

STATE OF MINNESOTA
DEPARTMENT OF EMPLOYEE RELATIONS

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

STATEMENT OF NEED
AND REASONABLENESS

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 The sunsetted provisions were to be repealed July 1, 1981 unless the 1981 Legislature acted to reinstate these provisions.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

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 This Act repealed and replaced all of the previous civil service statutes (Minn.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

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

1. To delete material no longer appropriately the subject of rule because it is now covered exclusively in collective bargaining agreements and/or plans established pursuant to Minn. Stat. § 43A.18. The rules promulgated under Chapter 43 will be abolished as the new rules are promulgated.
2. To delete material more appropriately the subject of administrative procedures pursuant to Minn. Stat. § 43A.04, subd. 4 because it affects only the State's relationship to employees in areas not appropriate to collective bargaining or it deals exclusively with the internal management of the Department or other agencies.
3. To delete material no longer required in rule because it is now adequately covered in statutes.
4. To add or revise rules or portions of rules to implement changes in law resulting from the enactment of Chapter 43A or changes to other laws such as the Minnesota Data Practices Act.

5. To organize the rules parallel to the organization of the personnel law which sequentially follows the employment process for job applicants.
6. To revise rules to permit better administration of the rules and the State's personnel program and to delete archaic or unworkable provisions which have fallen into disuse.
7. To make revisions for clarity, simplicity and consistency with language used in Chapter 43A.

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

1. 2 MCAR § 2.300 Scope of the rules. This rule specifies the purpose and scope of these rules. Minn. Stat. § 43A.04, subd. 3 requires that rules be promulgated to cover or implement provisions of Minn. Stat. ch. 43A which generally affect the rights of or processes available to the general public. The general public has the right to know who and what are covered by these rules.
2. 2 MCAR § 2.301 Other elements implementing the state personnel system. The State personnel management program is a comprehensive system of rules, administrative procedures, plans and collective bargaining agreements. Personnel rules are but one of the components of the personnel management system. To reduce confusion and eliminate inaccurate assumptions, the general public needs to understand the scope and place of personnel rules in the system.
3. 2 MCAR § 2.302 Application. This rule clarifies which rules govern actions at particular points in time. It eliminates confusion so the system can be administered efficiently and effectively. This rule prevents retroactive administration of the rules.
4. 2 MCAR § 2.303 Definitions. Terms used in the context of the rules that have unique meanings need to be defined so that individuals can fully comprehend the rules.
5. 2 MCAR § 2.306 Use of class titles. This rule requires the use of official class titles in formal personnel actions. It is necessary to have this rule because the State of Minnesota currently uses over 2,000 class titles. It is impossible to be familiar with all informal and working titles for similar positions. The required use of official titles reduces errors and delays in personnel transactions. The rule is reasonable because DOER disseminates information about positions and class titles widely, and access to official titles is conveniently available to agencies and to the public. In addition, this rule provides appointing authorities with the flexibility to use working titles for internal administrative purposes.
6. 2 MCAR § 2.307 Class specifications. This rule requires the Commissioner to make information about State job classes available to the public and defines the material to be included in these specifications. The rule is needed to help applicants, counselors, teachers, research personnel, and the general public obtain information available on each class relative to the duties performed and knowledge and skills required. The rule does not require an exhaustive description of work performed in each class but provides a general guide to the duties which may be performed or assigned by State supervisors.

The rule permits the use of individual position descriptions as class specifications for single position classes. While summary descriptions of positions assist the public in obtaining an overall view of the nature of work performed in large classes, the individual position description represents a better source of information about a single position class. No purpose will be served by making the additional effort to prepare an abstract summary of a single position class.

