STATE OF MINNESOTA

DEPARTMENT OF JOBS AND TRAINING

In the Matter of Proposed Rules Relating to Unemployment Compensation Employer Taxes, Minnesota Rules, Parts 3315.0100 to 3315.3220

Statement of Need and Reasonableness

INTRODUCTION

These proposed rules are presented by the Department of Jobs and Training in accordance with Minnesota Statues, sections 14.22 to 14.28 of the Administrative Procedures Act. These rules interpret those parts of Minnesota Statutes, sections 268.03 to 268.24, which impose taxes on employers for purposes of the unemployment compensation program. These rules have been developed as authorized by Minnesota Statues, section 268.021, which permits the Commissioner to adopt rules governing programs the Commissioner administers under Minnesota Statutes, Chapter 268.

The proposed rules would amend the existing rules in Minnesota Rules, parts 3315.0100 to 3315.6200. While most portions of the present rules have been incorporated into the proposed rules, many parts have been changed and others added. The proposed rules make four general changes to the existing rules. First, all references to the Internal Revenue Code are now to the 1986 version. Second, inclusive gender pronouns have been added where appropriate throughout the proposed rules. Third, the numbering of parts and subparts has been substantially changed throughout the proposed rules. Fourth, the headnote of parts and subparts have been re-named to reflect new content.

These proposed rules represent both the codification of existing departmental policy and practice and of departmental adjudication and appellate case law. The major portions of these rules deal with employer liability, covered employment and exclusions from employment, contribution rates, and employer payment of tax, reimbursement, penalties and interest. In some areas, the department has drawn on the national experience in administering the joint state-federal unemployment compensation system, and where applicable, the rules are consistent with the interrelated portions of the Federal Unemployment Tax Act (FUTA), the Federal Insurance Contributions Act (FICA), and the Internal Revenue Code

of 1986.

Cross references to the official Revisor's Copy of the rules have been added where applicable.

DISCUSSION

3315.0100 DEFINITIONS

Subpart 2. Tax. This proposed subpart is new material. The definition of "tax" is necessary and reasonable to differentiate that term from the broader term "contributions" as defined in Minnesota Statutes, section 268.04, subdivision 6. The term contribution is a misnomer. Payments, other than interest and penalties, which are required from taxpaying employers (as distinguished from reimbursing employers) are actually a tax. (Revisor's Copy, page 1, line 12)

Subpart 3. Tax report. This proposed subpart is new material. This proposed subpart is necessary and reasonable to reflect 1982 statutory changes. The legislature added Minnesota Statutes, section 268.121, which required employers beginning in 1984 to file a wage detail report in combination with the existing contribution report. An inclusive term "tax report" was needed to describe this combined reporting instrument. (Revisor's Copy, page 1, line 18)

WAGES

3315.0200 PURPOSE

This proposed subpart is now located in existing part 3315.0200, subpart 1. No new material has been added except technical corrections to internal references. The headnote was changed to more accurately reflect the content of the part.

3315.0201 DEFINITIONS

Subpart 1. Scope. This proposed subpart is new material. This subpart is necessary and reasonable because it introduces the subject matter of this part.

Subpart 2. Remuneration paid. This definition was located in repealed part 3315.0200, subpart 3. This proposed subpart is necessary in order to distinguish the definition from "remuneration payable" in subpart 3 below. The definition of

"remuneration paid" is reasonable because it represents longstanding department practice as reflected in the repealed part 3315.0200, subpart 3. (Revisor's Copy, page 1, line 33)

Subpart 3. Remuneration payable. This definition was located in repealed part 3315.0200, subpart 3. This definition makes clear that receipt of payment is unnecessary in order to constitute remuneration, while a matured right to payment is an essential element. This proposed subpart is needed in order to distinguish the definition from "remuneration paid" in subpart 2 above. New language was added to this proposed subpart to reflect the department's longstanding and reasonable practice for determining when wages are reportable though not actually paid. Departmental practice is to consider wages due on the employer's regular payday. In addition, a consistent method of determining reportable wages for employers is necessary in situations where (1) there is no regular payday for corporate officers, or (2) there is no declared payday for officers in the corporate minutes or (3) there is a declared payday in the minutes but wages are not actually paid on that day. In the three situations mentioned above it is reasonable to use corporate minutes for setting an outside time limit on when such wages become payable. New language in this subpart would use the end of the period specified in the minutes as the time for officers' wages to become due unless actual payment occurs first. For example, if the corporate minutes state that officers are paid each month, wages become reportable on the last day of each month unless preceded by actual payment. (Revisor's Copy, page 2, line 2)

3315.0202 REMUNERATION AS WAGES

This proposed part was located in repealed part 3315.0200, subpart 2. However, the wording has been rearranged in order to more clearly distinguish between the basis of remuneration and the mode of payment. (Revisor's Copy, page 2, line 12)

3315.0210 TYPES OF WAGES, GENERALLY

The content of this proposed part was located in repealed part 3315.0200, subpart 4. The repealed content is embodied in proposed items A to N; proposed item O is new material. This proposed part is necessary in order to provide a method for determining the wage value of the different forms of remuneration. This part reasonably provides that the monetary value of various types of remuneration is the functional equivalent of wages. (Revisor's Copy, page 2, line 18)

Item A. Item A is necessary in order to establish how in-kind payments should be treated. Minnesota Statutes, section 268.04, subdivision 25, defines wages as including remuneration paid in a

medium other than cash. Therefore, wages result if an employer provides a dwelling unit, utilities or meals or furnishes services or goods as compensation for services. Item A reasonably provides that the monetary value of in-kind payments be treated as wages so that the payments may be aggregated with cash wages for tax calculations.

Item B. Item B is necessary in order to establish that vacation pay will be treated as wages. It is reasonable to treat vacation pay as wages because such pay represents remuneration for services performed in the past. Therefore, vacation pay is subject to contribution determinations.

