



State of Minnesota
DEPARTMENT OF VETERANS AFFAIRS
VETERANS SERVICE BUILDING
ST. PAUL, MINNESOTA 55155-2079

(612) 296-2562

Bernie Melter

Commissioner This document is made available electronically by the Minnesota Legislative Reference Library as part of an ongoing digital archiving project. <http://www.leg.state.mn.us/lrl/sonar/sonar.asp>

December 10, 1991

Legislative Commission to
Review Agency Rules
55 State Office Building
St. Paul, Minnesota 55155-1201
Attn: Michele Swanson, Commission Secretary

Dear Ms. Swanson:

Since its' creation by the Legislature in 1943, the Department of Veterans Affairs has, at various times and under previous administrations, attempted to adopt rules governing the operation of the department, as required by the legislation which created the department. These past attempts never resulted in rules being adopted.

The 1957 Legislature enacted Minnesota Statute 14.12, which requires agencies to adopt rules within 180 days of the enactment of legislation authorizing such rules. If the agency does not meet this requirement, the agency is to report this failure to do so and the reason for this failure; to the Governor, the Legislative Commission to Review Agency Rules (LCRAR) and affected legislative committees.

Currently, the department is in the final stages of adopting rules governing the operation of the department. Our current rules were published in the State Register, volume 16, Number 5, July 29, 1991. Prior to publication, the department also prepared statements of need and reasonableness to support the rules as published. The publication of the rules resulted in no comments or requests for copies of the rules.

The department prepared its' findings of fact and conclusions and submitted all required material to the Assistant Attorney General assigned to the department. He reviewed all material and evidence and issued his declaration of counsel, attesting that the Administrative Procedure Act and Minnesota Rules, chapter 2010, had been followed in preparing the rules. He noted no exceptions.

To date, the department failed to successfully adopt rules or to meet the notification requirements of MS 14.12. While I cannot address previous failures to do so, I can state that the reason for the current failure to do so is due entirely to ignorance of the reporting requirement.

Given the progress of the department in its' current attempts to write rules, and the fact that we followed all requirements of which we were aware and the fact that the rules and the process have been approved by an Assistant Attorney General, I sincerely hope that the failure to report the fact that the department has failed to develop completed rules to date will not substantially affect our current efforts to develop rules.

Should you have any questions regarding the departments' rules writing efforts or the processes involved, please contact me.

Sincerely,



Bernie Melter
Commissioner
Minnesota Department of Veterans Affairs

STATE OF MINNESOTA

MINNESOTA DEPARTMENT OF VETERANS AFFAIRS

STATEMENTS OF NEED AND REASONABLENESS OF PROPOSED RULES, PARTS 9055.0010 TO 9055.0130, GOVERNING THE ADMINISTRATION AND OPERATION OF THE DEPARTMENT OF VETERANS AFFAIRS, AS MANDATED BY MINNESOTA STATUTES 196 AND 197.

I. INTRODUCTION

The intent of these proposed rules, Parts 9055.0010 to 9055.0130 is to provide an authoritative basis for the internal functioning and operation of the Minnesota Department of Veterans Affairs. These proposed rules commit to written form the practices currently in use within the Department of Veterans Affairs. These practices were developed in response to state law and the needs of Minnesota's veterans and their dependents.

These rules were developed through analysis of current and past practices, policies and procedures, consultations with staff, the policies procedures and regulations of the United States Department of Veterans Affairs and the Association of Minnesota County Veterans Service Officers.

Numerous drafts of these proposed rules were written, beginning in 1989. Drafts of proposed rules were reviewed by staff. The final draft of these proposed rules were forwarded for review by each of Minnesota's County Veterans Service Officers, representatives of the United Veterans Legislative Council and the Commanders of the Congressionally Chartered Veterans Organizations.