7. 2 MCAR § 2.311 Administration of the wage and salary plan. This rule establishes salary provisions for new employees and individuals who return to state employment. The rule is needed to help prospective applicants determine their interest in state employment. It is reasonable because it limits the autonomy of appointing authorities to set salaries and provides consistency across agency lines, while giving latitude and flexibility to appointing authorities. The rule provides flexibility by permitting the Commissioner to approve appointments at a higher rate based upon recommendations from appointing authorities regarding the exceptional qualifications of a candidate or the unavailability of candidates at the minimum salary rate. (The limits included in the rule have been used for several years with few problems.)
8. 2 MCAR § 2.312 Relocation expenses. Minn. Stat. § 43A.04, subd. 3e requires a rule on "conditions under which moving and other expenses may be authorized and paid prior to appointment to persons who have accepted state employment." This rule establishes the parameters for authorizing and paying relocation expenses and also requires that authorization be made on or before the date of hire to prevent retroactive bargaining. It is reasonable to expect that all negotiations of this type will be resolved before the employment decision is made. This rule also establishes a reasonable time period in which relocation must be completed, but provides for an extension of this time period under unique circumstances. To ensure fairness, the reimbursement limits for relocation are the same for current and new employees. The rule also provides an appointing authority flexibility to reduce the level of reimbursement so the appointing authority is not limited to all or a nothing proposition.
9. 2 MCAR § 2.316 Scope of competition. This rule identifies the criteria that the Commissioner will use to decide if an examination will be announced on a competitive open or competitive promotional basis. This rule is necessary to limit the authority of the Commissioner by forcing the Department of Employee Relations to publicly identify and communicate the criteria for making this decision. It is reasonable to provide this information so the public will know why they may not be able to participate in some selection processes. The criteria are reasonable because they provide a balance among the needs of appointing authorities, the provisions of collective bargaining agreements and plans established under Minn. Stat. § 43A.18, the number of qualified candidates inside and outside the civil service, affirmative action goals, and mobility opportunities for employees.
10. 2 MCAR § 2.317 Public notice of examinations. This rule implements the directives of Minn. Stat. § 43A.10, subd. 5, which requires public notice for competitive open examinations. It is reasonable to ensure public notice in order to recruit an adequate supply of qualified candidates. The rule also complies with the basic principles of a merit system of personnel selection which require open competition and public information about job opportunities. The provisions of this rule are essentially the same as previous personnel rules that have been in effect for several years. A minimum of seven (7) days posting is reasonable because it provides sufficient time for interested persons to become aware of examination announcements and/or job openings without placing undue time restrictions or delays on the remainder of the selection process. Incorporating a provision for use of a variety of means of publicizing examination announcements is necessary and reasonable because it allows the Commissioner to use the most effective and efficient methods of communication available at the time and to adapt them to focus on a targeted audience.

11. 2 MCAR § 2.318 Contents of announcements of examinations. This rule specifies the content of exam announcements. It is reasonable because it forces DOER to include adequate information on exam announcements so that prospective applicants can adequately assess their chances of success in the examination process and can decide whether to apply for listed jobs. This provision of the rules is essentially the same as previous personnel rules that have been in effect for several years.
12. 2 MCAR § 2.319 Expenses of candidates for civil service positions. The Commissioner or an appointing authority may pay travel expenses for candidates or eligibles invited to participate in oral examinations or employment interviews. Since all agencies use the Commissioner's Plan to pay travel expenses of employees not covered by collective bargaining agreements; therefore, it is reasonable to use the provisions of this plan to cover the travel expenses of candidates. This rule is needed to ensure that all candidates receive equal treatment across agency lines.
13. 2 MCAR § 2.320 Applications. This rule requires standardized forms to be used to apply for examinations. Without standardization it would be virtually impossible to administer the selection process, due to the large number of examinations and applications. The information required on the application form is necessary in order to determine candidate qualifications and to appropriately certify eligibles to vacant positions. It is reasonable to force DOER to provide the public with a description of the application form and its contents along with a statement of the importance, effects and private or confidential nature of the information collected. The provisions of this rule are essentially the same as previous personnel rule that has been in effect for several years.
14. 2 MCAR § 2.321 Admissions.

A. General. This rule is necessary to define the conditions under which candidates are admitted to examinations and to specify when applications may be withdrawn by the Commissioner. It provides that applicants must meet standard application requirements, but gives the Commissioner flexibility to accept incomplete applications if candidates later provide the needed information. The rule is reasonable because it gives the Commissioner flexibility and authority to withdraw an application if the applicant refuses to provide sufficient application data. This ensures consistency among candidates which provides an efficient selection process.

