

STATE OF MINNESOTA
DEPARTMENT OF HUMAN RIGHTS

In the Matter of the Proposed
Adoption of Rules of the State
Department of Human Rights
Governing Certificates of
Compliance for Public Contractors

STATEMENT OF NEED
AND REASONABLENESS

INTRODUCTION

In 1981, the legislature amended Minn. Stat. § 363.073 so as to require businesses having more than 20 full-time employees in Minnesota at any time during the previous 12 months to have an approved affirmative action plan in order to bid for or execute a contract for goods and services in excess of \$50,000 with a state agency. At the same time the legislature passed Minn. Stat. § 363.074 which directs the Minnesota Department of Human Rights to adopt rules to implement section 363.073 "specifying the criteria used to review affirmative action plans and the standards used to review implementation of affirmative action plans." Several drafts of the rules have been prepared since 1981, and on two occasions, May 16, 1983 and July 30, 1984 versions of these rules were published in the State Registrar in connection with the Department's efforts to promulgate emergency rules. The Department has prepared this Statement of Need and Reasonableness in support of its effort to promulgate permanent rules.

In drafting these rules, the Department has relied heavily upon the rules and regulations of the U.S. Department of Labor, Office of Federal Contract Compliance program set forth in 41 C.F.R. chapter 60. These rules have been in effect since at least October 20, 1978. The Department, in some instances, has incorporated sections of the federal rules word-for-word. In other instances, the Department has revised sections of the federal rules or drafted its own rules to fit its specific circumstances. The fact that many of the proposed rules have as their source federal rules which have been in effect for several years and have been administered by the federal government to accomplish the same objective on the federal level supports a conclusion that they are reasonable.

Part 5000.3400/Definitions.

This section provides definitions of terms which are used in the proposed rules. In general, the definitions are needed to provide uniformity of meaning and shorter forms of reference. They are also needed to avoid unnecessary repetition of explanations, minimize ambiguity, and simplify and make easier the use of these rules. They are reasonable in that they comprise rational explanations of the terms and phrases defined. More detailed statements of necessity and/or reasonableness with regard to specific definitions are set forth below.

Subpart 1. Scope. This subpart is necessary to specify the applicability of the definitions. It is reasonable in that it applies the definitions to all parts and subparts of the rules.

Subparts 2 and 3. The definitions of "affirmative action policy" and "affirmative action program" are reasonable in that they reflect the legislative intent which underlies Minn. Stat. § 363.073 that covered contractors must establish and implement objectives and procedures which are designed to remove all non-job related barriers to employment opportunity and to enhance employment opportunities for women, minorities, and qualified disabled individuals.

Subpart 4. The definition of the term "availability" is reasonable in that it provides a rational explanation regarding which minorities and women must be considered to be available during the term of an affirmative action program.

Subpart 5. The definitions of the phrases "civilian labor force", "at work" and "with a job but not at work" are necessary to provide uniform meaning to the rules which concern or make reference to the availability of individuals in the "civilian labor force". They are reasonable in that they provide rational explanations of these phrases.

Subpart 6. The term "Commissioner" is defined to eliminate repetition throughout these rules of the phrase "of the Department of Human Rights." It is reasonable in that it is essentially the same definition as that set forth in Minn. Stat. § 363.01, subd. 14 and other rules which have been promulgated by the department.

Subpart 7. The definition of the phrase "construction work" is the same as the definition of that phrase contained in the rules of the Federal Department of Labor, Office of Federal Contract Compliance Program. See 41 CFR § 60-1.3. As such it is reasonable in that it is a rational explanation of the phrase.

Subpart 8. The definition of the term "contract" is needed in order to identify which transactions are within the ambit of the rules. It is reasonable in that it is a rational explanation of the term.

Subpart 9. The definition of the term "contractor" is needed in order to identify which firms and businesses are within the ambit of the rules. It is reasonable in that it reflects the same criteria that is set forth in Minn. Stat. § 363.073.

Subpart 10. The definition of the phrase "covered state contract" is needed in order to identify which state contracts are within the ambit of the rules. It is reasonable in that it reflects the same criteria that is set forth in Minn. Stat. § 363.073.

Subpart 11. "Department" is defined to eliminate repetition throughout these rules of the phrase "Department of Human Rights." It is reasonable in that it is the same definition set forth in Minn. Stat. § 363.01, subd. 26.

Subpart 12. The definition of the term "deficiency" is needed in order to identify the precise circumstances to which the term refers. It is reasonable in that it is a rational explanation of the term.

Subpart 13. The definition of the phrase "disabled individual" is needed in order to identify which individuals are included within the ambit of the phrase. It is reasonable in that it constitutes one of the three criteria included in the definition of the term "disability" which is set forth in Minn. Stat. § 363.01, subd. 25. The Department determined that to include the other two criteria set forth in Minn. Stat. § 363.01, subd. 25, i.e., "any person who . . . has a record of such an impairment; or . . . is regarded as having such an impairment . . .", would dilute efforts to achieve affirmative action for disabled individuals by allowing contractors to count as disabled, persons who are perceived as being disabled but who do not have a functional limitation. The definition of "disabled individual" also excludes an "alcoholic or drug abuser whose current use of alcohol or drugs renders that individual a hazard to the individual or others." This limitation is necessary to reflect a similar limitation contained in Minn. Stat. § 363.01, subd. 25a, and, as such, it is a reasonable explanation of the phrase.

Subpart 14. The definition of the phrase "good faith effort" is necessary to eliminate repetition of the explanation throughout these rules. It is reasonable in that it is a rational explanation of the phrase.

Subpart 15. The definition of the phrase "immediate labor area" is necessary to enable persons to determine the precise geographic area which is being affected when the rules which

contain this phrase are applied to specific circumstances. It is reasonable in that it is a rational explanation of the phrase.

Subpart 16. The definition of the phrase "life activity" is necessary in order to enable persons to identify individuals who are disabled individuals within the meaning of Part 5000.3400, subp. 13. It is reasonable in that it is a rational explanation of the phrase.

Subpart 17. The definition of the phrase "minorities and women with requisite skills" is necessary to clarify what is meant by "requisite skills." It is reasonable in that it is a rational explanation of the phrase.

Subpart 18. The definition of the term "minority" is necessary to eliminate repetition. It is the same definition as that set forth in 41 CFR § 60-4.3, and, as such, is a reasonable explanation of the term.

Subpart 19. The definition of the term "modification" is necessary to eliminate repetition of the explanation throughout the rules. It is the same definition as that set forth in 41 CFR § 60-741.2, and, as such, is a reasonable explanation of the term.

Subpart 20. The definition of the phrase "promotable or transferable" is necessary to enable individuals to determine which persons are within the ambit of the phrase. It is reasonable in that it is a rational explanation of the phrase.

Subpart 21. The definition of the phrase "qualified disabled individual" is necessary to enable persons to identify which individuals are within the ambit of the phrase. It is reasonable in that it is the same definition as that contained in Minn. Stat. § 363.01, subd. 25a(1).

Subpart 22. The definition of the phrase "relevant recruitment area" is necessary in order to enable individuals to determine the geographic area which is affected when the rules which contain this phrase are applied to specific circumstances. It is reasonable in that it is a rational explanation of the phrase.

Subpart 23. The definition of the phrase "substantially limited" is necessary in order to enable persons to identify individuals who are "disabled individuals" within the meaning of Part 5000.3400, subp. 13. It is reasonable in that it is a rational explanation of the phrase.

Subpart 24. The definition of the phrase "utilization analysis" is necessary to eliminate repetition of the explanation throughout the rules and to identify the functions which are included within the ambit of the phrase. It is reasonable in that it is a rational explanation of the phrase.

Subpart 25. The definition of the phrase "workforce analysis" is necessary to eliminate repetition of the explanation throughout the rules and to identify the functions that are within the ambit of the phrase. It is reasonable in that it is a rational explanation of the phrase.

Part 5000.3410/General Provisions.

Subpart 1. Purpose. This rule is necessary to clarify the purpose of the proposed rules. It is reasonable in that it reflects the legislative intent which underlies Minn. Stat. § 363.073.

Subpart 2. Persons regulated. This rule is necessary to enable individuals to identify which contractors are subject to the rules. It is reasonable in that it reflects the criteria set forth in Minn. Stat. § 363.073, subd. 1.

Part 5000.3420/Criteria for Approval and Implementation of Affirmative Action Plans for Contractors.

Subpart 1. General requirements. This rule is needed to clarify the objectives of the proposed rules and the areas in which contractors must implement affirmative action. It is reasonable in that it reflects the legislative intent underlying Minn. Stat. § 363.073.

Subpart 2. Proper consideration of qualifications. This rule is necessary to insure that covered contractors will examine their existing personnel processes to determine whether or not they will facilitate the implementation of the affirmative action plan required under the rules and, if not, to require the contractor to modify such processes so that they would facilitate such a plan. This rule is reasonable in that it simply requires the contractor to examine their existing personnel processes and make modifications where the criteria established in the subpart is not met.

Subpart 3. Affirmative action plan. This rule is needed to clarify the point in time at which a contractor must prepare an affirmative action plan, and that, if the contractor has more than one establishment, it must prepare and maintain such a plan at each establishment. The point in time established in this rule at which a contractor must prepare an affirmative action plan is reasonable in that it reflects the point in time inferred in Minn. Stat. § 363.073. With regard to the requirement that an affirmative action plan be maintained at each establishment when the contractor has more than one establishment, the rule is based upon the rational premise that, despite common ownership, different establishments may have different practices and policies. In addition, maintaining a copy of the affirmative action plan at each establishment will enhance the opportunities for employees and applicants to view the plan.

Subpart 4. Plan review. This rule is needed to clarify how often affirmative action plans must be reviewed and updated, and, under what circumstances changes in such plans must be communicated to employees, applicants and the Department. This rule is reasonable in that requiring reviews on an annual basis does not impose an undue burden upon the contractor. Furthermore, the criteria for determining which changes are significant enough to require communication to employees, applicants and the Department focus upon areas in which changes would have a significant impact upon the rights of individuals and the compliance status of the contractor.

