STATE OF MINNESOTA

DEPARTMENT OF ECONOMIC SECURITY

IN THE MATTER OF THE PROPOSED RULES OF THE DEPARTMENT OF ECONOMIC SECURITY GOVERNING THE UNEMPLOYMENT INSURANCE PROGRAM RELATING TO PAYMENT OF BENEFITS AND COLLECTION OF EMPLOYER TAXES (8 MCAR §§ 4.3001 - 4.3999)

STATEMENT OF NEED AND REASONABLENESS

Agency Exh. No. 14
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The above captioned rules are hereby presented by the Department of Economic Security (DES) in accordance with the provisions of the Minnesota Administrative Procedures Act (APA), Minn. Stat. § 15.0412 and the Rule Hearing Procedures, 9 MCAR §§ 2.101 - 2.113. The statutory authority of DES to promulgate rules concerning unemployment compensation benefits and taxation is contained in Minn. Stat. § 268.12, subd. 3 which provides that the Commissioner of Economic Security may adopt rules as may be necessary to administer Minn. Stat. §§ 268.03 - 268.24.

DES was exempted from the rulemaking provisions of the APA prior to the passage of 1980 Minn. Laws, Ch. 615 § 2. Necessary implementation guidelines previous to that time were derived from non-APA regulations and policies and from case by case adjudications. Thus, the above captioned rules represent the initial comprehensive APA rulemaking effort in the unemployment compensation benefit and taxation areas by DES. In large measure, the rules represent the codification of existing practice, policy and case law. In addition, some statutory provisions which have never been comprehensively interpreted by any of these three means are implemented by these rules. In many areas DES has also drawn on the national experience in administering the joint state-federal unemployment compensation system and the rules are consistent with the interelated portions of the Federal Unemployment Tax Act, the Federal Insurance Contribution Act, the Internal Revenue Code of 1954, as amended and similar state provisions. The rules are generally consistent, also, where analogous terms and issues are involved, with related employment statutes such as the Workers' Compensation and Labor Standards Acts.

This document contains the verbatim affirmative presentation of the facts and circumstances necessary to establish the need for and reasonableness of the proposed rules. The statement is submitted pursuant to the requirements set forth in 9 MCAR § 2.104.

Chapter One: General Definitions

8 MCAR § 4.3000 Definitions.

This chapter provides three general definitions of terms which occur throughout the proposed rules of Chapters Two (benefits) and Three (taxes) in order to permit a shorter form of reference, avoid needless repetition of titles and explanations, and prevent possible ambiguity.

A. Commissioner.

The term "commissioner" refers to the Commissioner of the Department of Economic Security or his designated agent. Thus "commissioner" standing alone is always a reference to the Commissioner of the Department of Economic Security or his designee, while necessary references to commissioners of other departments will include their full title. The definition permits a shorter reference while preventing possible confusion as to the official indicated.

B. Department.

The term "department" refers to the Minnesota Department of Economic Security. The need for and purposes of this definition are the same as in A.

C. Unemployment office.

The phrase "unemployment office" is defined as a location where unemployment insurance claim services are offered. Benefit eligibility depends in these rules on various applications and appearances at an "unemployment office." This definition is supplied in order to clarify that such offices are only those supplying unemployment insurance claims service, rather than offices which, for example, are responsible for vocational rehabilitation or other services also provided by the department. The definition is necessary to avoid ambiguity and to inform claimants as to the offices responsible for receiving their claim applications.

Chapter Two: Benefits

8 MCAR § 4.3001 Applicability.

This section establishes that the rules provided in this chapter govern benefit eligibility determinations under the unemployment compensation statute. This rule is necessary to establish the scope of this chapter since the department's rulemaking authority extends only to those statutes which it is mandated to administer and since other rules govern other activities of the department.

8 MCAR § 4.3002 Definitions.

This part of the rule provides definitions to supplement and clarify those provided in Minn. Stat. § 268.04. These definitions are needed to establish with precision the meaning of terms which are essential in benefit eligibility determinations. These definitions will assure that such determinations can be made in a routine and timely manner consistent with the language and

policy of Chapter 268 and that claimants are aware of the specific elements of eligibility.

A. Credit Week.

This definition is necessary to clarify Minn. Stat. § 268.04, subd. 29. "Credit week" is defined as any week during the claimant's base period for which the required amount of wages has been paid or is payable as remuneration for services or for vacation periods. Other forms of wages not attributable to a specific week of employment, such as severance pay, are not to be used to establish credit weeks, though they are includable in wages for tax purposes. Under most circumstances wages are clearly allocable to a specific week of employment and eligibility or non-eligibility are easily ascertained by totaling the wages for each week in the base period. The treatment of sums not allocable to a specific week of employment, such as severance pay or bonuses, however, is not as easily determined. Such sums could conceivably be arbitrarily allocated to some portion of the employment period for purposes of establishing credit weeks, but this rule recognizes that such sums are not reasonably treated as wages in this context. To allocate sums to a week when no specific services were rendered for those sums in that week would defeat the purpose of the statute in requiring minimum levels of wages for a minimum period of employment before eligibility can be established. The exclusion of such sums prevents this result. Vacation pay, however, is allocable to specific weeks of employment, even though no services may be performed during the vacation week. It is therefore reasonable to include vacation pay in credit week wages, especially since a contrary rule would serve to disqualify weeks in which a full-time employment relationship was present, contrary to the intent of the credit week provision.

B. Labor market area.

The phrase "labor market area" is defined as the geographic area in which the claimant can reasonably be expected to seek and secure work. The definition is needed to assist in decisions as to claimant's availability and active search for suitable work. This rule recognizes that a claimant's reasonable area of search will depend upon his occupation and other appropriate factors and is therefore not necessarily subject to a specific area or mileage requirement.

C. Seasonal worker.

"Seasonal worker" is defined as an employee who performs agricultural, industrial, construction or other work where it is customary for the employer to curtail operations intermittently because of climactic or other reasons. This definition is necessary because seasonal workers must be available for work outside of their customary occupation during the off-season while this is not necessarily true for non-seasonal workers during their periods of unemployment.

8 MCAR § 4.3003 Able to work.

A. Generally.

This rule provides an explanation of the phrase "able to work" as used in Minn. Stat. § 268.08, subd. 1 (3) and in these rules. Ability to work, as defined, requires that the claimant establish that he is physically and mentally able to perform in his usual or other occupation for which he is qualified and which is regular gainful employment for others. The rule is necessary since benefit eligibility is dependent in part on an affirmative showing by the claimant of his ability to work. The rule is intended to establish the criteria by which the department will determine ability to work as well as specific requirements which must be met in individual cases. These criteria are reasonable since they logically relate to ability to work and indicate the particular meaning this phrase has in situations where doubt as to ability to work is present.

B. Particular situations.

This part of the rule establishes that the department, in making determinations as to the claimant's ability to work, will consider all the relevant facts and circumstances of the claimant's case and specifies the criteria to be used in this determination. This approach is a reasonable one since the circumstances of each case may vary widely. An inquiry into all the circumstances in light of particular criteria, rather than the application of a rigid formula, will assure that ability to work can be correctly ascertained.

1. Medical evidence of a claimant's ability to work may be required if there is a question regarding his mental or physical condition. This requirement is a reasonable one since the burden of establishing ability to work falls on the claimant and the department must be in a position to consider all the relevant evidence when doubt of this ability exists. Medical evidence is clearly relevant and it is appropriate for the department to reach a negative determination as to ability to work if the facts raise doubt about ability to work and no medical evidence to the contrary is provided by the claimant. Since the department does not presume inability to work under 3 below, the claimant is assured a decision based on the facts.

2. While medical separation from work due to serious illness will not alone result in a determination that a claimant is unable to work, the claimant must satisfactorily demonstrate that he is able to perform some other work in order to be determined able to work. This provision is reasonable since medical separation is itself indicative of inability to work at the job separated from but not necessarily of inability to work at some other job. It does raise a legitimate issue, however, which the claimant, under his general burden to establish ability to work, can reasonably be asked to respond to by providing evidence of ability to work at another job.

3. This paragraph establishes that no facts or circumstances will give rise to a presumption that a claimant is unable to work. The claimant has the burden to establish the conditions

of his eligibility for benefits, including ability to work, but the department, under B, is required to base its determinations on all the facts and circumstances of the specific case rather than a presumption of inability to work.

4. This section establishes that availability normally means availability for full-time work for all customary shifts in the occupation, but that a claimant who is restricted as a result of his physical or mental condition to part-time work or to a particular shift will be judged able to work if the likelihood of his obtaining employment within these restrictions is reasonable. This is a reasonable rule since availability should normally be determined according to the requirements of the market in the claimant's occupation, but ought to be modified in cases in which the claimant has good reason to restrict his search to part-time or specific shifts, so long as work can be obtained within these constraints.

8 MCAR § 4.3004 Available for work.

A. Generally.

This rule is necessary to clarify the phrase "available for work," a prerequisite for unemployment compensation benefit eligibility, as used in Minn. Stat. § 268.08, subd. 1 (3) and these rules. This paragraph provides that the availability requirement will generally be satisfied if the claimant demonstrates that he is unequivocally ready and willing to work at suitable employment when offered. Restrictions on availability for suitable employment, whether circumstantial or imposed by the claimant, are acceptable only if the claimant retains good prospects of obtaining employment within a reasonable time under the restrictions. This general statement is modified and applied by the more specific provisions in B through O. The general rule provided in this paragraph is necessary to establish the meaning of availability for work in the specific contexts in which the issue arises. Since availability is a major requirement of eligibility for unemployment compensation benefits, it is important that the meaning of the terms be clearly delineated. The general rule in A is a reasonable one since it is based on the central policy of the unemployment compensation system, that those available and willing to work and unable to find work after a non-disqualifying termination from previous employment should be compensated. The requirements of this rule that a claimant be ready and willing to accept work and that there be no unreasonable self-imposed or circumstantial restrictions on availability are consistent with this policy. Although circumstantial restrictions on the claimant's availability to work may not be under the claimant's control, the unemployment compensation system is not designed to compensate those who are unavailable for work. It is, therefore, inappropriate for benefits to be paid when suitable work is available but not accepted by the claimant because of restrictions on his availability. Self-imposed restrictions on availability are also inconsistent with genuine availability for employment when they diminish the claimant's prospects of obtaining work. Otherwise benefits would be payable when suitable work was actually available to the claimant. Reasonable restrictions on availability which do not significantly diminish the claimant's likelihood of obtaining work, however, are permitted under this rule.

B. Absence from labor market area.

This paragraph provides that a claimant who is absent from his labor market area for personal reasons will be considered unavailable for work unless the period of absence is due to extraordinary family or personal circumstances and is limited to two days or less. This provision is reasonable since the requirement of availability is contingent on the employee's search for employment in the labor market on a continuing basis. Absence from the area makes fulfillment of this requirement a physical impossibility and raises the possibility of missed employment opportunities. The section recognizes the need for extraordinary absences, but limits them to two days as would be the case in most employment settings. Work searches outside the claimant's usual labor market area would not be prohibited by this rule.

C. Alien status.

This section requires that claimants who are aliens submit evidence that they are lawfully authorized to work in the United States. Alien status legitimately raises the issue of availability, since aliens must be specifically authorized to work in the United States. An alien claimant who cannot legally be employed cannot reasonably be considered available for work whatever his marketability apart from this fact. This rule, which is consistent with federal law, is designed to clarify that legal prohibitions on employment, like other restrictions, are inconsistent with availability for work.

D. Change of residence.

This paragraph provides that, when a claimant's employment opportunities are substantially decreased because of a change in the location of his residence, he must look for employment on a regular basis, expand his search to other occupations and accept the prevailing wages, hours and other conditions of work prevalent in his new area in order to be considered available for work. This rule is necessary since a claimant must reasonably alter his expectations if he voluntarily moves to a geographic area where employment opportunities are curtailed. By moving to an area of more restricted opportunities, the claimant has in effect imposed a restriction on his availability for work, contrary to the general rule in A. It is therefore appropriate for the claimant to be considered unavailable unless he actively searches for work and removes other restrictions on his availability. In the absence of such a rule a claimant could move from an area where employment in his customary occupation was likely to one in which it was unlikely, or even impossible, and remain eligible for benefits without any requirement that he accept other employment.

E. Claimant cannot be contacted.

This part provides that a claimant who cannot be contacted for employment referrals will be deemed unavailable for work, unless good cause is established for his inability to be reached. This requirement is necessary since a claimant who cannot be contacted by the department, or by prospective employers, cannot reasonably be said to be available for employment. This rule is necessary to assure that claimants are actively engaged in a work search and available to receive information about employment possibilities, and in order to implement the provisions of parts B and D.

