STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

OCCUPATIONAL SAFETY & HEALTH DIVISION

In the Matter of the Proposed Adoption of Rules Implementing Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work.

STATEMENT OF NEED AND REASONABLENESS

On December 29, 1970, Congress passed the Williams-Steiger Occupational Safety and Health Act of 1970 for the purpose of assuring so far as possible every working man and woman in the nation safe and healthful working conditions and to preserve human resources. Section 18 of that Act provided guidelines for states to assume responsibility for development and enforcement of Occupational Safety and Health Standards under an approved State Plan. One criterion that must be met for State Plan approval provides for the development and enforcement of safety and health standards which are at least as effective in providing safe and healthful employment and places of employment as the standards promulgated under the federal Occupational Safety and Health Act of 1970.

Minnesota submitted a plan for the development and enforcement of state occupational safety and health standards to the Federal Occupational Safety and Health Administration (hereinafter: "Federal OSHA") on November 9, 1972. The plan included mandated changes in Minnesota's occupational safety and health program to bring it into full conformity with Section 18 of the Occupational Safety and Health Act of 1970. The Department of Labor and Industry was designated as the state agency to administer the plan.

The Commissioner of Labor and Industry adopted Federal OSHA Standards promulgated prior to October 1972 (effective in Minnesota in February 1973). The state plan also included a provision that the commissioner would continue to

adopt Federal OSHA Standards and retain those Minnesota Standards not covered by Federal Standards in accordance with Section 18 of the Act. The Minnesota Legislature passed the "Occupational Safety and Health Act of 1973" (Laws 1973, Chapter 732) on May 24, 1973.

The Employee Right-to-Know Act was enacted by the 1983 Legislature and incorporated into the Minnesota Occupational Safety and Health Act. As such, the Employee Right-to-Know Act will be enforced as part of the Minnesota OSHA Program.

Authority to adopt the above-captioned rules is in Minnesota Statutes section 182.657. This section requires the Commissioner of Labor and Industry to adopt rules deemed necessary to carry out the responsibilities of Laws 1973, Chapter 732.

The purpose of the Employee Right-to-Know Act is to ensure that employees receive necessary information concerning hazards in their workplaces. The occurrence of illness resulting from workplace exposure to hazardous substances is an indication of the need for an Employee Right-to-Know Statute. The most comprehensive figures on the problem were compiled by the United States Bureau of Labor Statistics (BLS) in an annual survey of approximately 200,000 industrial facilities entitled, "Occupational Injuries and Illnesses in the United States by Industry." BLS reported approximately 162,000 new cases of occupational illness in 1977, and 143,500 new cases in 1978. These figures do not include the number of workers totally disabled from occupational illness due to chemical exposures who have left the workforce.

An analysis of the survey reveals that 57.9 percent of occupational illnesses in 1977 and 60.5 percent in 1978 fell into categories of illnesses most likely to be related to chemical exposures. The percentages do not include malignant and benign tumors. This amounts to a total of more than 174,000

illnesses in those two years, many of which are attributable to exposures that might have been avoided through communication of hazardous substance information. (Federal Register, Volume 47, No. 54, dated March 19, 1982).

The number of such incidents can be decreased. Implementation of the Employee Right-to-Know Act will insure that employees receive information they need to protect themselves.

The Employee Right-to-Know Act requires the Commissioner of Labor and Industry to adopt standards and rules to further clarify certain provisions of the Act and to make the Act enforceable. To accomplish this task, the Department of Labor and Industry assembled two task forces--one task force was charged with the responsibility of developing standards governing hazardous substances and harmful physical agents (designated the Hazardous Substance Task Force); the second task force was charged with the responsibility of developing standards concerning infectious agents (designated the Hospital Task Force). Both task forces were involved in developing the trade secret and right to refuse to work rules. Each task force was comprised of approximately 12 members with approximately equal representation of labor, management, and experts in the field. Members of the Hazardous Substances Task Force included:

Employee Representatives:

Tobey Lapakko, Director of Consumer Affairs, Minnesota AFL-CIO

Richard Johnson, President of Minnesota State Firefighters Association

Russell Trout, Oil,Chemical and Atomic Workers Union, District 6

Ernie Schultz, Trustee of Teamsters Local 1145 and Director of Health and Welfare

Employer Representatives:

Jeff Peterson, Manager of State Legislative Affairs, Economics Laboratory, Inc.