Subpart 5. Identify plan coverage. This rule is needed to insure that contractors will apprise individuals of the affirmative action plans, their right to seek benefits under the plans and that exercising such rights is voluntary and will be kept confidential. It is also needed to insure that information regarding the exercise of rights under the plan will be used only for purposes under the Human Rights Act, and that refusing to participate will not result in adverse treatment. Furthermore, the rule clarifies the extent to which a contractor must go in determining whether or not an individual is "disabled" within the meaning of the rules and indicates that compliance with the certificate of compliance rules will not relieve a contractor of liability for discrimination. This rule is reasonable in that its provisions are consistent with common sense and the burden which it imposes upon the contractor, employee and applicant is not undue.

Subpart 6. Notice. This rule is necessary to establish a means for notifying employees and applicants that a contractor has an affirmative action plan under which they may benefit. It is reasonable in that it does not impose an undue burden upon the contractor and establishes a means which is commonly and successfully used to communicate such information to employees and applicants.

Subpart 7. Employee access to plan. This rule is needed to insure that employees and applicants will have access to the entire affirmative action plan and that they must be apprised regarding when and where they can obtain such access. This rule is reasonable in that it does not impose an undue burden upon the contractor and it is consistent with a common sense approach to requiring a contractor to internally disseminate an affirmative action plan.

Subpart 8. Equal opportunity policy statement. This rule is necessary to require contractors to state in writing its commitment to the principles of equal employment opportunity. This requirement is designed to insure that a contractor fully understands the nature and extent of their commitment and that by including this statement in the their affirmative action plan, the nature and extent of their commitment will be

communicated to employees and applicants. This rule is reasonable in that it does not impose an undue burden upon the contractor and reflects the principles underlying the Minnesota Human Rights Act, specifically Minn. Stat. § 363.073.

Part 5000.3430/Assignment of Responsibility for Program to Executive or Top-Management Official.

This rule is necessary to insure that a contractor has identified a person for whom the maintenance, and operation of the equal opportunity program is a major, if not the only responsibility. This will facilitate the operation of the program, and will provide the Compliance Division with the name of the responsible official, thereby making communication with the contractor more efficient and effective.

It is reasonable to expect that the contractor would name an EXECUTIVE level person to this position so that the designated official will have sufficient, broad-based authority to effectively monitor, and correct if needed, the contractors compliance efforts.

Subpart 1. Director. This section of the rules spells out those start-up and structural steps that must be undertaken by the Director to insure that an effective equal opportunity program is established and maintained. Items A-G specifically detail the minimum duties that would be carried out by the Director, in his role as the overall director of the program. These duties are reasonable, in that each of them is demonstrably necessary to insure that the program developed by the contractor is carried out.

Subpart 2. Director responsibilities. This section specifies additional line responsibilities that will be performed by the Director on a continuous basis to insure, by a continual review and evaluation process, that the program is being effectuated. Items A-I provide details about these continuing responsibilities so that the need and the actions that must be taken to insure compliance will be clear. These duties are reasonable in that they represent relatively standard methods used to insure compliance with a program. These duties are the minimum that must be done by by the director.

Part. 5000.3440/Procedures for Disseminating Policy Internally and Externally.

This rule provides specific instructions concerning the internal and external dissemination of the contractors Equal Opportunity/Affirmative Action Program (EO/AAP).

Subpart 1. Internal. This subpart provides detailed direction to the contractor concerning the nature of the contractor's efforts to disseminate the program internally: the items labeled A-F identify the measures that the Department will

examine to determine if the contractor has made a good faith effort to comply with the internal dissemination requirement. This is needed to eliminate inconsistency in approach by all contractors, and to remove any ambiguity about the requirement. The directions given about dissemination are reasonable in that they represent a standard methodology already used by companies to inform their employees about changes in company policy. This is vital to the success of the program, and it would be unreasonable for the Department to fail to specify the needed components of an effective internal dissemination program.

Subpart 2. External. This subpart, which details the external dissemination required under these rules, is similar to, and is as necessary, as Subpart 1; that is, it specifies those steps that the Department will expect all participating contractors to carry out to be in full compliance with this subpart. The items labeled A-F of this subpart provide the needed information that will eliminate any ambiguity about the expectations of the Department, and they will insure that all participating contractors will be consistent in their approach to the external dissemination of their plan. The measures are reasonable, in that they identify standard measures long used in industry to inform others about their operation, particularly for personnel and recruitment purposes.

Part 5000.3450/Workforce Analysis, Including Availability and Utilization Analyses.

Subpart 1. Workforce analysis. This rule, which requires that a workforce analysis be included in all plans submitted pursuant to these rules, is necessary in order to enable the contractor, and the Department, to determine if any deficiencies exist in the contractor's work force. (See 5000.3450, subp. 2.) This subpart specifies the type of analysis that must be done, and describes the required divisions of the contractors report. These divisions are standard work force breakdowns used for years by Federal Contract Compliance agencies, and they have been accepted by the courts as valid indicators of an organization's EO/AAP impact. It is reasonable, therefore, to use these standard and familiar categories and methods in these rules.

Subpart 2. Underutilization. This subpart requires that an analysis be done of all major job groups to determine if minorities or women are being underutilized. This subpart directs the contractor to use the analysis called for in Subpart 1, and to then, separately for minorities and females, find out any work groups that have fewer minorities, or women, than would be expected by the contractors analysis. (See Subpart 3.)

Subparts 3 and 4. Minority/Women analysis. Both of these subparts are necessary to insure that all contractors are informed of precisely what will be expected by the Department,

at a minimum, in the contractor's underutilization analysis. The measures are reasonable since they represent standard indicia used by Federal regulatory agencies which have been accepted by the courts.

There is a need for different indicia for women, since availability rates are computed differently for women. This factor is added to be in conformity with generally accepted practice in assessing female underutilization.

Part 5000.3460/Goals and Objectives Established by Organizational Units and Job Groups Including Timetables for Completion.

This rule is necessary to insure that all contractors develop meaningful goals, including timetables. The need for goals and timetables is at the heart of these rules, since it is the establishment of goals, and good faith efforts to meet them, that will determine if a contractor is in compliance with these rules. Subparts 1-11 provide detailed information about what will be expected of participating contractors in setting their goals and timetables. These are reasonable steps since they involve standard methods used nationwide in developing effective goals and timetables. This is necessary to eliminate the possibility of a badly developed set of goals, that could become quotas, which would be improper. By following the steps and procedures listed in these subparts a contractor can be certain that all appropriate steps have been taken, and that the Department will accept them.

Part 5000.3470/Identification of Problem Areas or Deficiencies by Organizational Units and Job Groups.

Subpart 1. Analysis. This subpart details the need for an analysis that must be done by all participating contractors. This is necessary in order for the contractor to have clear instructions concerning what the Department expects in the area of analysis of an on-going EO/AAP to insure that the organization is making a good faith effort to attain the goals and timetables established pursuant to these rules.

The required areas of analysis listed in Items A-J are reasonable in that they represent the standard steps needed to identify areas where compliance may be a problem. The areas are consistent with the expectations of these rules, and are similar to the areas examined by Federal agencies and the courts.

Subpart 2. Problem areas. This subpart specifies what indicia will indicate the need for corrective action on the part of the contractor; Items A-Q contain specific information concerning those items that would reveal a problem. These are needed to insure that all participating contractors use the same techniques to determine deficiencies. The items listed are reasonable since they are standard indicia used by Federal agencies and have been accepted by the courts.

Part 5000.3480/Measures to Facilitate Implementation of Equal Employment Opportunity Policy and Affirmative Action Programs.

Subparts 1, 2 and 3. These sections of the rule specify certain measures to assist the contractor in evaluating the structure of the company, with regard to position descriptions and worker specifications, in order to determine if any barriers exist to the employment of minorities and females. These are necessary to provide the contractor with a method of determining whether any of the contractor's practices have a disproportionate adverse impact on women and minorities. This requirement is reasonable since all contractors need to be aware of those factors that may act to make the contractor's EO/APP ineffective. It is also reasonable to use the type of analysis called for in these subparts, since they are consistent with the methods used by Federal regulatory agencies, and have been accepted by the courts.

Subpart 4. Selection process evaluation. This subpart mandates that the contractor evaluate the selection process used by the company to insure freedom from adverse impact on minorities and females. This is necessary to provide the contractor with clear instructions about this vital part of the selection process. The contractor needs to know about the potential for adverse impact in the selection process.

The specifics of the subpart call for reasonable attempts to discover any unintentional bias, or adverse impact. These measures are standard measures used to determine the effects of a particular selection process, and are therefore reasonable and necessary for the full implementation of the contractors EO/AAP.

Subpart 5. Recruitment techniques. This subpart provides suggestions about, and sources for the recruitment of minorities and women. This is necessary in order to provide the contractor with needed information that will assist in meeting the goals and timetables established as part of the contractor's EO/AAP. The sources listed are reasonable in that they are standard sources for the recruitment of women and minorities. Items B-J provide the contractor with additional ideas about methods for making the selection/recruitment process effective. This is necessary to insure that a failure to effectively recruit does not lead to the use of quotas to meet the contractor's timetables.

Subpart 6. Promotion. This subpart is the logical extension of Subpart 5, which dealt with selection. This subpart provides that the contractor must ensure that minorities and women are given equal opportunity for promotion. This is necessary, in that for an EO/AAP to be effective it must provide for upward mobility for those persons recruited and hired pursuant to the contractor's goals and timetables. The Items labeled A-J are suggested measures that the contractor

can use to assist in insuring the availability of promotional opportunities. The measures listed are reasonable, in that they represent those methods used by federal authorities, they are clear and unambiguous, and, if followed, would provide a demonstration of the contractor's good-faith efforts to meet the goals and timetables established pursuant to these rules.

Part 5000.3490/Internal Audit and Reporting Systems.

