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**STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY**

In the Matter of the Proposed Rules
Governing the Safety Account
Grant and Loan Program, Minn. Rules,
Parts 5203.0010 to 5203.0070

STATEMENT OF NEED
AND REASONABLENESS

I. INTRODUCTION

This Statement of Need and Reasonableness (SONAR) discusses proposed new rules governing the safety account grant and loan program. The Minnesota legislature enacted 1992 Minn. Laws, Chapter 510, article 3, section 8 (to be codified at Minnesota Statutes, section 79.253). The new statute established this program in order to encourage and facilitate implementation of safety recommendations which result from on-site safety inspections of employers who are covered for workers' compensation. The program grant and loan is to be administered by the Minnesota Commissioner of Labor and Industry ("Commissioner"). The 1992 legislation also provided that the commissioner may adopt rules necessary to implement the program.

The proposed rules establish procedures for the fair and orderly administration of the grant and loan program. Specifically, the proposed rules identify applicants, projects, and costs that may be funded through the program; establish application procedures; establish criteria for the review of projects and for the award of grants and loans; and specify the content of the grant and loan agreements.

II. STATEMENT OF COMMISSIONER'S STATUTORY AUTHORITY

As indicated above, newly enacted Minnesota Statutes, section 79.253, subdivisions (4) and (5) empower the commissioner to award grants and loans for implementing safety recommendations and to adopt rules necessary for implementation of the grant and loan program. Principal and income of the safety account are annually appropriated to the commissioner for safety grants and loans. The safety account is a separate account in the special compensation fund in the state treasury. Funds for the account come from all penalties assessed under Minnesota Statutes, chapter 176 which are payable to the special compensation fund. See Minn. Laws 1992, Chapter 510.

III. STATEMENT OF NEED

Minnesota Statutes, Chapter 14 (1990) requires the commissioner to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the commissioner must set forth reasons for the proposal which are not arbitrary and capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists that requires administrative attention, and reasonableness means that the solution proposed by the commissioner is appropriate. The need for the proposed rules is discussed below.

The proposed rules are needed to specify clearly the eligibility criteria and procedural conditions under which the commissioner will award grants and loans for implementing safety recommendations. The statute provides only an outline for the program's implementation, general standards and context, and rulemaking authority. For fairness, efficiency, and public and private accountability, details of the application format, timelines, notice, procedural guidelines, and standards must be set out by this rule.

IV. SMALL BUSINESS CONSIDERATIONS, COST TO LOCAL PUBLIC BODIES, IMPACT ON AGRICULTURAL LAND, AND EFFECT ON SPANISH SPEAKING PEOPLE

A. **Small Business Considerations.** Minnesota Statutes, section 14.155 (1990) requires state agencies proposing rules that affect small businesses to consider the following methods for reducing the impact of the rules on small businesses:

- (a) the establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedule or deadlines for compliance or reporting requirements for small businesses;
- (c) the consolidation or simplification of compliance or reporting requirements for small businesses;
- (d) the establishment of performance standards for small business to replace design or operational standards required in the rule; and
- (e) the exemption of small businesses from any or all requirements of the rule.

Minnesota Statutes, section 14.115, subdivision 3 (1990) requires agencies to incorporate into proposed rules any of the methods listed in subdivision 2 "that it finds to be feasible, unless doing so would be contrary to the statutory objectives that are the basis for the proposed rulemaking."

The proposed rules establish the criteria and procedures by which the commissioner provides financial assistance for recommended safety projects. The requirements of Minnesota Statutes, section 14.115 do not constrain these proposed rules because this program does not place any direct regulatory burden on small businesses. Participation is voluntary and the proposed rules do not limit the ability of small businesses to participate in the program. In fact, one of the purposes of the program is to assist the many small businesses by reducing the likelihood of injury to their workers and, consequently, workers' compensation exposure.

The commissioner has considered the impact of the proposed rules on small businesses in terms of the factors identified in Minnesota Statutes, section 14.115, subdivision 2 (a) through (e) (1990). Efforts were made to provide simple and clear financial reporting standards, which would not unnecessarily burden small business, but would allow for public and private accountability and provide the essential information necessary to administer such a program. Because the objective of the program is to assist the implementation of safety recommendations

resulting from on-site surveys which recommend practices and equipment designed to reduce the risk of injury to employees, it was not considered feasible to waive compliance or reporting standards. The safety recommendations are likely to be proportionate to the size of each particular enterprise. The commissioner has concluded that simplicity and clarity of reporting and accountability procedures and definite timelines for notice would be fair and equitable to all program applicants and that further exemption, simplification, or less stringent standards for small business pursuant to Minnesota Statutes, section 14.115, subdivision 2 (a) through (e) would be counterproductive and unnecessary to accommodate small business needs.