Mary Kay Zagaria, Corporate Occupational Health Consultant, Control Data Corp.

Mitchell Bergner, Supervisor of Occupational Health Programs, Honeywell, Inc.

Dr. Paul Willard, Manager of Product Regulatory Toxicology, 3M Company

Public Experts:

Dr. Roger Luckman, Associate Professor of Medicine, University of Minnesota and St. Paul Ramsey Medical Center, Occupational Medicine Dept.

Dr. Vincent Garry, Director of the Environmental Pathology Lab, University of Minnesota; and Assistant Professor of Lab Medicine and Pathology, School of Public Health, University of Minnesota

Dr. Faye Thompson, Assistant Professor of Environmental Health and Assistant Director of Environmental Health and Safety, University of Minnesota

David Senjem, Environmental Safety Coordinator, Mayo Clinic

Members of the Hospital Task Force included:

Employee Representatives:

Diane Rossmiller Holman, Education Coordinator, Virginia Regional Medical Center

Jan Cuccia, Business Representative, Service Employees International Union--(SEIU--Local 113) Hospital and Nursing Home Employees Union.

Martha Cole, registered nurse, adult nurse practitioner, and business representative with SEIU Local 113.

Employer Representatives:

Michael Myers, Administrator, St. Mary's Hospital--Rochester

Dick Culbertson, Senior Associate Director and Chief Operating Officer, St. Paul Ramsey Medical Center; Associate Professor of Public Health, University of Minnesota (representing the Minnesota Hospital Association).

Barbara Lawrence, Director of Personnel, St. Paul Ramsey Medical Center

Physician's Representative:

Dr. Constance N. Pries, Board Certified Specialist in Occupational Medicine, Airport Medical Clinic

"Expert" Representatives:

Nora Beall, Laboratory and Infection Control Specialist, Minnesota Department of Health

Dr. Don Vesley, Professor and Director, Department of Environmental Health and Safety, University of Minnesota

James Lauer, Bio-safety Officer, University of Minnesota

Ivan Russell, Director of the Occupational Safety and Health Division, served as chairman of both committees and the Department of Labor and Industry and the Occupational Health Section of the Minnesota Department of Health provided staff support. Each task force held five meetings during which time all aspects of the Employee Right-to-Know Legislation were discussed. These task forces were instrumental in developing the proposed rules governing the trade secrets and employees' conditional right to refuse to work provisions of the Employee Right-to-Know Act. The meetings also resulted in the Employee Right-to-Know Standards governing hazardous substances, harmful physical agents, infectious agents, training programs, labeling, criteria for technically qualified individuals, and availability of information which were the subject of a public hearing held on December 15, 1983.

Chapter Seventeen of the Occupational Safety and Health Rules, 8 MCAR SS 1.7001-1.7319, is intended to implement the trade secret provisions of the Employee Right-to-Know Act. The Minnesota Legislature, in considering passage of the Occupational Safety and Health Act of 1973, realized the necessity and importance of protecting trade secrets for Minnesota employers. Therefore, the Occupational Safety and Health Act (Laws 1973, chapter 732, section 19) contained provisions for the protection of trade secrets. Those provisions were amended by the Employee Right-to-Know Act of 1983 to protect the specific chemical identity information for hazardous substances while providing proper protection for exposed employees (Laws 1983, chapter 316, section 27). It is essential to protect trade secret information because the economic well-being of the employer, as well as its employees, may be dependent upon the protection of such information; once lost, its value as a trade secret cannot be recaptured. Therefore, these rules are intended to provide a balance in order to accommodate both the health interests of the employees in limited trade secret disclosure while protecting the economic interest of trade secret protection. The proposed rule defines the

circumstances under which a specific hazardous substance identity must be disclosed and allows the use of confidentiality restrictions that are necessary to protect the value of the trade secret to the manufacturer or employer.