F. Failure to report.

This section establishes, pursuant to Minn. Stat. § 268.08, subd. 1 (1) and (3), that a claimant who does not report to an unemployment office as required will be deemed unavailable for work unless he can demonstrate good cause for his failure to report. The department may require a claimant to report to an unemployment office in order to inquire into his eligibility or to a job service office in order to assist him with his job search. If the claimant fails to report, the department will be unable to answer questions about eligibility or to provide employment information. Required reporting may be necessary to assure that a claimant is available for work and failure to report suggests that the claimant is unavailable under B, D or other provisions of this rule. The rule permits the claimant to establish good cause for failure to report, but in other cases it is reasonable to conclude that the claimant is not available for work. In the absence of this provision, the department's ability to enforce eligibility requirements would be severely restricted.

G. Incarcerated.

This part of the rule establishes that an individual who is imprisoned and is not able to participate in a work release program is considered unavailable for work. As with part C, this paragraph recognizes that legal impediments on employability necessarily indicate that the claimant is unavailable for work. To hold otherwise would permit those unable to actually accept employment to receive unemployment compensation benefits, contrary to the policy of the statute. Those eligible for work release would be qualified for benefits under this paragraph.

H. Labor market area.

This provision states that to be considered available for work the claimant must make himself unequivocally available for employment throughout his labor market area. This rule is necessary since a claimant who does not in fact offer himself for employment under the usual conditions customary for his occupation in his labor market area cannot reasonably be viewed as available for work. This rule is needed to avoid ambiguity in situations in which a claimant is sufficiently equivocal and conditional in his "offering" of his services that he cannot really be said to be seeking employment.

I. Length of unemployment.

This paragraph establishes that to be available for work a claimant who has been unemployed for a lengthy period of time may be required to expand the geographic area in which he is seeking work, accept new shifts, enter counseling or retraining or accept employment at the prevailing wages in a new occupation. This section is necessary to establish that the meaning of availability for work will vary depending on the length of claimant's unemployment. The general rule in A provides that no restrictions can be imposed by the claimant on his availability for work which has the effect of diminishing his prospects for obtaining employment in a timely manner. This paragraph recognizes that restrictions, whether geographic or occupational, which are

reasonable at the initial stage of unemployment may cease to be so as unemployment lengthens. A claimant may, therefore, impose an initial restriction on his job search which does not appear to diminish prospects for employment in an unreasonable way. After lengthy unemployment without job offers, however, it is no longer possible to say that this restriction does not decrease the claimant's prospects for employment. At this stage the restriction no longer meets the requirements of A and thus it is reasonable for a claimant to be required to remove that restriction on his availability.

J. Seasonal worker.

This part of the rule provides that seasonal workers will be required to accept work in a different occupation during the off-season or will be deemed unavailable for work. Since, by definition, the normal occupation of a seasonal worker is not open to him in the off-season, it is reasonable for him to be required to be available for other employment during that time. A restriction on availability which guarantees that no employment can be obtained is clearly inconsistent with the requirement provided in A that a restriction can not prevent the acceptance of employment.

K. Self-employment.

This paragraph provides that a claimant is not available for work if he has ceased to seek employment because of current self-employment or preparation for self-employment which activities prevent him from accepting suitable employment under the customary conditions. Though self-employment is clearly a solution for unemployment, if the claimant has actually become self-employed, or his preparations for self-employment are so extensive that he is not able to accept suitable employment, and he is not in fact seeking such employment, it is reasonable to treat him as no longer available for work.

L. Time or shift restriction.

This paragraph provides that a claimant may not restrict the hours of the day or days of the week during which he will work in a way inconsistent with the usual schedule in his occupation or other suitable work and also prevents time and schedule restrictions which interfere with seeking work. These provisions are consistent with the general rule in A, which is essentially that restriction on the claimant's availability be reasonable in light of the object of obtaining employment. Time and schedule restrictions which make it impossible for the claimant to accept suitable work or to search for it are necessarily unreasonable.

M. Transportation.

This paragraph establishes that a claimant must have transportation to his labor market area to be available for work. A claimant's availability for work is dependent upon his having a means of access to his labor market area, both for his job search and for the maintenance of employment once he has found it. This provision clarifies that transportation is the claimant's responsibility and not that of the present or prospective employer.

N. Union membership.

This part of the rule provides that a claimant who is seeking work only through his union is unavailable for work unless he is in an occupation and locality in which substantially all the employment is handled through the union. In such a case the claimant may still be required to submit evidence that he is seeking work through the union, is a member in good standing and is complying with union rules. This rule is consistent with the general rules on restrictions on availability for work. If a union hiring hall, for example, is the source of all those unemployed in an occupation in the claimant's labor market area, it is not an unreasonable restriction on availability for the claimant to limit his job search to the hiring hall. If workers in the area, however, are not normally employed through the hiring hall, it cannot be said to be a reasonable restriction on availability for the claimant to limit his search to the hiring hall. In such a case he unreasonably restricts his access to prospective employment in his occupation and must be viewed as unavailable for work.

O. Wage restriction.

This paragraph provides that a claimant is not available for work if he requires wages in excess of those customary in his labor market area for the work he is seeking. This rule recognizes that a labor market is an economic market. Thus insistence on a higher wage than the customary wage in the labor market area is an unreasonable restriction on availability, contrary to part A, since the restriction is one which will prevent acceptance of employment even though employment at the usual rate is available.

8 MCAR S 4.3005 Actively seeking work.

A. Generally.

This rule is necessary to establish the meaning of the phrase "actively seeking work" as used in Minn. Stat. § 268.08, subd. 1 (3), and these rules. This section provides that the claimant must use reasonable, diligent efforts to actively seek work in each week of unemployment and must not restrict his search to positions for which he is not qualified or which are not available. The actual means required in his search would depend on the circumstances, so long as they corresponded with those a person in the claimant's situation would use if actually seeking employment. These are reasonable requirements since they permit flexibility in determining what steps a claimant must take to seek work, but require him to take the steps another would take in similar circumstances to find employment. "Diligence" requires an active, serious effort to find work, rather than a pro forma search and "reasonable" indicates that appropriate steps must be taken but that there are limits on what a claimant should be required to do in seeking employment. The requirements with respect to limited searches are reasonable ones since a claimant cannot be viewed as actively seeking work if he is only searching for work which is not available or for which he is unqualified.

B. 1-9. Scope of work search.

This part of the rule clarifies that to fulfill the requirements of actively seeking work, a claimant must comply with instructions provided by the department which are pertinent to the customary methods of obtaining employment in claimant's usual occupation and labor market area. This is a reasonable requirement since the department has expertise in job survey and placement activities, has regular information on job openings and possibilities, and is able to assess the claimant's job qualifications. The department is thus able to assist the claimant in his search and failure to respond to instructions with respect to that search is reasonably viewed as failure to actively seek work. This paragraph provides some of the methods, such as registration with a union hiring hall and completion of appropriate job applications, which would normally be elements of an active work search and which may reasonably be required of a claimant. The list is not meant to be all inclusive and actions other than those listed may also be required by the department, since particular occupations and circumstance may require other or additional efforts.

C. Number of contacts.

This part of the rule specifies that a claimant's employer contacts will be considered by the department in assessing whether he is actively seeking work, but that no arbitrary number of contacts is required. Rather, the circumstances of a particular case will determine the volume of contacts which is appropriate. This is a reasonable requirement since actual contact with employers is necessary in any work search, yet the specific number of contacts cannot be stipulated in an arbitrary way, but depends upon the opportunities present in the occupation and the labor market area, claimant qualifications, the normal practices in the occupation and the like.

D. Type of work sought.

This part provides that a claimant will normally meet the "actively seeking work" requirement if he pursues employment opportunities in his usual trade or occupation. However, this section requires that the claimant begin to seek work outside his customary occupation after a period of unsuccessful search in his own occupation if any of several specific circumstances indicate that a broadened search is appropriate and work in his usual occupation is not available. This is a reasonable rule since it permits the claimant to initially seek work in his customary occupation when there is any likelihood of his securing suitable employment in that occupation, but requires him to broaden his search to other suitable employment if and when it becomes apparent that work in that occupation is not to be found.

1. This part provides that the claimant must broaden his search where there are sufficient suitable openings outside of his customary occupation and there are few unemployed workers in the locality for whom the employment would be more suitable. This is a reasonable requirement since the claimant's employment should not be at the expense of other unemployed workers who would be more suitable for a particular position. But when there are no such workers and the work is suitable for the claimant, he should be required to seek that work.

2. This part requires a claimant to seek work outside his usual occupation when his prospects of finding work outside are more favorable than his chances of obtaining work in his customary occupation. This is a reasonable requirement since, if claimant's chances of obtaining work in his usual occupation are remote, he must alter his expectations and seek work in a different but reasonably suitable field. The claimant's attachment to his usual occupation should not prevent his accepting other suitable employment when prospects in his usual occupation are not good.

3. This part provides that if work outside claimant's usual occupation is suitable employment, the claimant can be required to seek such work. This section recognizes that work outside of claimant's customary occupation may be commensurate with the skills, training and education of a claimant, though it is not in his usual occupation. In such a case it would be unreasonable to allow the claimant to decline to seek such work.

E. Permanent and temporary work.

This paragraph provides that a claimant is generally required to seek permanent work but that a claimant on temporary layoff who is assured of recall in the near future may limit his work search to work of a temporary nature. It is reasonable for claimants to be expected to seek permanent work, even if it is outside their normal occupation, pursuant to part D, when they have been permanently terminated from employment. But it would not be appropriate to require this of a claimant whose former job will again be available after a layoff period. In such a situation temporary employment is a reasonable objective which will also serve to preserve the established labor force of an employer who is forced to impose temporary layoffs.

F. Seasonal workers.

This paragraph requires seasonal workers to actively seek work. This rule is consistent with the requirement in 8 MCAR § 4.3004 (J) that a seasonal worker seek work in other occupations during the off-season. It is a reasonable rule since off-season work may be suitable for a claimant and a search for work which is by definition not available cannot reasonably be viewed as "actively seeking work".

G. Incarcerated worker.

This paragraph indicates that an incarcerated worker who is not a participant in a work release program is not "actively seeking work." This rule specifies the logical result of the application of the general rule on actively seeking work to the situation of an incarcerated person unable because of his imprisonment to seek employment. By definition, if a claimant cannot seek work, he is not doing so.

H. Filing and reporting only.

This paragraph provides that where economic conditions would make a more extensive job search a futile exercise for claimants in a particular occupation or group, and a burden for employers, the department may

require only that the claimant avail himself of a union hiring hall, professional or similar placement facilities or the department's resources in order to actively seek work. This section recognizes that in certain situations the usual avenues of employment search are fruitless and that to require them would simply be harassment of the claimants and the would-be employers. The principle here is that an active search for employment known to be unavailable is an anomoly not intended by the active search requirement.

8 MCAR § 4.3006 Suitable Work.

A. Applicability.

This paragraph states that rules 8 MCAR §§ 4.3006 - 4.3008 are to be used in determinations of whether a claimant has failed without good cause to apply for or accept suitable work, as required by Minn. Stat. § 268.09, subd. 2. This rule is necessary to establish and limit the circumstances to which the referenced rules apply.

B. Policy.

This paragraph establishes the policy according to which the department will interpret and administer the suitable work provisions in Chapter 268 and in the rules. Since the department has the dual responsibilities of disbursing benefits only to those involuntarily terminated without fault and of placing such workers in the jobs for which they are best qualified, the suitable work provisions will be interpreted to recognize the claimant's skills and abilities but not to encourage or sanction the avoidance of work. This statement of policy is necessary since a very narrow construction of the phrase "suitable work" could, as the paragraph indicates, result in the finding that no work other than the exact work previously done by the claimant was "suitable work". Such a result would be absurd and the policy statement indicates that the workings of the labor market reasonably require more flexibility in the matching of claimant and job than such a reading would authorize. The alternative to this narrow interpretation is the policy of interpreting "suitable work" so that employers, employees and society as a whole benefit from the maximum utilization of the skills of the largest number of workers possible under existing economic conditions.

C. General.

This part of the rule provides guidelines within which determinations under Minn. Stat. § 268.09, subd 2 and 8 MCAR §§ 4.3007 - 4.3008 as to the suitability of work will be made. These guidelines are needed to provide general guidance in the application of the specific provisions of 8 MCAR §§ 4.3007 and 4.3008 to situations involving three broad categories of employees: workers with assurance of future work, workers without such assurances and seasonal workers. These are reasonable distinctions to make in rule because major differences in labor market status require different approaches to "suitable work."