Item C. Item C establishes that all separation payments made by an employer to an employee are taxable wages, whether or not the employer is legally obligated to make the payment. Item C is necessary in order to avoid ambiguity over the status of remuneration paid an employee because of termination, separation or dismissal. Such pay is reasonably treated as remuneration for past services since the payment cannot be construed as a "gift". The status of these payments as wages is unaffected by the fact that they are paid after separation and is unaltered by the voluntary or involuntary character of the separation.

Item D. Item D provides that monies paid an employee pursuant to award or settlement of an employment dispute comprise wages. The types of payment contemplated by Item D include remuneration for past services due under minimum wage or overtime requirements, under collective bargaining agreements or under discriminatory wage remedies. Portions of an award not constituting payment for services actually performed do not constitute wages. Therefore, wages do not include amounts paid as penalties or damages.

Item E. Item E establishes that distribution of profits to officers or shareholders of a Chapter "S" corporation who perform services to the corporation are treated as wages unless they constitute a return of capital or capital gain. Item E is needed because without it disputes could arise over the characterization of such payments and the portions of payments constituting remuneration. Since the largest part of such payment will be remuneration it is reasonable to characterize all such payments as wages unless the income is derived from capital. These wages like other wages are taxable when actually or constructively received.

Item F. Item F provides that the monetary value of an award, bonus or other consideration from an employer accrued in the course of an employment relationship is deemed remuneration for services. Item F is necessary and reasonable because Minnesota Statutes, section 268.04, subdivision 25, specifically includes the value of commissions and bonuses in the definition of wages.

Item G. Item G reasonably provides that where 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. Item G is necessary in order to clarify that payments from sick leave accumulation which are not related to illness are always treated as wages since they represent delayed remuneration for services performed in the past.

Item H. Item H is needed to clarify that standby or idle time payments made to employees for certain minimum periods during which an employee remains available to perform constitute wages; this is true even though the employee may not actually perform work. Item H reasonably provides that in such a situation availability for performance is tantamount to performance whether or not the employee actually works.

Item I. Item I provides that advance payments made by an employer for future work constitute wages and are taxable at the time of payment. However, if the payments are carried on an employer's books as loans to employees or a return of employee's capital investment the payments are not considered wages. Item I is needed in order to establish a precise point for the taxing of wages paid in advance and to separate such wages from other types of payments to employees. Item I reasonably subjects such payments to contribution and treats them as wages since the employer has disbursed and the employee has use of the funds.

Item J. Item J recognizes that loans may sometimes be remuneration for services and provides for taxing those amounts which actually constitute wages. Item J is necessary in order to prevent mislabeling of wage payments and the subsequent loss of appropriate tax revenue. This item reasonably lists criteria for piercing the fiction of a loan where the designated loans fail to exhibit any of the characteristics of a loan and are instead disguised payments for services.

Item K. Item K clarifies that payments to individuals acting as assistants or substitutes to or for an employee, whether paid directly by the employer or indirectly through the employee, are considered wages of the assistants or substitutes. The assistant or substitute becomes in effect an employee of the employer if the employer knows or has reason to know of the use of assistants or substitutes. This item is needed to avoid disputes concerning whether or not the employer of the employee is the employer of an assistant or substitute. The requirement of employer knowledge is reasonable because it protects the employer against tax liability in cases where the employer is unaware of the assistant or substitute arrangement.

Item L. Item L provides that remuneration for services provided by a caretaker is wages and is considered to be equally received

by a spouse or other member of the caretaker's household who also performs services. A contract or other evidence is allowed to show that a spouse or other household member did not receive wages for performance of services. Item L is necessary to clarify that tax liability extends to all members of the caretaker's household who perform services. Item L reasonably follows the general practice in the caretaker occupation; it treats as employees all members of the caretaker household who perform services and allocates their wages accordingly.

Item M. Item M specifies that remuneration for services performed by a migrant family is wages. Amounts paid are deemed to be received equally by each worker in a household despite payment to a single family member. A contract or other evidence is permitted to show that a member or members of a family are not employees. Item M is necessary to avoid disputes over tax liability for migrant family members. Item M is reasonable because it conforms to general industry practice.

Item N. Item N establishes that the cash value of the use of employer's vehicle for personal purposes by an employee is deemed to be wages if the vehicle is provided in lieu of compensation for services performed. The monetary value of the employee's use of the vehicle is considered to be $200 per month, and, if used less than a month, $7 per day. Clauses (1) and (2) of this item establish that amounts by which employee reimbursements fall short of these amounts (or 20 cents per mile on a mileage basis) are also treated as wages. Since the personal use of a vehicle is clearly an in-kind remuneration for services, Item M is needed to fix a monetary value for this form of wages. Item M reasonably establishes amounts reflecting actual leasing rental and mileage reimbursement schedules in order that the taxing of this form of wages may be administered effectively.

Item O. Item O addresses situations where the employee is no longer performing services for the employer but an employment contract is still in force and the employer has a continuing obligation to pay the employee. It is necessary and reasonable to consider such future payments as wages since the employee has a well-founded expectation of being paid in full. Therefore, item O as proposed conforms to the legal principle that compensation for services rendered in the past are treated as taxable wages when actually or constructively paid.