It is important to note that Occupational Safety and Health Standard, 1910.20 "Access to Employee Exposure and Medical Records," which was adopted by Minnesota OSHA on January 18, 1982 (8 MCAR SS 1.7230-1.7232), requires the disclosure of all chemical identities, levels of exposure and health status data regarding "toxic substances" to employees and their designated representatives regardless of any trade secret claims. It is permitted, however, for the employer to condition access to such information on the signing of confidentiality agreements and to withhold any trade secret process or percentage of mixture information. Therefore, access to trade secret information is available to an employee if that information is vital to the employee's health.

Proposed rule, 8 MCAR S 1.7220 "Trade secret registration," implements section 27 of the Employee Right-to-Know Act (Laws 1983, chapter 316). Paragraph A of this rule allows a manufacturer or employer who believes that all or part of the information required under the Employee Right-to-Know Act is trade secret information to register that information with the Commissioner of Labor and Industry.

"Trade secret" is defined in Minnesota Statute section 325C.01 to mean:

> "...information, including a formula, pattern, compilation, program, device, method, technique, or process, that:
> (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

Paragraph A of the rule further allows information certified by appropriate officials of the United States as secret for national defense purposes to also be registered as trade secret information with the Commissioner of Labor and Industry.

This rule is necessary because, although the Employee Right-to-Know Act requires disclosure of hazardous substance information to employees, it may be essential to the economic well-being of the employer to keep some of the information secret. Often, employers and manufacturers rely heavily on their ability to maintain the secrecy of valuable product formulas painstakingly developed over long periods of time and at great expense. These secret formulas are the primary assets of the industry and are an essential part of a company's continuing earning power.

This rule is reasonable because allowing a manufacturer or employer to register trade secret information with the Commissioner of Labor and Industry will prevent the inappropriate release of such information. It is also reasonable because it expands the trade secret provisions of the Occupational Safety and Health Act of 1973 (Minnesota Statutes section 182.668) to allow advance registration of trade secret information.

Paragraph B of 8 MCAR S 1.7220 indicates that the registration by employers or manufacturers of formulations or procedures is not mandatory. This rule is necessary to reduce the amount of information that an employer must file with the commissioner and to reduce the amount of information the Department will be required to safeguard. It is reasonable because many procedures and formulations are trade secrets and deserve automatic protection.

Paragraphs A and B are a reasonable protection of employer interests. The proposed rule provides greater trade secret protection than previously existed under OSHA law with a minimum of paperwork.

Paragraph C outlines the information that must be included in a trade secret registration of hazardous substance information. The information required is the name of the hazardous substance, a brief description of why it is a trade secret, and the name of a person who can be contacted for additional information. This rule is necessary to assure that basic information is received by the commissioner. This rule is reasonable because it requires only basic information from the employer while providing the commissioner with the name of a contact person should more information become necessary in order to make a determination.

Paragraph D of this rule imposes a two-year expiration date on registrations. This rule is necessary to reduce the possibility that information that is no longer a trade secret remains protected and, therefore, inaccessible to employees under normal circumstances. This rule is reasonable because it provides the employer and manufacturer with a "reminder" to review previous filings and determine whether or not the information need be registered as a trade secret any longer. The two-year period is long enough to adequately protect employers and to prevent any burden of constant re-registration. The information may be re-registered as described in Paragraph C if necessary.