This rule requires that a contractor set up a regular monitoring process to provide the contractor with on-going information regarding the operation of the contractor's EO/AAP progress.

The required reports are necessary, since the contractor must be able to discover problems in the program, and the reports called for in this rule will provide the data needed to determine that. The required reports are reasonable, in that any program, to be effective, would require a similar reporting and monitoring program. Contractors routinely receive such reports about the progress being made on projects, and this report structure is essentially similar, and should impose no real burden on any contractor.

Part 5000.3500/Disabled Individuals Plan.

This rule requires nonconstruction contractors to develop affirmative action plans for the employment of and advancement of disabled individuals. This rule is necessary and reasonable because section 363.073 of the Minnesota Human Rights Act requires public contractors to take affirmative action for disabled individuals. Section 363.074 requires the Commissioner to issue rules specifying the criteria to be used to review affirmative action plans submitted by contractors.

Part 5000.3510/Additional Required Content of Affirmative Action Plans.

The Department has determined that this rule is redundant of requirements contained in Parts 5000.3430, subparts 1 and 2, 5000.3440, subparts 1 and 2, 5000.3450, subparts 1 and 2, 5000.3460, subparts 1 and 2, 5000.3470, subpart 2, 5000.3480, subpart 5 and 5000.3490. Therefore, in order to avoid confusion, it shall be withdrawn.

Part 5000.3520/Construction Contractor's Affirmative Action Plans.

Goals and timetables for minority and female utilization in specific geographical areas are to be issued by the Commissioner. This is reasonable in that ultimately it is the Commissioner of Human Rights who will review contractors' affirmative action plans to determine compliance. The notice of the goals and timetables in the State Register is necessary to apprise contractors of the actual availability of minorities

and females in the contractor's particular geographical area and to assist him/her in preparation of an affirmative action plan. It will be necessary to periodically revise the goals and timetables to reflect the changing availability of minorities and females in the covered area.

Part 5000.3530/Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity.

This rule is needed to apprise contractors submitting bids or offers on state and state-assisted projects of state requirements for affirmative action to ensure equal opportunity, and to ensure the contractors' compliance with the Minnesota Human Rights Act.

Item 2 deals with goals and timetables in the notice requirements issued by contracting state agencies in the solicitation for bids by those agencies. These goals and timetables are realistic and reasonable in that they reflect the actual availability of females and minorities on all construction work in the contractor's covered area.

It is reasonable to require that contractors not transfer minority or female employees or trainees from contractor to contractor or from project to project for the purpose of meeting the contractor's goals. The requirement is necessary to ensure that contractors maintain representation of females and minorities in all phases of a project. It is reasonable, therefore, to state that compliance with goals will be measured against total work hours performed by females and minorities.

Item 3 provides that the prime contractor submit notification to the department of any subcontracts awarded, including names and addresses of subcontractors and dollar amounts of those subcontracts. While the department currently has no legal authority to require subcontractors to adhere to rules regarding compliance for state contracts, this requirement enables the Department to maintain statistics which may necessitate future legislation requiring subcontractors to be subject to the same rules as prime contractors.

Item 4 defines "covered area" as the geographical area where the contract is to be performed. It requires that specifics be provided by the contracting agency to prospective bidders. This information is needed by contractors bidding on projects to assist them in setting and achieving their affirmative action goals.

Part 5000.3535/Standard State Equal Employment Opportunity Construction Contract Specifications.

This rule requires that the equal opportunity clause be included by state contracting agencies and contractors on state and state assisted construction contracts. It is needed to

provide contractors with the specific steps they must follow to ensure equal employment opportunity. It is reasonable to expect contractors to implement the specific affirmative action standards stated in the rule to ensure employment and training opportunities for women and minorities.

Item 1 reasonably requires contractors to make progress toward the goals expressed in the contract solicitation.

Item 2 reasonably requires that a contractor shall not be excused from his/her affirmative action obligations because of any collective bargaining agreement or a union's failure to refer minorities and women. This is needed to ensure that contractors fulfill the affirmative action goals set forth in the contract solicitation.

Item 3 is needed to ensure that minority and female apprentices and trainees are not only be utilized in meeting training goals but that these apprentices/trainees receive the commitment of the contractor to employ them during the training period and upon completion of their training.

It is reasonable to expect that the contractor hire the apprentices/trainees in a good faith effort to achieve all goals in employment as well as in training.

Item 4, steps (a) through (o) define the minimal affirmative action steps a contractor is reasonably expected to take and are necessary to ensure the implementation of the contractor's affirmative action policy. The requirement to document efforts is necessary for the purposes of evaluating the contractor's compliance with obligations outlined under this rule.

Item 4(a). Maintaining a harassment-free working environment is a vital and necessary part of the contractor's affirmative action policy and it is reasonable to expect on-site supervisory personnel to maintain such an environment.

Item 4(b). Maintaining ongoing contact with minority and female recruitment sources is necessary to provide the contractor with a source of employment possibilities which may have been ignored in the past to aid in his/her attainment of affirmative action goals. This is necessary to attract minorities and women to jobs where a self-analysis has indicated underrepresentation.

Item 4(c). For the purposes of filing required reports with the Department, it is reasonable and necessary for the contractor to maintain records of female and minority applicants and referrals and action taken on each.

Item 4(d). Unions are subject to the Human Rights Act prohibition of discrimination in the area of employment referral based on sex and race. It is reasonable, therefore,

to expect contractors to report to the Commissioner a union's failure to refer minority persons or women.

Item 4(e). This step encourages contractors to identify barriers in employment opportunities and training programs and take necessary steps to eliminate such barriers. It is reasonable in that it equalizes opportunities for those who in the past may have been denied opportunity for training and advancement because of their minority standing or sex.

Item 4(f). Communicating the company's equal employment policy to employees, unions and management personnel is essential to the effectiveness of the affirmative action program. This communication assures parties of the contractor's commitment to the principles of affirmative action.

Item 4(g). An annual self-review and self-analysis of the company's policy is necessary to measure progress made on affirmative action goals.

Item 4(h). External dissemination of the contractor's equal employment opportunity policy is necessary to ensure that recruiting is conducted on a nondiscriminatory basis and that action is being taken to attract women and minorities to jobs in the company and make the community at large aware of the company's affirmative action efforts.

Item 4(i). The affirmative action commitment includes efforts to make use of the services of referral agencies which specialize in recruiting women and minorities. Directing recruitment efforts to such organizations and to schools in the contractor's geographical area which may have large numbers of minorities is a necessary component of the affirmative action plan. Notifying training and apprenticeship programs in the area of openings in the company is a reasonable requirement which will aid in breaking what may have been a past pattern of recruitment through referrals from the current workforce.

Item 4(j). Using present minority and female employees to recruit other qualified minorities and females is necessary to eliminate recruitment barriers and will lead to the desired change in the composition of the workforce.

Item 4(k). An annual survey of current minority and female personnel and a program of training and upgrading is necessary to alleviate disparities which may exist in areas of administrative, technical, managerial and professional jobs and is a reasonable way to achieve affirmative action goals.

Item 4(l). A continuous monitoring of personnel and employment-related activities is necessary to ensure that the equal employment opportunity policies and obligations of the contractors in those areas are being carried out and that personnel practices do not have discriminatory effects on protected class employees.

Item 4(m). Nonsegregated activities and facilities reinforce the contractors' commitment to equal opportunity in all phases of employment. It is, of course, reasonable to expect contractors to provide separate toilet and changing facilities to males and females to assure privacy.

Item 4(n). Since the Human Rights Act has no authority to monitor subcontractors' activities, it is necessary for contractors to demonstrate their commitment to the overall concept of affirmative action by circulating solicitations for subcontracts to minority and female companies and contractor associations and to record all solicitations of offers for subcontractors from minority and female construction contractors and suppliers.

Item 4(o). It is reasonable to expect a company to evaluate supervisors' performance on equal employment opportunity to determine progress of the established goals. Such evaluations also serve to reaffirm to supervisors the company's commitment to affirmative action.

Item 5 encourages voluntary participation by the contractors in associations which make a positive impact on the employment of women and minorities. The statement that failure of these groups to fulfill the contractor's commitment to affirmative action goals is not a defense for noncompliance by the contractor because the ultimate responsibility for compliance lies with the contractor.

Item 6 requires that although separate goals for minorities and women have been established, the contractor is reasonably required to provide equal employment opportunity for all minority groups (male and female), and all women (minority and nonminority). This is necessary to ensure that employment opportunities are not provided in a disparate manner.

Item 7. It is illegal to discriminate in the area of employment based on the factors cited and it is reasonable to expect that in pursuit of achieving goals and timetables, a contractor will not violate the law prohibiting discrimination.

Items 8 and 9. These items are needed to make clear to the contractor his/her obligation to not enter into subcontracts with debarred firms or firms whose compliance certificates have been revoked or suspended and to reaffirm that doing so shall be a violation of the law. Since the Department does not have jurisdiction over subcontractors, this obligation is reasonably placed on the contractors to ensure that they carry out the principles of affirmative action to which they are committed.

Item 10. It is reasonable to expect the contractor to follow the specific affirmative action steps outlined in order to make a good faith effort to implement the affirmative action plan. Determination of a contractor's failure to comply with these

requirements will necessitate the Commissioner's notifying the contractor of deficiencies.

Item 11. It is necessary to appoint an official to the task of monitoring the affirmative action policy to ensure that all personnel matters, including monitoring, reporting and recordkeeping are performed in accordance with the affirmative action plan. The information required on each employee need not be specifically prepared for purposes of fulfilling this requirement if the employer currently has such information in existing records which are easily retrievable.

Item 12. This item makes clear that contractors need to comply not only with the rules set forth in this document but, where applicable, with other state and federal compliance laws and requirements as well.

Part 5000.3540/Construction Contractor Affirmative Action Plans.

This rule requires construction contractors to prepare affirmative action plans for the employment of and advancement of disabled individuals. This rule is necessary and reasonable because section 363.073 of the Minnesota Human Rights Act requires public contractors to prepare affirmative action plans for the employment of disabled individuals. Section 363.074 requires the Commissioner to issue rules specifying the criteria to be used in reviewing contractors' affirmative action plans.

