability, knowledge and skills. For this reason and to add emphasis to current policy it is a reasonable approach to incorporate the Merit System examination retesting policy in rule language.

F. Certification Method

Minnesota Rules, parts 9575.0620 and 4670.2300 (Under the provisions of 7520.0200 Subp. 2, the Department of Human Services rules, parts 9575.0400 to 9575.1300 also apply to the Department of Public Safety's county and local agencies.)

An amendment is proposed to Subpart 5 of these rules to delete a portion of the current language of the subparts and to change the total number of names on the combined competitive and promotional registers for the same classification which could generate an agency request to certify names of applicants from a different register.

Some background information leading up to the proposed amendment is in order. For several Merit System classifications, both a competitive and promotional register of names exist. Prior to 1988, a complete certification of names from a competitive register consisted of seven names and a complete certification of names from a promotional register consisted of three names. If there were fewer than seven names on the competitive register, fewer than three names on the promotional register or fewer than three names on both registers, the agency could request the Merit System supervisor to certify names from a different register. In 1988, the

rule was amended to change a complete certification fifteen names from a competitive register and seven names from a promotional register. The number of names on both registers necessary to generate a request for certification from a different register remained at fewer than three. Over the past eleven years, there have been no requests received to certify names from a different register because there were fewer than seven or fifteen names on the competitive register. There were no requests received to certify names from a different register because there were fewer than three or seven names on the promotional register. There were no requests received to certify names from a different register because there were fewer than three names on both the competitive and promotional registers. Most of this inactivity can be attributed to the fact that, for most Merit System classes, there are not any alternative registers containing the names of persons unquestionably capable of performing the work of the vacant position. The one exception to this would be where there is a series of classes in the same occupational field (clerical/accounting) and a person on a register for a higher level class in the series might be interested in being considered for a lower level class in the same series. Another factor contributing to the absence of requests for the certification of names from alternate registers is that county agency personnel are aware that the Merit System supervisor is reluctant to grant permission for an agency, for whatever reason, to bypass persons who have qualified through the appropriate examination process and consider others who have not. The most appropriate response to this kind of situation is to accelerate local recruiting and testing of job applicants for the classification in which the vacancy exists in order to expand the register of names.

On the other hand, it is recognized that there may be occasions when the Merit System supervisor should seriously consider a request to certify names from an alternate, but appropriate, register. The proposed amendment, if adopted, would not allow an agency to request a certification of names from an alternate register

simply if there we fewer than fifteen names on th ompetitive register for that class or simply if there were fewer than seven names on the promotional register for that class. However, it would continue to allow an agency to request names from an alternate register if there were fewer than seven names on both the competitive and promotional registers combined. We believe it necessary to maintain this flexibility in the rules even though we do not foresee it being used on many occasions. In the past, the basis for using three names as the number of names on both the competitive and promotional registers that could generate such requests was that three names constituted a complete certification of names from a promotional register. In 1988, the number of names constituting a complete certification of names from a promotional register was increased to seven. It is reasonable to maintain the same basis as has been maintained in the past and so we are proposing that fewer than seven names on the combined competitive and promotional registers could generate requests to the Merit System supervisor to certify names from an alternate register.

An amendment is being proposed to Subpart 7 of these two rules. Current language in these subparts references to the definition of protected group contained in Minnesota Statutes, Section 43A.02, subdivision 3. However, a definition for protected groups is proposed for 9575.0010, Subp. 34a. and 4670.0100, Subp. 34a. While it is necessary to provide such a definition in 9575.0620, Subp. 7 and 4670.2300, Subp. 7, it is reasonable that the rule definition be cited rather than requiring the person interested in the definition to refer to the statute definition.

G. Probation Required

Minnesota Rule, part 9575.0720

An amendment is proposed to this rule to eliminate the phrase "and except appointment under 9575.1580" contained in "A." of the rule. That phrase provides

that employees appointed under the provisions of part 9575.1580 do not have to serve a probationary period. Part 9575.1580 relates to incumbents of reclassified positions. Subpart 1 of that rule relates to incumbents of positions that are reclassified and the reclassification is determined to be a reallocation. The last sentence of the subpart states: "An employee promoted in accordance with this provision shall serve a probationary period in the higher class." Obviously, this creates a conflict in language between the two rules. However, the policy and practice with respect to this matter has remained consistent over time. The Merit System has always required incumbents of reallocated positions to serve a probationary period in the higher classification upon appointment to that class. It is necessary to make the proposed change in order to eliminate the inconsistency between language in the two rule parts. It is equally reasonable to maintain the Merit System's policy of requiring incumbents of reallocated positions to serve a probationary period in the higher class. The probationary period is a significant time period used to closely observe the employee's work, obtain the most effective adjustment of the employee to the obligations of the position and to remove an employee whose performance does not meet the required standard of work. A reasonable approach to maintaining this policy is to delete, as proposed, the conflicting language.

It is anticipated that there will be no expert witnesses called to testify on behalf of the agency if this rule is heard in public hearing.

The aforegoing authorities and comments are submitted in justification of final adoption of the above-cited proposed rule amendments.

Ralph W. Corey

Ralph W. Corey

Merit System Supervisor

Dated: June 23, 1989

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Definitions, Objectives, Prohibition Against Discrimination/Affirmative Action Plan, Work Out of Class, Examination Retesting, Certification Methods and Probationary Periods (Minnesota Rules, parts 9575.0010, 9575.0020, 9575.0090, 9575.0380, 9575.0530, 9575.0620 and 9575.0720).

AFFIDAVIT OF ADDITIONAL MAILING

Nancy Bishop, being first duly sworn, deposes and says:

That on the 12th day of July, 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following parties:

- 10 County Agency Personnel Directors and Administrative Staff
- 3 Merit System Council Members
- 7 Unions
- DHS Affirmative Action Director
- 80 Chairpersons of County Boards under the Merit System

Nancy Bishop

Subscribed and sworn to before me

this 13 day of July, 1989

Claudia A. Eliason

CLAUDIA A. ELIASON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES NOVEMBER 15, 1990

Department of Human Services

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Definitions, Objectives, Prohibition Against Discrimination/ Affirmative Action Plan, Work Out of Class, Examination Retesting, Certification Methods and Probationary Periods (Minnesota Rules, parts 9575.0010, 9575.0020, 9575.0090, 9575.0380, 9575.0530, 9575.0620 and 9575.0720).

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 256.012.

All persons have 30 days or until 4:30 p.m. on August 16, 1989 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request 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 agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

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

A free copy of the rule is available upon request from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

The Minnesota Merit System rules provide for a system of personnel administration for 74 county welfare and human service agencies. The rules apply to all positions and employees engaged in the administration of community social services or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel administration. The rules cover such areas as classification of positions, compensation, recruitment and examination, certification and appointment, leaves of absence, separation, tenure and reinstatement, and, in general, provide standards for agencies to follow so as to ensure compliance with the Federal Standards for a Merit System of Personnel Administration (5 CFR Part 900).

If adopted, the proposed changes to part 9575.0010 would provide new definitions for several terms applicable to affirmative action and equal opportunity. Other proposals in this part include amendment of the definition of "general adjustment." Part 9575.0020 is amended to provide language that clarifies that pay scales be established on the basis of equal pay for work of equal value. Part 9575.0090 is amended to include "political affiliation" as a prohibited basis for discrimination, to broaden the meaning of the term "disability" to include both mental and physical impairments, and to add a reference to the internal discrimination complaint process. In this same part, outdated language on political affiliation and complaint procedures is being deleted and new language is being added which requires that counties establish an affirmative action plan containing five requirements which would apply to all employees covered by Merit System rules. Amendments to part 9575.0380 provide for extensions of work out of class assignments of up to one year. An amendment to part 9575.0530 provides for a policy on examination retesting. Amendments to part 9575.0620 clarify when an agency may request a related eligible list and substitute the rule definition for "protected groups" for the statutory definition. An amendment to part 9575.0720 is proposed to make the language consistent with other rules relating to probationary periods.