B. Limited admissions. This rule permits the Commissioner to limit admission to those applicants willing to work in specific geographic areas and under specific employment conditions of anticipated vacancies. It also permits the Commissioner to limit the number of candidates admitted to subsequent examination parts. This provision is reasonable because it balances the interest of individual applicants and the needs of state agencies. It reduces the time and effort needed to complete the exam process by eliminating those applicants for whom no appointment opportunities would ever exist (i.e., those wishing to work in locations or employment conditions where positions do not now or never will exist or those scoring too low on an examination part to have any hope of ever being referred).

C. Refusal to admit to an examination. This rule protects the security of examinations by permitting the Commissioner to refuse admission to an applicant who has taken all or part of an exam within the preceding six months and to withdraw applications of candidates who fail to appear for examination. It is both necessary and reasonable to prohibit individuals from retaking tests at any time because retesting would enable them to practice and "learn the test", which would provide an advantage for the applicant over other applicants and would reduce the validity of the examination. This rule gives the Commissioner the flexibility to determine the effects of retesting in a shorter period of time so that the applicant is not adversely affected if examination circumstances do not warrant it.

- D. Notice of admittance and refusal to admit. This rule requires that applicants be notified of the date, time and place of an examination or examination part and requires the Commissioner to provide a written statement on the reasons for refusing to accept an application or to admit an applicant. It is necessary and reasonable to inform the public of the information DOER will provide applicants regarding their admittance or rejection. It is reasonable to force DOER to spell out reasons why applicants are not accepted or admitted.
15. 2 MCAR § 2.322 Change of application deadline or examination date. This rule defines the Commissioner's authority to change dates for filing applications and/or cancelling examinations or exam parts. The rule is necessary to allow the Commissioner to adapt the selection process to current or changing conditions. It eliminates the need to follow a rigid process once that process becomes inefficient or unnecessary. The provisions of this rule are essentially the same as a previous personnel rule which has been in effect for several years.
 16. 2 MCAR § 2.323 Administration of examinations. This rule tells the public that the Commissioner has the authority to select the time, place and personnel to administer the examinations. Public notice of this authority is necessary to reduce appeals on the exam process which will reduce the cost and time of administering examinations.
 17. 2 MCAR § 2.324 Scoring of examinations. This rule establishes and communicates the procedures that will be used to score examinations. The rule is necessary and reasonable because it forces DOER to follow standardized procedures in scoring examinations. It provides public information regarding how test scores are derived and the effects of the scoring procedures on applicants. It indicates when veteran's preference points are applied according to Minn. Stat. § 43A.11.
 18. 2 MCAR § 2.325 Notification of examination ratings. This rule specifies that all candidates must receive written notice of their ratings and that DOER must keep this information on file. The rule is both necessary and reasonable because it forces DOER to provide candidates with written notice. Candidates have a right to know their test results and that this information is an official record of the department. This rule is essentially the same as a previous personnel rule in effect for several years.
 19. 2 MCAR § 2.326 Explanation and appeals of examination ratings. This rule establishes a thirty (30) day time limit for candidate appeals of examination results and provides a remedy if errors are found. The rule is necessary in order to give candidates a due process procedure to challenge their examination ratings. The thirty (30) day limit is reasonable because it provides ample opportunity for a candidate to determine whether an error was made and to initiate the appeal process. This rule also provides that a change in a rating as the result of an appeal will not affect an appointment already made in good faith as a result of original ratings. To make such a change would create hardship for the appointing authority and would be unfair to the selected candidate.
 20. 2 MCAR § 2.341 Eligible lists. This rule prescribes the order in which names appear on eligible lists and establishes an objective tie-breaking procedure. Minn. Stat. § 43A.13 specifies the number of names that can be certified for a position. A consistent procedure is needed to rank candidates with identical scores. The use of the last four digits of the social security number as the tie-breaking approach is reasonable because the method is objective and that can easily be documented.