B. Local Public Bodies. These rules are for the purpose of providing grants and loans for safety programs from the safety account to employers and the commissioner reasonably estimates it will not increase total expenditure of local public bodies within either of the two years following its adoption to implement the rule. Therefore, the rule is in compliance with Minnesota Statutes, section 14.11, subdivision 1 (1990).

C. Agricultural Land. The commissioner has determined that the adoption of this rule would not have a direct and substantial impact on agricultural land under Minnesota Statutes, section 14.11, subdivision 2 (1990). This rule pertains to grants and loans from the Safety Account to Minnesota employers to assist them on behalf of their employees.

D. These rules do not have their primary effect on Spanish speaking people and are therefore not subject to Minnesota Statutes, section 3.223, subdivision 4 (1990).

V. STATEMENT OF REASONABLENESS

Minnesota Statutes, Chapter 14 (1990) requires the commissioner to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the commissioner's proposed action. The reasonableness of the proposed rules is discussed below.

Part 5203.0020 DEFINITIONS

Definitional provisions were added to provide clarity, consistency, and context for interpretations of key terms in the rules. "Commissioner" was defined, (subp. 3), consistent with the statutory authority, as the commissioner of the department of labor and industry. The term is intended to include any other employee in that department who has been delegated responsibility and authority to specifically administer the safety grants and loans program.

The terms "program" (subp. 10) and "account" (subp. 2) were defined in the context of the safety account and grant and loan programs for context, implementation of safety recommendations, and shorthand simplicity and clarity.

"Person" (subp. 9) was defined to clarify that the term includes individuals and public and private entities.

"Employer" (subp. 8) and "employee" (subp. 7) were defined by reference to the statutory definitions in Minnesota Statutes, chapter 176. This establishes a body of interpretive

precedent and is consistent with the statutory context of the rule, since Minnesota Statutes, chapter 79 is the workers' compensation insurance statute for the insurance which Minnesota Statutes, section 176.181 requires "employers" to carry for coverage of "employees" as defined by chapter 176.

The term "eligible applicants" (subp. 4) was also defined to clarify which employers may engage in the "program" by establishing, consistent with Minnesota Statutes, Chapters 79, 176, and 182, that they are the employers who are insured for workers' compensation and who have had the statutory on-site survey under Minnesota Statutes, section 79.253, subdivision 2, by Minnesota OSHA, or similar authority. The commissioner's statutory authority is to make grants and loans for the cost of implementing specific safety recommendations. This rule provision establishes a definitional context within the scope and authority of the commissioner's responsibilities for occupational safety and workers' compensation.

Subpart 6 identifies projects that are eligible for assistance under the grant program. Essentially, any recommended safety proposal from an on-site inspection program that may be implemented by an applicant is potentially eligible for funding. The commissioner believes such a broad, goal oriented, definition encourages the creative design of safety practices and therefore is reasonable. It also is within the statutory standards and objectives of Minnesota Statutes, section 79.253 because it includes employers in the assigned risk plan, but does not exclude other employees and employers under Chapter 176, and is consistent with the commissioner's powers, duties and general responsibility for occupational safety under Minnesota Statutes, chapter 182.

Subpart 5 identifies costs that are eligible for assistance under the grant program. They are defined broadly in terms of the objective to be sought, safety, so that flexible, creative approaches to implementing safety recommendations may be accommodated. They include all or part of the cost of purchasing and installing recommended equipment and necessary purchases or rental of real property.

Part 5203.0030 APPLICATION PROCEDURES

Part 5203.0030 is intended to provide potential applicants with a clear and concise presentation of the application process for the grant and loan program. To this end, this part is divided into eight subparts which, together, establish the procedures for obtaining a grant or loan for implementing safety recommendations. These procedures create a Request for Proposal (RFP) process, which is a common process for providing financial assistance. Use of the RFP process is reasonable in that it allows the commissioner to adjust the grant and loan program to the availability of funds in the safety account as they are appropriated annually.

The RFP process is created in subpart 1 which states that funding rounds are initiated when the commissioner published a notice in the *State Register*. This notice will contain basic information of interest to persons who may wish to apply for a safety grant or loan, including the availability of grants and loans, deadline for submitting a grant or loan application, and the maximum amount of funds available for a project. Use of the *State Register* to provide notice of the funding program is reasonable because the program is statewide and because the *State Register* is the official publication for state notices. Further, by specifying the maximum amount

of funding available, the commissioner will be able to adjust the grant and loan program to reflect changes in the availability of funds in the account. Moreover, by providing notice of these adjustments in the *State Register* potential applicants are fully apprised of the availability of funds for projects of interest.