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 rule has been prepared and is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822 upon request.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 adopted rule, must submit the written request to Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

Date: 6-26-89

Sandra Gardebring

SANDRA S. GARDEBRING
COMMISSIONER OF HUMAN SERVICES

STATE OF MINNESOTA

DEPARTMENT OF HEALTH

IN THE MATTER OF THE PROPOSED AMENDMENTS TO EXISTING RULES GOVERNING DEFINITIONS, PROHIBITION AGAINST DISCRIMINATION/AFFIRMATIVE ACTION PLAN, WORK OUT OF CLASS, EXAMINATION RETESTING, AND CERTIFICATION METHODS (MINNESOTA RULES PARTS 4670.0100, 4670.0600, 4670.0610, 4670.0620, 4670.1600, 4670.1980 AND 4670.2300).

AFFIDAVIT OF ADDITIONAL MAILING

Rose Ann Bauer, being first duly sworn, deposes and says:

That on the 13th day of July, 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notices, by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following parties:

Merit System Council - 3
Commissioner of Health
Personnel Director, Department of Health
Affirmative Action Director, Department of Human Services

Rose Ann Bauer

Subscribed and sworn to before me

this 13 day of July, 1989

Claudia A. Eliason

CLAUDIA A. ELIASON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES NOVEMBER 15, 1990

Department of Health

In the Matter of the Proposed Adoption of the Rule of the State Department of Health Governing Definitions, Prohibition Against Discrimination/Affirmative Action Plan, Work Out of Class, Examination Retesting, and Certification Methods (Minnesota Rules, parts 4670.0100, 4670.0600, 4670.0610, 4670.0620, 4670.1600, 4670.1980 and 4670.2300).

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Health intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 144.071.

All persons have 30 days or until 4:30 p.m. on August 16, 1989 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request 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 agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

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

A free copy of the rule is available upon request from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

The Minnesot erit System rules apply to all sitions funded in whole or in part by federal grants-in-aide requiring a merit system of personnel administration. The rules cover such areas as classification of positions, compensation, recruitment and examination, certification and appointment, leaves of absence, separation, tenure and reinstatement, and, in general, provide standards for agencies to follow so as to ensure compliance with the Federal Standards for a Merit System of Personnel Administration (5 CFR Part 900).

If adopted, the proposed changes to part 4670.0100 would provide new definitions for several terms applicable to affirmative action and equal opportunity. Other proposals in this part include amendment of the definition of "general adjustment." Part 4670.0600 is amended to include "political affiliation" as a prohibited basis for discrimination, to broaden the meaning of the term "disability" to include both mental and physical impairments, and to add a reference to the internal discrimination complaint process. New language is being proposed to part 4670.0610 which requires that counties establish an affirmative action plan containing five requirements which would apply to all employees covered by Merit System rules, and outdated language on political affiliation in this same part is being deleted. Another proposal is to delete part 4670.0620, which has outdated language on complaint procedures. Amendments to part 4670.1600 provide for extensions of work out of class assignments of up to one year. An amendment to 4670.1980 provides for a policy on examination retesting. Amendments to part 4670.2300 clarify when an agency may request a related eligible list and substitute the rule definition for "protected groups" for the statutory definition.

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 rule has been prepared and is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822 upon request.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 adopted rule, must submit the written request to Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

Date: 6-26-89

SISTER MARY MADONNA ASHTON
COMMISSIONER OF HEALTH

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

IN THE MATTER OF THE PROPOSED AMENDMENTS TO EXISTING RULES CONCERNING DEFINITIONS, OBJECTIVES, PROHIBITION AGAINST DISCRIMINATION/AFFIRMATIVE ACTION PLAN, WORK OUT OF CLASS, EXAMINATION RETESTING, CERTIFICATION METHODS AND PROBATIONARY PERIODS (MINNESOTA RULES, PARTS 7520.0100, 7520.0200, 7520.0350, 7520.0680, 9575.0530, 9575.0620 AND 9575.0720).

AFFIDAVIT OF ADDITIONAL MAILING

Rose Ann Bauer, being first duly sworn, deposes and says:

That on the 13th day of July, 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notices, by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid to the following parties:

Merit System Council - 3
Local and County Emergency Management Agencies - 22
Affirmative Action Director, Department of Human Services

Rose Ann Bauer

Subscribed and sworn to before me

this 13 day of July, 1989

Claudia A. Eliason

CLAUDIA A. ELIASON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES NOVEMBER 15, 1990

Department of Public Safety

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Safety Governing Definitions, Objectives, Prohibition Against Discrimination/ Affirmative Action Plan, Work Out of Class, Examination Retesting, Certification Methods and Probationary Periods (Minnesota Rules, parts 7520.0100, 7520.0200, 7520.0350, 7520.0680, 9575.0530, 9575.0620 and 9575.0720).

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Public Safety intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 12.22, subd. 3.

All persons have 30 days or until 4:30 p.m. on August 16, 1989 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request 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 agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

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

A free copy of the rule is available upon request from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

The Minnesota Merit System rules apply to positions in 22 local and county emergency management agencies funded in whole or in part by federal grants-in-aid requiring a merit system of personnel administration. The rules cover such areas as classification of positions, compensation, recruitment and examination, certification and appointment, leaves of absence, separation, tenure and reinstatement, and, in general, provide standards for agencies to follow so as to ensure compliance with the Federal Standards for a Merit System of Personnel Administration (5 CFR Part 900).

If adopted, the proposed changes to part 7520.0100 would provide new definitions for several terms applicable to affirmative action and equal opportunity. Amendments are also proposed to the definition of "general adjustment." Part 7520.0200 is amended to provide for the establishment of pay scales on the basis of equal pay for work of equal value. Part 7520.0350 is amended to include "political affiliation" as a prohibited basis for discrimination, to broaden the meaning of the term "disability" to include both mental and physical impairments, and to add a reference to the internal discrimination complaint process. In this same part, outdated language on political affiliation and complaint procedures is being deleted and new language is being added which requires that counties establish an affirmative action plan containing five requirements which would apply to all employees covered by Merit System rules. Amendments to part 7520.0680 provide for extensions of work out of class assignments of up to one year.

Minnesota Rules, part 7520.0200, subp. 2 makes Minnesota Rules, parts 9575.0400-9575.1300 which are the rules of the Department of Human Services Merit System applicable to county and local emergency management agencies. The proposed changes to Minnesota Rules, parts 9575.0530, 9575.0620, and 9575.0720 would then apply to local and county emergency management agencies. An amendment to 9575.0530 provides for a policy on examination retesting. Amendments to part 9575.0620 clarify when an agency may request a related eligible list and substitute the rule definition for "protected groups" for the statutory definition. An amendment to part 9575.0720 is proposed to make the language consistent with other rules relating to probationary periods. A copy of the Human Services Notice is attached.

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 rule has been prepared and is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822 upon request.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 adopted rule, must submit the written request to Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

Date: 6-26-89

Rudy Perpich

RUDY PERPICH
GOVERNOR

Department of Human Services

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Definitions, Objectives, Prohibition Against Discrimination/ Affirmative Action Plan, Work Out of Class, Examination Retesting, Certification Methods and Probationary Periods (Minnesota Rules, parts 9575.0010, 9575.0020, 9575.0090, 9575.0380, 9575.0530, 9575.0620 and 9575.0720).

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Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 256.012.

All persons have 30 days or until 4:30 p.m. on August 16, 1989 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request 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 agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

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

A free copy of the rule is available upon request from Palph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

The Minnesota Merit System rules provide for a system of personnel administration for 74 county welfare and human service agencies. The rules apply to all positions and employees engaged in the administration of community social services or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel administration. The rules cover such areas as classification of positions, compensation, recruitment and examination, certification and appointment, leaves of absence, separation, tenure and reinstatement, and, in general, provide standards for agencies to follow so as to ensure compliance with the Federal Standards for a Merit System of Personnel Administration (5 CFR Part 900).