Part 5000.3550/All Contractors; Affirmative Action Plans for Disabled Individuals.

This rule sets forth an affirmative action clause which must be included in each state contract. This clause lists the specific responsibilities of contractors and the criteria which will be used by the Commissioner to evaluate affirmative action plans for disabled individuals submitted by the contractors.

Item 1(a) sets forth the contractors' duty to provide equal opportunity for disabled individuals. This statement is necessary and reasonable in order to make it clear that the contractor has responsibility to provide equal employment opportunity and affirmative action for disabled individuals. The inclusion of this statement in the contract also makes it clear that the contractor has agreed to do so. This statement forms the basis of the contractor's affirmative action plan for disabled individuals.

Item 1(b). The contractor must comply with the rules and relevant orders of the Department of Human Rights. The Department is provided general authority to adopt rules under section 363.05 of the Human Rights Act and is granted specific rulemaking authority under sections 363.074 and 363.075 relating to affirmative action plans for public contractors.

The Department is also authorized to issue orders under section 363.071 in individual cases of alleged discrimination arising under the Human Rights Act. Since rules have the effect of law and since rules must be complied with in order to have effective enforcement of the law, it is necessary and reasonable to require contractors to comply with the Department's rules. It is also necessary and reasonable to the effective enforcement of the law to require contractors to comply with orders issued by the Department.

Item 1(c) explains that action may be taken by the Department if contractors fail to comply with the rules and orders of the Department. It is necessary and reasonable to include a statement indicating that action may be taken for noncompliance with the affirmative action clause. This statement is necessary and reasonable to make clear the consequences that may follow for noncompliance. Section 363.073 provides for revocation or suspension of the contract in the event the contractor fails to implement an affirmative action plan.

Item 1(d). Contractors are required to post notices in conspicuous places frequented by employees. These notices must state the contractor's obligation to take affirmative action to employ and advance in employment qualified disabled individuals. Notices must also state the rights available to employees. It is necessary and reasonable for contractors to post notices in order for employees and applicants to know that the contractor is taking affirmative action for disabled individuals. Employees and applicants must first know that the contractor has an affirmative action program before they can exercise their rights under it.

Item 1(e). The contractor must inform labor organizations with whom they have collective bargaining agreements that they are taking affirmative action. It is necessary and reasonable for the contractor to inform labor organizations of the contractor's duty to take affirmative action in order to gain the labor organization's voluntary cooperation in implementing affirmative action. It is hoped that the contractor and labor organization will be able to work together to insure that collective bargaining agreements do not contain provisions which will hinder affirmative action efforts.

Item 2(a). Under this requirement, contractors must establish a schedule for reviewing all job descriptions to insure that, to the extent that the physical or mental qualifications preclude a person with a particular disability from performing the duties of the position, they are job-related, and are consistent with business necessity and the safe performance of the job. The establishment of a schedule for the review of physical and mental job qualifications is necessary and reasonable in order to insure that the contractor will set time aside to develop qualifications which meet the criteria listed in Item 1(a). The criteria of job relatedness, business

necessity and the safe performance of the job are necessary and reasonable because these three criteria are the factors used by courts in determining whether discrimination has occurred. These standards are also used in the Office of Federal Contract Compliance Programs rules implementing section 503 of the Rehabilitation Act of 1973, as amended.

Item 2(b) requires contractors to establish physical and mental job qualifications. It is necessary and reasonable to require that the physical and mental job qualifications be related to the specific duties of the job in question in order that such qualifications will not tend to automatically screen out disabled individuals. Much discrimination against disabled persons occurs because employers set up health standards to be met by applicants which have not been proven to be required for the satisfactory and safe performance of the duties of the job. Many employers have made assumptions without gathering supporting evidence that persons with particular conditions or disabilities could not perform the job in question. Item 2(b) requires contractors to base their criteria on evidence rather than myths and misconceptions about disabled persons.

Item 2(c). The contractor may conduct a comprehensive medical examination prior to employment provided and the results of the examination shall be used only in accordance with the requirements of this section. Information obtained during the comprehensive medical examination shall be kept confidential except that supervisors may be informed of worker restrictions and accommodations, first aid personnel may be informed if the condition might require emergency treatment and officials of the Department of Human Rights and representatives of local human rights commissions shall be informed when they are investigating compliance with the Minnesota Human Rights Act or a local ordinance. It is necessary and reasonable to permit the contractor to conduct a comprehensive medical examination in order to determine an applicant's physical and mental ability to perform the job. It is necessary and reasonable to require that the results of the examination be used only in accordance with the requirements of this section in order to insure that its physical and mental job qualifications are job related for entry level jobs, promotions, demotions and training.

It is necessary and reasonable to require contractors to keep medical information confidential in order to protect the privacy interests of applicants and employees. On the other hand, it is necessary and reasonable to inform supervisors and managers of a disabled individual's work restrictions and need for accommodation in order to insure that the individual will be placed in a job assignment which is not hazardous to the individual or to others. It is necessary and reasonable to inform first aid and safety personnel of an individual's medical condition if an individual has a medical condition which might require emergency treatment, so that first aid and

safety personnel can make necessary plans to insure that the individual will be given prompt and appropriate medical care in the event of an emergency. It is necessary and reasonable to inform officials of the Minnesota Department of Human Rights or local human rights agencies of an individual's medical condition when the Department or a local agency is investigating compliance with the Act so that accurate information will be obtained during the investigation.

Item 3 requires contractors to make reasonable accommodation to the known physical or mental limitations of an employee or applicant unless the contractor can demonstrate that making such an accommodation would impose an undue hardship on the conduct of the contractor's business. In addition to the requirement contained in section 363.073, subdivision 1 that a contractor must engage in affirmative action with regard to the employment of disabled individuals, section 363.03, subdivision 1(6) requires employers of 50 or more full-time employees to make reasonable accommodation to the known full-time disability of a qualified disabled person where the accommodation would not pose an undue burden. It is necessary and reasonable to require contractors to make reasonable accommodation to the known physical or mental limitations of an individual since without these accommodations disabled individuals often cannot perform the essential functions of the job. Reasonable accommodations give disabled individual an equal chance to perform the job in question on an equal basis with nondisabled persons. Accommodations are necessary and reasonable since work environments are generally set up with the assumption that only nondisabled persons will be assigned to them. It is necessary and reasonable to require the contractor to provide the accommodation since the accommodation may consist of providing a piece of equipment or modifying tools or work schedules.

The rules adopted pursuant to section 503 require federal contractors to make reasonable accommodation. The U.S. Department of Labor commissioned a study of federal contractors to learn their experiences in making accommodations. The study found that of the accommodations made by federal contractors about half cost the employer nothing and another 30% involved expenses ranging between \$1 and \$500. See Appendix A.

Item 3 also provides that the contractor need not make accommodations if it can demonstrate that making the accommodation would impose an undue hardship on the conduct of its business. It is necessary and reasonable to excuse the contractor from this obligation if an undue hardship can be demonstrated since some accommodations would be too expensive or disruptive to the contractor's business. This section provides that business necessity or financial expenditures would be considered as examples of factors that might be used in determining undue hardship.

Item 4 prohibits contractors from reducing a disabled individual's rate of pay because that individual receives income from another source such as social security disability benefits, supplemental security income, etc. This section is necessary and reasonable to make it clear that contractors are expected to pay disabled individuals on a basis equal to nondisabled individuals and that simply because a disabled individual receives income from another source due to the individual's disability, the contractor's obligation to pay the individual the same rate as paid to nondisabled persons is not lessened. This provision is again drawing from the Office of Federal Contract Compliance Programs rules. This rule was included in the OFCCP's rules because it received comments from interested persons pointing out that some employers had different pay rates for disabled employees.

Item 5 requires contractors to conduct a review of their personnel policies to determine whether they are conducting recruitment efforts such as those listed in item 5. Contractors need not undertake all of the listed activities.

Affirmative action is directed towards eliminating the present effects of past discrimination. Since the present effects of past discrimination against disabled persons are that disabled persons are not adequately and proportionally represented in the workforce in accordance with their availability in the population, it is necessary and reasonable to require contractors to conduct outreach and recruitment efforts to seek out and attract disabled applicants. The activities listed in Item 5 are examples drawn from the OFCCP's rules. These examples give guidance to contractors on the steps to be taken when conducting an effective outreach and recruitment program. Item 5 provides flexibility rather than rigidity by allowing the contractor to choose from a variety of options when designing its outreach program. Thus, contractors may select recruitment techniques which would best suit their particular business needs.

Item 6 sets forth requirements for internal dissemination by the contractor. The contractor must undertake the ten specific activities outlined in this item. This rule is necessary to insure that all employees are notified of the contractors' policies and their rights under those policies. It is reasonable in that the methods of dissemination identified are common, proven methods for accomplishing dissemination of information within businesses.

Item 6(a). The contractor is required to include its affirmative action policy in its policy manual in order that all employees will have a clear understanding that the contractor has a policy on affirmative action and the nature of the policy.

Item 6(b). The contractor must publish the policy in its newsletter, magazine, annual report and other publications in order to inform all employees and others who do business with the contractor.

Item 6(c). The contractor must hold special meetings with its managerial and supervisory staff to inform them of the policy and of their responsibilities to implement it. This requirement is necessary in order to insure implementation of the policy by all levels of the organization.

Item 6(d). The contractor must hold meetings with all employees to inform them of the policy and to explain to employees their individual responsibilities. This activity is necessary and reasonable to insure that all employees fully understand both the policy and their responsibilities under the policy. Such meetings will provide an opportunity for employees to raise questions and to gain further detailed information about the contractor's affirmative action program.

Item 6(e). The contractor must discuss the policy during new employee orientation meetings and training sessions for managers. This requirement is necessary and reasonable to insure that new employees and managers will be informed of the policy and their responsibilities under it.