A. Background:

The function and intent of these rules is to determine eligibility for services to veteran residents and their dependents, as provided for in Minnesota Statutes 196 and 197. The Minnesota Department of Veterans Affairs was created by the Legislature in 1943; prior to the creation of the department, benefits and services to veterans and their dependents were delivered by the Office of the Adjutant General for the State of Minnesota.

II. STATEMENT OF COMMISSIONER'S AUTHORITY

The Commissioner's authority to adopt these proposed rules is found in Minnesota Statutes at 196.04, which states that the "commissioner shall adopt reasonable and proper rules to govern the procedure of the divisions of the department and to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same, in order to establish the right to benefits provided for by the law." This statute gives the commissioner the authority to adopt these rules.

III. STATEMENT OF NEED

Minnesota Statutes, chapter 14 (The Administrative Procedures Act) govern the promulgation and adoption of rules. This statute also requires the commissioner to demonstrate the need for, and the reasonableness of, the proposed rules. To the extent that need and reasonableness are separate issues, need has come to mean that a problem exists which is addressed by the proposed rules and reasonableness has come to mean that the proposed rules are appropriate. Need for the proposed rules is discussed below.

The Minnesota Department of Veterans Affairs has never operated under rules promulgated under Minnesota Statutes, chapter 14. The proposed rules contained in parts 9055.0010 to 9055.0130 represent the commissioner's attempt to meet the legislative requirement for the rules.

IV. STATEMENT OF REASONABLENESS

The commissioner is required by Minnesota Statutes, chapter 14 to make an affirmative presentation of the facts which establish the reasonableness of the proposed rules. Reasonableness means that the proposed rules are neither arbitrary nor capricious; that there is a rational basis for the commissioner's proposed rules. The reasonableness of the proposed rules is discussed below.

The Minnesota Department of Veterans Affairs administers programs and services which are unique to Minnesota's veteran population. The rules as proposed will not place an unreasonable burden on veterans and their dependents who seek benefits and services, while still meeting the legislative intent of the rules. To maintain consistency and order with regard to the broad range of persons served and services offered, these rules, whenever possible, use definitions and standards already in use by other state agencies and programs and the standards of eligibility already in use by the United States Department of Veterans Affairs.

A. REASONABLENESS OF THE RULES AS A WHOLE

The rules as proposed require decisions and determinations based upon identifiable, objective criteria. Adherence to identifiable criteria is required to eliminate arbitrary decision making and abuse of discretion. All decisions are subject to an appeals process, as defined in these proposed rules.

The extent possible, these proposed rules follow definitions already contained in statute or used by other agencies in their rule text and utilize, either wholly or as a modified to fit the particular needs of the department, rules previously implemented by other agencies.

B. REASONABLENESS OF INDIVIDUAL RULES DETAIL BY SECTION

9055.0015 Scope.

This provision is necessary to establish the definitions of the terms used throughout the proposed rules.

9055.0020. State Soldiers Assistance Fund.

This provision is necessary to delineate the programs and services delivered by the department and the basic requirements of financial need, medical disability, veteran status and resident status an applicant must meet to receive the benefits offered through the state soldiers assistance fund. These requirements are found in Minnesota Statutes at 197.05. The proposed rule also states that benefits available under this section are not to be used to supplement other state benefits available from the Department of Human Services, which is consistent with the rules and practices of that agency.

9055.0025 State Soldiers Assistance Fund; How Spent.

This proposed rule is necessary to detail the eligibility periods for assistance under the State Soldiers Assistance Fund and the intervals at which assistance will be issued. The thirty day payment interval is consistent with other state and federal agency practice and with the minimum disability period required to obtain assistance under this program.

9055.0030 State Soldier's Assistance Fund; Amount of Assistance Granted; How Calculated.

This proposed rule is necessary to determine the amount of assistance that will be issued to the applicant, under the State Soldiers Assistance Fund. Subparts 1 and 2 detail how the resources, if any, available to the applicant, will be used to determine the amount of assistance issued. The example provided merely reduces this formula to a mathematical equation for purposes of clarity.