If adopted, the proposed changes to part 9575.0010 would provide new definitions for several terms applicable to affirmative action and equal opportunity. Other proposals in this part include amendment of the definition of "general adjustment." Part 9575.0020 is amended to provide language that clarifies that pay scales be established on the basis of equal pay for work of equal value. Part 9575.0090 is amended to include "political affiliation" as a prohibited basis for discrimination, to broaden the meaning of the term "disability" to include both mental and physical impairments, and to add a reference to the internal discrimination complaint process. In this same part, outdated language on political affiliation and complaint procedures is being deleted and new language is being added which requires that counties establish an affirmative action plan containing five requirements which would apply to all employees covered by Merit System rules. Amendments to part 9575.0380 provide for extensions of work out of class assignments of up to one year. An amendment to part 9575.0530 provides for a policy on examination retesting. Amendments to part 9575.0620 clarify when an agency may request a related eligible list and substitute the rule definition for "protected groups" for the statutory definition. An amendment to part 9575.0720 is proposed to make the language consistent with other rules relating to probationary periods.

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 rule has been prepared and is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822 upon request.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

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Date: 6-26-89

Sandra Gardebring

SANDRA S. GARDEBRING
COMMISSIONER OF HUMAN SERVICES

STATE OF MINNESOTA

DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Definitions, Objectives, Prohibition Against Discrimination/Affirmative Action Plan, Work Out of Class, Examination Retesting, Certification Methods and Probationary Periods (Minnesota Rules, parts 9575.0010, 9575.0020, 9575.0090, 9575.0380, 9575.0530, 9575.0620 and 9575.0720).

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)

Nancy Bishop, 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 Services rulemaking mailing list which is accurate, complete, and current as of this 12th day of July, 1989.

That on the 12th day of July, 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.

Nancy Bishop

Subscribed and sworn to before me
this 13 day of July, 1989.

Claudia A. Eliason

CLAUDIA A. ELIASON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES NOVEMBER 15, 1990

Department of Human Services

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Definitions, Objectives, Prohibition Against Discrimination/ Affirmative Action Plan, Work Out of Class, Examination Retesting, Certification Methods and Probationary Periods (Minnesota Rules, parts 9575.0010, 9575.0020, 9575.0090, 9575.0380, 9575.0530, 9575.0620 and 9575.0720).

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Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 256.012.

All persons have 30 days or until 4:30 p.m. on August 16, 1989 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request 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 agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

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

A free copy of the rule is available upon request from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

The Minnesota Merit System rules provide for a system of personnel administration for 74 county welfare and human service agencies. The rules apply to all positions and employees engaged in the administration of community social services or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel administration. The rules cover such areas as classification of positions, compensation, recruitment and examination, certification and appointment, leaves of absence, separation, tenure and reinstatement, and, in general, provide standards for agencies to follow so as to ensure compliance with the Federal Standards for a Merit System of Personnel Administration (5 CFR Part 900).

If adopted, the proposed changes to part 9575.0010 would provide new definitions for several terms applicable to affirmative action and equal opportunity. Other proposals in this part include amendment of the definition of "general adjustment." Part 9575.0020 is amended to provide language that clarifies that pay scales be established on the basis of equal pay for work of equal value. Part 9575.0090 is amended to include "political affiliation" as a prohibited basis for discrimination, to broaden the meaning of the term "disability" to include both mental and physical impairments, and to add a reference to the internal discrimination complaint process. In this same part, outdated language on political affiliation and complaint procedures is being deleted and new language is being added which requires that counties establish an affirmative action plan containing five requirements which would apply to all employees covered by Merit System rules. Amendments to part 9575.0380 provide for extensions of work out of class assignments of up to one year. An amendment to part 9575.0530 provides for a policy on examination retesting. Amendments to part 9575.0620 clarify when an agency may request a related eligible list and substitute the rule definition for "protected groups" for the statutory definition. An amendment to part 9575.0720 is proposed to make the language consistent with other rules relating to probationary periods.

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 rule has been prepared and is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822 upon request.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 adopted rule, must submit the written request to Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

Date: 6-26-89

Sandra Gardebring

SANDRA S. GARDEBRING
COMMISSIONER OF HUMAN SERVICES

STATE OF MINNESOTA

DEPARTMENT OF HEALTH

IN THE MATTER OF THE PROPOSED AMENDMENTS TO EXISTING RULES GOVERNING DEFINITIONS, PROHIBITION AGAINST DISCRIMINATION/AFFIRMATIVE ACTION PLAN, WORK OUT OF CLASS, EXAMINATION RETESTING, AND CERTIFICATION METHODS (MINNESOTA RULES PARTS 4670.0100, 4670.0600, 4670.0610, 4670.0620, 4670.1600, 4670.1980 AND 4670.2300).

CERTIFICATE

I hereby certify that the list of persons, associations and interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1a, and 14.22 or 14.30, that their names be placed on the State Department of Health rulemaking mailing list is accurate, complete, and current as of this 13 day of July, 1989.

D. H. Woodland/sam

STATE OF MINNESOTA

DEPARTMENT OF HEALTH

IN THE MATTER OF THE PROPOSED AMENDMENTS TO EXISTING RULES GOVERNING DEFINITIONS, PROHIBITION AGAINST DISCRIMINATION/AFFIRMATIVE ACTION PLAN, WORK OUT OF CLASS, EXAMINATION RETESTING, AND CERTIFICATION METHODS (MINNESOTA RULES PARTS 4670.0100, 4670.0600, 4670.0610, 4670.0620, 4670.1600, 4670.1980 AND 4670.2300).

AFFIDAVIT OF MAILING

Rose Ann Bauer, being first duly sworn, deposes and says:

That on the 13th day of July, 1989, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notices by depositing in the State of Minnesota Central Mail System for first class mailing, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who have requested that their names be placed on file with the Department of Health for the purpose of receiving notice of hearing by this Department.

Rose Ann Bauer

Subscribed and sworn to before me

this 13 day of July, 1989

Claudia A Elias

CLAUDIA A. ELIASON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES NOVEMBER 15, 1990

Department of Health

In the Matter of the Proposed Adoption of the Rule of the State Department of Health Governing Definitions, Prohibition Against Discrimination/Affirmative Action Plan, Work Out of Class, Examination Retesting, and Certification Methods (Minnesota Rules, parts 4670.0100, 4670.0600, 4670.0610, 4670.0620, 4670.1600, 4670.1980 and 4670.2300).

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Health intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 144.071.

All persons have 30 days or until 4:30 p.m. on August 16, 1989 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request 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 agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

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

A free copy of the rule is available upon request from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

The Minnesota Merit System rules apply to all positions funded in whole or in part by federal grants-in-aide requiring a merit system of personnel administration. The rules cover such areas as classification of positions, compensation, recruitment and examination, certification and appointment, leaves of absence, separation, tenure and reinstatement, and, in general, provide standards for agencies to follow so as to ensure compliance with the Federal Standards for a Merit System of Personnel Administration (5 CFR Part 900).

If adopted, the proposed changes to part 4670.0100 would provide new definitions for several terms applicable to affirmative action and equal opportunity. Other proposals in this part include amendment of the definition of "general adjustment." Part 4670.0600 is amended to include "political affiliation" as a prohibited basis for discrimination, to broaden the meaning of the term "disability" to include both mental and physical impairments, and to add a reference to the internal discrimination complaint process. New language is being proposed to part 4670.0610 which requires that counties establish an affirmative action plan containing five requirements which would apply to all employees covered by Merit System rules, and outdated language on political affiliation in this same part is being deleted. Another proposal is to delete part 4670.0620, which has outdated language on complaint procedures. Amendments to part 4670.1600 provide for extensions of work out of class assignments of up to one year. An amendment to 4670.1980 provides for a policy on examination retesting. Amendments to part 4670.2300 clarify when an agency may request a related eligible list and substitute the rule definition for "protected groups" for the statutory definition.