1. Suitable work for an individual who has an assurance of work in the near future (generally six weeks or less), is normally temporary work in his usual or a related occupation. It is reasonable for an individual who is, in effect, only temporarily separated from his usual occupation to limit his

search to temporary jobs in that or related occupations. A requirement that he search for and accept unrelated permanent employment, which he would then be obliged to quit to accept his usual work would be an unreasonable burden on both the claimant and the unrelated employer.

2. Suitable work for an individual with an assurance of work in the distant future (generally more than six weeks) is normally temporary work in his usual or a related occupation or an area which is a reasonable departure from his customary occupation. This rule has the same basis and rationale as that of 1. The difference is that when unemployment is to be prolonged for longer than six weeks it is reasonable to require a more extensive departure from the employee's usual occupation.

3. a-d. Suitable work for a seasonal worker is generally temporary work in his usual occupation or in an occupation in which conditions closely approximate those of his previous position. The rule provides an exception if 1) job openings exist in a lower skilled or lower paid occupation, 2) there are few unemployed workers for whom this work would be more suitable, 3) claimant is able to perform the work, and 4) the pay equals at least 150 percent of the claimant's weekly benefit amount. If all of these conditions are met the work is suitable even if not in a related occupation. This is a reasonable rule since it recognizes that seasonal workers will normally return to work in their seasonal employment. Thus, a requirement that they must accept employment in unrelated occupations, when there are others better suited for those positions would be unreasonable and a burden on the claimant. This reasoning does not hold, however, when no other employees are better suited for such jobs. Thus, the rule would reasonably require such work to be accepted so long as the claimant was able to do it and suffered no economic loss in doing so.

4. This part makes clear that for claimants who do not have assurances of future work, suitable work is that which approximates the conditions of their former employment if job prospects are reasonably good. If the likelihood of employment in the claimant's customary occupation is remote, however, work at a lower skill or wage will be deemed suitable if the claimant has skills and qualifications which may reasonably be adapted to the new work and if the work is a reasonable departure from his usual work unless there are other unemployed workers in the locality for whom the work is more suitable. This rule recognizes the principle that suitable work must respond to labor market conditions. If work initially deemed suitable, proves not to be available, it is reasonable to require the claimant to adjust his expectations toward work which is available, so long as the work is not unreasonably removed from the claimant's experience and abilities and there are few others better suited. A contrary rule would tend to discourage the most effective utilization of labor and would be contrary to the policy annunciated in A.

8 MCAR § 4.3007 Statutory terms interpreted.

A. Generally.

This rule provides definitions to clarify the terms and phrases used in Minn. Stat. § 268.09, subd. 2. These definitions are necessary since the operative words in this subdivision are crucial to eligibility determinations. Thus, in fairness to both claimants and employers, these terms should be defined as clearly as possible. The reasonableness of these definitions, however, is in many cases self-evident from the statutory language. Where this is so the rationale will not be set forth in detail.

B. To apply.

This paragraph is necessary to set forth the scope of the phrase "to apply" as used in the statutory provision cited above. It is specified that "to apply" means that the claimant must fulfill all job application procedures mandated by the department commencing with the job service interview itself and including personal application at the prospective employer's place of business when referral has been made by the department. This is a reasonable extrapolation from the statute since the claimant cannot be in a position to apply for employment unless he first comes to the job service interview for assistance in surveying available positions. Personal application at the place of business of the employer is the custom in many occupations and industries and thus it is reasonable to define "to apply" as including such applications.

C. Failure to apply.

This definition of the phrase "failure to apply", as including any knowing action or omission exhibiting lack of good faith effort to seek a position, makes clear that a claimant who goes through the motions of "application" for employment but does not make a genuine effort to obtain the position may be constructively in violation of Minn. Stat. § 268.09, subd. 2. This is a reasonable definition of the phrase, consistent with the policy of the statute and is designed to avoid ambiguity over the status of a pro forma application which no reasonable person would regard as a genuine effort to obtain employment.

D. Failure to accept.

This definition of the phrase "failure to accept" makes clear that an indirect refusal of a job offer as well as a direct refusal will be sufficient to result in disqualification from benefits pursuant to the statute. This provision establishes that conduct which would be regarded by a reasonable person as a refusal of a job offer will be deemed a "failure to accept." The rule thus clarifies that inactive, as well as active "failure to accept" are contemplated by the statute.

E. Available, suitable work.

This paragraph specifies that "available, suitable work" means that a specific position is open for application or acceptance and clarifies that work is not "available" if the claimant's qualifications have been found unsuitable by the employer. This provision recognizes that

it is unfair to disqualify a claimant from benefits on the grounds that work is generally or putatively available. It is only reasonable to require a claimant to accept work which is actually, specifically open for application or acceptance. Nor can a job be reasonably viewed as available if it has not in fact been offered to the claimant by the prospective employer because the claimant was not qualified.

F. Of which he was advised.

This paragraph clarifies that the claimant must be informed by the department of the actual nature of the duties of any position "of which he was advised". This section indicates, however, that this requirement does not mean that the firm's name need be revealed, unless the claimant accepts the referral, but only sufficient detail be provided to indicate the terms and conditions of employment. It is reasonable for the claimant to know the nature of the duties of a prospective position and the terms and conditions of employment. Otherwise it is difficult to see of what he can have been "advised". However, an employer may reasonably withhold his identity from any but active applicants and it is unreasonable, in any case, for a claimant to reject prospective employment simply because of the identity of the employer. Thus, "advice" of a position need not include the identity of the employer.

G. Risk involved to his health and safety.

This definition establishes that work conditions that may threaten the health or safety of the claimant must be considered in determinations as to the suitability of work. Similarly, claimant's demonstrable fear may exempt him from accepting certain kinds of work. This section also indicates that current inability to avoid hazardous conditions would constitute such work unsuitable. These are reasonable provisions since risks and hazards with which the claimant is unfamiliar or with which he is in fact unable to cope, should be considered in determining suitability, just as the nature of the work wages, levels of skill and the like are to be considered. It is unfair to require the unemployed to accept work which involves risks not customary to the occupation, since to require this is to invite the under-cutting of safety standards. Extra-hazardous work requires special training and it would thus be unreasonable to require the untrained claimant to accept such work. The definition also recognizes that hazards and risks previously born by the claimant may later be beyond his tolerance. The rule thus excepts from suitable work, employment which involves serious and unusual hazards but recognizes that employment always involves some risk or hazard. These everyday dangers associated with an occupation are not contemplated by this rule and work is thus not unsuitable simply because there is some danger or hazard involved.

H. His physical fitness.

This definition delineates the factors (previous work, physical conditions, physical demands of the job) which would be considered by the department in determining whether the physical requirements of a particular job would make it unsuitable for the claimant. The section clarifies that medical evidence substantiating claimant's physical condition may be required. It is reasonable for the department to consider claimant's genuine physical limitations in determining the suitability of work. The

factors specified are all reasonably related to ascertaining such limitations and medical evidence of physical condition is certainly relevant in such cases.

I. Prior training and experience.

This definition provides that claimant's "prior training and experience" will be considered in determinations as to the suitability of particular work. The section specifies that work may be suitable if, despite claimant's lack of relevant skills and training, the skills necessary require minimal training or the training is provided as part of the offered employment. It is reasonable to consider previous training and experience since these will often limit the potential employment of a claimant, but it is also rational to require a claimant to undergo "on-the-job" training when provided or to learn the skills required in an available job if they can be mastered in a short time, on his own.

J. Prospects of securing work in his customary trade or occupation.

This definition indicates that a claimant may be expected to find work outside of his usual trade or occupation if the likelihood of obtaining work in his customary area is remote. The section clarifies, however, that before claimant will be required to pursue work outside his customary trade or occupation, the general conditions on suitable work set forth in 8 MCAR § 4.3006 must be satisfied. This definition recognizes that suitability varies depending on the availability of work. A reasonable person would shift his sights to other work if work in his usual occupation proved unavailable for a significant period of time. The rule thus provides that a claimant must seek other work if employment in his usual occupation is unlikely, so long as it is otherwise suitable.

K. Distance of the available work from his residence.

This definition sets forth criteria to be used in determinations of the suitability of particular work in relation to the distance of the work from claimant's residence. The section reasonably provides that in addition to the distance, the availability and nature of transportation and the customary distance and means of transportation in claimant's occupation will be considered. If relocation is common in claimant's occupation, he will be required to follow suit. The department will consider the likelihood of employment proximate to claimant's residence, the length of his unemployment, the wages offered in relation to the cost of transporation and the actual distance to the available work in its determinations as to the suitability of particular work. This rule provides reasonable flexibility for the department to accommodate available job offers with transportation factors so that excess distance without offsetting wages or the like may result in a determination of unsuitability, while typical transportation or customary relocation patterns may result in a suitable work finding.

L. Wages.

This definition of "wages" establishes that suitability is dependent in part upon whether the total earnings offered claimant are comparable to the prevailing wage in the locality for similar work. If the wage rate is lower than claimant's previous rate, suitability will depend upon the length of claimant's unemployment and the proportional difference

in the rates. This rule recognizes that it is unfair to require a claimant to accept permanent employment at significantly lower wages than are usually paid for the job offered or wages lower than he has enjoyed in the past, at an early stage of his unemployment. However, if employment at his usual work or wage rate proves unavailable, it then becomes reasonable to require him to seek other, perhaps less attractive, work. Even in such a case, the percentage wage differential is a factor to be considered in determinations of suitability.

M. Hours.

This definition of "hours" clarifies that the scheduling of work as well as the number of hours of work will be considered in determinations as to the suitability of available work. While work on the first shift may be the most desirable, work on other shifts may be suitable if new employees are normally hired to work on them. It is more reasonable to require claimants to accept less desirable shifts and scheduling if these are the normal conditions for entry level personnel, but less reasonable in other circumstances. Nonetheless, such employment may be suitable work if other work were unavailable or if claimant's unemployment were lengthy.

N. Other conditions of work.

This definition establishes that the suitability of available work will depend upon all of the conditions of work. This paragraph provides for consideration of all express or implied contractual terms of employment as well as the actual physical circumstances in which the work is done. Since a reasonable person would evaluate these factors in accepting employment, it is reasonable for the rules to provide for their discretionary consideration.

O. Substantially less favorable to the individual.

This definition of "substantially less favorable to the claimant" specifies that the comparison is to be between the terms offered to the claimant and that offered for similar work in the labor market area. The past employment terms of the claimant are not considered in this comparison. Minor variances will not be determinative but the subjective impact of the differences will be considered. The definition provides that wages more than 10 percent below those prevailing for the work in question or less than the applicable minimum wage will be deemed "substantially less favorable." This section establishes that the comparison intended by the statutory language is between the wages of the work offered and those prevailing for similar work, rather than previous employment. This paragraph provides for the discounting of de minimus variances, but consideration of subjective effects when appropriate. The 10 percent and minimum wage limitations are reasonable flat indications of necessarily "substantially less favorable" terms of employment since 10 percent is "substantial" by most measures and wages less than the applicable minimum wage standard are illegal.

P. Prevailing

"Prevailing" is defined in reference to the initial wages, hours and

other conditions of work of individuals who begin similar work in the labor market area. This is a reasonable interpretation of the statutory term since those newly accepting employment are necessarily in competition with those commencing employment. "Prevailing" in this context should thus reasonably refer to the conditions of entry level (or equivalent) employment in the suitable work involved.

Q. Locality.

This definition of "locality" clarifies that it refers to claimant's labor market area, since this is the operative geographic term under the statute and these rules.

R. Good cause.

This definition clarifies the phrase "good cause" since it is a crucial factor in determining whether a claimant rightfully or wrongfully refused suitable employment. "Good cause" rejection of employment occurs only in compelling circumstances. The paragraph further clarifies that "good cause" for refusal of employment is usually personal to the claimant and of a temporary and emergency character and need not be a matter of employer fault. This section is necessary since the meaning of "good cause" could be the source of significant dispute. This definition restricts the application of the phrase to unusual, temporary, personal circumstances or cases of employer fault. The definition reasonably provides that a refusal for "good cause" cannot normally be based on the circumstances of the employment itself. Thus, a subjective dislike of otherwise suitable employment would not constitute "good cause." This part also clarifies that rejection of employment cannot be continuing since the claimant in that case would cease to be available for work.