3315.0211 TIPS AND GRATUITIES AS WAGES

This proposed part is now located in existing part 3315.0300 and

no new material has been added except a corrected statutory reference. (Revisor's Copy, page 4, line 27)

3315.0212 EMPLOYEE EQUIPMENT AND VEHICLES

This proposed part is now located in existing part 3315.0500. The term "wages" has been deleted from this proposed part and the term "remuneration" has been substituted. It is necessary and reasonable to use the broader term "remuneration" because that term more accurately describes the nature of payments to equipment owner-operators. Such payments are often a combination of wages and equipment rental rather than wages alone. This proposed part also changes the method for determining the wage portion of remuneration. Any combination of wages and equipment rental are treated solely as wages unless wages are clearly delineated from equipment rental. This change is necessary in order to be consistent with the treatment of employer reimbursement to employees for work-related traveling and other expenses in part 3315.0220, paragraph H, and with the Internal Revenue Code's treatment of such payments. The headnote was changed to more accurately reflect the whole content of the part. (Revisor's Copy, page 5, line 12)

3315.0213 NONCASH REMUNERATION

This proposed part is now located in existing part 3315.0400 and no new material has been added except the deletion of obsolete internal references. The headnote was changed to more accurately describe the content of the part. (Revisor's Copy, page 4, line 35)

3315.0220 EXEMPT WAGES

This proposed part is now located in existing part 3315.0600. It is reasonable and necessary to add the introductory clause in this proposed part in order to address the 1987 statutory change in Minnesota Statutes, section 268.04, subdivision 25, paragraph (K). The introductory clause will conform this part to the provisions of paragraph (K). Paragraph (K) specifies that remuneration diverted on behalf of an employee under a salary reduction agreement will be considered wages if the employee has the option to receive the payment in cash; this treatment of salary reduction amounts would hold even though the payments might otherwise be excludable as wages. Clarifying language was added to Item D but the content remained unchanged. A new item E

was added to address the circumstances in which remuneration in the form of employee parking privileges is excludable as wages. It is necessary to devise a method for establishing when parking privileges are excludable because the department often must determine the status of free parking. It is reasonable to exclude employee parking privileges when the parking privileges are incidental to employment. The Internal Revenue Code provides that in-kind remuneration results where parking is provided to or parking expenses are reimbursed to any individual employee as distinguished from a class of employees. Likewise, the test in proposed item E for characterizing such privileges as incidental is whether or not the privileges are extended to all employees or to an entire class of employees as is consistent with the federal Internal Revenue Code. (Revisor's Copy, page 5, line 35)

EMPLOYMENT

3315.0501 DEFINITIONS

This proposed part is located in existing part 3315.0700 and no new material has been added except corrected internal references.

3315.0510 IN EMPLOYMENT BY FEDERAL LAW

This proposed part is located in existing part 3315.1400 and no substantive additions have been made to the content.

3315.0515 AGENT-DRIVERS AND SALESPERSONS

This proposed part is located in existing part 3315.1300 and no changes have been made to the content.

3315.0520 EMPLOYMENT, GENERAL INCLUSIONS

This proposed part is now located in existing part 3315.1500. New language has been added to the present item C concerning demonstrators employed by placement agencies. The existing item C addresses situations in which manufacturers, distributors and retailers can be employers of factory demonstrators. It is necessary and reasonable to also include placement agencies in the employer category where these agencies place demonstrators; placement agencies exercise similar control over demonstrators' performance as the other entities already categorized as employers and any exclusion of placement agencies would be inconsistent and arbitrary. The Minnesota Supreme Court in Guhlke v. Roberts Truck Lines, 128 NW2d 324 (1964) at p. 326 stated that in determining the existence of an employer/employee relationship "the most important factor considered in light of

the nature of the work involved is the right of the employer to control the means and manner of performance." With regard to the degrees of control necessary the Minnesota Supreme Court ruled that an employee status may exist even though the work is such that little, if any, supervision is required. Frankle v. Twedt, 47 NW2d 482 (1951). In Burman v. Zahler, 178 NW2d 234 (1970), the court said that the existence of the right is enough to establish the requisite control. Placement agencies could have sufficient control over the demonstrators they hire to establish an employer/employee relationship. The headnote was changed to be consistent with other headnote in this section. (Revisor's Copy, page 11, line 15)

3315.0525 EMPLOYMENT, SPECIAL EXCLUSION

This proposed part is now located in existing part 3315.2200. Existing item G was changed to specify that a written contract must be an element in establishing the independent contractor status of truck owner-operators. It is necessary and reasonable to require that the contract be in written form because a formalized instrument is readily demonstrable, is evidence of an arm's length relationship and is the embodiment of the parties' intention. In the past, parties had difficulty in showing a contractual relationship when the contract was oral rather than written. (Revisor's Copy, page 21, line 6)

3315.0530 EMPLOYMENT, GENERAL EXCLUSIONS

Subpart 1. Work relief and work training programs. The proposed subpart 1 of this proposed part is now located in existing part 3315.2100. No change has been made to the content. (Revisor's Copy, page 17, line 30)

Subpart 2. Ministers and members of religious orders. The proposed subpart 2 is new material. It is necessary in order to interpret the legislative intent of Minnesota Statutes, section 268.04, subdivision 12, clause 10, paragraph (b). The proposed subpart reasonably delineates the type of services contemplated by the statutory phrase "exercise of a ministry". A principal test for the applicability of that statutory phrase is how directly connected the employee's services are to the furtherance of an organization's religious as opposed to secular activities. This is a valid test since the reason for the exclusion is the nature of the employer's religious activity; the less connection the employee has to the employer's religious function, the less eligible the employee's services should be for exclusion. (Revisor's Copy, page 18, line 9)

Subpart 3. Convention or association of churches. The proposed subpart 3 is new material. It is necessary in order to interpret the legislative intent of Minnesota Statutes, section 268.04, subdivision 12, clause 10, paragraph (a). This proposed subpart reasonably stresses religious activities in defining the term "convention or association of churches". Therefore, the function of these organizations must primarily be religious before employment by the organization may be excludable. (Revisor's Copy, page 19, line 9)

