

STATE OF MINNESOTA
DEPARTMENT OF LABOR AND INDUSTRY
VOLUNTARY APPRENTICESHIP DIVISION

In the Matter of the Proposed Adoption
by the Minnesota Department of Labor
and Industry, Division of Voluntary
Apprenticeship of Amendments to Rules
Governing Administration of Apprenticeship
Programs.

STATEMENT OF NEED
AND REASONABLENESS

The above-captioned rules are amendments to existing rules of the Department of Labor and Industry governing the Voluntary Apprenticeship program. Under Minn. Stat. § 178.01, the Commissioner of the Department of Labor and Industry is responsible for the following duties and functions: 1) to promote apprenticeship and other forms of on-the-job training; 2) to establish, in cooperation with the apprenticeship advisory council and with the apprenticeship committees, conditions and training standards for the approval of apprenticeship programs and agreements; 3) to issue certificates of registration to sponsors of approved apprenticeship programs; 4) to approve apprenticeship agreements which meet the established standards; 5) to keep record of apprenticeship agreements; 6) to make wage determinations which are applicable to apprenticeship agreements; 7) to investigate complaints; and 8) to carry out the appeal procedure as required.

The existing rules were originally adopted in January, 1975, to facilitate implementation of the apprenticeship program under Minn. Stat. § 178.01 through 178.10 (1982). The amendments to the present rules are needed in response to subsequent developments in the areas of reciprocity agreements between states, safety training requirements, required state licenses, and issuance of completion certificates. Additionally, the proposed amendments clarify existing procedures concerning apprenticeship agreements and address aspects of the statutory provisions not previously clarified by rule. The amended rules are intended to: 1) provide concise and consistent guidelines and rules of operation governing all apprenticeship agreements; 2) set forth the procedures necessary from initiation to completion of apprenticeship programs; and 3) conform with federal standards by requiring compliance with title 29 C.F.R., parts 29 and 30 for reciprocity agreements.

Throughout the rules, archaic language and male pronouns have been stricken and replaced with simple English and gender neutral terms. "Shall" has been replaced with "must" or "will" where the "shall" did not refer to an action by a person.

Part 5200.0290/Authority, Scope and Purpose.

The authority of the Department of Labor and Industry to promulgate and adopt these rules is contained in Minn. Stat. § 178.041, subd. 1 and subd. 2 (1982). Part 5200.0290 recognizes the statutory authority for the Commissioner to adopt rules governing administration of Voluntary Apprenticeship programs.

Part 5200.0300/Procedure for Establishing Programs.

Part 5200.0300 was amended to require sponsors of apprenticeship programs to provide the director with proof that they have indentured at least one apprentice to retain their certificate of registration. This was necessary to insure that sponsors using the certificate of registration to obtain building contracts requiring active participation in an apprenticeship program are in fact indenturing apprentices.

Part 5200.0310/Minimum Training Standards.

Part 5200.0310 was amended to clarify the standards used by the director. The rule previously referred to "joint apprenticeship committee standards" and "Minnesota minimum standards." The standards for apprenticeship programs are those registered with the Division of Voluntary Apprenticeship. "Joint Committee Standards" are those arrived at by a committee established under Minn. Stat. § 178.05. They are subject to registration with the division in the same manner as any other apprenticeship program. It is therefore unnecessary to have a separate category for "joint apprenticeship committee standards."

Part 5200.0320/Minnesota Minimum Standards.

Part 5200.0320 was amended for clarification. This part had previously been incorrectly titled "Standard Apprenticeship Agreement." The Agreement form was intended to be used when registering an apprenticeship program with the Division of Voluntary Apprenticeship. The form was kept on file with the division so that the division could have ready access to the apprenticeship program standards. The purpose of having the form in the rule was to insure that all registered apprenticeship programs contained at least the Minnesota Minimum Standards. The amended rule clearly states that the rule is providing the Minnesota Minimum Standards which part 5200.0310 requires be the minimum standards used in an apprenticeship program registered with the division. Except as noted below, the amendments in this part are changes in form, not substance. The standards remain consistent with the earlier rule.

Subpart 1.B.

"Minnesota" was deleted from the definition because it is unnecessary. The rules govern only Minnesota programs. "Advisory" was added to correctly identify the council created by Minn. Stat. § 178.02 which advises the Apprenticeship director. "Advisory" was mistakenly omitted from the title of the council at the time this rule was promulgated.

Subpart 1.D.

This provision reduces the former requirement of 4,000 hours of employment to 2,000 hours to qualify as an apprentice. The amendment is needed to conform with federal law contained in the Equal Employment Opportunity and Apprenticeship and Training regulations at 29 C.F.R. § 30 (1984).

Subpart 3.

The sentence relating to permissive veteran's preference in this subpart is deleted as unnecessary. Program sponsors are required to formulate affirmative action plans designed to protect certain groups. Veterans are not included as a protected class and thus are not designated as persons in need of special preference. It is reasonable to provide opportunities for those outside of the classes protected by federal law based on prior experience and training.

Subpart 14.

"Director" is substituted for "approval agency" to reflect the actual practice of the division. The amendment reasonably promotes administrative efficiency. The director is able to approve modifications expediently, thus facilitating the continuing operation of the plan. The advisory council is not available as readily and need not be consulted for minor plan modifications.