8 MCAR § 4.3008 Re-employment offer.

This rule establishes, pursuant to Minn. Stat. § 268.09, subd. 2, that failure to accept suitable re-employment offered by a base period employer will disqualify the claimant from benefit eligibility unless the terms and conditions offered are substantially less favorable than those existing during the principal part of his previous employment or good cause for the refusal is demonstrable. This is a reasonable rule since there can be little question of the suitability of work offered by a previous employer which is substantially equivalent to that done in the past by the claimant and the continuance of a preexisting employment relationship should be encouraged. The rule, however, provides exceptions in cases in which the terms and conditions of the employment are significantly less favorable than in the past, or the circumstances of the previous good cause separation continue, or there is otherwise good cause for refusal, since in these cases the presumption of suitability would be rebutted.

8 MCAR § 4.009 Partial benefits exemption.

This rule clarifies that claimants who are eligible for partial benefits are exempt, pursuant to Minn. Stat. § 268.08, subd. 1 (1), from the eligibility limitations and requirements of 8 MCAR §§ 4.3001 - 4.3008. This exemption is provided since partially unemployed claimants continue to be employed, though on a less than full-time basis due to a temporary lack of work. The temporary nature of the underemployment and the certainty of full-time employ-

ment in the near future make this exemption reasonable. It would be counter-productive and oppressive for the claimant and his employer, as well as for prospective employers, to require the employee to seek full-time work, register with the job service and meet the other requirements of Chapter Two of these rules, when he is currently partially employed and likely to be fully employed by the same employer in a short period of time.

8 MCAR § 4.3010 Benefit claim procedure.

A. Purpose and scope.

This rule is necessary to clarify the claim procedure and eligibility criteria set forth in Minn. Stat. § 268.08, subd. 1. The purpose is to provide a precise indication of the requisites and procedures for filing a claim.

B. 1-3. Initial claim.

This paragraph delineates the procedures to be followed by an individual when filing or reopening a claim for benefits. An in-person application is reasonably required since it is the best way to assure that all inquiries relevant to eligibility can be made and benefits approved or denied in a timely fashion. A claimant's social security number can reasonably be required to be furnished in this context as a means to establish employment history. The department provides a form to facilitate the processing of claims and to minimize errors and omissions. The registration requirement is reasonable since it is consistent with the general requirement of availability for work and actively seeking work.

C. Claim acceptance form.

This paragraph provides that a claim acceptance form will be presented to a claimant if the unemployment office to which he initially reports is unable to provide claim service at that time. The form serves to establish the date the claimant initially filed. This provision is reasonable and necessary since it allows the claimant to establish a filing date (important for the commencement of benefits) as of the date of an attempted filing even if he is unable, because of the volume of business or the like, to complete the process. The principle applied here is that the claimant should not be penalized, by a later benefit commencement date, when he has attempted in good faith to file as required.

D. Part-time unemployment office.

This provision sets forth the procedures to be followed by an individual who lives in an area in which there is a part-time unemployment office. The paragraph provides that a claimant may file retroactive to the Sunday of his first week of unemployment when he files with a part-time unemployment office in his locality so long as the day he actually files is his first opportunity to file. This is a necessary provision to avoid disadvantaging claimants who live in areas served by part-time unemployment offices by later commencement of benefits.

E. Permitted benefit years.

This provision establishes that benefit years may not overlap unless this result is specifically required in a given situation or by law or rule. This is a reasonable rule since benefit years function more or less as specific accounting periods for benefits. If benefit years are allowed to overlap, more benefits would be paid than is contemplated by the statute.

F. Withdrawal of claim.

This paragraph provides that an initial claim for benefits may not be withdrawn or terminated, once filed, except as provided by rule or law. This provision is designed to prevent the claimant from withdrawing his claim in response to possible harassment or solicitations by previous employers and to assure that no claim is terminated except when required by law or rule.

G. Continued claim.

This section requires that after filing the initial claim the claimant continue to report to the unemployment office charged with administering his claim in the manner and with the frequency prescribed by the department. This provision is designed to provide the department with the flexibility to periodically monitor the continued eligibility of the claimant and to closely assist him in his work search when this is required by the circumstances while authorizing a less direct oversight role when appropriate.

H. Transferred claim.

This paragraph requires a claimant who files for more than four weeks of benefits through an area office other than that of his initial claim to transfer his claim to the second office. Eligibility would not be denied, however, unless the claimant was directed to transfer his claim prior to the continued filing. This rule is necessary to assure that the area office which is in the best position to monitor claimant's eligibility and his work search is the office with responsibility for his claim. In the absence of this requirement the enforcement of availability, work search and other requirements in statute and rules would be made very difficult, especially for out-of-state claimants.

I. Late filed claim.

This paragraph stipulates that a claimant who fails to file a continued claim in the manner, time and place specified by the department may file the claim within fourteen days, in person or by mail, of the date specified without effect on the benefits or waiting week credit. Good cause on the part of the claimant will serve to extend this period to within thirty-five days of the end of the benefit year. This section makes clear, however, that a claimant will not be entitled to credit or benefits for subsequent weeks for which he has neglected to file unless good cause for this noncompliance can be adequately demonstrated. This rule thus reasonably provides the claimant with additional time without penalty where there is good cause for the delay, but restricts eligibility when he fails to report without sufficient justification.

8 MCAR § 4.3011 Week of unemployment.

A. Scope and purpose.

This rule is necessary to clarify the definition of "week" as defined in Minn. Stat. § 268.04, subd. 23 in the context of a labor dispute.

B. Week calculated, labor dispute.

This paragraph provides that a "week" in the circumstances of a labor dispute, is whatever days in the week remain after the termination of the dispute. A proportional credit is to be allowed for each such day toward benefit or waiting week eligibility.

Chapter Three: Taxation

8 MCAR § 4.3100 Definitions

A. Generally.

This paragraph indicates that the terms used in 8 MCAR §§ 4.3100 - 4.3108 should be interpreted in accordance with the definitions provided in Minn. Stat. §§ 268.03 - 268.24 or the rules promulgated by the department.

B. Pay period.

This part of the rule clarifies the term "pay period" and provides a maximum length pay period of one month for the purposes of these rules.

8 MCAR § 4.3101 Wages

A. Purpose.

This rule provides a comprehensive explanation of the term "wages" as used in the unemployment compensation benefit and tax system. A general definition is provided in Minn. Stat. § 268.04, Subd. 25, in which "wages" are defined as "all remuneration for services." The purpose of the rule is to apply this definition to include as "wages" various types of specific payments which should reasonably be regarded as remuneration for services in an employment situation. Other specific types of payments not properly regarded as "wages" are excluded by the rule. There is need for this rule since "wages" are an essential component in numerous types of decisions the department must make in administering the unemployment compensation statute. It is a reasonable rule since its provisions consistently apply the general statutory definition of "wages" to specific, recurring circumstances in which wages may or may not be present. The rule lists many of the forms remuneration for services may take and still constitute "wages" and examples of payments which are not contemplated by the term "wages" are also included as a guide in borderline situations. The rule provides clarification of the term wages so that employer tax liability and employee benefit rights can be determined with precision and in a timely fashion.

B. Types of wages, generally.

This part of the rule makes clear that to constitute wages, remuneration for services is not limited by the medium of payment, the time or interval of payment, or the basis or measurement of payment. Any actual compensa-

tion for services rendered, under this rule, is to be treated as "wages" unless some exception applies. This part of the rule is needed to make clear that "wages" is not limited to hourly pay, but includes all compensation for employment services. The purpose is to ensure that all compensation is treated in an equivalent manner and to avoid ambiguity over the status as "wages" of piecework payment, salary, commissions and the like.

C. Paid and payable wages.

This part of the rule establishes that remuneration for services constitutes "wages" whether they are paid or merely payable. Receipt is thus not necessary for inclusion as "wages". This section is designed to avoid ambiguity concerning the status as wages of remuneration not yet received by the employee and to establish that all remuneration the right to which has matured is wages.

D. Types of wages.

Since part B defines wages as including all forms of remuneration for employment services, a method of determining the "wage" value of the different forms of remuneration is needed. This part provides that "wages" equal the monetary value of various types of remuneration. The list of certain forms of remuneration does not exhaust or limit the taxable forms of wages but instead provides examples of the commonest forms of wages.

1. The term "wages" as defined in Minn. Stat. § 268.04, subd. 25, includes remuneration for services paid in a medium other than cash. Thus, "wages" result if the employer provides a dwelling unit, utilities or meals or furnishes services or goods as compensation for services. This rule is required in order to establish a method for the treatment of such in-kind payments. The rule provides that the monetary value of these items is to be treated as "wages" so that this form of remuneration can be aggregated with cash wages for tax and benefit calculations.

2. Remuneration paid an employee on vacation, despite the employee's absence from work, is to be treated as constituting wages under this paragraph, since the vacation allowance represents remuneration for personal services rendered in the past. Thus, vacation pay is subject to contribution and is to be included in benefit determinations.

3. This part of the rule establishes that all separation payments made by an employer to an employee, regardless of whether the employer is legally obligated to make the payment, are taxable wages. Such pay is to be treated as remuneration for past services rendered since it is not reasonable to view it as a "gift". The status of such payments as "wages" is unaffected by the fact that they are paid after separation and is not altered by the voluntary or involuntary character of the separation, since past services are the source of the "wage" status of these payments. This paragraph is necessary in order to avoid ambiguity over the wage status of remuneration paid an employee on account of termination, severance or dismissal.

4. This paragraph provides that monies paid an employee for remuneration for services pursuant to an award or settlement made in resolution of a dispute arising out of the employment relationship comprise "wages." The types of payments contemplated by this paragraph include remuneration for past services determined to be due under minimum wage or overtime requirements, or under a collective bargaining agreement or pursuant to a discriminatory wage remedy, for example. Portions of the award not constituting payment for services actually rendered are not to be treated as wages. Wages, therefore, do not include amounts paid as penalties or as damages for employment wrongfully witheld.

5. This paragraph establishes that payments received by officers or shareholders of a chapter S corporation who render services to the corporation are treated as "wages" unless they constitute a return of capital or capital gain. This section is needed because in its absence there would be constant disputes over the labels applied to such payments and the portions of them constituting remuneration. Since the largest part of such payments will be remuneration, it is reasonable to define all such payments as wages even though an indeterminable amount may be said to constitute income from capital. These wages like other wages are taxable when actually or constructively received.

6. The term "wages" as defined in Minn. Stat. § 268.04, subd. 25 explicitly includes the value of commissions and bonuses. This paragraph applies this general rule by providing that the monetary value of an award, bonus or any other consideration from the employer if accrued during the course of the employment relationship is deemed remuneration for services. This recognizes that such sums represent additional compensation for personal services rendered in the past by the employee, rather than a disinterested "gift." This paragraph represents an application of the general rule that consideration paid for services rendered by an employee regardless of form or timing is subject to contribution and must be considered in benefit determinations.

7. This paragraph provides that if an employer compensates or partially compensates an employee for unused sick leave or allows such payments in circumstances other than personal absence due to sickness, the payments constitute wages. This section is necessary to make clear that payments from sick leave accumulation which are not related to illness are always to be treated as wages since they represent delayed remuneration for services rendered in the past.

8. This paragraph clarifies that standby or idle time payments made to employees for certain minimum periods during which the employer can require the employee to remain available, even though he may not actually perform work, constitute wages. In such a situation availability for performance is itself treated as providing services regardless of whether the employee actually does work during this time.

9. This paragraph provides that advance payments made by an employer to an employee for work to be done in the future constitute wages and are taxable at the time of payment. However, if the payments are indicated by the employer on its books as amounts loaned to employees or a return of employee's capital investment, the payments will not be considered wages. This rule is needed in order to establish a clear point in time for the taxing of wages paid in advance and to separate such wages from other types of payments to employees. It is both reasonable and convenient to subject such payments to contribution and to treat them as wages for benefit purposes as of the time of payment since the employer has disbursed and the employee has use of the funds.

10. This part of the rule subjects to contribution payments made to corporate shareholders and officers which, though called "loans", fail to exhibit any of the characteristics of loans, when those persons have actually rendered service to the corporation and have not received amounts constituting reasonable compensation for those services. This section recognizes that "loans" may sometimes be remuneration for services and seeks to pierce that fiction when the amounts actually constitute "wages." Failure to establish this requirement would invite mislabeling of wage payments and cause loss of appropriate tax revenue.

11. This part clarifies that payments made to individuals acting as assistants or substitutes to an employee, whether paid directly by the employer or indirectly through the employee, are considered wages of the assistants or substitutes if they are in payment of personal services rendered. The assistant or substitute becomes in effect an employee so long as the employer knows or has reason to know of the use of assistants. This rule is needed to avoid dispute as to whether the employer or the employee is the employer of an assistant or substitute. The knowledge requirement serves to protect the employer against tax liability in cases in which he is not even aware or able to be aware of the assistant or substitute arrangement since such a result would be unfair.