Subpart 3. Asset limitation. This is necessary to clearly indicate that applicants with resources at or in excess of the established base level will not be issued assistance. This is consistent with rule and practice at other agencies.

Subpart 4. Assistance limited to six months. This rule is necessary to ensure that the assistance provided is of a temporary nature. Applicants with longer term disabilities are assisted with application for long term benefits, such as Social Security, United States Department of Veterans Affairs or other appropriate long term benefits.

Subpart 5. Assistance beyond six months. This rule is necessary for two reasons. Occasions due arise where an applicant has made a good faith, timely application for long term benefits to which the applicant is entitled, but assistance has not been received. To terminate assistance under such conditions would create an undue and unnecessary financial hardship on the applicant. Secondly, the legislature recently required that all applicants who are on assistance beyond six months be certified as not eligible for long term benefits, as a condition of receiving assistance beyond six months.

9055.0035; Subparts 1-3.

This rule is necessary to clearly establish how the department will calculate income for assistance purposes for individuals who are self-employed.

Subpart 4. Determining monthly income. This rule is necessary because the department issues assistance at roughly monthly intervals, every thirty days. The amount of assistance issued is calculated based upon thirty day increments.

Subpart 5. Irregular income periods. This rule is necessary as some applicants receive income in other than monthly or bi-weekly increments; grain or cattle farmers are examples which immediately come to mind. This income must be reduced to a monthly average to determine eligibility for assistance, which is based upon a monthly schedule.

9055.0040 Calculation of Income; Effect of Court Ordered Child Support Payments.

This rule is necessary to determine the effect of child support payments in determining income and assets of the applicant's household. Child support payments must be counted as an asset or as income unless the applicant specifically requests that it not be so counted as allowed by this proposed rule. The rule allows the options of either (1) including the child support payments received as income and available to the household and including the child for whom support payments are received as part of the household for program purposes or (2) disregarding the income and not including the child for whom it is received as part of the household for program purposes.

Subpart 4. Child support payments excluded. This rule is necessary so as not to penalize the veteran applicant who is current and up to date with court ordered child support payments. Without this option, the applicant would be forced to count court ordered support payments as income available to the applicant and the applicant's household, when in fact it is paid to someone else and not available.

9055.0050 Method of payment.

This rule is necessary to ensure that all payment transactions under the auspices of the soldier's assistance fund conform to Department of Finance standards, rules and regulations.

9055.0055 Assistance authorized.

This rule is necessary to ensure that applications which are complete and which indicate that the applicant is eligible for assistance will be honored and that assistance will be issued.
9055.0060 Types of assistance authorized.

This rule is necessary to clearly delineate the types of assistance which will be authorized and issued under the auspices of the soldier's assistance fund. This rule is also necessary to clearly establish those types of assistance sought which will not be authorized.

9055.0070 Notice required; assistance granted.

This rule is necessary to ensure that the applicant is made fully aware, in writing, of the type(s) of assistance which has been authorized as well as any requirements for continued assistance beyond the initial 30 day assistance period.

9055.0075 Notice required; assistance denied.

This rule is necessary to ensure that an applicant whose request for assistance has been denied is made fully aware, in writing, of the reason(s) for the denial and of the applicant's right to appeal the denial of assistance.

9055.0080 Appeal procedure; denial of assistance.

This rule is necessary to ensure that an applicant whose request for assistance has been denied is made fully aware, in writing, of the requirement that an appeal must be filed in a timely manner as prescribed by department rules. This rule informs the applicant of the appeal options available, the time frame within which a determination on the appeal will be made and when assistance will be issued if the commissioner determines that assistance will be issued. This rule also informs the applicant that failure to appeal within the specified time frame will result in an inability to pursue further appeals.