Paragraph E governs the classification of trade secret information registered with the commissioner or other information reported to or otherwise obtained by the commissioner or his representative in connection with any inspection or other proceeding under Minnesota Statutes, chapter 182. This

data is classified as nonpublic or private data as defined by the "Data Privacy Act," Minnesota Statutes, section 13.02, subdivisions 9 and 12.

Section 13.02, subdivision 9, defines "nonpublic data" as:

> "...data not on individuals which is made by statute or federal law: (a) not public; and (b) accessible to the subject, if any, of the data."

Section 13.02, subdivision 12, defines "private data on individuals" as: "...data which is made by statute or federal law: (a) not public; and (b) accessible to the individual subject of that data."

Paragraph E further allows the disclosure of this data, with the exception of national defense trade secret information, to other officers or employees who must carry out the responsibilities of Minnesota Statutes, chapter 182, if it is relevant or required in order to comply with federal law or regulation. Most importantly, this paragraph charges the commissioner with the responsibility of protecting nonpublic and private information in a secure manner.

This rule is necessary to assure proper safeguarding of trade secret information. The commissioner has established procedures to safeguard trade secret information; those procedures are outlined in Occupational Safety and Health Division Operating Policy #117. This rule is necessary because trade secret information may be required by the Department of Labor and Industry to comply with federal requirements. An Occupational Safety and Health Investigator conducting an inspection under the provisions of chapter 182 may need to be aware of trade secret information in order to assure employee safety at the worksite. Additionally, an Occupational Safety and Health Investigator may come upon information in the course of an inspection that the employer wishes classified and protected as a trade secret. The rule is necessary to limit the disclosure of trade secret information to only those Department of Labor and Industry employees

who have a genuine need to know in order to carry out their responsibilities under Minnesota Statutes chapter 182.

This rule is reasonable because it allows the disclosure of information to only those persons who must know of its existence in order to carry out their responsibilities, while at the same time, protecting the interests of the employer who has filed the data. The rule is reasonable in that it requires the commissioner to establish safeguards to protect the registered trade secret information.

Paragraph F, which specifies the circumstances under which the commissioner may reveal trade secret information, has been amended from the proposed rule:

"F. Disclosure. If the commissioner determines that disclosure of nonpublic or private information is essential to protect employees from imminent danger ~~or otherwise to protect the health and safety of employees,~~ or when necessary to expedite provision of medical services to an employee(s), he must notify the appropriate manufacturer or employer of his decision by certified mail and timely disclose the information to alleviate the danger."

This amendment is reasonable and necessary to clarify the actual intent of the rule. The commissioner is restricted to disclosing trade secret information only in imminent danger situations or when a treating physician requires the information in order to make a medical diagnosis and provide treatment to an employee who has been exposed to the trade secret substance. The rule is also necessary to assure that the employer or manufacturer receives notification of the commissioner's decision to disclose the trade secret information.

Paragraph G specifies the guidelines to be used by the commissioner in determining whether information registered by an employer under the provisions of this chapter is actually trade secret information. The rule requires the determination to be made using the trade secret definition found in Minnesota Statutes, section 325C.01, subdivision 5. The rule requires the commissioner to notify the employer or manufacturer of his determination. Should the commissioner determine that the information is not a trade secret, the manufacturer or employer is allowed 15 days in which to provide the commissioner justification for the trade secret registration. The commissioner is mandated to review his determination in light of the justification statement from the employer within 15 days of the commissioner's receipt of the justification. If no justification is received, the requesting party and the appropriate employer or manufacturer must be notified by certified mail of the Commissioner's determination within 30 days of the original request. If it is determined that the information is not a trade secret, the final notice must include a date on which the information will be made available. The date of release must be at least 15 days after the date of mailing the final notice. During the 15-day period, the employer or manufacturer may file for a declaratory judgment in district court to require the commissioner to register the information as a trade secret.

This rule is necessary to provide a short, definite time frame during which the commissioner must register or reject information as a trade secret. The rule is necessary to provide the employer or manufacturer with a means to challenge an adverse decision from the commissioner. The rule is necessary to assure that the requesting party receives an expeditious response to the request.