12. This paragraph establishes that remuneration for services rendered by a caretaker is wages and will be considered to have been equally received by a spouse or other members of the caretaker's household who also perform services unless a contract or other evidence establishes otherwise. This is necessary to clarify that benefit eligibility will extend to all members of the caretaker's household who perform services unless payment of remuneration has been specifically limited solely to an individual. The rule follows the general practice in the caretaker occupation and appropriately treats as employees all members of the caretaker household who perform services and allocates their wages accordingly. An employer may establish a different pattern, however, merely by specifying that only certain individuals are his employees and monitoring adequate records of this fact.

13. This paragraph specifies that remuneration for personal services rendered by a migrant family is wages. Amounts paid will be deemed to have been received equally by each worker in a household, despite the fact that the employer makes payment to only one member of the family, unless a contract or other evidence clearly establishes that other members of the family are not employees. This rule conforms to general industry practice and is necessary to ensure that benefit rights are available to all members of a migrant family who actually render services and to avoid unnecessary disputes over this fact.

14. This paragraph establishes that the cash value to an employee of the use of an employer's vehicle for personal purposes will be computed as wages within the meaning of Minn. Stat. § 268.04, subd. 25, if the vehicle is provided in lieu of wages as compensation for services rendered. The monetary value to the employee of the use of the vehicle is deemed in this part to be $200 per month, and if used less than a month, $7 per day. Clauses a and b of this section establish that amounts by which employee reimbursements fall short of these amounts (or of 20¢ per mile on a mileage basis) are also to be treated as wages. The provision of a vehicle which may be used in part for personal use is common in many occupations. Since the personal use of a vehicle clearly falls within "wages" as in-kind remuneration for services, a rule is necessary to establish a monetary value for this form of wages. This paragraph establishes amounts reflective of actual leasing, rental and mileage reimbursement schemes in order that the taxing of "wages" in the form of vehicle use may be administered effectively.

15. This paragraph establishes that monies deducted from an employee's earnings pursuant to a deferred compensation agreement are to be treated as wages for tax purposes in the year in which the employee would otherwise have received them. Although the employee does not actually receive the remuneration until a fixed time in the future, usually after retirement, the employer has disbursed them and the employee has rendered the services on which they are based. The rule thus provides that the sums paid into the program are merely deferments of previously earned wages and thus give rise to benefit eligibility and employer contributions in the year the sums are paid into the fund. These sums could not be taxed after retirement, since the employment relationship will have terminated. The rule is thus needed to avoid loss of contribution on deferred wages.

E. Tips and gratuities.

This part of the rule defines the terms necessary to implement Minn. Stat. § 268.04, subd. 25, which provides that "wages" include tips and gratuities paid to an employee by a customer of an employer and accounted for by the employee to the employer.

1. a-d. These sub-parts describe the several methods by which tips and gratuities may be "accounted for to the employer" and thus subjected to contribution.

2. a-c. These sub-parts itemize the various ways that tips and gratuities may be paid to an employee by a customer. These provisions are necessary to clarify the phrase "paid to an employee by a customer" in terms of the various arrangements in effect in different work settings.

F. Valuing non-cash remuneration.

1. Wages under Minn. Stat. § 268.04, subd. 25, include remuneration for services paid in a medium other than cash. This part of the rule sets forth the method by which non-cash remuneration for services is to be valued for tax purposes so that such valuations can be made in a timely and consistent manner.

a. This section establishes that the value of meals furnished without charge to an employee by an employer is to be treated as remuneration for services rendered. Fair market value or an agreed value is to be the measure of "wages" in such a case so long as the result is higher than the meal allowance provided pursuant to the state fair labor standards act.

b. This paragraph of the rule defines the rental value of lodging furnished without charge to an employee by an employer as remuneration for services rendered. The value of the lodging for employer tax purposes is measured by the rental value of equivalent accomodations as long as it is not less than the allowance provided pursuant to the state fair labor standards act.

c. This paragraph extends the reasoning of a and b to any other in-kind remuneration. Any compensation provided an employee by an employer in a medium other than cash is thus to be valued at its fair market value at the time of receipt unless a higher value is agreed upon between the employer and employee. This provides a general method for the valuation of unanticipated forms of in-kind remuneration.

2. This part of the rule is necessary in order to authorize the department to reevaluate the employer's estimate of the fair market value of remuneration for services furnished to the employee if the department reasonably believes that the employer's determination is incorrect. Though the parties are free to fix a higher value than fair market value on such remuneration, the department must have authorization to reevaluate unreasonably low valuations.

G. Employee equipment.

This rule sets forth a method for the treatment of mixed payments of remuneration for services and vehicular equipment rental. The basic principle is that the value of vehicular equipment furnished by the

employee in the interest of the employer's business is not wages for tax or benefit purposes since any payments made the employee for the use of the equipment do not represent remuneration for services.

1. This paragraph establishes the manner by which the value of the employee's equipment will be determined in order that the employee's taxable wages can be calculated.

    a. This part provides that the wages of the employee shall not be less than the prevailing rate of pay of other employees, not furnishing equipment, who do similar work, operating similar equipment, in the locality where the work is being conducted. This should provide the most accurate base value of the employee's services at the time and place they are rendered.

    b. This part establishes that if there is no local prevailing wage for the type of work being performed, 40 percent of the total pay shall be deemed to constitute remuneration for personal services. This rule is necessary to provide a method of allocation where no comparable wage measure is available and it does reflect the average breakdown of labor and equipment rental costs in the circumstances addressed by the rule.

2. This paragraph establishes that, contrary to the rule on vehicular equipment, payments to an employee which include reimbursements for use of a personal vehicle are to be treated as wages, unless such reimbursements are separately paid or accounted for and then only when the amounts are reasonable. This rule recognizes the common practice of hiring on a "must have car" basis, where no real equipment rental payment is contemplated by the parties and it is thus reasonable to treat the entire payment as wages. Genuine reimbursements, however, are to be treated as such and not as wages.

3. This paragraph is necessary to authorize the department to reevaluate the employer's wage determination if the department reasonably believes that the employer's determination is unreasonable or arbitrary in a particular case.

H. Exempt wages.

This rule provides a non-exclusive list of payments or benefits furnished by the employer to the employee which are not considered wages under any circumstances. This rule is designed to avoid disputes over payments and benefits which it is not reasonable to treat as remuneration for services.

1. Discounts on goods or services offered by employers to employees are not be be considered wages unless they are so routine and on such a scale as to constitute in-kind remuneration. Since such discounts are optional and may or may not be received by those doing the same work, it is appropriate to treat them as privileges rather than remuneration for services.

2. Fees paid to directors not otherwise employed by a corporation, if deemed customary and reasonable, are not included as wages. This paragraph recognizes that outside directors are properly treated as independent contractors or consultants, rather than employees, but provides an exception when fees are more than is usual for a non-employee director.

3. This part of the rule clarifies that money furnished by the employer to compensate an employee for meal expenses made necessary by overtime work are not wages, but reimbursements.

4. Minn. Stat. § 268.04, subd. 25 (2) expressly exempts employer payments on behalf of an employee for retirement or for accident or health insurance from wages. This section extends this exemption to employer payments for dental and legal service plans since these newer plans are in every respect analogous to health and accident insurance or retirement payments and should be treated in a consistent manner.

5. This paragraph establishes that long term payments made to employees to compensate for sickness or disability are not to be counted as wages for employment tax purposes if the employer does not maintain a plan pursuant to Minn. Stat. § 268.04, subd. 25. The rule assumes that after six months of payments it is appropriate to regard such payments as disability or income maintenance insurance type payments, rather than remuneration for services.

6. Fees in the form of cash or other medium paid by a court to an individual during jury duty are deemed not to be wages since these fees are in the nature of reimbursements of expenses and since the services performed by the individual were not the result of an employment relationship.

7. This paragraph excludes royalties and similar payments from wages since they are a form of income from property rather then remuneration for services.

8. This part of the rule establishes that reimbursements paid to an employee for traveling or for other expenses incurred while performing services for the employer are not wages if they are paid specifically for such expenses and are identified as such at the time of payment. This rule properly excludes reimbursements and advances for expenses from wages, but limits this exclusion to cases of clearly documented expense-related payments in order to avoid ambiguity.

9. This paragraph provides that residual payments for the use of broadcast or film properties are not wages since, like royalties, these payments are income from property, rather than remuneration for services.

10. Payments made to an employee pursuant to a general supplemental unemployment compensation benefit plan established by the employer are not wages. This paragraph recognizes that many employers provide supplements to statutory unemployment compensation benefits. It is arguable that such supplements are remuneration for past services. The rule,

however, excludes them from wages, consistent with the treatment of long-term sick pay, since no present services are being remunerated and in order to avoid penalizing employers who provide such supplements. The section stipulates general safeguards in order to assure that such plans are merely supplementary and do not function in such a way that unemployment compensation obligations are duplicated, evaded or modified and to limit the use of such funds to supplementary unemployment compensation payments.

8 MCAR § 4.3102 Employment.

A. Definitions.

This part of the rule provides definitions to supplement and clarify those provided in Minn. Stat. § 268.04.

1. This definition clarifies the term "control" since it is a significant factor in determining whether an employment relationship exists under these rules and in employment law generally.

2. The definition of "employing unit" incorporates the one provided in Minn. Stat. § 268.04, subd. 9 and includes any person or organization securing services in order to make clear that the tests for the existence of an employment relationship will be applied in any situation in which services are secured.

3. This definition of "employment" incorporates that in Minn. Stat. § 268.04, subd. 12 and states that employment is services performed under control as to method and result. This is the classic definition provided throughout employment law.

4. This definition clarifies the term "method" as it is used in this rule since control over the method of performing services, rather than merely the results, is a factor tending to establish the existence of an employment relationship, rather than that of independent contractors.

B. 1-6. Procedures for determining control.

This paragraph provides notice of the sources the department may examine to ascertain whether "control" in the employment sense is present in a specific situation. The section lists contracts, interviews, statements, statutes pertaining to the occupation or business, records and other appropriate means as sources for evidence as to the existence of the control factor. The specific items listed would normally be the major evidenciary indicia of the nature of the employment situation. The last item allows the department to examine other evidence as well when appropriate.

C. Evidence of control.

This part of the rule provides the criteria which will be used by the department in its determination of whether the element of control is present in order to determine whether an employment relationship exists.

Such criteria are needed in order that determinations may be made according to all the relevant facts and circumstances rather than the label that may be attached to the relationship by the parties. The criteria are also provided so that the parties may better understand their own relationship in terms of their rights and duties under the unemployment compensation statute. These criteria are not meant to be exhaustive but they do constitute the major factors which would reasonably be considered in any determination of the existence of an employment relationship. These criteria are traditional in determinations of employment status under common law and under several statutory schemes such as workers' compensation, labor relations, labor standards and the like.

1. The employing unit's authority over the individual's assistants suggests an employment relationship since the employing unit would not normally have such authority over an independent contractor's assistants.

2. Mandatory compliance with instructions by an individual concerning when, where and how he is to work generally indicates control since an independent contractor makes his own decisions concerning such matters.

3. Oral or written reports if submitted on a regular basis to the employing unit are reasonable indicia of control since independent contractors are not, as a rule, required to complete regular status reports.

4. The place where the work is accomplished is a significant factor in the determination of the existence of an employment relationship, since work on the employer's premises often indicates employment status and work elsewhere, independent status, though these presumptions may not always operate.

5. The requirement that the work be done personally by an individual may reasonably suggest the presence of an employment relationship. Conversely, if the employing unit is only due a specific result and not a particular method of execution, the likelihood that an independent contractors' relationship exists is greater.

6. The establishment of a work sequence or the retention of the right to establish a work sequence constitutes indicia of control since an independent contractor will normally establish his own sequence of work.

7. The right to discharge is typically indicative of an employment relationship since an independent contractor cannot be discharged until contract termination unless his end product does not meet contract specifications. The rule indicates limits to the application of this criterion where a labor agreement restricts discharge and where an independent contractor may be terminated, under the agreement, short of non-delivery of the final result.

8. Set hours of work generally suggest an employment relationship since an independent contractor usually establishes his own hours of work.

9. It is reasonable to consider the factor of training as an index of control since independent contractors are not normally provided training by those engaging their services.

10. The amount of time spent at work is a significant factor in the determination of an employment relationship. Full time work in a single activity strongly suggests that control is present.