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 rule has been prepared and is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822 upon request.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 adopted rule, must submit the written request to Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

Date: 6-26-89

SISTER MARY MADONNA ASHTON
COMMISSIONER OF HEALTH

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

IN THE MATTER OF THE PROPOSED AMENDMENTS TO EXISTING RULES CONCERNING DEFINITIONS, OBJECTIVES, PROHIBITION AGAINST DISCRIMINATION/AFFIRMATIVE ACTION PLAN, WORK OUT OF CLASS, EXAMINATION RETESTING, CERTIFICATION METHODS AND PROBATIONARY PERIODS (MINNESOTA RULES, PARTS 7520.0100, 7520.0200, 7520.0350, 7520.0680, 9575.0530, 9575.0620 AND 9575.0720).

CERTIFICATE

I hereby certify that the list of persons, associations and interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1a, and 14.22 or 14.30, that their names be placed on the State Department of Public Safety rulemaking mailing list is accurate, complete, and current as of this 12th day of July, 1989.

Barbara J Johnson

STATE OF MINNESOTA

DEPARTMENT OF PUBLIC SAFETY

IN THE MATTER OF THE PROPOSED AMENDMENTS TO EXISTING RULES CONCERNING DEFINITIONS, OBJECTIVES, PROHIBITION AGAINST DISCRIMINATION/AFFIRMATIVE ACTION PLAN, WORK OUT OF CLASS, EXAMINATION RETESTING, CERTIFICATION METHODS AND PROBATIONARY PERIODS (MINNESOTA RULES, PARTS 7520.0100, 7520.0200, 7520.0350, 7520.0680, 9575.0530, 9575.0620 AND 9575.0720).

AFFIDAVIT OF MAILING

Rose Ann Bauer, being first duly sworn, deposes and says:

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Rose Ann Bauer

Subscribed and sworn to before me

this 13 day of July, 1989

Claudia A. Elias

CLAUDIA A. ELIASON
NOTARY PUBLIC-MINNESOTA
WASHINGTON COUNTY
MY COMMISSION EXPIRES NOVEMBER 15, 1990

Department of Public Safety

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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 rule has been prepared and is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822 upon request.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 adopted rule, must submit the written request to Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

Date: 6-26-89

Rudy Perpich

RUDY PERPICH
GOVERNOR

Department of Human Services

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Definitions, Objectives, Prohibition Against Discrimination/ Affirmative Action Plan, Work Out of Class, Examination Retesting, Certification Methods and Probationary Periods (Minnesota Rules, parts 9575.0010, 9575.0020, 9575.0090, 9575.0380, 9575.0530, 9575.0620 and 9575.0720).

NOTICE OF INTENT TO ADOPT A RULE WITHOUT A PUBLIC HEARING

Notice is hereby given that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes, section 256.012.

All persons have 30 days or until 4:30 p.m. on August 16, 1989 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request 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 agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

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

A free copy of the rule is available upon request from Palph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

The Minnesota Merit System rules provide for a system of personnel administration for 74 county welfare and human service agencies. The rules apply to all positions and employees engaged in the administration of community social services or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel administration. The rules cover such areas as classification of positions, compensation, recruitment and examination, certification and appointment, leaves of absence, separation, tenure and reinstatement, and, in general, provide standards for agencies to follow so as to ensure compliance with the Federal Standards for a Merit System of Personnel Administration (5 CFR Part 900).

If adopted, the proposed changes to part 9575.0010 would provide new definitions for several terms applicable to affirmative action and equal opportunity. Other proposals in this part include amendment of the definition of "general adjustment." Part 9575.0020 is amended to provide language that clarifies that pay scales be established on the basis of equal pay for work of equal value. Part 9575.0090 is amended to include "political affiliation" as a prohibited basis for discrimination, to broaden the meaning of the term "disability" to include both mental and physical impairments, and to add a reference to the internal discrimination complaint process. In this same part, outdated language on political affiliation and complaint procedures is being deleted and new language is being added which requires that counties establish an affirmative action plan containing five requirements which would apply to all employees covered by Merit System rules. Amendments to part 9575.0380 provide for extensions of work out of class assignments of up to one year. An amendment to part 9575.0530 provides for a policy on examination retesting. Amendments to part 9575.0620 clarify when an agency may request a related eligible list and substitute the rule definition for "protected groups" for the statutory definition. An amendment to part 9575.0720 is proposed to make the language consistent with other rules relating to probationary periods.

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 rule has been prepared and is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822 upon request.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of Minnesota Statutes, section 14.11. A fiscal note prepared according to the requirements of Minnesota Statutes, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 adopted rule, must submit the written request to Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

Date: 6-26-89

Sandra Gardebring

SANDRA S. GARDEBRING
COMMISSIONER OF HUMAN SERVICES

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 Services

Proposed Permanent Rules Relating to Merit System

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Human Services intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, section 256.012.

All persons have 30 days or until 4:30 p.m. on August 16, 1989 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request 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 agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

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

A free copy of the rule is available upon request from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822. A copy of the rule may also be viewed at any of the 87 county welfare or human services agencies in the State of Minnesota.

The Minnesota Merit System rules provide for a system of personnel administration for 74 county welfare and human service agencies. The rules apply to all positions and employees engaged in the administration of community social services or income maintenance programs funded in whole or in part by federal grants-in-aid requiring a merit system of personnel administration. The rules cover such areas as classification of positions, compensation, recruitment and examination, certification and appointment, leaves of absence, separation, tenure and reinstatement, and, in general, provide standards for agencies to follow so as to ensure compliance with the Federal Standards for a Merit System of Personnel Administration (5 CFR Part 900).

If adopted, the proposed changes to part 9575.0010 would provide new definitions for several terms applicable to affirmative action and equal opportunity. Other proposals in this part include amendment of the definition of "general adjustment." Part 9575.0020 is amended to provide language that clarifies that pay scales be established on the basis of equal pay for work of equal value. Part 9575.0090 is amended to include "political affiliation" as a prohibited basis for discrimination, to broaden the meaning of the term "disability" to include both mental and physical impairments, and to add a reference to the internal discrimination complaint process.

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.

In this same part, outdated language on political affiliation and complaint procedures is being deleted and new language is being added which requires that counties establish an affirmative action plan containing five requirements which would apply to all employees covered by Merit System rules. Amendments to part 9575.0380 provide for extensions of work out of class assignments of up to one year. An amendment to part 9575.0530 provides for a policy on examination retesting. Amendments to part 9575.0620 clarify when an agency may request a related eligible list and substitute the rule definition for "protected groups" for the statutory definition. An amendment to part 9575.0720 is proposed to make the language consistent with other rules relating to probationary periods.

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 rule has been prepared and is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822 upon request.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11. A fiscal note prepared according to the requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 adopted rule, must submit the written request to Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

Dated: 26 June 1989

Sandra S. Gardebring
Commissioner of Human Services

Rules as Proposed

9575.0010 DEFINITIONS.

Subpart 1. [Unchanged.]

Subp. 1a. **Affirmative action.** "Affirmative action" means a management program designed to ensure equal employment opportunity and correct past discrimination by identifying and removing barriers throughout a personnel system. Affirmative action includes special efforts to eliminate underuse of disabled persons, minorities, and women through recruitment, hiring, and advancement of these groups.

Subp. 2. to 13. [Unchanged.]

Subp. 13a. **Disability.** "Disability" means a condition or characteristic that renders a person a disabled person. A disabled person is a person who:

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

B. has a record of such an impairment; or

C. is regarded as having such an impairment.

Subp. 14. [Unchanged.]

Subp. 14a. **Discrimination.** "Discrimination" means unequal treatment, intentional or unintentional, that is based on the following protected characteristics: race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. 15. [Unchanged.]

Subp. 15a. **Disparity.** "Disparity" means the employment of fewer disabled persons, minorities, or women in the agency's work force than could reasonably be expected, based on their availability in the relevant labor area.

Subp. 16. to 18. [Unchanged.]

Subp. 18a. **Equal employment opportunity.** "Equal employment opportunity" means the policy of basing all personnel activities solely on individual merit of applicants and employees in relation to job requirements, and without regard to race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. ~~18a.~~ 18b. **Equitable compensation relationship.** "Equitable compensation relationship" means that a primary consideration in establishing, recommending, and approving total compensation is comparable work value in relationship to other employee positions within the merit system.