9055.0085 State Soldier's assistance fund; dental or optical assistance.

This rule is necessary to make applicants for these types of assistance fully aware of the requirements to receive assistance, the amount of assistance that will be issued and the frequency at which these benefits will be available to the applicant.

9055.0090 Veterans assistance fund; emergency medical treatment.

This rule is necessary to ensure that applicants are made fully aware of all requirements which must be met to qualify for this assistance, including income and asset limitations and the maximum amount of assistance which is available to them.

9055.0095 Veterans assistance fund, clothing allowance.

This rule is needed to clearly identify the scope of the assistance available to applicants, the requirements which must be met by the applicant in order to receive this assistance as well as the amount of assistance which will be available.

9055.0100 Claims division.

This rule is needed to ensure that applicants are aware of their right to representation by the department in their attempts to gain veterans benefits from the federal government, at no charge to the applicant.

Subpart 3. Termination.

This rule is necessary to protect the physical and mental health of department employees working in the claims division, threats of physical violence and intimidation. While such instances are rare, they do occur. No employee should be required to assist an applicant who threatens the employee if an unfavorable decision is rendered to the applicants claim for benefits.

Subparts 4, 5.

This rule is necessary to clearly establish the fact that the conduct of department claims employees in the handling of claims for federal veterans benefits is governed by federal regulation. These regulations are found at Title 38, U.S.C., chapter 1, sections 14.628 (b) to 14.669.

Subpart 6. Contested claims not accepted.

This rule is necessary to clearly establish that the department claims office will not accept claims from more than one party to an action for benefits based upon a single individuals eligibility. This rule is consistent with all other organizations which provide assistance to applicants in these matters.

9055.0105 Education.

This rule is necessary to clearly establish the eligibility requirements which applicants for the assistance must meet, the method of application and the notification requirements the department must meet once a determination of eligibility has been made. This rule also is needed as it addresses the issue of appealing an unfavorable eligibility determination and this rule clearly establishes that the commissioner is the final authority in determining eligibility for the benefit, in the appeals process.

Subpart 10. Approval; payment.

This rule is necessary because this benefit is funded at a fixed level, set by legislative appropriation. Should the department receive more qualifying applications than have been funded, the department would have no choice but to delay payment until such time as additional funding could be requested from the legislature.

9055.0110 Educational assistance; war orphan.

This rule is necessary to ensure that applicants for the benefit are fully aware of all requirements which must be met in order to qualify for the benefit.

9055.0115 Files and records.

This rule is necessary to protect the integrity of confidential and privileged data on individuals, collected and maintained by the department, in the process of providing benefits to applicants. Data collected and maintained by the department is governed by Minnesota Statutes 196.08 and the Government Data Practices Act, Minnesota Statutes, Chapter 13.

9055.0120 No disclosure.

This rule clearly establishes the conditions under which data collected and maintained by the department will be released by the department.

9055.0125 Adjusted compensation; merchant mariners, World War II.

This rule is necessary to ensure that members of the merchant marine in World War II, who have been granted veterans status by the United States Secretary of Defense, are aware of their eligibility for this state benefit. This rule clearly outlines the requirements that applicants must meet in order to qualify for this benefit, the amount of the benefit available and those members of the merchant marine during World War II who are not eligible for this benefit.

Subpart 7. Other groups eligible under Public Law Number 95-202, section 401.

This rule is necessary to allow the department to extend this benefit to other classes of individuals who may be granted veterans benefits at some future date. This would obviate the need for the department to secure legislative authority to provide this benefit each time a new class of veterans has been established.

9055.0130 Commissioner's technical staff.

This rule is necessary to clearly delineate those employees of the department who must possess the same qualifications as the commissioner. Applicants for these positions have the right to know all qualifications required of them at the time of application, as well as the authority for these requirements. The individuals affected by this rule are delineated in Minnesota Statutes at section 196.05; the qualifications they are required to have are delineated in Minnesota Statutes at section 196.02.