11. The provision of tools and materials by the employing unit reasonably indicates the existence of an employment relationship, since contractors typically furnish their own equipment and materials.

12. Expense reimbursement typically suggests an employment relationship since an independent contractor will normally cover his own expenses from the total contract price.

D. Independent contractor or employee, factors to consider.

The focus of this section of the rule is on factors which suggest a nonemployment or independent contractor relationship. The independent contractor criteria provided in this part of the rule will be considered by the department in conjunction with employment criteria in its determination of whether an employment relationship exists. These negative factors are intended to assist the parties and the decision-maker in identifying the nature of the relationship especially in borderline situations in which many of the criteria for employment may also be present. The factors provided are similar to those traditionally used in the determination of independent contractor status under common law and statutes such as FUTA and FICA, except where there are clear reasons for deviation. These items are stated as factors for consideration since none is in itself conclusive. Employment on a commission basis may contravene 3 (profit or loss), for example, and skilled workers may furnish their own tools as employees, despite 5.

1. The fact that an individual routinely makes his services available to the general public reasonably suggests that his status is that of an independent contractor since this availability strongly implies that the individual is offering and supplying services to many individuals and entities rather than to a single employer.

2. Compensation on a job basis rather than by the hour, week or month, is indicative of an individual's independent status since this arrangement suggests that the individual is being compensated for delivering a result rather than for providing services under a traditional employment relationship.

3. The capacity to realize profit or loss as a result of his work suggests that an individual is an independent contractor since an individual in an employment relationship does not normally assume risks of loss and is not usually in a position to expect gain other than specified remuneration for services rendered.

4. The inability to sever an employment relationship at will is usually indicative of an individual's independent status since the independent contractor normally contracts to achieve a result based on the satisfactory completion of a specific job. While an employee generally need only supply reasonable notice of termination to his employer, severance before the job is finished would normally subject the independent contractor, on the other hand, to damages for breach of contract.

5. A substantial monetary investment by an individual in the facilities used by him in providing services for another would reasonably suggest an independent status, under most circumstances, since the employer generally provides the facilities necessary for his employees to render the services which are due.

6. An individual performing work under simultaneous contracts for more than one individual or entity will normally be treated as an independent contractor since an individual in an employment relationship usually performs services for a single individual or entity.

7. Whether an employing unit is held legally accountable for an individual's actions in the course of his work is a factor in determining his status as an employee or independent contractor. An employer would, for example, be held responsible for tortious acts committed by an employee during the course of his employment, but since an independent contractor is not considered an agent or representative of an employing unit, the employer would not be held responsible for such acts committed by the individual in performance of his contract, except in exceptional circumstances.

E. Services in the course of the employing unit's organization, trade or business.

This section introduces an additional factor which is to be considered by the department in its determination as to the existence of an employment relationship. It provides that, if services performed by an individual are in the course of the employing unit's business, the individual's relationship to the employing unit is likely to be treated as that of an employee. This additional criterion is provided in recognition of the fact that work performed in the course of the employer's business will normally be performed by employees, since that is the purpose of engaging employees, while work done outside the course of that business is likelier to be performed by an independent contractor. The paragraph defines "in the course of" and related terms and provides examples in order to assist in these determinations.

F. Independent status, determination.

This section of the rule is necessary to explain the general method by which the department intends to make determinations concerning the nature of work relationships. Part F indicates that the department will utilize the foregoing factors for determination of the existence of an employment relationship on a case-by-case basis, rather than through any mechanical or formulaic application of the factors. Since

industry and occupational customs and practices differ dramatically, the factors noted must be applied and weighted differently depending on the circumstances. This flexibility is needed in order to allow a reasoned determination of employment status based on the employment realities of individual industries, occupations and situations.

G. This paragraph applies Minn. Stat. § 268.04, subd. 12 (1) (b) under which certain specified agent-drivers, commission-drivers and salespersons, although classified as independent contractors under the common law, are considered employees if they perform services for remuneration for a principal employer under certain prescribed circumstances.

1. This section of the rule clarifies the meaning of the term "full-time" in its application to traveling or city salesman as it is used in Minn. Stat. § 268.04, subd. 12 (1) (b). It is necessary to establish that the traveling or city salesman is engaged upon a full time basis in the solicitation of orders for his principal since anything less may be indicative of an independent status.

2. Consistent with Minn. Stat. § 268.04, subd. 12 (1) (b), this part of the rule provides that, to qualify as employees, agent-drivers and salespersons cannot have a significant investment in their permanent work facilities. This section is necessary to further distinguish these employees from independent contractors who would normally have a substantial investment in their own work facilities.

a. This definition is necessary to clarify the term "facilities" as used in Minn. Stat. § 268.04, subd. 12 (1) (b) and this rule in order to make decisions about the presence or absence of substantial investment by agent-drivers or related personnel.

b. This definition is necessary to clarify the term "substantial investment" as used in Minn. Stat. § 268.04, subd. 12 (1) (b) and this rule in order to ascertain the employment status of agent-drivers and related personnel.

H. In employment by federal law.

This part of the rule indicates that a person will be considered an employee if his services subject an employer to the federal unemployment tax, or if his services are required to be defined as employment in the federal statute. The first part of this section recognizes that tax liability indicates that a considered judgment as to the existence of an employment relationship has been made for tax purposes which should reasonably be extended to other purposes under these rules. It also is designed to achieve uniformity in the state-federal systems. The second part of this section is derived from Minn. Stat. § 268.04, subd. 12 (c).

I. In employment, general inclusions.

This paragraph of the rule specifically includes certain services within the meaning of the term employment.

1. This part indicates that persons who perform services and receive remuneration in part in the form of commission

allowances as a direct result of a sale are in an employment relationship. This section of the rule is necessary since in certain instances elements of both an employment and a nonemployment relationship might be present. The rule reasonably resolves this ambiguity by providing that the employment aspect will dominate. All remuneration in such cases, including commissions, will thus be treated as wages in the determination of employer tax liability and benefit eligibility. This is a reasonable provision since it is logically inconsistent for a person to be both an employee and a nonemployee with respect to the same relationship. Licensed insurance and real estate persons, all of whose income is in commissions would not be treated as employees under this rule.

2. This section establishes that services performed by election judges are employment services. That election judges' services fall within the meaning of employment is consistent with the general rule since they provide services for remuneration. In the absence of an express inclusion, it might be claimed such services were casual or merely civic duties.

3. This section of the rule clarifies that factory demonstrators, whether employed by the manufacturer, distributor or retailer, are performing services arising out of an employment relationship since it would be inappropriate to treat such an individual as an independent contractor. This part of the rule further states that if the employee is paid partly by the manufacturer or distributor and partly by the retailer, he is providing service to both and both are subject to contribution in proportion to the remuneration paid by each. Proportional contribution is the fairest means to allocate liability in cases in which a demonstrator works, in part, for several employers. This is consistent with the treatment of other multiple employer situations and avoids a possible anomalous result: that the demonstrator is an employee of, for example, the manufacturer, but an independent contractor with respect to the retailer.

J. Casual Labor.

1. This section specifies that "casual labor", not in the course of the employer's business, is employment for the purposes of this rule, unless the labor in question meets the exclusionary provisions in paragraph 2. "Casual labor" is generally excluded from the term employment by Minn. Stat. § 268.04, subd. 12 (15) (b). Federal law, however, includes most casual labor within employment. Another provision in state law provides a means to reconcile these two provisions. Minn. Stat. § 268.04, subd. 12 (6) states that employment shall include that which is deemed employment under the Federal Unemployment Tax Act. Thus, casual labor, to the degree it is covered in the federal act, is employment for the purpose of this rule, while it is excluded from employment to the degree it does not meet the federal definition, pursuant to Minn. Stat. 268.04, subd. 12 (15) (b). Since casual labor is treated in a different way than "in the course of" labor in much employment law this rule is necessary to clarify that,

while certain casual labor is excluded from coverage under these rules, much casual labor will give rise to tax liability and benefit eligibility. The federal act is thus treated as defining casual labor for the purposes of the state law's exclusionary provision, implemented by this paragraph of the rule.

2. This paragraph defines casual labor excluded from the term employment as labor, for which less than $50 cash remuneration is received, performed by an employee not regularly employed by the employer and which does not advance or promote the trade or business of the employing unit. Corporate employees are always to be treated as regular employees. This rule is necessary to define and limit excludable casual labor. Casual labor traditionally occurs in small employer situations in which business and non-business employment may not be clearly segregable. It is therefore reasonable to limit excludable casual labor to non-regular employees, earning small amounts, doing clearly non-business work in non-corporate settings.

K. Localized employment.

1. This part of the rule identifies the criteria the department uses to determine whether an employee who works in more than one state performs sufficient services in Minnesota to constitute localized and thus reportable employment. This rule reasonably limits Minnesota employers' tax liability to employees who perform 80 percent of their regular services in Minnesota. This is sufficient contact to make the employee a Minnesota employee for the purposes of these rules. To require 100 percent localized employment would invite abuses and leave large amounts of wages untaxed in any state.

2. a-c. This section provides that regular services may be performed in an office located in the home of the employee only if the home office is the only office used by the employee, federal tax deductibility is established and the office and the duties performed there are regular duties. The limitations are needed in order to assure that decisions about the localization of employment are not distorted by consideration of non-regular duty work performed in an ancillary office. The main work location or locations of the employee should be the determinant of the locality of employment.

3. a-b. This part of the rule defines incidental, temporary, transitory and isolated services in order to distinguish them from regular services. These services, in contrast to regular services, would not affect the 80 percent requirement of localized employment, since the locality of employment should reasonably be established only by reference to regular services.

L. Multi-state employment.

This part of the rule sets forth the tests the department will utilize in determining whether the services of an employee whose employment is not localized to Minnesota are nonetheless reportable to Minnesota.

These tests establish reasonable bases for identifying an employment relationship to Minnesota and are necessary to avoid gaps in benefit eligibility and tax liability in the national unemployment compensation system.

1. The base of operations test provides that if an employee performs part of his regular services in Minnesota and the "base of operations" is in Minnesota, the employee's entire services are reportable to Minnesota. This test is a reasonable one since an employment relationship meeting the test would exhibit more extensive employment contacts with Minnesota than with any other state.

2. The direction and control test provides that if an employee performs part of his regular services in Minnesota and if Minnesota is the state from which the employer exercises "direction and control", the employee's entire services are reportable to Minnesota. As with the first test, the direction and control test establishes a Minnesota locality for an employment relationship when the relationship is more identified to Minnesota than to any other state. Some reporting location is necessary and it is reasonable to make it Minnesota if this test is applicable.

3. The residence test reasonably provides that if an employee performs part of his regular services in Minnesota and his residence is located in Minnesota, the employee's entire services are reportable to Minnesota. Reporting to Minnesota is reasonable in such a case since no greater contacts exist with another state. Residence establishes jurisdiction in many other contexts and is adequate to require reporting to Minnesota here.

4. The "no other coverage" test provides that if an employee's services are not covered in any other jurisdiction and if his services are directed and controlled from Minnesota, the employee's entire services are reportable to Minnesota. This is in effect, a "minimum contacts" test, but where no other coverage is appropriate and direction and control from Minnesota are present, reporting to Minnesota is a reasonable requirement.

M. Employment partially exempt within a pay period; 50 percent rule.

1. This part of the rule clarifies the application of the 50 percent rule as provided in Minn. Stat. § 268.04, subd. 12 (15) (p). The statute creates the presumption that if one-half of an individual's work constitutes employment, all of his services will be considered employment. The rule indicates that work which is specifically excluded by statute from the definition of employment, such as services performed by an independent contractor or services performed for a religious organization, cannot become employment by application of the 50 percent rule since it is not appropriate in such a case to "presume" that those services are employment. This rule reasonably limits the application of the statutory presumption to cases where services have not been specifically excluded from employment in a separate provision.

2. This part of the rule clarifies application of Minn. Stat. § 268.04, subd. 12 (15) (p) by providing a reverse 50 percent rule: if 50 percent or more of an individual's services are excluded employment, none of the individual's services are employment during that pay period. This provision is a reasonable one since it supplies a presumption logically consistent with the employment presumption and equally helpful in administration of the statute and rules.

3. This part of the rule makes clear that although services performed for a religious organization are exempt from Chapter 268 (under the 50 percent rule or otherwise), other employment services performed by the same individual are subject to the provisions of the Chapter. This establishes that although an individual's work may consist in part of excluded employment, services performed by the individual in an employment relationship are severable and will be taken into account in benefit determinations and in tax contribution decisions.