Subp. 19. to 20a. [Unchanged.]

Subp. 21. **General adjustment.** "General adjustment" means ~~the~~ an annual merit system recommended salary adjustment based on ~~a salary survey or~~ a review of ~~consumer price index changes.~~ adjustments to salaries by employers with similar and competing types of employment and trends in the Twin Cities consumer price index. The general adjustment applies to all employees on the professional, support, clerical, and maintenance and trades salary schedules whose positions are not covered by the terms and conditions of a collective bargaining agreement.

Subp. 22. to 34. [Unchanged.]

Subp. 34a. **Protected groups.** "Protected groups" means females, disabled persons, and members of the following minorities: Black, Hispanic, Asian, Pacific Islander, American Indian, or Alaskan native.

Subp. 35. to 49. [Unchanged.]

9575.0020 OBJECTIVES OF COUNTY WELFARE MERIT SYSTEM.

It is the aim of the Department of Human Services of the state of Minnesota, through the establishment of the county welfare merit system, to provide appointing authorities with an effective system of personnel administration based on merit principles. Specific objectives are:

A. to C. [Unchanged.]

D. equitable pay scales for the various classes established on the basis of equal pay for ~~equal~~ work of equal value; and

E. [Unchanged.]

9575.0090 PROHIBITION AGAINST DISCRIMINATION.

Subpart 1. **In general.** No person shall be discriminated for or against in recruitment, examination, appointment, tenure, compensation, classification, or promotion or in conditions, facilities, or privileges of employment because of race, color, political affiliation, creed, religion, national origin, ~~physical~~ disability when such disability does not interfere with the completion of assigned duties, age, marital status, status with regard to public assistance, or sex. Any person aggrieved by a violation of these prohibitions may file a complaint under the provisions of *Minnesota Statutes*, chapter 363, or may file a discrimination complaint under the county agency's internal complaint process.

Subp. 2. [See Repealer.]

Subp. 2a. **Affirmative action plan.** Each county agency shall have an affirmative action plan for employees covered by parts 9575.0010 to 9575.1580. The plan must contain:

A. a policy defining and prohibiting discriminatory harassment, including sexual harassment;

B. an internal discrimination complaint policy and procedure that includes notification of the Department of Human Services Affirmative Action Office of complaints that are brought and their resolution;

C. provision for appointment of a person to provide liaison between the county agency and the Department of Human Services Affirmative Action Office and to have responsibility for implementation of the local agency's plan; and

D. provision for participation by the county agency in an affirmative action committee and notification of the Department of Human Services Affirmative Action Office of periodic hiring goals established by the county agency, for expanded certification purposes.

These requirements may be incorporated as part of a county-wide affirmative action plan or provided as an addendum to the plan.

Subp. 3. [See Repealer.]

9575.0380 WORK OUT OF CLASS.

If an employee is expressly assigned in writing to perform all the duties of a position allocated to a higher classification that is temporarily unoccupied for reasons other than vacation or sick leave and that work exceeds 15 consecutive work days in duration, the employee so assigned shall be paid for all hours of the assignment at least at the minimum rate of pay of the salary range for the higher class or may be granted a one-step salary increase within the assigned employee's salary range. If the assignment is to a

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position in a classification at an equal or lower level, the employee shall be paid for all hours of the assignment at the employee's current rate of pay. A work out of class assignment ~~may be proposed only if the duration of the vacancy is anticipated to be less than six months.~~ is limited to no more than six months. An appointing authority may submit a written request to extend a work out of class assignment for up to an additional six months, specifying the reason why the extension is necessary. A request to extend a work out of class assignment must be initiated at least 15 days before the end of the initial six-month assignment. Approval of such assignments by the supervisor is required and must be received by the supervisor within five calendar days of the assignment. Upon completion of the work out of class assignment, the employee's salary shall be reduced to its previous level. This decrease is not subject to part 9575.0370 or part 9575.1180.

9575.0530 EXAMINATION RETESTING.

Applicants may apply to retake a competitive or promotional examination that is open for application on a continuous basis but may not retake an examination within 60 days of the previous test date and more than three times in a calendar year.

9575.0620 CERTIFICATION METHODS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Too few names on a certification.** When the number of different names available for filling any vacancy by original appointment, promotion, or reinstatement is fewer than ~~15~~ seven on ~~a~~ all competitive ~~certification or seven on a~~ and promotional ~~certification, and there are fewer than three different names on all~~ registers combined, the appointing authority may decline certification for that vacancy and may request certification from a register, or registers, that the supervisor deems appropriate.

Subp. 6. [Unchanged.]

Subp. 7. **Expanded certification.** When the supervisor determines that a disparity exists between an agency's work force and its approved affirmative action plan, the supervisor shall ensure to the extent possible that available eligibles who are members of the protected group as defined in ~~*Minnesota Statutes,* section 43A.02, subdivision 33~~ part 9575.0010, subpart 34a, for which the disparity exists are certified for appointment. When fewer than three protected group eligibles for which a disparity exists would be certified under subparts 1 and 2, the supervisor shall certify additional protected group eligibles for which a disparity exists to bring the number of eligibles certified to a total of three names from each protected group. Eligibles to be certified shall be determined by examination score.

9575.0720 PROBATION REQUIRED.

A person employed by an appointing authority in any of the following ways shall serve a probationary period:

A. appointment from an eligible register other than the layoff list~~, and except appointment under 9575.1580~~;

B. reinstatement of a former probationary employee or of a former permanent employee in an agency other than the last employing agency;

C. transfer of an employee between counties except when specifically waived, in writing to the merit system supervisor, by the new employing county prior to the date on which the transfer of a permanent employee becomes effective; or

D. transfer or reinstatement to a position on the basis of eligibility from a comparable position in a similar merit system jurisdiction.

An appointing authority may effect a probationary period in an employment action in which such period is not required as specified above by writing this condition of appointment on the appointment report submitted to the merit system. In no case, however, may a probationary period be required of a permanent employee who is appointed from the layoff list.

REPEALER. *Minnesota Rules,* part 9575.0090, subparts 2 and 3 are repealed.

Department of Health

Proposed Permanent Rules Relating to Merit System

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Health intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, section 144.071.

All persons have 30 days or until 4:30 p.m. on August 16, 1989 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request 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 agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

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

A free copy of the rule is available upon request from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

The Minnesota Merit System rules apply to all positions funded in whole or in part by federal grants-in-aide requiring a merit system of personnel administration. The rules cover such areas as classification of positions, compensation, recruitment and examination, certification and appointment, leaves of absence, separation, tenure and reinstatement, and, in general, provide standards for agencies to follow so as to ensure compliance with the Federal Standards for a Merit System of Personnel Administration (5 CFR Part 900).

If adopted, the proposed changes to part 4670.0100 would provide new definitions for several terms applicable to affirmative action and equal opportunity. Other proposals in this part include amendment of the definition of "general adjustment." Part 4670.0600 is amended to include "political affiliation" as a prohibited basis for discrimination, to broaden the meaning of the term "disability" to include both mental and physical impairments, and to add a reference to the internal discrimination complaint process. New language is being proposed to part 4670.0610 which requires that counties establish an affirmative action plan containing five requirements which would apply to all employees covered by Merit System rules, and outdated language on political affiliation in this same part is being deleted. Another proposal is to delete part 4670.0620, which has outdated language on complaint procedures. Amendments to part 4670.1600 provide for extensions of work out of class assignments of up to one year. An amendment to 4670.1980 provides for a policy on examination retesting. Amendments to part 4670.2300 clarify when an agency may requst a related eligible list and substitute the rule definition for "protected groups" for the statutory definition.

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 rule has been prepared and is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822 upon request.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11. A fiscal note prepared according to the requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 adopted rule, must submit the written request to Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

Dated: 26 June 1989

Sister Mary Madonna Ashton
Commissioner of Health

Rules as Proposed

4670.0100 DEFINITIONS.

Subpart 1. [Unchanged.]