Subpart 1 also states that the commissioner may use the *State Register* notice to limit the types of projects that will be accepted during a funding round. By limiting a funding round to specific types of projects, the commissioner will be able to react more effectively to changing safety needs and conditions and advancing technology. Accordingly, the commissioner will be able to encourage workplace safety projects of particular interest and need at any given time. The ability to make this adjustment is reasonable because it will allow the commissioner to manage the grant and loan program to address, to the fullest intent possible, the safety needs of employers and employees within the state.

Subparts 2 through 5, identify the procedures the commissioner will use in evaluating applications. These provisions specify the information required to be submitted, a threshold determination of eligibility and completeness, notice of acceptance, rejection or need for correction, a reasonable (14 day) period of time to correct application deficiencies with provision for extension upon a showing of good cause, and default rejection for uncorrected deficiencies. These procedures ensure that applications will receive equal and fair treatment. Further, they provide administrative certainty to the application process. Thus, the proposed procedures are reasonable. (Please note that the criteria for evaluating applications are established later in the rules and are discussed later in this Statement of Need and Reasonableness.)

Subpart 6 provides that the commissioner will award grants and loans to those projects that the commissioner determines best satisfy the workplace safety needs of employers and employees as measured according to criteria established later in the rules. Because each criterion establishes a preference based on only a specific element or elements of a proposed project, the commissioner must necessarily balance those preferences to identify those projects that satisfy the criteria as a whole to accomplish statutory objectives. This subpart also allows applicants that do not receive an award to resubmit their application in response to a future notice from the director, published in the *State Register*. This is reasonable because, although the proposed project may be meritorious, funds may be limited, and proposals will be selected based on which projects best satisfy the evaluation criteria; and it thus may be surpassed by a proposal that is even better or is a higher priority at that particular time.

Subpart 7 specifies that the commissioner may decline awards to any or all of the applicants if the commissioner determines that the proposals would not significantly advance workplace safety goals. The commissioner believes this subpart provides a safeguard to ensure that program funds are disbursed to satisfy the objectives of the program.

Subpart 8 provides that the commissioner shall solicit and consider the safety recommendations provided by the on-site surveys. The commissioner believes that use of these recommendations is consistent with statutory directives and standards and will promote consistent and comprehensive evaluation of grant and loan applications.

This part sets out the limitations of the program. The rationale for each limitation is provided below.

Subpart 1 sets out the conditions under which the commissioner may award a grant or loan for less than the eligible amount requested by an applicant or less than the maximum award established in the notice under Part 5203.0030, subpart 1. Two conditions are set out: (1) insufficient resources to provide full assistance to all proposed grantees and (2) ability of an applicant to operate the project at a lesser award. These conditions are reasonable in that they allow projects to go forward while at the same time preserving limited funds.

Subpart 2 provides that the commissioner will not disburse grant or loan funds until the recipient has executed a written grant or loan agreement with the commissioner. This condition establishes a reasonable safeguard to prevent abuse of funds awarded through these rules. Part 5203.0050 sets out the terms of grant and loan agreements.

Part 5203.0050 GRANT AND LOAN AGREEMENT

This part sets out the basic terms of the agreements that a grant or loan recipient will need to sign before receiving funds from the commissioner. Identifying these terms by rule is reasonable because it provides advance notice to potential grant or loan applicants of the conditions of a grant or loan award. The rationale for each condition specified by the rules is provided below.

Item A states that the grant or loan proposal submitted to the commissioner under 5203.0030, subpart 2 will be incorporated into the grant or loan agreement. This incorporation contractually obligates a recipient to develop and implement the project described in the proposal and thereby establishes criteria against which the commissioner may evaluate progress of the grant or loan recipient.

Item B specifies that the grant or loan agreement will state that no further program funding will be available for cost overruns. This safeguard is necessary to ensure effective administration of the program with limited funds and foster responsible commitment by a applicants.

Item C specifies that a recipient must provide written reports to the commissioner. Written reports will allow the commissioner to assess the performance of a recipient and, where applicable, transfer knowledge and experience gained from a project to other persons of the employment community. Thus, this requirement is reasonable because it will assist the commissioner in attaining safety program goals.

Item D provides that the commissioner specify the interest rate and repayment obligations for a loan recipient. This provision will assist a recipient in planning for the repayment of a loan.