21. 2 MCAR § 2.342 Reemployment lists and reinstatement. This rule defines "reinstatement" as the return of a former employee to a position in the same class within three years of separation. It defines "reemployment list" as the names of individuals who have applied to be placed on that list within three years of separation from that class. The public has a right to know that reinstatement or reemployment are alternatives to competitive open examinations for filling vacant positions.
22. 2 MCAR § 2.343 Duration of eligible lists. The Commissioner has authority to establish the length of time that eligible lists remain in effect beyond the six months required by statute. This rule is necessary because it establishes and communicates the criteria that the Commissioner uses to determine how long an eligible list will remain in effect. It also establishes the criteria and conditions for abolishing or combining lists. It requires the Commissioner to notify individuals whose names appear on lists that will be abolished and invite them to reapply if the exam is announced again. This rule is reasonable because it forces DOER to follow a specific set of criteria and to communicate specific actions to affected parties.
23. 2 MCAR § 2.344 Removal of names from eligible lists. This rule defines conditions under which a candidate's name may be removed from an eligible list. An accurate, up-to-date list makes the selection process easier and faster; therefore, it is necessary to remove from eligible lists names of individuals who are no longer interested in or available for employment. If names are not removed, agencies waste time contacting people who have no interest in employment. This rule makes candidates aware of their specific responsibilities for remaining on eligible lists.
24. 2 MCAR § 2.345 Notice of removal of names from eligible lists. This rule is both necessary and reasonable to protect the rights of eligibles by requiring the Commissioner to notify them in writing when they are permanently removed from an eligible list.
25. 2 MCAR § 2.346 Restoration of names to eligible lists. This rule establishes a procedure for individuals who have been removed from eligible lists to request that their names be restored. It is necessary and reasonable to provide a mechanism to correct errors in removing names from eligible lists.
26. 2 MCAR § 2.347 Changes in availability. This rule informs eligibles that they may update the status of their availability by notifying the Commissioner. It is necessary and reasonable to communicate this right to eligibles so that they may increase their possibilities of finding a job.
27. 2 MCAR § 2.351 Order of certification. The Commissioner has the authority to select the most appropriate eligible list when certifying candidates for vacancies. The rule is necessary because it provides the order of certification used by the Commissioner and requires the Commissioner to consider requests of an appointing authority and/or any obligation under collective bargaining agreements or plans established under Minn. Stat. § 43A.18. The rule is reasonable because it forces DOER to follow specific procedures and also communicates to the public the process and procedures or priority listing of eligible lists.
28. 2 MCAR § 2.352 Selective certification. This rule authorizes the Commissioner to certify only those eligible who have specific skills documented by an appointing authority as being essential and unique to a position or need of a state agency. Some positions require unique skills, knowledge or abilities that are not common to the general class; therefore, it is necessary and reasonable to screen out individuals who do not have these qualifications because they would be unable to perform the duties of the position without substantial training time and expense.

29. 2 MCAR § 2.353 Incomplete and augmented certification. This rule provides for flexible administration of the certification process in order to assist agencies in securing a reasonable number of eligibles to make appointments to fill vacancies without undue delays. It allows the Commissioner to refer more names to an agency when those originally referred were unavailable rather than supplying a completely new certification. This is necessary to ensure that interested eligibles already interviewed and under appointment consideration may continue to be eligible for appointment. Establishment of a 30 day limit on this provision is necessary and reasonable to balance the interests and rights of agencies and eligibles already referred and interested in employment with those eligibles who may subsequently be added to eligible lists for referral through a continuous testing process.

The rule also provides procedures to follow if there are insufficient eligibles available to make a complete certification. This is necessary because labor market conditions periodically make it impossible to supply a complete certification in occupations and/or geographic areas where few eligibles are available. In such cases, it is reasonable to establish alternative strategies for the Commissioner to use in referring eligibles to agencies. The provisions of this rule were previously included in old Personnel rule 2 MCAR § 2.084 section 5C, D and E.

30. 2 MCAR § 2.354. Revised certification. This rule provides for the addition of eligibles to certifications already made when the eligibles' scores or availability have been changed. It is reasonable to require the referral of eligibles whose scores are changed through the due process appeal procedures of 2 MCAR § 2.326. It is also reasonable to permit the Commissioner discretion in referring eligibles who have themselves decided to change their availability since the Commissioner must balance their interests with the needs and interests of the State service for optimum administrative efficiency in the job filling process. Provisions of this rule were previously included in old Personnel rule 2 MCAR § 2.067.