Subp. 1a. **Affirmative action.** "Affirmative action" means a management program designed to ensure equal employment

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opportunity and correct past discrimination by identifying and removing barriers throughout a personnel system. Affirmative action includes special efforts to eliminate underuse of disabled persons, minorities, and women through recruitment, hiring, and advancement of these groups.

Subp. 2. to 12. [Unchanged.]

Subp. 12a. **Disability.** "Disability" means any condition or characteristic that renders a person a disabled person. A disabled person is any person who:

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

B. has a record of such an impairment; or

C. is regarded as having such an impairment.

Subp. 13. [Unchanged.]

Subp. 13a. **Discrimination.** "Discrimination" means unequal treatment, intentional or unintentional, that is based on the following protected characteristics: race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. 14. [Unchanged.]

Subp. 14a. **Disparity.** "Disparity" means the employment of fewer disabled persons, minorities, or women in the agency's work force than could reasonably be expected, based on their availability in the relevant labor area.

Subp. 15. to 17. [Unchanged.]

Subp. 17a. **Equal employment opportunity.** "Equal employment opportunity" means the policy of basing all personnel activities solely on individual merit of applicants and employees in relation to job requirements, and without regard to race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. 17b. **Equitable compensation relationship.** "Equitable compensation relationship" means that a primary consideration in establishing, recommending, and approving total compensation is comparable work value in relationship to other employee positions within the merit system.

Subp. 18. to 20. [Unchanged.]

Subp. 21. **General adjustment.** "General adjustment" means ~~the~~ an annual merit system recommended salary adjustment based on a ~~salary survey or a~~ review of ~~consumer price index changes under part 4670.1200~~ adjustments to salaries by employers with similar and competing types of employment and trends in the Twin Cities consumer price index. The general adjustment applies to all employees on the professional and administrative, health services support, clerical, and building maintenance salary schedules whose positions are not covered by the terms and conditions of a collective bargaining agreement.

Subp. 22. to 34. [Unchanged.]

Subp. 34a. **Protected groups.** "Protected groups" means females, disabled persons, and members of the following minorities: Black, Hispanic, Asian, Pacific Islander, American Indian, or Alaskan native.

Subp. 35. to 50. [Unchanged.]

4670.0600 PROHIBITION AGAINST DISCRIMINATION.

No person shall be discriminated for or against in such matters as recruitment, examination, appointment, tenure, compensation, classification, or promotion, or in such matters as conditions, facilities, or privileges of employment because of race, color, political affiliation, creed, religion, national origin, ~~physical~~ disability where such disability does not interfere with the completion of assigned duties, age, marital status, status with regard to public assistance, or sex. Any person aggrieved by a violation of these prohibitions may file a complaint under the provisions of *Minnesota Statutes*, chapter 363, or may file a discrimination complaint under the local agency's internal complaint process.

4670.0610 ~~POLITICAL OPINIONS; DISCRIMINATION~~ AFFIRMATIVE ACTION PLAN.

~~No person shall be discriminated for or against as provided in part 4670.0600 because of his political opinions or affiliations within the limitations imposed by part 4670.0500, nor shall discrimination occur because of any other nonmerit factor. Any person aggrieved by a violation of a prohibited discrimination that does not come within the jurisdiction of *Minnesota Statutes*, chapter 363 may file a complaint with the supervisor setting forth the basis of his belief that an act or threat or promise of an act of discrimination occurred and identifying by name and position the person alleged to have committed such act or threat or promise of an act of discrimination.~~ Each local agency shall have an affirmative action plan for employees covered by parts 4670.0100 to 4670.4300. The plan must contain:

A. a policy defining and prohibiting discriminatory harassment, including sexual harassment;

B. an internal discrimination complaint policy and procedure that includes notification of the Department of Human Services Affirmative Action Office of complaints that are brought and their resolution;

C. provision for appointment of a person to provide liaison between the local agency and the Department of Human Services Affirmative Action Office and to have responsibility for implementation of the local agency's plan; and

D. provision for participation by the local agency in an affirmative action committee and notification of the Department of Human Services Affirmative Action Office of periodic hiring goals established by the local agency, for expanded certification purposes.

These requirements may be incorporated as part of a countywide affirmative action plan or provided as an addendum to the plan.

4670.1600 WORK-OUT-OF-CLASS ASSIGNMENTS.

If an employee is expressly assigned in writing to perform all the duties of a position allocated to a higher classification that is temporarily unoccupied for reasons other than vacation or sick leave and that work exceeds 15 consecutive work days in duration, the employee so assigned shall be paid for all hours of the assignment at least at the minimum rate of pay of the salary range for the higher class or may be granted a one step salary increase within the employee's salary range. If the assignment is to a position in a classification at an equal or lower level, the employee shall be paid for all hours of the assignment at the employee's current rate of pay. A work-out-of-class assignment ~~may be proposed only if the duration of the vacancy is anticipated to be less~~ is limited to no more than six months. An appointing authority may submit a written request to extend a work-out-of-class assignment for up to an additional six months, specifying the reason why the extension is necessary. A request to extend a work-out-of-class assignment must be initiated at least 15 days before the end of the initial six-month assignment. Approval of these assignments by the supervisor is required and requests for approval must be received by the supervisor within five calendar days of the assignment. Upon completion of the work-out-of-class assignment, the employee's salary shall be reduced to its previous level, notwithstanding the provisions of ~~part~~ parts 4670.1500, subpart 1, and ~~part~~ 4670.3530.

4670.1980 EXAMINATION RETESTING.

Applicants may apply to retake a competitive or promotional examination that is open for application on a continuous basis but may not retake an examination within 60 days of the previous test date and more than three times in a calendar year.

4670.2300 CERTIFICATION METHODS.

Subpart 1. to 4. [Unchanged.]

Subp. 5. **Inadequate registers.** When the number of different names available for filling any vacancy by original appointment, promotion, or reinstatement is fewer than ~~15~~ seven on ~~a~~ all competitive ~~certification or seven on a~~ and promotional ~~certification, and there are fewer than three different names on all~~ registers combined, the appointing authority may decline certification for that vacancy and may request certification from a register, or registers, that the supervisor deems appropriate.

Subp. 6. [Unchanged.]

Subp. 7. **Expanded certification.** When the supervisor determines that a disparity exists between an agency's work force and its approved affirmative action plan, the supervisor shall ensure to the extent possible that available eligibles who are members of the protected group as defined in ~~*Minnesota Statutes,* section 43A.02, subdivision 33~~ part 4670.0100, subpart 34a, for which the disparity exists are certified for appointment. When fewer than three protected group eligibles for which a disparity exists would be certified under subparts 1 and 2, the supervisor shall certify additional protected group eligibles for which a disparity exists to bring the number of eligibles certified to a total of three names from each protected group. Eligibles to be certified shall be determined by examination score.

REPEALER. *Minnesota Rules,* part 4670.0620, is repealed.

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.

Department of Public Safety

Proposed Permanent Rules Relating to Merit System

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Public Safety intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes*, section 12.22, subd. 3.

All persons have 30 days or until 4:30 p.m. on August 16, 1989 in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. 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 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request 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 agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to: Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

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

A free copy of the rule is available upon request from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

The Minnesota Merit System rules apply to positions in 22 local and county emergency management agencies funded in whole or in part by federal grants-in-aid requiring a merit system of personnel administration. The rules cover such areas as classification of positions, compensation, recruitment and examination, certification and appointment, leaves of absence, separation, tenure and reinstatement, and, in general, provide standards for agencies to follow so as to ensure compliance with the Federal Standards for a Merit System of Personnel Administration (5 CFR Part 900).

If adopted, the proposed changes to part 7520.0100 would provide new definitions for several terms applicable to affirmative action and equal opportunity. Amendments are also proposed to the definition of "general adjustment." Part 7520.0200 is amended to provide for the establishment of pay scales on the basis of equal pay for work of equal value. Part 7520.0350 is amended to include "political affiliation" as a prohibited basis for discrimination, to broaden the meaning of the term "disability" to include both mental and physical impairments, and to add a reference to the internal discrimination complaint process. In this same part, outdated language on political affiliation and complaint procedures is being deleted and new language is being added which requires that counties establish an affirmative action plan containing five requirements which would apply to all employees covered by Merit System rules. Amendments to part 7520.0680 provide for extensions of work out of class assignments of up to one year.