N. Previously excluded employment.

This section of the rule makes clear that if an individual's status under Minn. Stat. §§ 268.03 - 268.24 changes within a calendar year because his employing unit's status changes, his previously excluded remuneration is retroactively reportable. This part of the rule is necessary because liability is determined on an annual basis. No change in status can be administered other than on an annual basis without disparities resulting between benefits to be paid and taxes due.

O. Employment, general exclusions.

This provision clarifies the application of Minn. Stat. § 268.04, subd. 12 (10) (d), which excludes from employment services performed for an unemployment work relief or training program assisted or financed by a governmental authority, except for certain CETA participants. The paragraph establishes that the assistance or financial aid in question need only be supervision or advice, but must be substantial and continuing in nature, that the provision of non-incidental facilities or material is always "assistance" and that the financing or assistance must be provided directly to the program, rather than indirectly as assistance to the agency operating the program. This part of the rule is necessary to establish the level and kind of assistance which would serve to exclude employment under Minn. Stat. § 268.04, subd. 12 (10) (d) and to make clear that only direct assistance and funding, rather than revenue sharing funds, tax credits and the like provided generally to the agency operating the program, are assistance or financing under the statute.

8 MCAR § 4.3103 Agricultural Labor.

A. Purpose.

This rule provides definitions to supplement and clarify terms used in Minn. Stat. § 268.04, subd. 12 (15) (a) and in this rule.

B. 1-13. Definitions.

The terms in this section are for the most part defined for identification purposes consistent with their usual dictionary meaning and with trade practices. Thus poultry is defined as "...domestic fowl raised for meat or eggs and includes chickens, turkeys, ducks and geese." Since agricultural employment is treated, in some respects, differently than other types of employment, these terms are necessary in order to provide a means to distinguish agricultural from other employment. The definitions are reasonable since they correspond to the everyday meanings of these terms and the trade practices associated with them. The following definitions are discussed individually since they limit or replace the everyday meanings of the terms used.

5. "Farm" is generally defined in the rule as land and buildings primarily used for raising crops, livestock or poultry. No certain size is required, nor is contiguousness of plots, but agricultural services alone will not suffice to make land a farm. This definition is necessary in order to establish a clear rule which will permit the department to routinely make the determinations required under the statute and rules. It is a reasonable definition since it will include all working farms regardless of size or shape, even if some non-agricultural labor is performed on them, so long as the primary occupation on the farm is agricultural work, but excludes hobby farms, manufacturing plants operated in farm buildings and the like.

10. "Primary", for the purpose of applying the "farm" definition, is identified as 70 percent or more. It is necessary that this term be precisely defined for ease of application and 70 percent is a standard requiring predominantly agricultural activities, but permitting substantial non-agricultural work in recognition of the sometimes extensive non-farm labor performed on a modern farm as a supplement to agriculture.

C. Farms, exclusions.

This part of the rule is necessary to establish that certain operations on land are not in themselves "farms" since they might otherwise be thought to meet the general definition in B. These exclusions are consistent with the general definition and make for ease of application.

1. Feedlots, hatcheries and horsebreeding and training are explicitly excluded from the term farm despite the fact that some of the services associated with such operations might be considered agricultural labor. This paragraph is a necessary and reasonable one because it recognizes that feedlots and hatcheries are in the nature of processing operations for "semi-finished" agricultural products, while horsebreeding and training is a "commercial" rather than an agricultural operation. This section would not exclude a farm which included a feedlot or a horsebreeding and training component, but such activities alone, since not necessarily agricultural, would not suffice for a farm.

2. Land upon which no effort has been made to conduct any farming operations is excluded from the term farm consistent with the definition in B (5), since it is evident in such a case that

no agricultural or horticultural products are being produced, even if hunting and gathering is done.

D. 1-5. Farms, inclusions.

This part of the rule is necessary in order to fix the nature of specific arrangements which contain ambiguous elements, but which are most properly treated as farms under Chapter 268. These situations involve crops (or wildlife) which can be gathered wild, or in the case of ranges, land which is left in more or less its natural state. But in these cases the crops and wildlife are actually being raised and the land used as part of a livestock operation, so treatment as a farm is reasonable.

E. Crop purchase agreements, farms, agricultural labor.

1. This part of the rule clarifies that an individual who purchases a commodity under a crop purchase agreement is not a farm operator even if he is involved in the production and harvesting of the corp. This section draws this distinction to avoid confusion as to the status of the buyer when a farm's crops are subject to a crop purchase agreement. Since a crop purchase agreement is a commercial transaction it is inappropriate for the buyer to be treated as a farmer even if he severs the crop from the land.

2. This part clarifies that services performed for either party to a crop purchase agreement are agricultural labor. Though the crop purchaser is not a farm operator, this should not imply that labor hired by the buyer to, for example, harvest the crop, is not agricultural labor. This section thus defines such labor as agricultural to avoid this inappropriate inference.

F. 1-5. Agricultural labor on farms.

This part of the rule establishes that horse breeding and training, poultry hatching, aerial seeding and the like, office work directly related to raising and harvesting and feedlot operation will be treated as agricultural labor only if they are conducted on a farm. This section is necessary since the listed activities are merely ancillary to agriculture proper and may be conducted in non-agricultural settings. It is thus reasonable to define such activities as agricultural labor only when performed on a farm.

G. Agricultural labor, specific cases.

1. This paragraph provides examples of work which are ancillary to agricultural work but when performed in the context indicated are deemed agricultural work. This section is needed to delineate the conditions under which the specified ancillary activities will be treated as agricultural. Since these activities are less directly related to primary agricultural operations than those in F, it is reasonable to specify additional conditions on their treatment as agricultural labor.

2. a-c. This paragraph indicates that clerical work not directly related to raising and harvesting, but related to farm operation and management or the preparation and delivery of agricultural products, is agricultural labor if it is performed on the farm, in the employ of the operator and incidentally to agricultural operations. Since the types of clerical work cited can also be performed in a non-agricultural setting, the section specifies reasonable conditions to assure that such work is only treated as agricultural when genuinely ancillary to farm operations.

3. a-b. This part of the rule makes clear that commodity retailing is agricultural labor only if it is performed by an employee of the farm operator utilizing less than half his time for retailing and only when the operator's own products are being sold. This section is necessary to segregate ancillary "roadside" retailing by farm operators, which is properly treated as agricultural labor, from substantial retail operations conducted on a farm, which is not appropriately defined as agricultural labor.

4. This part of the rule clarifies that waterways work conducted in the employ of the operator of a farm is agricultural labor. This is reasonable since a farm operator is unlikely to engage in work on waterways except as an adjunct to farm operations. Thus no further conditions are necessary to assure that such labor is ancillary to farming. Those employed by others to do such work, on the other hand, are more properly treated as employed in construction work.

5. This section of the rule establishes that land clearance performed in the employ of the operator of the farm is agricultural labor. The same reasoning applies as in 4 above.

H. Agricultural labor exclusions.

1. a-h. This paragraph provides examples of kinds of work which appear to have some of the characteristics of agricultural labor but which are specifically excluded. Activities associated with pets, experimental animals or non-draft horses might be viewed as "livestock" related, but it is more appropriate to treat these activities as non-agricultural since they do not result in either food or fiber products. Activities associated with trapping, maple syrup processing and wild rice harvesting result in food or fiber, but they involve gathering wild products rather than husbandry. Lumbering is a separate commercial activity from farming and landscaping is the commercial retailing of one type of product of the soil.

2. This part of the rule clarifies that services performed in connection with hauling crops to a packing plant and services within the plant for an individual other than the operator of the farm are excluded from the term agricultural labor, since such activities are more properly treated as part of the processing, meat packing and canning industries.

I. Agricultural labor, separate commodities.

This paragraph requires that determinations of whether services are agricultural labor are to be made on a commodity-by-commodity basis. This rule is necessary to prevent the unintended exemption from these rules of farmers who combine their produce with the different commodities of others for delivery.

8 MCAR § 4.3104 Domestic Service.

A. Purpose.

The purpose of this part of the rule is to provide definitions to clarify terms related to domestic service in the statute and rules.

B. Definitions.

1. This definition of "domestic service" is necessary to clarify the nature of the work contemplated by the term and to delineate some of the categories of workers who are encompassed by this employment term. It is necessary to distinguish domestic service since, the statute mandates a different threshold wage level for domestic service than for other types of service before the provisions of the statute apply. The definition is a reasonable one since it includes all of the services traditionally considered domestic services when performed in a private home or college club.

2. This part provides a definition of "local college club" since such clubs are sites where domestic services may be performed. The definition clarifies that a local college club must be a non-profit organization in order to distinguish profit-making businesses which may be called college or student clubs, but which are not properly treated as locations where domestic service is performed.

3. This definition is necessary to clarify with specificity the meaning of "private home" since it is the primary location where domestic services are performed. The definition establishes that a "private home" is any place of abode and clarifies how the department treats facilities that have mixed uses. This definition is reasonable since it includes all possible forms of private homes while separating portions of the same facility which may be used for business purposes or as the residence of others.

C. Domestic service, general.

1. This paragraph establishes that services for remuneration performed at the private home of the employing unit, if non-domestic in nature, will be subject to the other provisions of Chapter 268. This section clarifies that the exemption of domestic service from employment does not extend to other services performed by an employee in a private home. This is consistent with the statute and is necessary to avoid disputes over non-exempt services performed in an otherwise domestic setting.

2. This paragraph is designed to distinguish housekeeping and normal maintenance, which are exempt as domestic service, from related non-exempt services such as major repair and construction labor or other skilled work performed by contract in the home. This distinction follows traditional employment law and is designed to avoid claims of exemption for employment services simply because they are performed in a dwelling.

3. This section of the rule is intended to distinguish personal care domestic service from related types of service which are non-domestic. This paragraph is also intended to provide for the non-exemption of certain employment services performed in the home. Nurses and secretaries, for example, even though employed in a domestic setting, do not perform services traditionally understood as domestic service. The reason for this provision, as with 2, is to clarify the employment status of non-domestic services even when performed in a home. The nature of the services, rather than the setting alone, is the determining factor.

4. This part of the rule makes clear that relatives may perform domestic services if the employment relationship is evidenced by a contractual agreement, so long as the services are not performed by the employer's minor child or by a parent or spouse, since these services are excluded from employment in the statute. This rule recognizes that where a genuine employment relationship exists, employment is present whether the parties are related or not, subject to express exemptions.

5. This part of the rule is designed to clarify that housekeeping services performed with respect to rental units by employees of a landlord or rental agency do not qualify as domestic service since such labor is clearly employment in the course of a rental business. This paragraph is consistent with the two part approach to domestic services set forth in these rules: they must be both housekeeping services and they must be performed in the residence of the employer.

6. This section clarifies that employment qualifies as domestic service only if the employee is paid directly by the recipient of the services. This rule is necessary to distinguish a domestic employed through a referral, who is properly treated as providing domestic service, from an employee of a housekeeping service which contracts with an individual to provide services. The latter employee ought not to be exempt since he provides services in the course of the business of his employer.

7. This part of the rule is designed to distinguish service performed in the private home of a minister, priest, rabbi or other member of a religious order where the worker is paid by the recipient of the services from a situation where the worker is paid directly by the religious organization. The former comes within the meaning of domestic service while the latter is entirely excluded from employment since the services are performed for a religious organization. Since services performed for a religious organization are exempt,

this section is necessary to clarify that this exemption extends to services which would otherwise be domestic services under the rules. The treatment of services paid for directly by the recipient as domestic services is reasonable since only services for a religious organization are entirely exempt.

8. This part of the rule is necessary to clarify the status of registered and licensed practical nurses with respect to one another and to domestic services. The rule provides a presumption that registered nurses providing services privately in a home are independent contractors, if they are not subject to direction and control, but that registered nurses and licensed practical nurses engaged by other entities to provide such services are not independent contractors and are not providing domestic services. Since nursing services in the home are common, this rule is necessary to provide a routine manner of treating them under the rules. These presumptions are consistent with the general rules on independent contractors and with 3 above and can be rebutted when the parties intend a different relationship.

9. This paragraph is necessary to clarify the status of nurses aids and patient helpers with respect to domestic service. Since such personnel normally are engaged in providing domestic services, the rule presumes this is their status, though rebuttal is possible. If the patient selects the person who provides patient-helper services, he will be presumed to be the employer, with rebuttal again possible. These presumptions are consistent with the general rules on domestic service and the employment relationship and permit such situations to be treated in a uniform and routine manner under the rules.