The language added to the last sentence of the rule further defines the basis upon which the approval agency may cancel standards of apprenticeship. It is a necessary clarification of what constitutes "good and sufficient reason," thereby providing specific guidelines to program participants.

Subpart 15.

Amendment to this subpart is necessary to convert what was formerly part of an agreement form containing rules, into a clearer rule. The requirements have not changed. The rule is improved by the inclusion of a cross-reference to the related rule governing equal opportunity.

The section formerly labeled "B" is deleted as unnecessary. Procedures for program modification are contained in subpart 14. The statement in "B" and signature lines were appropriate in the old rule as part of an agreement form. Modification of this part into rule form renders these provisions obsolete. It is unnecessary to include them in the rules.

Part 5200.0340/Approval of Apprenticeship Agreements.

Part 5200.0340 is being amended for clarification. Part 5200.0310 requires the director to approve standards. The inclusion of "standards" was redundant in this section.

Part 5200.0350/Duties of Sponsors.

The amendments in this part were primarily to clarify language. The last sentence in subpart D. was amended to clarify that it is the Director of Voluntary Apprenticeship who approves variances in safety programs which are part of an apprenticeship program's standards registered with the division.

Part 5200.0360/Termination, Cancellation, or Transfers of Agreements.

The amendments to this part are editorial clarifications that make usage consistent throughout the rules and facilitate use of the rules. The changes have no effect on the substance of the rule.

Part 5200.0370/Equal Opportunity for Apprentices.

Item C was added to this section to insure that approved apprenticeship programs and programs approved for reciprocity comply with C.F.R., Title 29, part 30. This is necessary to promote equal employment opportunity in apprenticeship programs as required by federal law.

Part 5200.0380/Complaints of Discrimination.

The amendments to this part are editorial clarifications that do not affect the substance of the rule.

Part 5200.0390/Determination of Apprentice Wages.

Subpart 2. of this part was amended to more clearly state the current rule. The rule requires that apprentice wages must be set according to the most current wage regulation under state and federal law. It is reasonable to use the current established wage rates to fairly compensate the apprentice. The current language of the rule is clarified by the amendment which provides a straight forward explanation of wage calculation.

Part 5200.0400/Apprenticeship Committee Rules.

This part was amended to delete surplus language. It is unnecessary to note in the rule the Attorney General's role in the rule adoption process.

Part 5200.0410/Certificate of Completion.

Subpart 1 of this part was amended to more accurately reflect the current practice. The apprentice is required to have the appropriate license prior to receiving the certificate of completion; however, the licensing authority is not required to sign the certificate of completion.

Subpart 2 of this part was amended to provide the apprentice with a procedure to secure a certificate of completion when the sponsor/employer refuses to request the certificate. This was added to protect the apprentices who have completed the registered program but for some reason have sponsor/employers who are unwilling or unable to request the certificate.

Part 5200.0420/Maintenance of Records.

The amendments to this part are editorial clarifications which make the wording in the rules consistent and facilitate use of the rules.

IMPACT ON SMALL BUSINESS

Participation in voluntary apprenticeship is by definition a matter of choice. If employers do not wish to have apprentices in approved programs, they are not required to set up programs. Therefore, these rules do not necessarily have any impact on small businesses. A business is affected by the rules only if it chooses to participate in the program.

The amendments to the rules are primarily not changes in substance but, rather, clarify the form and procedure to be used in administering an approved apprenticeship program. The amendments do not increase any burdens which the current rules may place on small or large businesses. The division has nonetheless considered each of the following methods for reducing the impact on small businesses.

1. Less Stringent Reporting Requirements.

Although the requirement of providing a detailed apprenticeship program to the division may involve an initial burden, once the program is approved, it can be used for any number of apprenticeship agreements in the future and it can

be modified with little difficulty. If certification of a program is going to have any meaning, it is essential that the department be given the full standards of the program so that the director can verify that the program complies with the Minnesota Minimum Standards.

2. Less Stringent Schedules and Deadlines.

Since the rule deals with voluntary programs, there are very few schedules or deadlines. The 90 day deadline in part 5200.0300 is essential for both large and small businesses to insure that the division is not used to certify programs where there is no intention to actually indenture apprentices.

3. Consolidation or Simplification of Reporting Requirements.

The reporting requirements after a program has been certified involve maintaining records of an apprentice's individual progress. To allow lesser records to be kept would put the apprentice of a small business at a disadvantage. Should an apprentice move from a small business to a large business, working in the same trade, he/she would have no record of how much of the apprenticeship program had been completed and could be forced to repeat the entire program. The purpose of reporting requirements are to protect the apprentice and cannot be modified without compromising this purpose.

4. Establishment of Performance Standards for Small Business to Replace Design or Operational Standards Required in the Rule.

These rules contain no design or operational standards. This consideration is not applicable.

5. Exemption for Small Businesses.

This is also not relevant since a small business can exempt itself from the requirements by simply not creating an approved apprenticeship program.

FISCAL IMPACT ON LOCAL PUBLIC BODIES

This rule will not require the expenditure of public monies by local public bodies. Apprenticeship programs are generally set up by private businesses. A public body could not be forced to institute an apprenticeship program.