Item 6(f). The contractor must meet with union officials to inform them of the contractor's policy and to request the union's cooperation. This activity is necessary and reasonable because the union's cooperation is essential to effective implementation of affirmative action. Union cooperation is essential for insuring that labor contracts will incorporate affirmative action and nondiscrimination policies.

Item 6(g). The contractor is required to include a nondiscrimination clause in labor contracts and to insure that all provisions of the contract are nondiscriminatory. This requirement is necessary and reasonable in order to state clearly that the contractor will not discriminate on the basis of disability and to insure that discrimination will not occur as a result of language contained in labor contracts.

Item 6(h). The contractor must include articles about the accomplishments of disabled persons in company publications. This activity is necessary and reasonable in order to help publicize the accomplishments of disabled individuals. Publicity about the accomplishments of disabled individuals will aid in breaking down societal stereotypes and negative attitudes which may have been held by contractors' employees. As more and more company employees at all levels come to know the capabilities and accomplishments of disabled individuals, they will come to have greater acceptance of disabled individuals as their subordinates, co-workers or superiors. Employment opportunities will be enhanced as a result of the publication of articles about disabled individuals.

Item 6(i). It is necessary and reasonable to require the contractor to post its policy on bulletin boards in order to remind employees that the contractor is taking affirmative action and that employees and applicants will be protected from coercion, intimidation, interference, or discrimination, when filing complaints or assisting in investigations.

Item 6(j). The contractor must include photographs of disabled employees if they feature other employees in employee handbooks or other publications. The inclusion of photographs of disabled individuals will help enhance opportunities for disabled individuals by illustrating that disabled persons are employed in various positions within the company.

Item 7 requires the contractor to designate an executive level individual to implement the affirmative action program. Item 7 further delineates the responsibilities of this executive. The individual responsible for affirmative action shall develop affirmative action policies and internal as well as external communication approaches. This item simply indicates who is responsible for developing and implementing the affirmative action requirements cited in the other items contained in this rule. The affirmative action officer executive must identify problem areas in the implementation of the affirmative action plan and seek solutions to those problems. This requirement is necessary and reasonable in order to insure the effective implementation of the contractor's affirmative action program. The responsible executive must implement auditing and reporting methods. Five specific areas must be audited to insure proper implementation of the contractor's affirmative action plan. It is necessary and reasonable to require the contractor to audit and report on its affirmative action efforts in order to assist both the contractor and the Department in knowing whether the contractor is effectively implementing its affirmative action program. The responsible executive must serve as the liaison between the contractor and the Department of Human Rights. It is necessary and reasonable to have the responsible executive serve as a liaison in order for the Department to know who to contact within the contractor's company to discuss questions of compliance with the Minnesota Human Rights Act and the rules adopted pursuant to the Act.

The responsible executive must also serve as a liaison between the contractor and organizations of and for disabled individuals. It is necessary and reasonable to require the responsible executive to serve as a liaison so that meaningful relationships can be developed and maintained between the contractor and organizations of and for disabled individuals. These organizations are an important source of job applicants and expertise relating to the area of disability. The responsible executive must also arrange for involvement of company representatives in the community. It is necessary and reasonable to require the responsible executive to obtain the involvement of company representatives in the community since the community is an important source of recruitment.

The responsible executive must keep management informed of developments in the affirmative action field. This requirement is necessary and reasonable in order to insure that the contractor is in compliance with all relevant state and federal laws and rules related to affirmative action. The responsible executive must arrange for career counseling for known disabled individuals. This requirement is necessary and reasonable in order to help eliminate the present effects of past discrimination. Since many disabled individuals have become locked into entry-level or deadend positions, because of past discriminatory policies and practices, they may develop career options and learn of employment opportunities within the company through career counseling.

Item 8 relates to the development and execution of the contractor's affirmative action plan.

Item 8(a) requires the contractor to make available to managers and others involved in the personnel selection process the physical and mental job qualifications developed pursuant to Part 5000.3550, Item 2. This requirement is necessary and reasonable since personnel involved in all phases of the selection process must know the physical and mental qualifications which applicants must meet prior to recruiting, interviewing and selecting candidates. Without this information, personnel involved in selection might employ individuals who do not meet the established job qualifications. This could have the effect of continuing to screen out qualified disabled individuals.

Item 8(b) requires the contractor to review all aspects of the selection process to insure that the process is free from stereotyping. This requirement is necessary and reasonable since disabled individuals historically have been stereotyped and, as a result, have been denied employment opportunities commensurate with their skills and abilities.

Item 8(c) requires all personnel involved in the selection process to be carefully selected and trained to insure that the contractor's commitment to affirmative action is implemented. This requirement is necessary and reasonable to insure that personnel involved in personnel decisions are free from discriminatory attitudes and that they are committed to taking affirmative action. Because negative attitudes toward disabled persons have so insidiously permeated our society, persons in a position to select personnel may have lower expectations for disabled applicants and may have doubts about their abilities to function effectively, competently, and on the basis of equality.

Item 8(d) outlines the requirement that the contractor hold briefing sessions with recruiting sources. It is necessary and reasonable to require briefing sessions with recruiting sources to provide information to recruiting sources which they must

have in order to refer appropriate applicants to the contractor. These briefing sessions are an efficient way for contractors to initiate and build relationships with recruiting sources for the purpose of obtaining applicant referrals. A formal referral process must be implemented. This requirement is necessary and reasonable to insure that the contractor will have a pool of qualified disabled applicants and to insure that both the contractor and the recruiting source will have individuals with whom liaison may be maintained.

Item 8(e) requires contractors to make a special effort to include disabled individuals in the personnel relations staff. This requirement is necessary and reasonable to illustrate to both recruiting sources and applicants that the contractor is serious about affirmative action and that it does employ disabled individuals.

Item 8(f) requires contractors to make disabled employees available for career days and other related activities in the community. This requirement is necessary and reasonable to assist in educating the broader community about the abilities and accomplishments of disabled individuals and also in breaking down stereotyped attitudes toward disabled individuals. As a result of the participation of disabled persons in these activities the public will learn that the contractor employs disabled persons and will be encouraged to do the same.

Item 8(g) requires contractors to make special efforts to reach disabled students as part of their recruiting efforts at schools. This requirement is necessary and reasonable because recruitment efforts are a key aspect of the contractor's affirmative action program. Without effective recruitment the contractor would not have a pool of qualified disabled persons from which to select employees.

Item 8(h) requires contractors to make efforts to participate in work-study and on the job training programs in cooperation with rehabilitation facilities and schools which train disabled individuals. This requirement is necessary and reasonable since work-study and on the job training programs are an important means of giving disabled individuals work experience. Participation in these programs often leads to permanent jobs within the company or to other employment opportunities. In addition, disabled individuals do not often have the same opportunities that non-disabled individuals have. In addition, they have not enjoyed the same opportunities for other kinds of work experience such as summer jobs, which non-disabled persons have had. The lack of work experience severely hinders the efforts of disabled persons who seek employment at the conclusion of educational or other training programs.

Item 9 states that contracts with sheltered workshops do not constitute affirmative action for contractors unless sheltered workshops train employees for employment in the contractor's workforce at full compensation. This provision is necessary and reasonable to prevent contractors from claiming that they have met their affirmative action obligations through subcontracts to sheltered workshops. Since sheltered workshops employ disabled persons on a non-competitive basis at wages usually below the minimum standard required by law, employment in a workshop is not equal to employment in the contractor's company. This provision is drawn from the OFCCP's rules under section 503.

Item 10(a) permits the contractor to require medical documentation of an individual's disability. This may be accomplished by requiring the individual to provide medical documentation or to undergo a medical examination at the contractor's expense. It is necessary and reasonable to permit the contractor to require documentation of an individual's disability since some disabilities are invisible and since participation in the contractor's affirmative action program by persons who are not truly disabled would be unfair to disabled persons.

Item 10(b) requires that any determination of disability must meet the requirements of part 5000.3550, Item 2(c), be used for the purposes of affirmative action and proper job placement, and not be used for the purpose of excluding or limiting the employment opportunities of qualified disabled individuals.

Item 10(c) requires the contractor to use the American Medical Association's Guide to the Evaluation of Permanent Impairment as a basis for requiring medical documentation. This requirement is similar to a requirement contained in the rules of the OFCCP.

Item 11 requires the contractor to request the Minnesota Department of Economic Security to refer qualified job applicants to the contractor. This provision is necessary and reasonable since the Minnesota Department of Economic Security has contact with a wide variety of disabled individuals through its Job Service and through the Division of Vocational Rehabilitation. The Job Service provides job openings to any Minnesotan wishing to seek employment. The Division of Vocational Rehabilitation extends rehabilitation and placement services to disabled Minnesotans. It is necessary and reasonable to require contractors to request the Minnesota Department of Economic Security to refer qualified disabled individuals in order to insure that qualified disabled persons will be made aware of openings and will have an opportunity to submit applications.

Item 12 indicates that a contractor is not required to conduct a utilization study or to establish goals and timetables for the employment of disabled individuals as is required for minorities and women. This provision is necessary and reasonable because statistical data on the distribution of disabled individuals in job classifications in the workforce is not available. Thus, it would not be possible for the contractor to determine how many disabled individuals are available in a particular job classification. This data is crucial in the establishment of goals. The first step in establishing goals is to conduct a utilization study of the contractor's internal workforce. The second phase is to research the utilization of disabled individuals in the larger labor force. As a result, of the research conducted during the second phase, the contractor determines how many disabled individuals should be employed in each particular job category. However, since the data is not available for phase two, it is, of course, impossible for the contractor to determine how many disabled individuals should be employed. The OFCCP's rules do not include goals and timetables for disabled individuals for the same reason.

Part 5000.3560/Procedures for Issuing Certificates of Compliance.

Subpart 1. Information required. This rule is needed to reflect in the proposed rules the requirement contained in Minn. Stat. §§ 363.073 and 363.074 that a contractor must submit an affirmative action plan to the Department for approval unless it is certified to be in compliance with the affirmative action requirement of the local human rights agency or the federal government. The rule identifies the documents must be submitted to establish the manner of compliance with this requirement. It is reasonable in that it reflects the requirements contained in Minn. Stat. §§ 363.073, subd. 1 and 363.074.