Item E provides that the commissioner may rescind a grant and require a recipient to repay the grant in full if the commissioner determines that, due to the bad faith of the recipient, a project has not been developed and implemented in accordance with the terms and conditions

of the grant agreement. By ensuring that funded projects are implemented properly, this provision will assist the commissioner in administering the grant program and preserving account funds. Item F establishes a parallel provision for the loan program and is reasonable for the same reasons as item E.

Item G provides that the commissioner may cease making further disbursements of grant or loan funds and may recover unspent funds that have been disbursed if the commissioner determines that, for reasons other than bad faith, a project has not been developed and implemented in accordance with the terms and conditions of the grant or loan agreement and amendment to the agreement is not justified. This provision is a companion to Item E which addresses repayment of a grant where there has been bad faith. Like Item E, Item G will assist the commissioner in administering the grant program and preserving account funds by assuring that funded projects are implemented properly. Unlike Item E, however, Item G does not require repayment where the failure of the project is due to causes other than bad faith. The commissioner believes that it is reasonable to establish different financial repercussions for project failures due to bad faith and those due to causes unrelated to bad faith on the part of the recipient.

Item H states that the grant or loan agreement must require a recipient to perform and complete project activities in accordance with the work scheduled in the proposal submitted to the commissioner and incorporated into the grant or loan agreement. This provision will ensure that a recipient implements a project in timely manner upon receipt of a grant or loan award. Thus, this provision will assure that employees obtain as quickly as possible the safety benefits hoped to be achieved by the grant or loan.

Item I provides that all information developed as a result of a grant or loan shall be made available to the public. This is consistent with the MGDPA and would promote greater awareness of workable safety measures and public accountability regarding the funds allocated in the program. It is necessary to indicate that the information is public because of stringent privacy requirements concerning other data at the Minnesota Department of Labor and Industry. This provision is not intended to make data available which is otherwise classified as private.

Item J provides that a recipient must maintain detailed records of all expenditures related to the grant or loan agreement. This provision will ensure that program resources received by a recipient are used to finance project costs only. Accordingly, this provision is reasonable because it assures the proper use of account funds.

Item K provides that the grant or loan agreement shall establish other conditions or terms needed to implement the agreement. This provision is intended to make clear that the grant or loan agreement will also contain other conditions needed to ensure orderly administration of the grant or loan.

Part 5203.0060 GRANTS

Part 5203.0060 is divided into four subparts which, together, establish the substantive conditions and criteria under which the commissioner will provide financial assistance to eligible applicants for implementing safety recommendations. These four subparts are: (1) scope; (2)

proposals; (3) evaluation of proposals; and (4) proposal preference. The first subpart (scope) is self-evident and requires no further explanation. Subparts 2 through 4 are discussed below.

Eligible applicants, costs, and projects are those so defined in this rule in the above definitional provisions. See Part 5203.0020, subpart 4 et.seq., above, for the reasons for those definitional categories.

Subpart 2 describes the information that an applicant must include in a proposal under this program. This is the minimum amount of information needed to ensure that the commissioner can effectively evaluate the proposals.

Subpart 2 (A) requires the names, qualifications, and addresses of the applicant and other project participants. This information is needed to allow the commissioner to contact each applicant and to assess the ability and commitment of project participants to complete project activities.

Subpart 2 (B) requires a specific description of a proposed project. This information is needed and reasonable because it allows the commissioner to determine, among other things, the eligibility of a proposed project; the feasibility of a proposed project; the applicant's ability and intention to implement the project in a timely manner; and the consistency of the proposed project with workplace safety priorities. Each of these factors will be considered by the commissioner in deciding which projects to fund.

Subpart 2 (C) requires financial information. Requiring this information is reasonable because it will allow the commissioner to assess the economic feasibility of the proposed project; the eligibility of project costs; and the ability of the applicant to implement the project in a timely manner. Item C (1) requires an itemized description of project costs. This information is needed to determine whether estimated costs realistically match the scope of a proposed project and whether the eligible costs identified by an applicant are within the range of eligible costs. Item C (2) requires an itemized description of project financing. This information is needed to determine whether an applicant has secured financing for all project costs that would not be paid for with grant funds. Item C (3) requires a business plan demonstrating ongoing financial commitment to the project. This is reasonable because it ensures that the project will receive the financial attention needed to make it successful over the life of the project.

Subpart 2 (D) requires information demonstrating, where applicable, the technical feasibility of a proposed project, including preliminary design and engineering plans. This information is needed to assess a project's potential for success. For capital expenditures, preliminary design and engineering plans provide a framework for determining a project's technical viability.