Subpart 4. Policy-making or advisory positions with the State of Minnesota, its instrumentalities, and political subdivisions. The proposed subpart 4 is new material. It is necessary in order to interpret the legislative intent of Minnesota Statutes, section 268.04, subdivision 12, clause 10, paragraphs (f), (v), (a), (b), and (c). This proposed subpart excludes from covered employment major policy making or advisory positions with state or local government. Relying on federal Department of Labor guidelines, the proposed subpart reasonably defines "major" positions as those performed at high levels of government, as the result of an appointment by high governmental executives and, where applicable, as so designated by state law. This emphasis on "major" positions assures that the services performed are vital to the very direction and focus of state and local government and so integral to the sovereign rights of government that these essential functions should be exempt from burdensome constraints. This proposed subpart also provides that the positions be time-limited or non-permanent as evidence that these positions are furthering the narrower sovereign interests and not the on-going ministerial functions of government. By contrast, tenured or classified employment would be serving the public as a whole on a continuing basis. (Revisor's Copy, page 19, line 16)

Subpart 5. Temporary employees hired for emergencies. This proposed subpart is new material and is necessary in order to interpret Minnesota Statutes, section 268.04, subdivision 12, clause 10, paragraph (f)(iv). The statute excludes from the term employment temporary services performed during or after a major disaster. Services performed in the prevention or detection of a disaster and services of a permanent nature do not meet the criteria established by law. For example, the services of voluntary firefighters are not excluded and are covered employment. (Revisor's Copy, page 20, line 23)

Subpart 6. Students employed by school, college or university. This proposed subpart is new material and is necessary in order to interpret Minnesota Statutes, section 268.04, subdivision 12, clause (15), paragraph (g)(2). It is reasonable to exclude from covered employment services performed for certain educational institutions by students who are in regular attendance at the institution. This proposed subpart reasonably defines the phrase

"regularly attending classes" as the minimum attendance required to maintain the status of a full-time degree candidate. Such a definition furthers the statutory purpose of encouraging institutions to assist students who are earnest about completing their education. (Revisor's Copy, page 20, line 31)

3315.0535 EMPLOYMENT PARTIALLY EXCLUDED WITHIN A PAY PERIOD; 50 PERCENT RULE

This proposed part is now located in part 3315.1900. The added material removes any possible ambiguity from the existing part. The new material is necessary because of provisions in Minnesota Statutes, section 268.04, subdivision 12, clause (15), paragraph (p). This subpart clarifies that a majority of an individual's services within a pay period must be in excluded employment before the whole may be excluded; the proposed language reasonably makes clear that a majority is an amount more than 50 percent of the total services. The headnote was changed to conform to the other terminology in these rules; the proper terminology throughout is "exclusion" when referring to employment rather than "exemption", which refers to wages. (Revisor's Copy, page 15, line 30)

3315.0540 PREVIOUSLY EXCLUDED EMPLOYMENT

This proposed part is not located in existing part 3315.2000 and no changes have been made to the content.

3315.0545 CASUAL LABOR NOT IN THE COURSE OF THE EMPLOYING UNIT'S TRADE OR BUSINESS

This proposed part is now located in existing part 3315.1600. The augmented headnote more specifically identifies the excluded services which are referred to in Minnesota Statutes, section 268.04, subdivision 12, clause (15), paragraph (b). (Revisor's Copy, page 12, line 6)

3315.0550 MULTISTATE EMPLOYMENT

Subpart 1. Localized employment. The proposed subpart 1 is now located in existing part 3315.1700. The proposed subpart defines the term "regular services". It is necessary to define that term because the existing part does not specifically do so and the definition is crucial to determining the percentage of localized employment. Also, the existing language is somewhat ambiguous. It is reasonable to change the emphasis in the term's definition to those services the employee is currently most responsible to

perform; the present language emphasizes the services the employee was originally hired to perform. The definition of "regular services" better accommodates job duties which are transformed gradually or abruptly to meet new circumstances. Furthermore, the proposed subpart re-names all the services that are not regular as "nonregular services". Nonregular services are those services unconnected with the primary duties of the employee. The terms "incidental", "temporary" and "transitory" were deleted because they were confusing; those terms are but a part of the definition of nonregular services. The prevalence of the services is less important than how directly the services relate to the employee's job. (Revisor's Copy, page 14, line 5)

Subpart 2. Multi-state worker. This proposed subpart is now located in existing part 3315.1800, subpart 1. No new material has been added. (Revisor's Copy, page 15, line 2)

Subpart 3. Base of operations. This proposed subpart is now located in existing part 3315.1800, subpart 2. No new content has been added except that the new terminology "nonregular services" is used. (Revisor's Copy, page 15, line 3)

Subpart 4. Directions and control. This proposed subpart is now located in existing part 3315.1800, subpart 3. No new content has been added except that the new terminology "nonregular services" is used. (Revisor's Copy, page 15, line 14)

Subpart 5. Residence. This proposed subpart is now located in existing part 3315.1800, subpart 4. No new content has been added except that the new terminology "nonregular services" has been added. (Revisor's Copy, page 15, line 22)

Subpart 6. Service not covered under laws of any other state or Canada. This proposed subpart is now located in existing part 3315.1800, subpart 5. No new material has been added except corrected internal references. (Revisor's Copy, page 15, line 29)

3315.0555 DETERMINING WORKER STATUS

Subpart 1. Essential factors considered. This proposed subpart is now in existing part 3315.1200. The subpart headnote has been added to identify the content of this subpart. A technical correction has been made to remedy an error in the existing language; the word "refurnishing" should have been "furnishing". An internal reference has been added to replace outmoded and therefore incorrect references. (Revisor's Copy, page 8, line 28)

Subpart 2. Additional factors considered. The introductory clause in this subpart is new material and is needed to introduce

Items A to H. (Revisor's Copy, page 8, line 12)

Item A. This proposed item is now located in existing part 3315.1100, subpart 2. All gender references have been deleted.

Item B. This proposed item is now located in existing part 3315.1100, subpart 3. No new material has been added.

Item C. This proposed item is now located in existing part 3315.1100, subpart 4. No new material has been added.