31. 2 MCAR § 2.355 Appointments. This rule expands on statutory language contained in M.S. § 43A.14 and M.S. 43A.15(1). It establishes the appointing authority's responsibility to verify application data, explain specific terms and conditions of employment to prospective employees and submit appropriate appointment forms. This rule precludes appointment from an eligible list prior to the date of certification to prevent selection of candidates prior to implementation of established certification procedures. It is necessary to clarify who is responsible for verifying application information and communicating to new employees specific terms and conditions of employment. It is also necessary to inform the public that application data on prospective employees will be verified. Since appointing authorities have direct contact with prospective employees, they are in the best position to perform this function.

32. 2 MCAR § 2.361 General. Minn. Stat. § 43A.04, subd. 3b requires rules on "the process for effecting noncompetitive and qualifying appointments". This rule identifies for the public the types of appointments that can be made without competition. This rule provides continuity for the specific rules that follow and helps the public understand the various methods of appointment to State jobs.

33. 2 MCAR § 2.362 Emergency appointments. This rule communicates to the public that these short-term appointments are noncompetitive in nature due to unique and immediate needs of an agency and that an appointing authority may appoint anyone who is considered qualified.

34. 2 MCAR § 2.363 Temporary appointments. This rule establishes and communicates the situations under which temporary appointments are appropriate and the criteria the Commissioner uses in approving temporary appointments. The Commissioner may authorize an appointing authority to appoint anyone who is qualified or may certify qualified eligibles from an appropriate list. This approach balances the needs and interests of appointing authorities and eligibles. The criteria are designed to clearly communicate that temporary appointments are, in fact, temporary and not a vehicle for subverting the normal selection process.
35. 2 MCAR § 2.364 Provisional appointments. This rule establishes and communicates the documentation an appointing authority must submit and the criteria that the Commissioner uses in approving a provisional appointments. Public notice of provisional appointment procedures is necessary because Minn. Stat. § 43A.15, subd. 4 gives the Commissioner the power to authorize a probationary appointment of a provisional appointee who has performed satisfactorily for at least sixty (60) days. The criteria used for selection are designed to comply with merit system principles and are compatible with the state selection process. The provisions of this rule are essentially the same as a previous personnel rule that has been in effect for several years.
36. 2 MCAR § 2.365 Transfers from other public jurisdictions. This rule establishes criteria the Commissioner uses in exercising his/her discretionary authority to allow transfers from other public jurisdictions. It limits the authority of the Commissioner. The criteria are compatible with merit system principles and the state selection process.
37. 2 MCAR § 2.366 Exceptional appointments. The Commissioner has discretionary authority to authorize a probationary appointment of a person possessing exceptional qualifications needed by an agency to fill a particular position. This rule establishes and communicates the criteria and procedures used to review and authorize or deny these appointments. The criteria are compatible with merit system principles and the state selection process.
38. 2 MCAR § 2.367 Routine service appointments. This rule requires public notice of the designation of classes which will be included as routine service. It is both necessary and reasonable to require DOER to designate these classes and to provide public information regarding the selection processes used to fill positions in these classes.
39. 2 MCAR § 2.368 Shortage occupation appointments. This rule establishes and communicates criteria and procedures to be used in making shortage occupation appointments. The criteria are compatible with merit system principles and the selection process. It is both necessary and reasonable to require DOER to designate these classes and to provide public information regarding the selection processes used to fill positions in these classes.
40. 2 MCAR § 2.369 Work-training appointments. This rule authorizes appointing authorities to make work-training appointments only to positions in specific work-training programs approved by the Commissioner. It provides for public notice of intent to accept applications for entry into approved training programs. The rule is necessary because successful completion of a work training program can lead directly to probationary appointment. Therefore, it is reasonable to maintain selection procedures that are compatible with a merit philosophy and our selection process.
41. 2 MCAR § 2.370 Internship appointments. This rule specifies that interns must be associated with formal academic programs. Internships are designed to be practical applications of academic learning and must be directly associated with academic programs.