Subpart 2 (E) requires information demonstrating that a proposed project will comply with applicable regulations, including a list of permits required for a project. Requiring this information is needed and reasonable because it allows the commissioner to assess whether a proposed project will conform with applicable legal requirements.

Subpart 2 also provides that the commissioner may request additional information from

an applicant if the commissioner determines that additional information is necessary to clarify and evaluate a proposal. This is reasonable because it allows the commissioner to obtain sufficient information to fully review and evaluate proposals under the criteria established in subparts 3 and 4.

Subpart 3 establishes criteria that the commissioner will use in determining which projects should be awarded in account funds.

Subpart 3 (A) requires the commissioner to determine that a proposed project is technically and economically feasible. This criterion is reasonable because it assures that account funds will only be used on projects that present a potential for success, which are consistent with the statutory on-site safety survey.

Subpart 3 (B) requires the commissioner to determine whether an applicant has the ability and intention to implement a proposed project upon the receipt of a grant award. This criterion is reasonable in that it assures that employees will benefit, as soon as possible, from the project.

Subpart 3 (C) requires the commissioner to determine the extent to which a proposed project is consistent with reducing risk of injury to employees. Using this criterion will allow the commissioner to direct account funds to projects that best satisfy the current workplace safety needs of employees at any given time in accordance with the statutory standard.

Subpart 3 (D) requires that applicants demonstrate the necessary financial commitment for all project costs. This criterion is reasonable because it ensures that account funds will be awarded only to projects that demonstrate the potential for success over the life of the project actualizing safety objectives.

Subpart 3 (E) requires the applicant to demonstrate that it has the support of all public entities involved in the project. This is reasonable because all project participants must demonstrate support in order for the project to be successfully completed and that the project does not run counter to other public objectives.

Subpart 3 (F) requires the commissioner to determine that a proposed project will comply with federal, state, and local regulations. This criterion is reasonable because it assures a coordinated, consistent public effort to address workplace safety issues.

Subpart 4 establishes preferences and priorities for grants in addition to the aforementioned criteria. Then factors involved in these priorities are set out in descending order (A) through (C). The factors take into consideration the jobs-related economic impact that safety projects proposed for manufacturing or processing sites would have in a particular area and allow the commissioner to target sites in areas where safety improvements would impact job quality, creation, and preservation.

Part 5203.0070 LOANS

Part 5203.0070 establishes the conditions under which the commissioner will make loans to eligible applicants for implementation of safety projects.

Part 5203.0070 is divided into four subparts which, together, establish the substantive conditions and criteria under which the commissioner will provide loan assistance to eligible applicants for the implementation of safety recommendations. These four subparts are: (1) scope; (2) proposal; (3) evaluation of proposals; and (4) proposal preference. The first subpart (scope) is self-evident and requires no further explanation. Subparts 2 through 4 are discussed below.

Eligible applicants, costs and projects are defined in this rule and 5203.0020. Reasons for these definitions are discussed above. The commissioner may also make loans for implementing safety recommendations. Since loans are made with the expectations of repayment, the rules must require evidence of financial solvency and provide specific guidelines and legal safeguards designed to facilitate recovery of the loaned money. These items are covered at subpart 2 below in financial report requirements.

Subpart 2 describes the information that an applicant must include in a proposal under this program. This is the minimum amount of information needed to ensure that the commissioner can effectively evaluate the proposals under subpart 3. Subpart 2 requires essentially the same information as required for grants for the same reasons as stated for the grant programs. (See discussion, above, regarding subpart 2 of the safety grant program.) It is further necessary and reasonable in a loan program to have the information regarding credit worthiness, financial status, and project feasibility for the commissioners to accurately estimate the likelihood of timely repayment and achievement of program safety goals. Thus (A) and (B) are added for loans.

Subparts 3 and 4 establish criteria and priorities that the commissioner will use in determining which projects should be awarded account funds. These criteria and priorities are essentially the same as those established in the grant program above and are necessary and reasonable for the same reasons as they are necessary and reasonable in the grant program. (See discussion, above, regarding subparts 3 and 4 of the safety grant program.)

VI. CONCLUSION

Based on the foregoing, proposed Minnesota Rules Part 5203.0010 to 5203.0070, are needed and reasonable.

Witnesses

DOLI: Workplace Services Division
Assistant Commissioner Nancy Christensen and departmental staff, including, but not limited, OSHA staff.
Safety inspections.

DOLI: Special Compensation Fund
Director Deborah Cordes and staff.
Grant and Loan Account