Item D. This proposed item is now located in existing part 3315.1100, subpart 5. No new material has been added.

Item E. This proposed item is now located in existing part 3315.1100, subpart 6. No new material has been added.

Item F. This proposed item is now located in existing part 3315.1100, subpart 7. No new material has been added.

Item G. This proposed item is now located in existing part 3315.1100, subpart 8. No new material has been added.

Item H. This proposed item is now located in existing part 3315.1100, subpart 9. No new material has been added.

Subpart 3. Evidence of control. This proposed subpart is now located in existing part 3315.1000. Proposed language has been added to the introductory clause clarifying that it is the employing unit which must exercise control in order for this subpart to be applicable. Internal references have been altered. Proposed items A to M are now located in part 3315.1000, subparts 2 to 14. Language has been added to proposed item G to enhance meaning; the new language makes clear that an independent worker cannot be terminated at will if the worker is performing under a contract and if the worker is meeting the contractual requirements. (Revisor's Copy, page 7, line 23)

Subpart 4. Procedures for determining control. This proposed subpart is now located in existing part 3315.0900. No new content has been added except a technical correction to an internal reference.

Subpart 5. Obtaining a determination or opinion. This proposed subpart is now located in existing part 3315.0800. No new material has been added.

3315.0801 PURPOSE

This proposed part is now located in existing part 3315.2300. No new content has been added except technical corrections to internal references.

3315.0805 DEFINITIONS

This proposed part is now located in existing part 3315.2400. No new material has been added.

3315.0810 UNMANUFACTURED STATE

This proposed part is all new material and is necessary in order to define the statutory term "unmanufactured state" in Minnesota Statutes, section 268.04, subdivision 12, clause (15), paragraph (a), (4). Under the statute, agricultural employment is excluded where the labor is directed toward agricultural commodities in their "unmanufactured state". This proposed part reasonably defines the statutory term as agricultural products which maintain their original nature and which have not been transformed by human labor. It is reasonable to focus on human intervention as the key element in the shift from unmanufactured to manufactured status; human activity is clearly required to change the identity of an agricultural commodity and therefore it is the one variable which is indispensable in the transformation from a natural product to a man-made one. Also, the proposed part lists common foodstuffs resulting from manufacturing processes. (Revisor's Copy, page 7, line 5)

3315.0815 FARMS, INCLUSIONS

This proposed part is now located in existing part 3315.2600 and no new content has been added.

3315.0820 FARMS, EXCLUSIONS

This proposed part is now located in existing part 3315.2500 and no new content has been added.

3315.0825 AGRICULTURAL LABOR ON FARMS

This proposed part is located in existing part 3315.2800 and no new material has been added except corrected internal references.

3315.0830 AGRICULTURAL LABOR, CONDITIONAL SITUATIONS

This proposed part is now located in existing part 3315.2900 and no new content has been added.

3315.0835 AGRICULTURAL LABOR EXCLUSIONS

This proposed part is now located in existing part 3315.3000 and no new content has been added.

3315.0840 AGRICULTURAL LABOR, SEPARATE COMMODITIES

This proposed part is now located in existing part 3315.3100 and no new content has been added.

3315.0845 CROP PURCHASE AGREEMENTS

This proposed part is now located in existing part 3315.2700. There is no new content except that extraneous material has been deleted from the part's headnote to more truly reflect the subject matter of this part. (Revisor's Copy, page 23, line 25)

DOMESTIC SERVICE

3315.0901 PURPOSE

This proposed part is now located in existing part 3315.3200. No new material has been added except technical corrections to internal references.

3315.0905 DEFINITIONS

This proposed part is now located in existing part 3315.3300 and no new content has been added.

3315.0910 DOMESTIC SERVICE, GENERAL

This proposed part is now located in existing part 3315.3400. No new material has been added. However, the existing subpart 1 is no longer included in this proposed part and the other existing subparts have been re-numbered.

3315.0915 NONDOMESTIC SERVICE IN HOME

This proposed part was located in repealed part 3315.3400, subpart 1. It is necessary and reasonable to create this separate part in order to emphasize the distinction between domestic and nondomestic service. This clarifies that the exclusion of domestic service from employment does not extend to other services performed by an employee in a private home. No new content has been added except technical corrections to internal references and the inclusion of a headnote. The headnote is necessary and reasonable in order to describe the content of this proposed part. (Revisor's Copy, page 7, line 16)

3315.0920 LOCATION OF DOMESTIC SERVICE

This proposed part is now located in existing part 3315.3500 and no new material has been added.

RECORD AND REPORTS

3315.1001 SCOPE

This proposed part is now located in existing part 3315.3600. All references to payments have been deleted because that topic area is addressed separately in subsequent parts of these rules. It is reasonable and necessary to treat records and reports as separate from payments; while tangentially related, the two topic areas are logically distinct. Furthermore, the topic area of payments is significant and extensive and, therefore, deserves to be highlighted in its own section. Technical corrections have been made to internal and statutory references. (Revisor's Copy, page 26, line 17)

3315.1005 NOTIFICATION

Subpart 1. Establishment of new business or change in existing business. This proposed subpart is now located in existing part 3315.3700, subpart 1. The phrase "conducted in Minnesota" has been added to the first sentence in the proposed subpart 1. It is necessary to add this phrase in order to avoid a misapplication of this subpart's notice requirements to employing units conducting business outside Minnesota. The addition of this phrase is reasonable because Minnesota Statutes, section 268.04, subdivision 10, defines "employer" as an employing unit having employment within the state. The last two sentences in this proposed subpart were added to ensure the department's ability to confirm the physical location of an employer's reported business establishment. The requirement of a physical location is necessary in order to prevent fraud and is reasonable since a post office box is not sufficient for departmental

auditing purposes. (Revisor's Copy, page 26, line 23)