42. 2 MCAR § 2.391 Affirmative action. This rule outlines the general goals of affirmative action and the methods by which the goals are to be achieved. The inclusion of a policy statement is necessary to reaffirm the State's commitment to affirmative action and to comply with the provisions of Minn. Stat. § 43A.19, subd. 1 which require that the Statewide Affirmative Action Program include a statement of general goals and policies.
43. 2 MCAR § 2.392 Scope of chapter. This rule is necessary to establish that the remainder of this chapter covers all of the executive branch. This rule is reasonable because it meets the requirements of the law. To prevent undue administrative burden, it is reasonable to include a provision that allows the Commissioner to permit agencies covered by federal requirements that parallel or conflict with these rules to substitute requirements of the federal agency for the requirements of these rules.
44. 2 MCAR 2.393 Duties of the agency head. Minn. Stat. § 43A.19, subd. 2 requires the head of each agency to prepare and implement an affirmative action program. The agency head is further required by Minn. Stat. § 43A.19, subd. 1 to periodically report to the Governor and the Legislature on the implementation of the agency's affirmative action plan. To ensure success of an affirmative action program, responsibility must be vested with individuals who have sufficient status and authority to carry out the requirements of the program. It is then reasonable to assign the responsibility for affirmative action to the agency's top executive.
45. 2 MCAR 2.394 Requirements for agency affirmative action plans. This rule is necessary to establish minimum standards which all agencies must meet to ensure program consistency throughout the executive branch. With this approach the State, which is perceived by its citizens as a single employer, may carry out and report the success of a uniform statewide affirmative action program. The rule implements the requirements of Minn. Stat. § 43A.19, subds. 1 and 2 which establish a statewide program and which further state that "the head of each agency in the executive branch shall prepare and implement an agency affirmative action plan consistent with this section and rules promulgated in section 43A.04, subd. 3." It also implements Minn. Stat. § 43A.19, subd. 1(b) which requires the Commissioner to establish standards for agency affirmative action plans, goals and timetables.

The standards set forth in this rule are reasonable because they are a composite of federal enforcement agency requirements which govern the activities of one or more state agencies. Conformity with these standards not only allow uniformity throughout the state executive branch, but ensure that agencies will meet the requirements of various federal agencies which regulate their activities. In addition, these requirements are reasonable because they are general in nature which allows agencies maximum flexibility to adapt them to meet individual management needs.

Specifically, Minn. Stat. §§ 2.394 A (1,3,4,5) and 2.394 B(1) are needed to communicate to employees and the public the content of each agency's affirmative action program and individuals covered by it.

2 MCAR § 2.394 A(2) is necessary to clearly identify persons accountable for affirmative action activities and to delineate their responsibilities. Such a requirement is reasonable to ensure the success of any good management program. Consideration was given to designating an affirmative action committee in each agency. The decision was made not to mandate such a committee but to leave the formation of one to the discretion of each agency head. It is reasonable not to require committees in all agencies for four reasons: dilution of accountability, variation in management styles, the risk of stressing means at the expense of ends, and lack of capability to monitor committee action. Appointing authorities should

be free to designate affirmative action committees or select other effective structures to implement the affirmative action program in their agencies. Whatever the structure, it is the intent of these rules to emphasize the responsibility of each agency head to lead an effective affirmative action effort.

2 MCAR § 2.394 A(8) and (9) are necessary because specific measurable objectives and action steps must be established for achieving the goals of the program. It is necessary to identify the procedures which will be used to evaluate the success of the objectives and action steps.

It is reasonable to require each agency to include a procedure for pre-employment review of all hiring decisions for positions in goal units with unmet affirmative action goals. Access to positions in the work force is the first and most important step in the process of eliminating barriers to equal employment opportunity. The decision to hire must take into account affirmative action goals.

2 MCAR § 2.394 A(10) is reasonable because the law in Minn. Stat. § 43A.19, subd. 1(b) requires that agencies be provided with procedures, standards and forms to be used in the preparation of their affirmative action plans. A summary transmittal form provides a check list for each agency and for the Equal Opportunity Division so that no important element of the plan's requirements is overlooked.

2 MCAR § 2.394B exempts agencies with fewer than 25 employees from developing full scale affirmative action plans. This variation in requirements is needed for agencies that have few employees and little turnover. Further, statistical computations of goals and timetables are unnecessary in small agencies because underutilization is more readily apparent. This exemption covers 35 agencies with a total of 199 employees, .0657% of the 30,164 employees in the executive branch of state government.

The standards outlined in 2 MCAR § 2.394, subd. B are repetitious of those portions contained in 2 MCAR § 2.394, subd. A which do not add to administrative burden but which are necessary to provide protection for the individual employee and to establish an agency commitment to the affirmative action program.