The rule is reasonable because the 15-day time periods allow sufficient time for the employer to respond to the commissioner's initial decision and for the commissioner to review his initial determination and the employer's justification

statement. The rule is reasonable in that a maximum of 30 days for a final response allows sufficient time for the commissioner to analyze all information submitted by the employer while not impeding the release of information that is determined not to be trade secret information.

Rules 8 MCAR SS 1.7240, 1.7241, 1.7243 and 1.7245 are found in Chapter Nineteen: "Discrimination Against Employees" of the Minnesota Occupational Safety and Health Rules. These rules implement the discrimination provisions of the Occupational Safety and Health Act and were adopted by the Department of Labor and Industry on January 18, 1982. The proposed amendments to these rules incorporate provisions of the Employee Right-to-Know Act.

The amendments to 8 MCAR SS 1.7240, 1.7241 and 1.7245 are non-substantive changes to incorporate subdivision designations that were added to the Occupational Safety and Health Act, Minnesota Statutes chapter 182, by the Employee Right-to-Know Act. These changes are housekeeping in nature and merely bring these rules up-to-date.

8 MCAR S 1.7243 "Protected activities" is amended to incorporate the provisions of the Employee Right-to-Know Act which allow an employee to refuse to work under certain conditions and to be paid for the work that was not done if those conditions are met. Paragraph B.2. of this rule allows an employee who believes that s/he is exposed to an imminent danger to refuse to work if:

1) the employee requests, within 24 hours of the refusal, the Commissioner of Labor and Industry to inspect and determine the nature of the hazardous condition; and
2) the commissioner determines that the employee would have been placed in imminent danger of death or serious physical harm had the task been performed.

If these conditions are met, the employee will retain a right to continued employment and be paid for the tasks which would have been performed. The employer has the option of reassigning the employee to another task.

Paragraph B.3. of 8 MCAR S 1.7243 allows an employee who has been assigned to work with a hazardous substance, harmful physical agent, or infectious agent and who has not been trained as required by 8 MCAR S 1.7206 or provided with the information required in 8 MCAR S 1.7207, to refuse to perform the assigned task. The employee retains the right to continued employment and to receive pay for the task not performed if:

1) the employee requests, within 24 hours of the refusal, the commissioner to inspect and determine if a hazardous condition exists; and
2) the commissioner determines that the employer has failed to provide the training required under 8 MCAR S 1.7206 prior to the employee's initial assignment to a workplace if the employee may be routinely exposed to a hazardous substance, harmful physical agent, or infectious agent and the employer has failed to provide the information required under 8 MCAR SS 1.7206 and 1.7207 after a request within a reasonable period of time, but not to exceed 24 hours, of the request.

The employer has the option of re-assigning the employee to another task.

The rule is both reasonable and necessary because its requirements are identical to the statute. The rule is included to aid understanding of the two different grounds for a refusal to work.

Section 9 of the Act amends Minnesota Statutes 182.653, by adding subdivision 4b which exempts small businesses from the hazardous substances and harmful physical agent provisions of the Employee Right-to-Know Act. Because the Employee Right-to-Know Act does not define "small businesses," the task forces

adopted the statutory definition of "small business" found at Minnesota Statutes section 645.445. That definition reads as follows:

"645.445 Small Business; Definitions.

Subdivision 1. Wherever the term "small business" is used in Minnesota Statutes or in any rule or program established thereunder, the definitions contained in this section shall apply unless the context clearly indicates that a different meaning is intended or required.

Subdivision 2. "Small business" means a business entity organized for profit, including but not limited to any individual, partnership, corporation, joint venture, association or cooperative, which entity:

(a) Is not an affiliate or subsidiary of a business dominant in its field of operation; and

(b) Has 20 or fewer full-time employees or not more than the equivalent of $1,000,000 in annual gross revenues in the preceding fiscal year.