Subpart 2. Certificates issued. This rule is needed to establish a time period in which the Department must respond to applications for certificates of compliance. It is reasonable in that the time period established is consistent with time periods in comparable administrative contexts.

Subpart 3. Insufficient information. This rule is needed to identify the procedure which will be followed in the event that there are deficiencies in the information submitted by an applicant for a certificate of compliance. Pursuant to this procedure, the Department will be required to notify the applicant within fifteen days and state specifically the nature of the deficiency. The rule also establishes a time period in which the Department must issue a certificate of compliance once a corrected submission has been received. This rule is reasonable in that the procedure established is calculated to accomplish the purpose of the rule and the time periods which are established are consistent with time periods in comparable administrative contexts.

Subpart 4. Duration of certificates. This rule is needed to reflect the requirement contained in Minn. Stat. § 363.073, subd. 1 that a certificate shall be valid for two years. Furthermore, it clarifies the fact that certificates shall expire after the second year. This rule is reasonable in that it reflects the requirement contained in Minn. Stat. § 363.073, subd. 1.

Part 5000.3570/Determination of Compliance Status.

Subpart 1. General criteria for review. This section is needed to identify the factors to be evaluated in determining compliance status. It is reasonable to evaluate not only the contractor's affirmative action plan and adherence to it, but also implementation of its equal opportunity clauses and its employment practices. All of these factors must be evaluated in order to provide a complete and balanced view of the contractor's performance with respect to women and minorities. The Department will consider not only the current conditions or achievements but also whether the contractor has made efforts in good faith to address identified problems. The Department will evaluate not just the contractor's numbers but rather the efforts made to achieve goals.

Subpart 2. Determination of good faith efforts. Since the contractor's efforts will be the primary focus of evaluation, it is reasonable and necessary to define what areas of a contractor's operation will be examined to determine whether good faith efforts are being made. All of the conditions described in this section are standard ways of determining whether discriminatory practices exist. It is reasonable to expect that contractors take prompt and effective actions to correct discriminatory practices once known.

Items A. through D., G., and J. state that the Department will look at the overall, statistical picture of the experience of women and minorities employed by the contractor in the areas of hiring, promotions, transfers, and terminations. Patterns may emerge which would show whether employment opportunities are being limited by discrimination or whether the contractor is taking steps to enhance employment opportunities for women and minorities. This kind of examination is needed to compare the employment experience of women and minorities to that of others.

Items H., I., K., and L. address aspects of a business operation which are indicative of the degree to which equal opportunity is actively practiced in all phases of the contractor's operations. If women, minorities, and disabled individuals are segregated from others or are not participating in company-sponsored activities, it may be indicative of an atmosphere of intolerance which will result in less than equal employment opportunities. While the overall numbers may be impressive, the employment experience may not be equal in important respects.

Item M. requires the contractor at least to have techniques for evaluating the success of its affirmative action program. Otherwise, the contractor would not know whether it was successful and could not improve in the areas where unsuccessful. The Department expects the contractor to be engaged in an ongoing effort to monitor its own affirmative action efforts. The contractor must have its own internal self-evaluation process so that it is fully responsible for its own affirmative action program, rather than waiting for the Department to detect deficiencies.

Item N. states that a determination of good faith efforts will include whether equal employment opportunity posters are adequately displayed. It is important that a contractor communicate its commitment to all employees. Posters are a public, concrete representation of the employer's commitment to equal employment opportunity, making information easily accessible. Employees need to have easy access to information about who to contact for complaints, both internally and with state, federal, or local agencies.

Subpart 3. Additional factors regarding good faith efforts. This subpart lists additional factors which may be used to determine good faith efforts. The previous list in subp. 2 identified factors related to the internal operations of the contractor. This list of additional factors addresses the relationship of the contractor with the Department. This second list is necessary because it allows the Department to assess the contractor's compliance with the procedures set out in these rules. It is reasonable to expect compliance with these rules because a lack of cooperation with the Department inhibits a valid assessment of the contractor's performance.

Subpart 4. Analysis of good faith efforts. Contractors are notified in this section of the methods that may be used by the Department to determine whether good faith efforts are being made.

Item A. An investigation of a charge of discrimination may reasonably be used because evidence that the contractor has discriminated is clearly relevant to adherence to equal employment opportunity principles. An investigation might uncover discriminatory practices which would help a contractor know what problems it needs to work on.

Items B. and C. of subp. 4 notify the contractor that the Department will gather information for analysis of good faith efforts by analyzing their affirmative action plan and by conducting an on-site review. Analysis of the affirmative action plan is necessary to know what the contractor's plan or strategy is. The on-site is necessary to assess the degree to which the plan has actually been implemented.

Finally, Item D. notifies the contractor that the entire file of relevant information gathered from the sources listed in the previous subparts will be analyzed to determine good faith efforts. This part is necessary to make it clear that the Department will examine the overall body of evidence gathered from all sources, so that the Department is not limited to a narrowly-defined source or process for determining good faith efforts.

Subpart 5. Notification of deficiencies. Notification is necessary in order to assure that the contractor knows of a deficiency. Suggesting corrective measures to correct the deficiency is reasonable so that the contractor will know exactly what needs to be done. The principles of due process give the contractor an opportunity to respond.

Requiring the Department to attempt to secure compliance through conciliation and persuasion is necessary and reasonable in order to avoid the costs of protracted litigation. The contractor's commitment to correct a deficiency is necessary in order to carry out the role given to the Department or the Human Rights Act. The Department must assure that a violation does not continue.

Establishing a timetable for correction of deficiencies assures that the process is not prolonged and is necessary so that both the Department and the contractor will be able to assess whether the agreement is being carried out.

Subpart 6. Notice of sanctions and hearing. This section outlines a procedure which would allow the contractor to dispute the fact that a deficiency exists or that sanctions should be imposed. The Department clearly has authority to impose sanctions in Minn. Stat. § 363.073, subd. 2. This section of the rules clearly states how the Department must notify the contractor and when the sanctions take effect.

The contractor must follow the procedure outlined in this section to request a hearing. The time period of 20 days to file the request is reasonable and comparable to the time allowed for civil proceedings.

Item A. It is necessary and reasonable to give the Commissioner responsibility for notification of the time and place of hearing.

Item B. It is a standard practice to stay sanctions until the results of an appeal have been determined. It is reasonable to allow dismissal if the contractor fails to appear at the hearing.

Item C. It is standard practice for the administrative law judge's office to send decisions or reports to the Commissioner, who has responsibility for notifying the parties.

The 20-day time period for filing exceptions is reasonable and is comparable to that allowed by other administrative proceedings when exceptions to a decision are allowed.

Item D. specifies how the written exception to the administrative law judge's report must be organized. These guidelines are needed for clarity, consistency and ease of understanding the nature of the exceptions.

Item E. describes the circumstances in which oral argument may be permitted or denied by the Commissioner. A party may request an opportunity for oral argument at the time an exception is filed. The Commissioner may deny such a request if the Commissioner determined that the facts and legal arguments are adequately presented by the briefs and records and the decisional process would not be significantly aided by oral argument. If oral arguments are presented, it is reasonable to define and limit the scope of the argument.

It is necessary to give the Commissioner the authority to deny oral arguments for the purpose of being efficient and avoiding unnecessary costs. This discretion regarding oral argument is practiced by both the Minnesota Supreme Court and the Court of Appeals and is typical of appellate procedures in general.

Item F. provides that after a final decision or order, any party may petition for rehearing, for amendment or vacation of findings of fact, decision or order or for reconsideration or reargument. This provision is comparable to the rules of other administrative agencies. It is reasonable to provide an opportunity for a party to bring to the Commissioner's attention new evidence or a mistake. The final decision, however, is the Commissioner's who may grant or deny the petition or set a hearing.

It is necessary and reasonable to give the Commissioner the final decision since the Human Rights Act explicitly gives the Commissioner the authority to suspend or revoke a certificate of compliance (Minn. Stat. § 363.073, subd. 2).

Item G. A second petition is prohibited if it is based on the same grounds as a former petition which has been denied. This prohibition is necessary to prevent time-consuming and useless appeals based on the same grounds.

Once the process of appealing a Department decision to suspend or revoke a certificate of compliance has been completed, the Department is responsible for making the necessary notification to the state agency which holds contracts with the affected contractor. The Department also makes appropriate recommendations regarding whether the contracts should be terminated. This responsibility is assigned to the Department by Minn. Stat. § 363.073, subd. 3.

Subpart 7. Recertification. The contractor may be recertified upon showing that the past deficiency has been corrected to the commissioner's satisfaction. This provision is necessary to provide incentive to the contractor to address the problem identified and is a reasonable exercise of the Commissioner's responsibility to certify compliance with Minn. Stat. § 363.073 and with Parts 5000.3400 to 5000.3600.

Subpart 8. Evidence of discrimination. Under this section the Commissioner is clearly given responsibility to exercise jurisdiction over any discriminatory practice which s/he becomes aware of, as required in Minn. Stat. § 363.06.

Part 5000.3580/Submission of Compliance Reports.

Subparts 1, 2 and 3. Construction contractors; monthly reports/construction contractors; semi-annual reports/nonconstruction contractors; semi-annual reports.

These rules are necessary so that covered contractors will provide the Department with the information needed to determine whether women and minorities are being under-utilized and whether specific contractors are accomplishing the goals set forth in their affirmative action plans. These rules are reasonable in that the information required is precisely that needed to determine whether or not women and minorities are being under-utilized. The frequency of the reports is rationally gauged to provide contemporary feedback regarding progress without imposing an undue burden upon the contractors. Construction contractors are required to submit more frequent reports regarding their construction personnel than they are required to submit regarding their non-construction personnel, i.e. monthly regard as opposed to semi-annual, because of the transitory nature of construction work.