46. 2 MCAR 2.395 Requirements for complaint procedures. This rule is needed to provide for due process in handling complaints of disparate treatment from individual members of protected groups.

This rule is reasonable because it allows aggrieved employees to use the grievance procedure included in the Commissioner's Plan established under Minn. Stat. § 43A.18 or in applicable union contracts should the complaint be unrelated to affirmative action concerns. This eliminates the possibility of an employee missing the time limits for filing a grievance under a more appropriate grievance procedure. This rule also provides reasonable time limits for determining and reporting the merits of affirmative action grievances. These time limits balance the needs of aggrieved employees for timely redress with the needs of state executives for a reasonable amount of time to study the issues, weigh alternatives and arrive at equitable conclusions.

47. 2 MCAR § 2.396 Requirements for goals and timetables. The procedures outlined in 2 MCAR § 2.396 are designed to meet the requirements of various federal enforcement agencies and to standardize methodology. They also are designed to permit flexibility in data collection to cover cases where more specific data is attainable such as for faculty, by particular discipline rather than as a group, or where standard data may not be available such as for Vietnam era veterans until publication of the 1980 census data. For example, prior to publication of 1980 census data, in the case of Vietnam era veterans, a 9% affirmative action goal has been set for each agency's work force based on State Veteran's Administration and United States Veterans Administration data indicating that this percentage approximates the total percent of Vietnam era veterans in the state.

Numerical goals and timetables for achieving them are an integral part of affirmative action programs. This rule establishes general standards for identifying underutilization of protected groups and for setting goals to reach parity between the numbers of protected group employees and the numbers of qualified protected group workers in the external labor force.

48. 2 MCAR 2.397 Reporting requirements. Reporting procedures are required by Minn. Stat. § 43A.19, subd. 1(c). Internal reporting systems on a prescribed schedule are needed to monitor the results of affirmative action efforts so needed corrective action can be taken. Quarterly reporting was chosen for agencies with 25 or more employees, and semi-annual reporting was chosen for agencies with fewer than 25 employees. It is reasonable to assume that sufficient turnover and opportunity for hiring protected group members would occur in that amount of time to provide managers with data to assess progress towards meeting goals and, if necessary, to take corrective action. Agencies need 30 days to collect, verify and submit their reports.
49. 2 MCAR § 2.397 Biennial reports. Since all agency goals and management programs are reviewed when biennial budgets are submitted, it is reasonable to require agency affirmative action reports to be submitted to the Governor and the Legislature with their budget requests.
50. Social Security rules. Minnesota Statutes, Chapter 355, permits the State to enter into an Agreement with the Federal Government to extend social security coverage to state and local governmental employees in Minnesota. In accordance with Section 218 of the Federal Social Security Act, such agreement was entered into. While the State's responsibilities and direction are provided by federal law, federal regulations, state law and the State Social Security Agreement, Minn. Stat. § 355.05 permits the Department of Employee Relations to promulgate rules applicable to other state departments, local governmental units and state and local governmental employees.
- The proposed social security rules replace 2 MCAR § 2.198 and incorporate the latest changes in Federal Social Security Law covering definition of wages, contribution rates, maximum wage limits, and depositing due dates.
51. 2 MCAR 2.401 Authority and scope of chapter. This is intended to provide all affected agencies and individuals with the statutory authority for the rules that follow concerning social security coverage for state and local governmental employees.
52. 2 MCAR 2.402 Definitions. Terms that relate to Social Security matters must conform to their legal definitions. This rule provides legal definitions of these words and phrases.