Subdivision 3. "Dominant in its field of operation" means having more than 20 full-time employees and more than $1,000,000 in annual gross revenues.

Subdivision 4. "Affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least 20 percent owned by a business dominant in its field of operation, or by partners, officers, directors, majority stockholders, or their equivalent, of a business dominant in that field of operation."

The statute governing small business considerations in rulemaking contains a different definition of "small business." Small Business Considerations in Rulemaking, H.F. No. 491, chapter 188, subdivision 1 (1983) states:

"For purposes of this section, "small business" means a business entity, including its affiliates, that (a) is independently owned and

operated; (b) is not dominant in its field; and (c) employs fewer than 50 full-time employees or has gross annual sales of less than $4,000,000. For purposes of a specific rule, an agency may define small business to include more employees if necessary to adapt the rule to the needs and problems of small businesses."

Chapter 188 further requires an agency to consider five points to reduce the impact a rule will have on small businesses. The impact of the proposed rules on an employer is dependent on whether the employer utilizes hazardous substances in the workplace, the possibility that any hazardous substance used by the employer is considered a trade secret, the number and quantity of hazardous substances used in the facility, and the quantity and quality of training provided to employees relative to hazardous substances.

To comply with the requirements of Chapter 188, the Department of Labor and Industry considered the five points noted in the chapter relative to the impact of these rules on employers who employ 21 to 50 employees:

a) Establishment of less stringent compliance or reporting requirements for small businesses.

The rules require less stringent compliance because small business, as defined by Minnestoa Statutes section 645.445 (1982), exempts employers with fewer than 20 employees and less than the equivalent of $1,000,000 in annual gross revenues in the preceding year.

The small businesses that remain to be considered are those employing fewer than 50 employees and earning less than $4,000,000 annually.

The Occupational Safety and Health Act has been in existence since 1973 and has provided for trade secret protection for all employers regardless of size. This provision has not been extensively used by small business. Small businesses will not be affected by this proposed rule governing trade secrets

unless that business wishes to register trade secret information with the commissioner. The registration procedures are very simple and require a minimum of information. Therefore, less stringent requirements for the remaining non-exempt small businesses are deemed unnecessary.

The Occupational Safety and Health Act has provided all employees with the right to refuse to work under imminent danger conditions since its passage in 1973. An imminent danger situation is a serious, potentially life threatening situation. The right to refuse to work with a hazardous substance, harmful physical agent, or infectious agent as proposed in 8 MCAR S 1.7243 B.3. is an extension of that basic right to refuse to work under imminent danger conditions.

Employers of more than 20 full-time employees are subject to the requirements of this rule. However, the employer will only be affected if hazardous substances, harmful physical agents, or infectious agents are present in the workplace and the employer fails to provide employees with the required training and/or information. If proper training and/or information is provided, an employee cannot legitimately refuse to work under this rule.

Exemption of even some small business from the conditional right to refuse to work provisions is a generous compromise in view of the fundamental purpose of the Occupational Safety and Health Act to preserve human resources.

b) Establishment of less stringent schedules or deadlines for compliance or reporting requirements for small business.

This consideration is inapplicable to the registration of trade secret information. The trade secret registration rule does not include a schedule or deadline. Businesses may register trade secret information whenever they deem it necessary.

Since employees have had the right to refuse to work under imminent danger conditions since the Occupational Safety and Health Act was passed in 1973, this rule merely extends that right to cover working with hazardous substances,

harmful physical agents and infectious agents without proper training and/or information. The employee's right to refuse to work becomes effective, by statute, on July 1, 1984. The department is without authority to extend the effective date.

c) Consolidation or simplification of compliance or reporting requirements for small businesses.

As stated previously, the requirements for registering trade secrets are already very simple. The department does not believe it can consolidate or simplify them any further. The registration provisions are already so simple that they should not deter small business from registering trade secrets.