Subpart 4. Minimizing duplication of reports. This rule is necessary to state that it is the objective of the Department to minimize the burden of duplication of reports and efforts of federal and local contract compliance agencies. Furthermore, it is needed in order to identify methods for accomplishing this objective. This rule is reasonable in that the methods identified are rationally calculated to accomplish the objective of the rule.

Part 5000.3590/Procedures for Compliance Review.

Subpart 1. This rule notifies contractors how an evaluation will be conducted. As many as three steps may be involved, depending upon the thoroughness of the relevant information obtained in each part. Each step is designed to be as complete and unobtrusive as possible without sacrificing the integrity of the contractor's evaluation. It is necessary to identify how the Department will evaluate the contractor and it is reasonable to provide for both desk audits and on-site reviews to verify or augment information supplied in writing.

Subpart 2. Desk audit. This section is necessary to define what will be examined in a desk audit. The organization of documents to be examined are described clearly, so that the Department will be able to assess the work forces of various contractors in a consistent manner. Workforce analysis is clearly defined so that contractors will know exactly what they must provide for a desk audit.

Subpart 3. Exceptions to desk audit requirements. This rule is designed to allow some flexibility by not always requiring a full desk audit. The Department may then respond to special situations while still carrying out the responsibilities of certifying contract compliance.

Subpart 4. On-site review. This rule gives clear notice of exactly how and when an on-site review will be conducted. It is necessary so that both the Department and the contractor have a common understanding of the scope and limits of the review and the rights and responsibilities of each.

Item A. makes it clear that the Department shall have access to the premises and further defines what the Department may do. This part also informs the contractor how the information will be used, in keeping with the principles established by the Minnesota Government Data Practices Act. This part is reasonable because it gives the Department access to the information it needs in order to determine the contractor's compliance status.

Item B. describes the possible results of a desk audit, defining situations in which the on-site review need not be carried out. The Department is given reasonable flexibility in taking action which is appropriate given the results of the desk audit, without requiring an on-site review when it is not needed.

Items C. and D. notify the contractor of the information which should be ready for the on-site review. This notice is necessary so that the contractor will know what to expect and also so that the Department can examine the information in the most efficient way possible. This rule is reasonable because only information which is relevant to the contractor's compliance status will be examined.

Items E. and F. give the Department the authority to seek additional information even though it has not been previously identified or to take data off-site for further analysis. This authority is necessary because the need for certain information may not be known until documents are reviewed on-site. Furthermore, it is reasonable to provide for further analysis of data off-site in order to allow for adequate attention to what may be large quantities of data. This further analysis will benefit both parties so that a valid assessment is made.

Subpart 5. Review of contractor data. This part guarantees that the Department will have access to all data relevant to assessing contractor compliance status and addresses any possible concerns of confidentiality. If the contractor is concerned about data being taken off-site, this section provides a process for appealing the relevance of the information.

Subpart 6. Employee interviews. The on-site review reasonably includes employee interviews as a means of verifying the written data supplied by the contractor. It is a reasonable and good investigative technique to use more than one source of data. The details of the interviews will be discussed in advance with the contractor.

Part 5000.3600/Duties of Contracting State Agency.

Subpart 1. Cooperation with Commissioner. This section clearly notifies each state agency of its responsibility to notify contractors of their obligations under Minn. Stat. § 363.073 and Parts 5000.3400 to 5000.3600. In order to implement these rules it is necessary to be clear about assigning responsibility, especially with respect to who will notify the contractors of their responsibility to comply with Minn. Stat. § 363.073 and Parts 5000.3400 to 5000.3600. It is reasonable and efficient to assign that responsibility to each state agency because it will be in touch with state contractors.

Subpart 2. This subpart specifies what the state agency will be expected to do to fulfill its obligation under subpart 1. It is reasonable to require the state agency to insert information about the contractor's obligation to comply with Minn. Stat. § 363.073 directly into the contract to make sure that the contractor has an opportunity to read it and also to provide a legal basis for affirmative action compliance as a term of the contract. It is also reasonable for the state agency to supply a copy of the law and rules pertaining to it so that the contractor does not need to go to great lengths to find information relevant to certification of compliance.

Subpart 3. This part makes it clear that the contracting state agency must convey to the Commissioner information relevant to a contractor's compliance. If the state agency were not required to do so, it would be in the position of allowing a possible violation of its own contract to persist.

Subpart 4. This part specifically requires each contract of a state agency to contain provisions notifying the contractor of its obligation to carry out an affirmative action plan or make good faith efforts to do so. The contract will also clearly establish the consequences of failing to implement the contractor's affirmative action plan or make good faith efforts to do so. This provision is necessary to assure that the

affirmative action aspect of the contract is known and what will happen if it is not achieved.

Subpart 5. Submission of bidders' list. It is reasonable to require a list of prospective bidders prior to the opening of a contractor's bid so that the Department can identify contractors who have not been in compliance in the past or who are known to have discriminatory practices from other information sources.

Subpart 6. Contractors' list from Department. This part establishes a system of communication between the Department and state agencies. It is necessary that state agencies know which contractors have currently valid certificates of compliance so that the agency will not unknowingly enter into a contract with an ineligible contractor.

Subpart 7. This section further requires the state agency to cooperate by providing any information needed by the Department to seek compliance with Minn. Stat. § 363.073 and rules adopted under it. It is reasonable to ask the assistance of other state agencies in carrying out the policy of the state.

Subpart 8. A potential contractor needs to know what needs to be done in order to comply with the law regarding contract compliance and rules implementing it. It is reasonable to assign the state agency responsibility for giving the bidder a copy of the law and rules since the agency will be in touch with the bidder from the very early stages of doing business with the state. Thus, the bidder will have everything needed all at once without having to go to several sources for contract information.

Subpart 9. Bid specifications, modifications; incorporation of statutory and rule requirements. This part specifies that language regarding compliance with Minn. Stat. § 363.073 be inserted into the contract. The language makes the statutory language and the rules a part of the contract. This provision places the language regarding affirmative action on an equal level with any other term of the contract and is an important tool for enforcement.

SMALL BUSINESS CONSIDERATIONS IN RULEMAKING.

Minn. Stat. § 14.115 (Supp. 1983) requires state agencies, when proposing rules, to consider whether the rules will impact "small businesses". A small business is defined as "a business entity, including its affiliates, which (a) is independently owned and operated; (b) is not dominant in its field; and (c) employs fewer than fifty full-time employees or has gross annual sales of less than \$4 million." The rules which the Department proposes implement Minn. Stat. § 363.073 which applies to businesses having more than twenty full-time employees in Minnesota at any time during the previous

twelve months. Thus, Minn. Stat. § 363.073 and the proposed rules will not apply to all firms which are "small businesses" within the meaning of Minn. Stat. § 14.115. The Department has determined that the rules will have an impact upon those small businesses which are within the ambit of Minn. Stat. § 363.073. As a result, in drafting the rules, it has considered the following methods set forth in Minn. Stat. § 14.115, subd 2 for reducing the impact of the rules on small business:

- (a) The establishment of less stringent compliance or reporting requirements for small businesses;
- (b) the establishment of less stringent schedules 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 businesses 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.

The Department finds, however, that to incorporate any of the above methods into the proposed rules would be contrary to the statutory objectives of Minn. Stat. § 363.073. In that statute, the legislature has required that all businesses which have more than twenty full-time employees in Minnesota at any time during the previous twelve months must have an approved affirmative action plan for the employment of minority persons, women, and the disabled in order to bid on or execute any contract for goods or services in excess of \$50,000 with a state agency. The clear intent of the legislature is to require all businesses within the ambit of the statute to adopt and achieve the principles of affirmative action and equal opportunity, and to equip the state with the means to facilitate, monitor, and insure compliance. These objectives are not ones which can be accomplished by imposing different levels of requirements upon businesses based upon their size. In view of the dominant role of small businesses in providing employment, to impose less stringent requirements upon them would impede the ability of the state to accomplish the objective of Minn. Stat. § 363.073. Therefore, the means which the Department has employed to implement section 363.073 is by necessity generic.

The Department has sought ways to lessen the burden with regard to all businesses which are within the ambit of the rules. For example, Part 5000.3560, subp. 1 excuses businesses which have complied with federal or local agency certificate of compliance rules from submitting an affirmative action plan under the Department's rules. It provides that they may comply with the Department's rules by simply submitting letters or documentation establishing their compliance with the federal or local agency's rules together with an affirmative action program for disabled individuals. Part 5000.3580 provides that the Department "shall attempt to the fullest extent possible to minimize the burden of duplication of reports and efforts of federal and local contract compliance agencies by utilizing forms and standards similar to those [used] by federal equal employment opportunity programs, accepting forms and reports prepared for federal or local agencies where the information contained therein is sufficient for [the Department's rules]; and minimizing duplication of programs and procedures."

FISCAL IMPACT ON LOCAL PUBLIC BODIES.

Pursuant to Minn. Stat. § 14.11, subd. 1 (1982), the Department must consider the fiscal impact of the proposed rules on local public bodies. The rules place no additional financial burden on local public bodies.

IMPACT ON AGRICULTURAL LANDS.

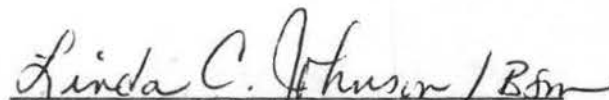
Minn. Stat. § 14.11, subd. 2 requires the Department to consider whether the rules will have an impact upon agricultural land in the state. The rules will not have direct impact upon agricultural land.

CONCLUSION.

Based on the foregoing, the proposed rules, Parts 5000.3400 to 5000.3600 are both needed and reasonable.

Dated: December 7, 1984.

DEPARTMENT OF HUMAN RIGHTS


LINDA C. JOHNSON, Commissioner

IN THE MAINSTREAM

VOLUME 7, NUMBER 5

SEPTEMBER-OCTOBER 1982

First National Survey Finds Accommodations Are "No Big Deal"

How The Survey Was Conducted

• Two thousand federal contractors in private industries (manufacturing, services, finance, insurance and real estate) were sent mail surveys. Questionnaires were analyzed for 367 responding firms, representing 512,000 workers of whom 19,200 were known to be handicapped.