53. 2 MCAR 2.403 Employee account numbers. The Agreement between the State of Minnesota and the Secretary of Health and Human Services requires the State to report covered wages paid to state and local governmental employees under the social security account number assigned by Social Security Administration. To fulfill its responsibilities in reporting, the State needs rules concerning the employee social security account number. The requirements set forth in these rules are identical to those required by the Social Security Administration of private enterprise.
54. 2 MCAR 2.404 Identification number for coverage groups. This rule informs political subdivisions that Social Security Administration assigns a separate identification number to each reporting unit for reporting social security wages. This number must be entered on all of the reporting units documents involving social security.
55. 2 MCAR § 2.405 Employee's and employer's contribution. Federal law and Regulations of the Secretary of Treasury, which govern the Federal Insurance Contribution Act do not apply to local governmental units. Therefore, this rule is needed to direct local governmental unit regarding employee and employer contribution rates, controls and records, and employee statements.
56. 2 MCAR § 2.406 Collecting and remitting tax. This rule details the employer's responsibility in deducting employee social security contributions. It includes the time period for taking the deduction, the employer matching of such deduction, and time and form used in remitting the deduction to the State. Since neither federal law nor the Secretary's regulations apply to local governments, the state agency rules must provide the authority, direction and penalties to ensure compliance with the State Agreement.
57. 2 MCAR 2.407 Submitting contributions. All employers, including governmental units, receive from the Internal Revenue Service instructions for depositing withheld federal income taxes and FICA taxes. FICA instructions apply only to private enterprise. While the instructions often include a statement that the FICA directions do not apply to governmental units, this statement is sometimes overlooked. Invariably some governmental units deposit their Social Security contributions with a depository bank or the Federal Reserve Bank. This rule is, therefore, included to alert the governmental unit not to make such deposits. If it does make such deposits, the unit can be assessed interest on the delinquent payment to this office.
58. 2 MCAR § 2.408 Liability for tax. Other sections of these rules direct local governmental units to withhold required Social Security employee contributions. This rule states that the units are responsible for contributions whether or not they are withheld. Similarly employees remain liable for their contributions even if the employer fails to withhold them from their earnings.
59. 2 MCAR § 2.409 Reporting unit's failure to pay state agency. This section re-states the actions available to the state agency to collect or recover delinquent contributions (including interest) from political subdivisions.
60. 2 MCAR § 2.410 When employer may begin deducting. The effective date of a political subdivision's Social Security coverage is defined by State law and requires an agreement between the state and the federal government. This section is needed to direct political subdivisions when to begin deductions from earnings.
61. 2 MCAR § 2.411 Sick pay. Public law 97-123, enacted by the U.S. Congress on December 29, 1981, provides that sick pay (even when paid by a third party) shall be considered wages for social security purposes. Federal law and Internal Revenue regulations apply and provide direction only to private enterprise. The provisions contained in these rules are similar to legal requirements for private enterprise.

62. 2 MCAR § 2.412 Wage reports. The federal Social Security law and the State Agreement require the State to submit periodic wage reports covering the political subdivisions included in the State Agreement. This section requires each political subdivision to submit its wage report to the state agency so that the State may submit its report.
63. 2 MCAR § 2.413 Quarterly reports before 1981. Federal social security reporting requirements changed from quarterly to annual reporting on January 1, 1981. Since Social Security coverage under federal law can be retroactive for up to five years, this rule provides for quarterly reports that may be required from some political subdivisions for periods before 1981.
64. 2 MCAR § 2.414 Annual reports, 1981 and after. This rule provides direction to political subdivisions for reporting social security wages for calendar year 1981 and thereafter. It states the period covered by each report, the employees to be included, the due date for submitting the completed report and the penalty assessed for failing to meet the established due date. The terms of the State Agreement with the Secretary of Health and Human Services provide similar direction and due dates for the State. Therefore, to fulfill the State's obligations, the state must receive the wage reports from the local government within the periods established by these rules.
65. 2 MCAR § 2.415 Adjustment reports. Because there will be some errors in the wage reports submitted to the state agency by the reporting units, this rule provides direction about errors that need to be corrected and time limits for making corrections.
66. 2 MCAR § 2.416 Records. The State Social Security Agreement requires the State to maintain certain records and requires that employees covered by the Agreement be given periodic written statements. Since the State does not maintain a record of all the information required by the State Agreements, political subdivisions must retain certain records so that individual employee wage payments can be verified, if needed. The local governmental unit is also directed to issue employee statements by designated due dates.
67. 2 MCAR § 2.417 Administrative costs. This rule provides DOER with funds to continue operations by operating from a revolving fund. State law permits DOER to recover its administrative expenses by billing each reporting unit a prorated share. This rule, therefore, establishes the basis for the prorated billing and the period for each billing. This rule carries out the intent of the Legislature to administer this program without appropriated funds.
68. Repealer. Personnel rules based on Minn. Stat. § 43 are being repealed because they are redundant and/or obsolete. They are being replaced by the new set of rules which are consistent with Minn. Stat. § 43A.