All businesses, regardless of size, have been subject to the refusal to work under imminent danger condition provisions of the Occupational Safety and Health Act since 1973. The proposed rule extends that provision to cover the refusal of an employee to work with a hazardous substance, harmful physical agent, or infectious agent if the employee has not received proper training or information. Neither the existing rule nor the proposed rule require the employer to submit any written report or information.

d) Establishment of performance standards for small businesses to replace design or operational standards required in the rule.

The proposed rule governing trade secrets is a specification standard in that it specifies the information that must be submitted for trade secret registration and provides time frames for the commissioner to register or reject the information as a trade secret and for the employer to appeal an adverse decision. The time frames are reasonable and should not cause any undue hardship on small businesses who choose to register trade secret information.

The rule governing an employee's right to refuse to work with a hazardous substance, harmful physical agent, or infectious agent if proper training and/or

information is not provided is a performance standard to the extent that employers have the option of reassigning the employee. The remaining requirements of the rule place responsibility on the employee and commissioner rather than on the employer.

e) Exemption of small businesses from any or all requirements of the rule.

As stated above, employers with fewer than 20 employees and less than $1,000,000 in annual gross sales are exempt from the rules.

In summary, the Minnesota Legislature passed the Employee Right-to-Know Act with the intent of assuring that employees who work with hazardous substances, harmful physical agents, and infectious agents are provided with necessary training and information to prevent serious illness or death. The Act explicitly allows an employee who is assigned to work with these substances or agents and who has not received the appropriate training or information to refuse to work with the substance or agent until the training and/or information is provided. Conditions are placed on this right to refuse to work to prevent an employee from indiscriminately refusing to work under other than extreme conditions. The proposed rules implement these provisions in an efficacious manner.

Although the Employee Right-to-Know Act requires that employees receive information concerning the substances or agents with which they work, the Legislature recognized the importance of securing trade secret information for employers. Thus, the Act included provisions for the registration of trade secret information with the Commissioner of Labor and Industry with safeguards to secure that information from inappropriate release. The proposed rules implement these provisions in an effective and simple manner.

STATE OF MINNESOTA

DEPARTMENT OF LABOR AND INDUSTRY

OCCUPATIONAL SAFETY & HEALTH DIVISION

In the Matter of the Proposed Adoption of Rules Implementing Provisions of the Employee Right-to-Know Act of 1983 Governing Trade Secrets and Employees' Conditional Right to Refuse to Work.

SUPPLEMENTAL STATEMENT OF NEED AND REASONABLENESS

The following housekeeping changes have been made in the proposed rules:

8 MCAR § 1.7220, paragraph G., is amended as follows:

G. Determination by commissioner. On the request of a manufacturer, employer, employee, or employee representative, the commissioner must determine whether information registered pursuant to the requirements of this chapter or otherwise reported to or obtained by the commissioner...

This change is necessary to correct an inadvertent omission of the word, "employer," in the first sentence of this proposed rule. The term, "manufacturer or employer" is used throughout this rule. This amendment makes this statement consistent with the other provisions of the rule and clarifies the intent of this rule.

8 MCAR § 1.7243, paragraph B, sections 2.a. and 3.a., are amended as follows:

2.a. the employee requests, within 24 hours of the refusal (excluding weekends and state holidays), the commissioner to inspect and determine the nature of hazardous condition; and...

3.a. the employee requests, within 24 hours of the refusal (excluding weekends and state holidays), the commissioner to inspect and determine if a hazardous condition exists; and...

This change is necessary to clarify the intent of this rule. The term, "24 hours," is unclear and needs to be defined. The 24-hour period is intended to refer to only work hours when a representative cf the Department of Labor and Industry, Occupational Safety and Health Division, will be available to receive an employee's report of unsafe conditions and refusal to work. Since this 24-hour time period was not intended to include weekends or state holidays, the rule is amended to reflect this intent.