Minnesota Rules, part 7520.0200, subp. 2 makes *Minnesota Rules*, parts 9575.0400-9575.1300 which are the rules of the Department of Human Services Merit System applicable to county and local emergency management agencies. The proposed changes to *Minnesota Rules*, parts 9575.0530, 9575.0620, and 9575.0720 would then apply to local and county emergency management agencies. An amendment to 9575.0530 provides for a policy on examination retesting. Amendments to part 9575.0620 clarify when an agency may request a related eligible list and substitute the rule definition for "protected groups" for the statutory definition. An amendment to part 9575.0720 is proposed to make the language consistent with other rules relating to probationary periods. A copy of the Human Services Notice is attached.

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 rule has been prepared and is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822 upon request.

Adoption of these rules will not result in additional spending by local public bodies in excess of $100,000 per year for the first two years following adoption under the requirements of *Minnesota Statutes*, section 14.11. A fiscal note prepared according to the requirements of *Minnesota Statutes*, section 3.98, subdivision 2, estimating the fiscal impact of the rule is available from Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the 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 adopted rule, must submit the written request to Ralph W. Corey, Minnesota Merit System, Second Floor, Human Services Building, 444 Lafayette Road, St. Paul, Minnesota 55155-3822.

Dated: 26 June 1989

Rudy Perpich
Governor

Rules as Proposed

7520.0100 DEFINITIONS.

Subpart 1. [Unchanged.]

Subp. 1a. **Affirmative action.** "Affirmative action" means a management program designed to ensure equal employment opportunity and correct past discrimination by identifying and removing barriers throughout a personnel system. Affirmative action includes special efforts to eliminate underuse of disabled persons, minorities, and women through recruitment, hiring, and advancement of these groups.

Subp. 2. to 12. [Unchanged.]

Subp. 12a. **Disability.** "Disability" means any condition or characteristic that renders a person a disabled person. A disabled person is any person who:

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

B. has a record of such an impairment; or

C. is regarded as having such an impairment.

Subp. 13. [Unchanged.]

Subp. 13a. **Discrimination.** "Discrimination" means unequal treatment, intentional or unintentional, that is based on the following protected characteristics: race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. 14. [Unchanged.]

Subp. 14a. **Disparity.** "Disparity" means the employment of fewer disabled persons, minorities, or women in the agency's work force than could reasonably be expected, based on their availability in the relevant labor area.

Subp. 15. to 17. [Unchanged.]

Subp. 17a. **Equal employment opportunity.** "Equal employment opportunity" means the policy of basing all personnel activities solely on individual merit of applicants and employees in relation to job requirements, and without regard to race, color, creed, sex, age, marital status, national origin, disability, reliance on public assistance, religion, or political affiliation.

Subp. 17b. **Equitable compensation relationship.** "Equitable compensation relationship" means that a primary consideration in establishing, recommending, and approving total compensation is comparable work value in relationship to other employee positions within the merit system.

Subp. 18. to 19a. [Unchanged.]

Subp. 20. **General adjustment.** "General adjustment" means ~~the~~ an annual merit system recommended salary adjustment based on ~~a salary survey~~ adjustments to salaries by employers with similar and competing types of employment and trends in the Twin Cities Consumer Price Index. The general adjustment applies to all employees on the professional and clerical salary schedules whose positions are not covered by the terms and conditions of a collective bargaining agreement.

Subp. 21. to 35. [Unchanged.]

Subp. 35a. **Protected groups.** "Protected groups" means females, disabled persons, and members of the following minorities: Black, Hispanic, Asian, Pacific Islander, American Indian, or Alaskan Native.

Subp. 36. to 50. [Unchanged.]

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.

7520.0200 STATEMENT OF POLICY AND MEANS OF EFFECTING POLICY.

Subpart 1. **Objectives.** It is the declared aim of the governor and the state Department of Public Safety of the state of Minnesota to put into full force and effect the merit principles of personnel administration. To this end the merit system council, the merit system supervisor, and the Department of Public Safety shall work toward the objectives of:

A. to C. [Unchanged.]

D. equitable pay scales for the various classes established on the basis of equal pay for ~~equal~~ work of equal value; and

E. [Unchanged.]

Subp. 2. to 5. [Unchanged.]

7520.0350 PROHIBITION AGAINST DISCRIMINATION.

Subpart 1. **In general.** No person shall be discriminated for or against in such matters as recruitment, examination, appointment, tenure, compensation, classification, or promotion, or in such matters as conditions, facilities, or privileges of employment because of race, color, political affiliation, creed, religion, national origin, ~~physical~~ disability where the disability does not interfere with the completion of assigned duties, age, marital status, status with regard to public assistance, or sex. Any person aggrieved by a violation of these prohibitions may file a complaint under the provisions of *Minnesota Statutes*, chapter 363, or may file a discrimination complaint under the local agency's internal complaint process.

Subp. 2. [See Repealer.]

Subp. 2a. **Affirmative action plan.** Each local agency shall have an affirmative action plan for employees covered by parts 7520.0100 to 7520.1200. The plan must contain, at a minimum, the following:

A. a policy defining and prohibiting discriminatory harassment, including sexual harassment;

B. an internal discrimination complaint policy and procedure that includes notification of the Department of Human Services Affirmative Action Office of complaints that are brought and their resolution;

C. provision for appointment of a person to provide liaison between the local agency and the Department of Human Services Affirmative Action Office and to have responsibility for implementation of the local agency's plan; and

D. provision for participation by the local agency in an affirmative action committee and notification of the Department of Human Services Affirmative Action Office of periodic hiring goals established by the local agency, for expanded certification purposes.

These requirements may be incorporated as part of a county-wide affirmative action plan or provided as an addendum to the plan.

Subp. 3. [See Repealer.]

7520.0680 WORK OUT OF CLASS.

If an employee is expressly assigned in writing to perform all the duties of a position allocated to a higher classification that is temporarily unoccupied for reasons other than vacation or sick leave and the work exceeds 15 consecutive work days the employee so assigned shall be paid for all hours of the assignment at least at the minimum rate of pay of the salary range for the higher class or may be granted a one step salary increase within his salary range. If the assignment is to a position in a classification at an equal or lower level the employee shall be paid for all hours of the assignment at the employee's current rate of pay. A work out of class assignment ~~may be proposed only if the duration of the vacancy is anticipated to be less~~ is limited to no more than six months. An appointing authority may submit a written request to extend a work out of class assignment for up to an additional six months, specifying the reason why the extension is necessary. A request to extend a work out of class assignment must be initiated at least 15 days prior to the end of the initial six month assignment. Approval of the assignments by the supervisor is required and must be received by the supervisor within five calendar days of the assignment. Upon completion of the work out of class assignment the employee's salary shall be reduced to its previous level, notwithstanding the provisions of part 7520.0670 or 12 MCAR S 2.508 D.

REPEALER. *Minnesota Rules*, part 7520.0350, subparts 2 and 3, are repealed.

Board of Teaching

Proposed Permanent Rules Relating to Teacher Education

Notice of Withdrawal

The rules proposed at *State Register*, Volume 13, Number 43, pages 2603-2607, April 24, 1989 (13 S.R. 2603) are hereby withdrawn.

STATE OF MINNESOTA
DEPARTMENT OF PUBLIC SAFETY

In the Matter of the Proposed Adoption of the Rule of the State Department of Public Safety Governing Definitions, Objectives, Prohibition Against Discrimination/ Affirmative Action Plan, Work Out of Class, Examination Retesting, Certification Methods, and Probationary Periods (Minnesota Rules, parts 7520.0100, 7520.0200, 7520.0350, 7520.0680, 9575.0530, 9575.0620 and 9575.0720).