3315.1010 RECORDS

Subpart 1. Records required to be established, maintained and preserved. This proposed subpart is now located in existing part 3315.3800. However, some new material has been added. First, new language has been added to inform employers that records must be maintained on helpers of their regular employees if the employer has actual or constructive knowledge of helper services being performed; this is a necessary provision because Minnesota Statutes, section 268.04, subdivision 9, covers such helpers and it is reasonable to put employers on specific notice that helpers must be accommodated in employer record keeping. Second, new language has been added to increase the record keeping period to eight years. The maintenance of employer records is necessary in order to substantiate the payroll and benefit charges in the employer's experience rating record, especially where an experience rating record is transferred to a successor. An experience rating record includes employment history for portions of six calendar years during the experience rate period. Because benefit charges in the first half year of an experience rate period could include wages paid in the calendar year preceding the year in which the experience rate period commences, that full year must be added to the six years of an experience rate period. To the seven calendar years must be added the current year for a total of eight years. It is reasonable to require records for full calendar years because many payroll reports such as those for federal unemployment taxes are filed on a calendar year basis. Third, a new item K has been added. It is necessary to require employers to maintain specific records on exempt and covered employment because of Minnesota Statutes section 268.04, subdivision 12, clause (15), paragraph (p). That statutory provision contains the 50 percent rule as interpreted by part 3315.0535 and it is reasonable for employers to maintain adequate records as evidence of compliance. (Revisor's Copy, page 27, line 11)

Subpart 2. Instate and outstate employment. This proposed subpart is now located in existing part 3315.3900, and no new material has been added except a corrected internal reference.

Subpart 3. Covered and uncovered employment. This proposed subpart is now located in existing part 3315.4000, and no new material has been added except a corrected internal reference.

3315.1015 REPORTS

Subpart 1. Tax report filing requirements. This proposed subpart is now located in existing part 3315.4100. Proposed language has been added to clarify for employers when tax reports are due. Such proposed language is necessary and reasonable in order to more clearly and explicitly explain the filing requirements. Also, proposed language has been added to inform employers that adjustments to previously submitted tax reports must be sent to the department separately. This proposed language is necessary and reasonable so that information attributable to each quarter is kept distinct and efficiency of tax collection is enhanced. (Revisor's Copy, page 28, line 22)

Subpart 2. Signature requirements on contribution reports. This proposed subpart is all new material. The content in the proposed subpart apprises employers of the required process for the signing of tax reports, including signing by employer-authorized representatives. It is necessary to inform employers of signature requirements so that delays are forestalled and timely submission of reports is maximized. Furthermore, it is necessary and reasonable to require a responsible person, including an authorized representative, to sign the report; such a requirement provides tacit acknowledgement of a report's content and prevents subsequent repudiation by the employer if taxes are delinquent and collection enforcement is needed. (Revisor's Copy, page 29, line 9)

Subpart 3. Employer responsible for reporting wages. This proposed subpart is all new material. This proposed subpart informs employers that responsibility for reporting wages, and consequently paying taxes, rests with the employer of the employee; it does not matter who actually pays the wages. An exception specified in this subpart is the common paymaster situation contemplated in part 3315.1020. It is necessary to fix employer responsibility because Minnesota Statutes, section 268.06, subdivision 21, requires the department to maintain separate accounts for each employer based on submitted reports. This subpart reasonably allows a legal entity to report the wages of all of its components. However, several legal entities owned or controlled by the same individuals are prohibited from combining reports because improper reporting could occur. It is reasonable to require distinct reports so that employer experience ratings and taxes match paid benefits. (Revisor's Copy, page 29, line 19)

Subpart 4. Wage Detail Reporting Requirements. This proposed subpart is all new material. This subpart is necessary in order to institute special reporting procedures for employers with numerous employees. Special reporting procedures for these employers are needed because the time for keypunching each entry into the department's system is limited and should be reserved for employers with fewer employees. Small businesses should be

exempt from the requirement of reporting by magnetic media although nothing prevents such businesses from electing to comply. This subpart exempts businesses with less than 250 employees because the Internal Revenue Service requires employers submitting 250 or more employee documents to do so on magnetic tape. This subpart is reasonable because it affects less than one percent of all employers and does not create an undue hardship on such affected employers; large employers already have the requisite equipment or subscribe to a service for processing information on magnetic media. (Revisor's Copy, page 29, line 25)

3315.1020 CONSOLIDATED REPORTS

Subpart 1. When permitted. This proposed subpart is now located in existing part 3315.4200 and no new material has been added.

Subpart 2. Related corporations test. This proposed subpart is now located in existing part 3315.4300 and no new content has been added except that the existing subpart 1 has become the introductory paragraph and the existing subparts 2 to 5 have become items A to D. Furthermore, internal references have been corrected.

Subpart 3. Stocks defined. This proposed subpart is now located in existing part 3315.4400 and no new material has been added except corrected internal references.

Subpart 4. Excluded stock, parent-subsidiary. This proposed subpart is now located in existing part 3315.4500 and no new content has been added.

Subpart 5. Excluded stock, brother-sister group. This proposed subpart is now located in existing part 3315.4600 and no new content has been added.

Subpart 6. Limits on groups. This proposed subpart is now located in existing part 3315.4700 and no new content has been added.

Subpart 7. Concurrent employment. This proposed subpart is now located in existing part 3315.4800 and no new material has been added except corrected internal references.

Subpart 8. Cash payments only. This proposed subpart is now located in existing part 3315.4900 and no new material has been added except corrected internal references.

Subpart 9. Common paymaster. This proposed subpart is now located in existing part 3315.5000 and no new material has been added except corrected internal references.

Subpart 10. Joint account. This proposed subpart is now located in existing part 3315.5100. Proposed language has been added allowing a joint account between or among related corporations to become effective retroactively beyond the first day of January of the year preceding the year of application. It is necessary and reasonable to extend the retroactive period in order to accommodate employers who, for good cause, fail to file a timely request. (Revisor's Copy, page 30, line 3)

Subpart 11. Joint and several liability. This proposed subpart is now located in existing part 3315.5200 and no new content has been added.