In statistical analyses of respondents and phone interviews with 47 nonrespondents, there appeared to be no strong response bias in terms of size or type of firm, or extent of experience with handicapped workers and accommodations.

Each employer was asked to document the extent, nature and costs of the accommodations provided. Also, the survey sought information on the relationship between a company's attitudes and actions in regard to making modifications for disabled employees.

• Eighty-five firms from the survey respondents were interviewed by telephone. Those companies were chosen because they had indicated in their questionnaire that they had made "at least one significant accommodation."

• One hundred and forty-five disabled employees' responses to a mail survey were analyzed.

• Thirty companies were visited by researchers. These firms were chosen because of their exemplary accommodation practices as identified in their survey and/or telephone responses.

Federal contractors that employ handicapped people say making accommodations for them is "no big deal." Firms believe that such accommodations are a sensible business practice. It secures reliable employees with needed skills just like providing tools or other aids to nondisabled workers increases their productivity. Of the accommodations made for handicapped workers, about half cost employers nothing; another 30 percent involved expenses ranging between \$1 and \$500.

These are some of the general conclusions drawn by Berkeley Planning Associates (BPA) from its 20-month national survey ("A Study of Accommodations Provided to Handicapped Employees by Federal Contractors")—the first of its kind—of 2,000 federal contractors in the private sector. BPA, with its subcontractor Harold Russell Associates, performed the study for the Labor Department's Employment Standards Administration. Besides interviewing federal contractors, the research group also surveyed 145 disabled employees.

The DOL-commissioned study had three primary objectives. First, to find out how many federal contractors are actively making accommodations. Second, to learn the range and costs of modifications employers are making. Finally, to understand the decision-making process used by companies for determining if an accommodation is "reasonable."

Costs of Accommodation

- Fifty-one percent of the accommodations were made at no cost.
- Another thirty percent cost less than \$500.



- Eight percent cost over \$2,000.
- Seventy-nine percent of the companies did not think accommodations are prohibitively costly.

Accommodation Needs, Met and Unmet

- Of the 145 disabled employees surveyed, 87 reported accommodations had been made for them by their employers.
- Twenty-one percent reported unmet accommodation needs.
- At least half of those who had made their accommodation needs known to management had received an encouraging response.

Effectiveness of Accommodation

- Most firms felt the accommodations needs were successful in helping their disabled employees be effective in their jobs.
- Twenty-two percent of the telephone interviewees reported that not all the accommodations they had made were successful. (See First, p. 2, col. 1)

First National Survey on Accommodations (from p. 1, col. 3)

- Seven percent of the companies responding by mail denied that accommodations had improved productivity or asserted that costs had exceeded benefits.

- In half of the telephone interviews, employers said the accommodations would benefit the employee if promoted to a new position.

- Twenty-nine percent reported that nondisabled workers also benefited from the accommodation.

- Overall, companies as well as handicapped employees did not think there is a strong relationship between accommodation and upward mobility, either in terms of providing advantage or limiting potential.

Types of Accommodations

- The range of accommodations made by employers included structural modifications in the plant affecting all workers and specific accommodations which were undertaken for particular workers in their jobs.

- Of firms reporting the extent of physical accessibility in their workplace, 62 percent said there is now general access throughout the facility.

- Thirty-seven percent of responding firms did not answer this part of the questionnaire.

- The most frequent modifications made were in parking spaces, curb cuts, ramped entrances, and wheelchair access to office and other areas.

- Individual accommodations take many forms:

- Adapting the work environment and location of the job

- Retraining or selectively placing the worker in a job needing no accommodation

- Providing transportation or special equipment or aides

- Redesigning the job to be performed by the disabled worker

- Reorienting or providing special training to supervisors and co-workers.

- Of the above groupings, no particular type of accommodation

dominates; each constitutes between 15-21 percent of the accommodations provided to all workers.

Employee Patterns Relating to Accommodations

- Once an individual is hired, he or she is likely to be accommodated regardless of occupation or seniority.

- Two-thirds of the handicapped persons who required an accommodation received it some time after their hiring, presumably because of the development or worsening of their disability.

Higher skilled workers were more often provided environmental adaptations or special equipment.

- One-third needed an accommodation at the time of their hiring.

- Ten percent of the employees were accommodated due to work-related injuries.

- Higher skilled workers were more often provided environmental adaptations of the workplace or special equipment than lower skilled workers.

- Lower skilled workers were more likely to receive job redesign accommodations or accommodations involving retraining or selective placement.

- The telephone interviews showed that 63 percent of the accommodated workers had received a promotion and/or raise since their accommodation.

Employer Patterns Relating to Accommodations

- Overall, 14 percent of the companies reported more than 5 percent of their labor force is handicapped.

- Sixteen percent of companies with more than 200 employees reported that more than 5 percent of their labor force is handicapped.

- Nine percent of companies with fewer than 200 employees reported that more than 5 percent of their labor force is handicapped.

Impact of Section 503 on Accommodations

- Twenty-eight percent agreed that Section 503 had prompted them to make accommodations; 45 percent dissented.

- Given a choice of over 15 factors, 22 percent of the companies (both employers hiring many and those hiring few) said compliance with the law was a major reason for making accommodation.

- The great majority of companies who have made their facilities accessible have done so since the Rehabilitation Act became law.

- However, the phone survey and case studies indicate that much of the legislative and regulatory impact of the law has come in the form of a "moral suasion." That is, the passage of the Rehabilitation Act of 1973 and the resulting publicity it gave to handicapped Americans raised the consciousness of management, super- (See First, p. 3, col. 1)

Reference Guide

- Section 503 of the Rehabilitation Act of 1973 says any government contractor receiving a federal contract of more than \$2,500 cannot deny employment to applicants because of a disability and must take steps to recruit, hire and promote qualified handicapped workers through affirmative action.

- Likewise, Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974 requires government contractors who receive \$10,000 or more in federal contracts to bring qualified disabled and Vietnam veterans into the workforce.

- These affirmative action laws are enforced by the Office of Federal Contract Compliance Programs (OFCCP) of the Department of Labor (DOL).

- Other acronyms commonly used in this newsletter are: ESA—Employment Standards Administration; DOJ—Department of Justice; ALJ—administrative law judge.

First National Survey on Accommodations (from p. 2, col. 3)

visors and disabled workers concerning the need for accommodation.

- Company affirmative action and personnel officers have often cited the law and regulations in justifying making accommodations, even when the regulations did not strictly require the specific actions they were recommending to management.

A major factor encouraging accommodation is the affirmative action commitment of top management.

- Most of the accommodations reported by the telephone respondents went far beyond the requirements of the regulations, and were in response to the acceptance by management of the legitimacy and appropriateness of accommodations, given societal needs, and company interests in hiring handicapped persons having skills the firm needs. Therefore, a major factor encouraging accommodation is the affirmative action commitment of top management.

Other Incentives For Making Accommodation

- The mail survey indicated that none of several "practices and policy changes" cited was a "strong" incentive for making accommodations.

- The ranking of options in terms of providing "some" incentives were:

- Tax credits, 65 percent
- More placement by vocational rehabilitation agencies, 64 percent
- Free technical assistance in making accommodations, 56 percent
- More technical training and work experience for disabled people, 54 percent
- Increased enforcement of affirmative action regulations, 48 percent
- More information about the advantages of hiring handicapped persons, 36 percent
- Wage subsidies, 34 percent.

Company Practices That Encourage Accommodation

- Publicizing within the company top management's commitment to accommodating disabled workers. This often sets the tone throughout the whole firm.

- Assigning a specialist within the EEO/Affirmative Action Office specifically for carrying out affirmative action and EEO policies for handicapped persons.

- Establishing special procedures for reviewing and tracking applications of handicapped applicants.

- Centralizing recruiting, intake and monitoring of hiring decisions for handicapped workers. This practice increases the probability that disabled applicant's capacity for doing a job will be considered by all units in the organization.

- Providing a "central special budget" for accommodations above the budget limits of individual departments or divisions.

- Encouraging managers and supervisors to devise task assignments in which the limits of an employee's handicap (and thus the need for changes in the physical environment or in the job's design) are minimized.

- Developing a procedure for orienting the handicapped worker to the workplace; holding pre-employment discussions with supervisors and co-workers to help them understand the special needs of the newly-hired disabled individual.

- Informing company employees about successful experiences in accommodation. This practice appears to increase receptivity to later appeals for accommodation by handicapped workers.

- Training by the firm of personnel staff, line managers, supervisors, and co-workers about the affirmative action policies of the firm and dispelling common myths about disabled workers.

- Developing strong relationships with organizations who can refer disabled job applicants, and subsequent use of such outside recruitment resources for advice and expertise concerning the disabled applicant's qualifications and the kinds of accommodations that might be appropriate.

- Sharing information and experiences about handicapped employees and applicants with other firms.

- Participating in the direct training of potential future job applicants through programs like Projects With Industry (PWI).

Findings Will Be Disseminated

The final report, which fills two volumes and includes a set of recommendations from Berkeley Planning Associates and Harold Russell Associates to DOL, was due out in September. How will this information be used? "It will be disseminated widely throughout DOL in order to help government officials make good, informed and rational policy decisions" in regard to contractors making accommodations under Section 503, according to DOL Labor Economist Tom Hodges, who was the project officer for the study. He felt the information will be especially beneficial to employment opportunity specialists (EOS), who are responsible for enforcing government policies under 503.

The report, or its executive summary, will also be distributed "as much as possible" to companies, organizations and individuals.

To request a copy of the report, "A Study of Accommodations Provided To Handicapped Employees By Federal Contractors," or its executive summary, contact:

Tom Hodges
Development and Research
Employment Standards
Administration
Department of Labor
Room C-3313
200 Constitution Avenue, NW
Washington, DC 20210
(202) 523-9145