10. This section establishes that services provided in the private home of an individual by homeworkers who are funded by governmental agencies are not considered to be domestic services. Since such personnel are in the employ of the governmental unit engaged in providing this service they are clearly in the course of the agency's "business" and not employed by the individual, even if the individual is the conduit for the employee's wages.

D. Location of domestic service.

1. This part establishes that service which is classified as domestic service must be performed solely in a private home, a college club or fraternal organization, consistent with the definition in B (1).

2. This section expressly excludes alumni and faculty clubs from the definition of college club or fraternal organization consistent with the definition in B (2).

8 MCAR § 4.3105 Employer records, reports and payments.

A. Scope.

This rule is necessary to clarify employer responsibilities pursuant to Minn. Stat. §§ 268.06, subd. 1; 268.11, subds. 2 and 3; and 268.12, subd. 8.

B. Notification.

1. This paragraph imposes reporting duties on the employer when the business is transferred in order to assure that employer taxes will be assessed and collected in an effective and timely manner and to make the successor aware of tax liability and benefit determinations which would affect him. These are reasonable requirements since the employer, and not the department, is in a position to know of such events.

2. This paragraph requires that the executor or similar representative notify the department of the employer's death so that the department can be prepared to take the necessary steps to assure that contributions and experience are assessed to the appropriate account.

3. This paragraph is designed to assure that the department is given adequate notice of an employer's bankruptcy in order that the employer's tax liability can be appropriately provided for in the proceedings.

C. 1-10. Records.

This part of the rule specifies that records be kept by the employer for the purpose of establishing, among other things, the employee's identity, the periods of employment, the location of the employment, the wages paid, the rate of pay, reimbursement of expenses and the date and reason for termination. The paragraph reasonably requires that these records be preserved for a minimum of five years after the wages have been actually or constructively paid in order that the department have the opportunity to ascertain the employer's experience rating, determine the extent of any overdue taxes and resolve any litigated issues. The records required by this provision are necessary to enable the department to make reasonable and informed decisions regarding tax liability and benefit eligibility. These are reasonable requirements since such records are normally retained for federal tax purposes for even longer periods of time.

D. 1-3. Records, instate and outstate.

This paragraph specifies additional records that need be kept if the employee works both within Minnesota and outside of the state. The records required are necessarily more extensive than in C so that the department will be able to make the more complicated determinations required in ascertaining to what extent the employment was localized in Minnesota.

E. Records, covered and uncovered employment.

This section is designed to assure that employer records adequately distinguish between included and excluded employment so that tax liability and benefit eligibility can be more readily ascertained. Segregating included hours of work and excluded time is unavoidable if these determinations are to be made.

F. Filing reports.

This paragraph specifies that the employer's tax report must be filed in a timely fashion on forms and in the manner prescribed by the department. Consolidated reports are authorized only to the extent

specified in the rules and corrections of erroneous reports are required. This section is necessary to assure that tax assessments and benefit determinations can be administered in an efficient and effective manner. The assignment of the basic reporting responsibility to the employer is reasonable since he is the one who knows the information necessary to establish liability and is consistent with similar duties under other tax statutes.

8 MCAR § 4.3106 Consolidated reports.

A. 1-2. When permitted.

This rule authorizes, pursuant to Minn. Stat. § 268.06, subd. 21, the submission of consolidated tax reports by corporations having common ownership under specified circumstances. The rule stipulates that consolidated reports will be acceptable only if 1) the related corporations employ the same individuals, 2) they provide compensation through a common paymaster which is one of the corporations and 3) the arrangement has been previously approved by the commissioner. These requirements are designed to ensure that tax liability can be properly ascertained and are made necessary by the increasing use of consolidated payroll and accounting systems by related corporations. The provisions of this rule parallel the treatment accorded consolidated tax reports by the Internal Revenue Service. See, e.g. I.R.C. § 1563.

B. Related corporations tests.

This section provides tests which will be used by the department to ascertain the relatedness of two or more corporations. The applicability of any one of the tests is sufficient for treatment as related corporations. Four separate tests are necessary since relatedness can occur in each of four major ways.

1. a-d. This test focuses on the relatedness of two or more corporations as a result of common stock ownership. This test would treat corporations as related if the parent corporation owned more than 50 percent of the stock or voting power of any one of the related corporations and the others owned more than 50 percent in one another, or if five or fewer individuals or entities own these percentages in each of the related corporations, and in cases of combinations of these two situations and specifically authorized linkages of life insurance companies. Control through ownership is one effective means of relatedness of corporations and the rule reasonably presumes that ownership of more than 50 percent of the stock or voting power of a corporation is actual control.

2. This test focuses on the relatedness of two or more non-stock issuing corporations as a result of a common directorship. Relatedness would be established by 50 percent or greater common directors or power to elect 50 percent or more or the directors on the part of the same persons. This is a reasonable test for relatedness since the directors' majority is the sole source of control in a non-stock issuing corporation.

3. This test focuses on the relatedness of two or more corporations as a result of common officers. Fifty percent or greater common officers could establish relatedness. Since the day-to-day affairs of the corporation are in the hands of its officers, this test is also a reasonable index of relatedness.

4. This test focuses on the relatedness of two or more corporations as a result of common employees. Relatedness would be established in cases in which 30 percent or more of a corporation's employees were also employees of the related corporation. Control may be absent in such a case, but the actual relatedness of the firms for purposes of employment taxes is clearly established.

C-E. Stock defined; Excluded stock, parent-subsidiary; Excluded stock, brother-sister group.

These paragraphs define "stock" and related terms in order that test 1 in part B can be effectively implemented. Non-voting preferred stock and treasury stock are not "stock" under these rules since they cannot be voted and hence are not a measure of control. "Excluded stock", as defined in the rules, includes stock owned by parent corporation shareholders, employees, employer trusts and non-profit organizations, under certain circumstances. These exclusions are appropriate because it is not reasonable to count the votes of such stock as potentially opposed to that of the control group. That is, if 41 percent of the total stock of corporation A is owned by corporation B, but 20 percent of the stock is owned by a major stockholder in B, B should be considered as controlling A since B's shareholder is unlikely to be opposed to B's control.

F. Limits on groups.

This paragraph makes clear that a corporation is authorized to make consolidated reports with only one group of corporations. This rule is based on the premise that control or majority ownership of a corporation can only logically be held by one entity.

G. Concurrent employment.

This paragraph is necessary as it defines the term "concurrent employment" as used in Minn. Stat. § 268.06, subd. 21, and in test 4 in part B of this rule. The section clarifies that an individual must be party to an employment relationship on a continuous basis with two or more corporations during a pay period for the employment to qualify as concurrent. Substantial services in return for wages are required for employment to exist, as in other contexts, but leave or inactivity at any given time does not vitiate concurrent employment, so long as some services are performed during a quarter. This section is necessary to delineate the circumstances under which an employee is concurrently employed by two or more corporations and the limits on that concurrency. The rule is reasonable since it requires actual employment services for both corporations but allows short periods of exclusive service for one or the other.

H. Cash payments only.

This paragraph establishes that consolidated wage reports are acceptable only for cash wages, except with respect to the paymaster corporation itself. The value of non-cash remuneration provided by a related corporation is explicitly excluded. Consolidated wage reporting is a privilege accorded under the rules to accomodate automated common payroll systems. The rule reasonably limits this privilege to cash payments of related corporations in order to avoid an undue administrative burden. In-kind wages are to be included in the consolidated report, if they are earned in the employ of, as well as paid by the paymaster corporation itself. In-kind wages attributable to a related corporation even if paid by the common paymaster, are to be reported by the related corporation only.

I. 1-3. Common paymaster.

This paragraph defines "common paymaster" to assist in the application of the consolidated reporting provisions. The common paymaster can be any one of the related corporations which disburses wages on behalf of the group to at least some of the employees of the group. There can be more than one common paymaster with respect to different classes of employees. Wages of employees not paid through one of the common paymasters cannot be included in consolidated reports. This rule provides a necessary definition of common paymaster, allows maximum flexibility with respect to the paymaster corporation(s) and authorizes partial as well as total consolidated reporting so long as only one system or paymaster applies to any one class of employees.

J. Joint Account.

This section of the rule is necessary to provide notice of how joint accounts of related corporations filing consolidated reports should be applied for and maintained. This provision is necessary to implement the consolidated reporting rules.

K. Joint and several liability.

This part makes clear that all related corporations party to a consolidated reporting system will be jointly and severally liable for any unpaid contribution, penalties and/or interest due on wages. This provision is reasonable because the corporations in a consolidated reporting system are jointly controlled or intimately related. This section is necessary in order to provide against the insolvency of the paymaster corporation, with unpaid taxes, while the related corporations escape contribution.

L. Common paymaster responsibilities.

This paragraph establishes that the common paymaster has administrative responsibility with respect to tax and benefit issues pertaining to all of the related corporations. This rule is designed to assure that there is a single focus of responsibility for unemployment compensation matters when related corporations file jointly.

M. Reports.

This section makes clear that the individual corporations are responsible for all tax and benefit matters when the group fails to meet relatedness requirements with respect to some or all employees. This rule is necessary to fix responsibility for contributions and information when consolidated reports are not authorized.

N. Work other than for common paymaster.

This paragraph establishes that wages earned in the employ of a related corporation during a period when consolidated reporting is not authorized cannot be combined with wages earned while consolidated reports are authorized. This rule is designed to prevent the evasion of the consolidated reporting requirements and the loss of contribution which would ensue from the consolidation of wages, for purposes of determining the maximum taxable wage, when such consolidation is inappropriate.

O. Non-related or noncurrent.

This part of the rule make clear, consistent with other provisions of this rule, that if the relatedness or concurrent employment conditions are not met, each corporation is responsible individually for its own employees. This rule is necessary to fix liability with the individual employer when consolidated reporting is not permissible.

P. Wages, wage credits and experience rate factors of a joint account.

This part of the rule makes clear that a joint account of related corporations filing consolidated reports is a single account for contribution, benefit and experience rating purposes. This is consistent with the purpose of this rule to treat related corporations as a single entity under the statute when required conditions are met.

Q. Relation cessation.

This paragraph creates a duty in the common paymaster to inform the department whenever a related corporation ceases to have that status. This rule reasonably allocates this duty to the entity which has both reason to know of the change of circumstances and a financial interest in relaying it to the department. The thirty days provided is ample time for the report to be made.

R. Termination of agreement.

This paragraph authorizes the commissioner to terminate agreements which do not comply with the requirements set forth in this rule as well as those which have been abused in order to obtain more favorable experience rating. This rule is necessary in order to avoid abuses in the consolidated reporting system and to prevent the commissioner's being contractually bound by an agreement in violation of these rules.

S. Written protest.

This provision establishes that a denial of permission for consolidated reporting or a termination of such permission is final unless written protest is filed. The rule is designed to promote finality and is consistent with due process requirements.

8 MCAR § 4.3107 Payments of interest.

A. Scope.

This rule provides conditions which if met would reasonably warrant the waiver of interest due on contributions pursuant to Minn. Stat. § 268.16, subd. 1. This rule is needed to implement the statutory waiver provision in circumstances in which the employer is not at fault.

B. 1-2. Waiver.

This part of the rule reasonably provides that interest will be waived if the delay was clearly not attributable to the employer, either because the department itself or another caused the late payment. This rule is a reasonable one since the interest payment is designed as a penalty for failure to pay. Such a penalty is inappropriate where the employer was not able to make a timely payment through no fault of his own.

C. Application.

This section establishes the method by which the employer may secure waiver of interest. As is reasonable, the employer himself must generally seek the waiver, since he is the one who is likely to know of the circumstances for the late payment. The commissioner, however, is authorized to waive interest on his own motion, when the states' interest is served.

8 MCAR § 4.3108 Contribution rates.

A. Notice of rate.

This part establishes how and when an employer will receive notice of his contribution rate. The section specifies that an employer determined to be liable by the department prior to the first of the year shall be notified of his contribution rate by March 15 of the year in which the rate is effective. This paragraph provides for notice to the employer in time for orderly submission of taxes due without hardship.

B. Time limit on voluntary contributions.

This section makes clear that voluntary contributions made pursuant to the statute in order to avoid the inclusion of the benefits involved in experience rating will not have that effect unless paid before 120 days of the new tax period have elapsed. This requirement is designed to encourage an employer to make such contributions in a timely fashion to allow the department to close its books on the previous tax year. Minn. Stat. § 268.06, subd. 24 was intended to allow employers to avoid adverse experience rating but this privilege was not intended to continue indefinitely after the close of the tax year. One hundred and twenty days is ample time in which to make such contributions if desired.