Subpart 12. Common paymaster responsibilities. This proposed subpart is now located in existing part 3315.5300 and no new content has been added.

Subpart 13. Reports. This proposed subpart is now located in existing part 3315.5400 and no new content has been added.

Subpart 14. Work other than for common paymaster. This proposed subpart is now located in existing part 3315.5500 and no new content has been added.

Subpart 15. Nonrelated or noncurrent. This proposed subpart is now located in existing part 3315.5600 and no new content has been added.

Subpart 16. Wages, wage credits, and experience rate factors of a joint account. This proposed subpart is now located in existing part 3315.5700 and no new content has been added.

Subpart 17. Relation cessation. This proposed subpart is now located in existing part 3315.5800 and no new content has been added.

Subpart 18. Termination of agreement. This proposed subpart is now located in existing part 3315.5900 and no new material has been added except corrected internal references.

Subpart 19. Written protest. This proposed subpart is now located in existing part 3315.6000 and no new material has been added except corrected internal references.

CONTRIBUTING RATES AND RATIOS

3315.1301 DEFINITIONS

Subpart 1. Scope. This proposed subpart is new material. This subpart is necessary and reasonable because it introduces the subject matter of this part. (Revisor's Copy, page 9, line 9)

Subpart 2. Chargeable. This proposed subpart is new material. Minnesota Statutes, section 268.06, subdivision 6, requires that an employer's experience rating account be subject to employee benefits for at least 12 consecutive calendar months before it can be eligible for an experience rate. Under the statute, the 12 months of chargeability must have occurred before July 1st of the year preceding the year for which the rate is effective. This proposed definition is necessary in order to inform employers that chargeability begins when an account is capable of being subject to benefit charges; it does not matter that an account is actually charged. If the term "chargeable" were interpreted to mean that an experience rating account must actually be charged with benefits, very few employers would qualify for a minimum experience rate. This subpart is reasonable because it reflects the longstanding practice of the department. (Revisor's Copy, page 9, line 12)

Subpart 3. Experience. This proposed subpart is new material. The combined factors in an employer's rate comprise the term "experience". This definition is necessary and reasonable because it is integral to the operation of these rules and especially parts 3315.1301 to 3315.1315. (Revisor's Copy, page 9, line 15)

Subpart 4. Factors. This proposed subpart is new material. The factors comprising experience are the benefits charged to an account and the reported taxable payroll upon which taxes have been paid. This definition is necessary and reasonable because it is crucial to defining the term experience in subpart 3 above. (Revisor's Copy, page 9, line 18)

Subpart 5. Experience rating account. This proposed subpart is new material. This definition is necessary and reasonable because Minnesota Statutes, section 268.06, subdivision 5, provides for the creation of such an account for liable employers. (Revisor's Copy, page 9, line 21)

Subpart 6. Experience rate period. This proposed subpart is new material. An experience rate period is never more than 60 months ending on June 30th of the year preceding the year for which a tax rate is being determined. However, such a rating period can be less if an employer meets the minimum requirements established by statute. This definition is necessary and reasonable because of the requirements of Minnesota Statutes, section 268.06, subdivision 6. (Revisor's Copy, page 9, line 24)

3315.1305 NOTICE OF RATE

This proposed part is now located in existing part 3315.6200,

subpart 1, and no new content has been added.

3315.1310 CORRECTIONS OF DEPARTMENT ERRORS

This proposed part is all new material. It is necessary in order to clarify the department's statutory authority under Minnesota Statutes, section 268.06, subdivision 20, to unilaterally correct errors in the computation or assignment of an employer's contribution rate. The law discusses two types of errors-clerical and computational. This subpart combines both types under the term "department errors". Since the errors contemplated by the statute are the fault of the department, it is reasonable that they should be rectified by the department. Clarification of the statute is necessary to inform employers of the appropriate circumstances for protesting a contribution rate. (Revisor's Copy, page 9, line 28)

3315.1315 EXPERIENCE RATES

Subpart 1. When chargeability begins. This proposed subpart is new material. The proposed language provides that an employer's experience rating account first becomes chargeable for employee benefits on the date of initial employment. It is necessary to fix a date for the beginning of chargeability because an employer thereafter becomes eligible for an experience rate. It is reasonable to use the date of first employment because the employee or employees could file for benefits based on such employment and the employer's account could be charged for the benefits. (Revisor's Copy, page 10, line 8)

Subpart 2. Effect of unpaid taxes on experience rates. This proposed subpart is new material. This proposed subpart provides that employers who are otherwise eligible for an experience rate will, nonetheless, be assigned a rate that is equivalent to the applicable benefit cost rate if the employers do not pay taxes on taxable wages in the computation period. This subpart is necessary in order to prevent employers from influencing the experience rating provision of Minnesota Statutes, section 268.06, subdivision 6, to their advantage; without this proposed subpart, employers could pay at a minimum rate rather than at the appropriate experience rate. If an employer has not paid any tax there is no taxable payroll to use. To allow such an employer an experience rate based solely on the fact that minimum time requirements have been met would be unreasonable and against longstanding department policy. Therefore, it is reasonable for employers to pay at the benefit cost rate where they do not pay taxes on taxable wages in the computation period. The benefit cost rate is a statewide average, is a reasonable proxy for the average employer's experience and is above the minimum rate. The due date for payment of tax for purposes of this subpart is outside the computation period defined in part 3315.1301, subpart

6. Some payment of tax must be received by October 31st of the year preceding the year in which the rate is to be effective while the experience rating period, i.e., computation period, ends on June 30th. (Revisor's Copy, page 10, line 13)