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

Notice of the Governor's intent to adopt the above-entitled rule was published in the State Register on July 17, 1989 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22, on July 13, 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 mailing list and published in the State Register and was available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the agency.

(5) No submissions or comments on the rule were received by the agency. (7) No requests for notice of submission to the Attorney General were received by the agency.

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

(8) The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Minnesota Rules, parts 7520.0100, 7520.0200, 7520.0350, 7520.0680, 9575.0530, 9575.0620 and 9575.0720 is adopted this 31st day of August, 1989, pursuant to authority vested in me by Minnesota Statutes, section 12.22, subd. 3.

Rudy Perpich

RUDY PERPICH
Governor

STATE OF MINNESOTA
DEPARTMENT OF HUMAN SERVICES

In the Matter of the Proposed Adoption of the Rule of the State Department of Human Services Governing Definitions, Objectives, Prohibition Against Discrimination/ Affirmative Action Plan, Work out of Class, Examination Retesting, Certification Methods and Probationary Periods (Minnesota Rules, parts 9575.0010, 9575.0020, 9575.0090, 9575.0380, 9575.0530, 9575.0620 and 9575.0720).

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

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on July 17, 1989 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22, on July 12, 1989. (2) 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 mailing list and published in the State Register and was available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the agency.

(3) No submissions or comments on the rule were received by the agency.
(7) No requests for notice of submission to the Attorney General were received by the agency.

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

(5) The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Minnesota Rules, parts 9575.0010, 9575.0020, 9575.0090, 9575.0380, 9575.0530, 9575.0620 and 9575.0720 is adopted this 23 day of August, 1989, pursuant to authority vested in me by Minnesota Statutes, section 256.012.

CHARLES C. SCHULTZ
Deputy Commissioner

STATE OF MINNESOTA
DEPARTMENT OF HEALTH

In the Matter of the Proposed Adoption of the Rule of the State Department of Health Governing Definitions, Prohibition Against Discrimination/Affirmative Action Plan, Work out of Class, Examination Retesting and Certification Methods (Minnesota Rules, parts 4670.0100, 4670.0600, 4670.0610, 4670.0620, 4670.1600, 4670.1980 and 4670.2300).

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

(1) Notice of the Commissioner's intent to adopt the above-entitled rule was published in the State Register on July 17, 1989 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22, on July 13, 1989. (2) 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 mailing list and published in the State Register and was available to the public.

(4) All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the agency.

(5) No submissions or comments on the rule were received by the agency. (7) No requests for notice of submission to the Attorney General were received by the agency.

(8) Based on the comments and evidence in the record before the agency, I find the following:

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Minnesota Rules, part 4670.0100, 4670.0600, 4670.0610, 4670.0620, 4670.1600, 4670.1980 and 4670.2300 is adopted this 25th day of August, 1989, pursuant to authority vested in me by Minnesota Statutes, section 144.071.

SISTER MARY MADONNA ASHTON
Commissioner

In the Matter of the Adoption of the Rule of the State Departments of Human Services, Health and Public Safety Governing Definitions, Objectives, Prohibition Against Discrimination/ Affirmative Action Plan, Work out of Class, Examination Retesting, Certification Methods and Probationary Periods (Minnesota Rules, parts 9575.0010, 9575.0020, 9575.0090, 9575.0380, 9575.0530, 9575.0620, 9575.0720, 4670.0100, 4670.0600, 4670.0610, 4670.0620, 4670.1600, 4670.1980, 4670.2300, 7520.0100, 7520.0200, 7520.0350, and 7520.0680.)

DECLARATION OF COUNSEL

I, Gail Olson, 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 Minnesota Rules, chapter 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 0859.

Gail Olson
Assistant Attorney General

Dated: September 8, 1989

Comments
PN

3 rule - for Human Services, Health Dept. and Public Safety

Adopted Permanent Rules Relating to Merit System

Dept of Human Services 9575.0010 - 9575.0120
Dept of Health 4670.0100 - 4670.2300
Dept of Public Safety 7520.0100 - 7520.0680

Authority

256.012 - Human Services - shall promulgate by rule personnel standards on a merit basis with federal standards

144.071 - Health Dept - commissioner may establish a merit system for employees of county or municipal health departments

12.22 - Division of Emergency Man. - governor shall have authority to establish rules for proper and efficient ... of personnel standards on a merit basis

Notice of Intent
3 Separate Notices for each agency
each contains statutory authority
each dated 6-26-89

Statement of Need and Reasonableness
Statement seems to be consistant with rules

Affidavit of Mailing the Notice of Intent

Affidavit from Human Services = both mailing and accuracy of list
Notice of Intent Attached dated July 13, 1989

Affidavit from Health = for mailing of notice
? Certificate from Heath = for accuracy of list
Notice of Intent Attached
dated July 13, 1989

Affidavit from Public Safety - for mailing
? Certificate of use from Heath = accuracy of list
Notice of Intent Attached
dated:
Certificate - July 12, 1989 Affidavit July 13 1989

3 rules combined in following documents

Notice of Intent to Solicit
Statement of Need and Reasonableness
Declaration of Counsel

Repealed:
MN Rule part 4670.0620 (Health)
MN Rules part 9575.0090, subparts 2 and 3 (Human Services)
MN Rules part 7520.0350, subparts 2 and 3

Rules

9575.0090 Subp. 2a D last sentence

? These requirements may (shall) be incorporated

? 9575.0380
... shall be paid for all hours of the assignment ... or may be granted a one-step salary increase

MINNESOTA MERIT SYSTEM

FOR: COUNTY WELFARE
HUMAN SERVICE BOARDS
COUNTY AND LOCAL EMERGENCY SERVICES
COUNTY AND LOCAL PUBLIC HEALTH

HUMAN SERVICES BUILDING
444 LAFAYETTE ROAD
ST. PAUL, MINNESOTA 55155-3822
612/296-3996

DATE: September 11, 1989

TO: ~~Rita Desmond~~ BaRB Louik
Legal Assistant
Attorney General's Office, Administrative Division

FROM: Ralph W. Corey
Merit System Supervisor

SUBJECT: Review of a Rule Adopted Without a Public Hearing; Rules Relating the Merit System, Minnesota Rules, parts 9575.0010, 9575.0020, 9575.0090, 9575.0380, 9575.0530, 9575.0620, 9575.0720, 4670.0100, 4670.0600, 4670.0610, 4670.0620, 4670.1600, 4670.1980, 4670.2300, 7520.0100, 7520.0200, 7520.0350, and 7520.0680.

Enclosed are the documents required to be submitted under Minnesota Rules, part 2010.0300 for your review of a rule adopted without a public hearing for the above entitled matter.

Official documents in this submitted material include:

1. A copy or photocopy of the notice of solicitation of outside information or opinions as published in the State Register.

2. A copy of the proposed rule with a certificate of approval as to form by the revisor of statutes attached.

3. The notice of intent to adopt a rule without a public hearing as mailed.

4. The statement of need and reasonableness in support of the proposed rule complying with part 2010.0700.

5. The affidavit of mailing the notice of intent to adopt a rule without a public hearing. The affidavits state that the mailing list maintained by the agency pursuant to Minnesota Statutes, sections 14.22 and 14.14, subdivision 1a is accurate, complete, and current and that the notice of intent to adopt the rule without a public hearing was mailed to all persons and groups whose names appear on the list.

6. A copy or photocopy of the notice of intent to adopt the rule without a public hearing as published in the State Register.

7. Four copies of the rule as adopted. Any modification made to the proposed rule is reflected on the rule as adopted and is approved as to form by the revisor of statutes.

8. The findings of fact, conclusions, and order adopting the rule.

9. All written requests, submissions, or comments on the rule received by the agency except requests solely for copies of the rule or of the statement of need and reasonableness.

Please note no requests, submissions or comments on the rule were received.

10. The declaration of the attorney in the attorney general's office who represents the agency.

11. No requests to be notified of submittal of the rule to the Attorney General.

If you have any questions on this submitted material, please call me at 296-3996.