Subpart 3. Effect of partial payment of taxes on experience rates. This proposed subpart is new material. This subpart informs employers that not all taxable wages reported during an experience rating period will be used in the computation of an experience rate unless all the taxes due are paid. It is necessary to disregard the reported taxable payroll unless the related taxes have been paid because of statutory prohibition. Minnesota Statutes, section 268.06, subdivision 6, prohibits taxable payroll from affecting experience rates if taxes due have not been paid. This prohibition is reasonable because it encourages employers to pay their taxes in a timely fashion in order to avoid higher rates. (Revisor's Copy, page 10, line 19)

Subpart 4. Previously liable employing unit. This proposed subpart is new material. This subpart provides that an employing unit's experience rating account can remain open after a period of nonliability. However, the account will not remain open if there is no experience in the account or if taxable wages had been paid during the period of nonliability. It is reasonable to deny reassignment of an experience rating account in such instances. The assignment of an experience rate requires that there be experience in an account and that the account be chargeable for at least 12 consecutive uninterrupted months immediately preceding July 1st of the previous calendar year. If taxable wages had been paid during the period of nonliability, there would be a break in the chargeability. (Revisor's Copy, page 10, line 27)

PAYMENTS

3315.1650 CONTRIBUTIONS, TAXPAYING ACCOUNTS

Subpart 1. Tax payments, general. This proposed subpart is new material although the due dates for tax payments were found in repealed part 3310.0400. This proposed subpart is necessary to interpret Minnesota Statutes, section 268.06, subdivision 1. The due dates based on calendar quarters are reasonable because they conform to requirements of the federal Internal Revenue Code and embody past departmental practice. Furthermore, it is reasonable to make the due dates one month after the end of each calendar quarter in order to allow sufficient time for employer computation. This proposed subpart segregates an employer's reporting duties from payment duties; such a segregation is reasonable because it better informs employers of their responsibilities and promotes administrative efficiency.

(Revisor's Copy, page 12, line 23)

Subpart 2. New employers. This proposed subpart is necessary to inform new employers when their first tax payment is due. While new employers are liable for the entire calendar year in which they first become liable, they cannot be expected to meet payment due dates for quarters prior to the quarter in which liability occurred. It is reasonable to use the due date of the calendar quarter in which liability first arises because when liability does occur a new employer becomes subject to the same reporting requirements as other employers. (Revisor's Copy, page 13, line 9)

Subpart 3. Employing units electing coverage. This proposed subpart is new material. This proposed subpart designates the first payment date for employers who elect coverage. The first payment is due on or before the tax report due date for the calendar quarter in which the election became effective or was approved, whichever is later. This is reasonable because it allows the employer to provide coverage retroactively for its employees without being penalized. Furthermore, it is necessary to remind employers that their first payment must include taxes for all prior calendar quarters, beginning with the quarter in which the election became effective. (Revisor's Copy, page 13, line 17)

Subpart 4. Due date upon demand. This proposed subpart is new material. This proposed subpart vests the Commissioner with authority to demand contributions from an employer under special circumstances. Before demanding payment, the Commissioner must have reasonable grounds to believe that tax collection will be delayed or evaded. Also, this subpart gives the Commissioner authority to assess penalties and interest if payment is not made after demand. For example, it may come to the Commissioner's attention that an entire business is moving to another state. In such a situation it is necessary to exact immediate payment. It is reasonable to vest the Commissioner with this authority because the Commissioner is responsible for collecting contributions in a timely and efficient manner so that the trust fund can adequately pay benefits. Such summary authority is akin to that possessed by the U.S. Internal Revenue Service and the Minnesota Department of Revenue. (Revisor's Copy, page 13, line 28)

Subpart 5. Late Payments. This proposed subpart is new material. This proposed subpart permits the department to apply employer payments to the employer's oldest debt. It is necessary to apply unspecified monies to an employer's oldest debt so that possible confusion over contributions is avoided. Also, it is reasonable to adopt such a practice because it follows commonly accepted accounting principles, and is a longstanding

departmental practice. (Revisor's Copy, page 13, line 35)

3315.2010 ADJUSTMENTS AND REFUNDS, TAXPAYING ACCOUNTS

Subpart 1. Overpayments. This proposed subpart is new material. This proposed subpart establishes departmental procedure for addressing overpayment errors by taxpaying employers. This provision in the rules provides for both refunds and credits if the overpayment occurred within the current or preceding four calendar years from the date of the request for adjustment. However, this subpart makes the credit allowance the usual means of correcting an overpayment unless the employer requests a refund. It is reasonable to prefer credit allowances because of the administrative convenience and the cost savings for the department. Also, this proposed subpart requires that information necessary for the processing of the corrections must be provided by the employer. Data on individual employees is required if the correction involves a change in the total wages reported; this is necessary and reasonable because changes in gross wages can affect future employee benefits and such changes must be tracked for each employee. (Revisor's Copy, page 16, line 18)

Subpart 2. Underpayments. This proposed subpart is new material. This proposed subpart establishes departmental procedure for underpayments by taxpaying employers in the same manner as overpayments in subpart 1 above. The same information is required of employers as in subpart 1 because the processing of underpayments is complementary to that of overpayments. (Revisor's Copy, page 17, line 9)

Subpart 3. Wages reported to another state in error. This proposed subpart is new material. This subpart informs employers of the corrective action to be taken if they have made erroneous contributions to another state. It is necessary to so inform employers because of the impact on employer responsibility for record keeping. This rule provision is reasonable because it ensures that taxes are paid to the proper state, i.e., the state to which wages are reportable. Furthermore, this subpart sets an outside time limit for adjusting wages which were incorrectly reported to another state to coincide with the refunding state's statute of limitations. (Revisor's Copy, page 17, line 22)

3315.2210 INTEREST

Subpart 1. Scope. This proposed subpart is now located in existing part 3315.6100, subpart 1. Language has been added to broaden the scope of the proposed part and any reference to permissive waivers of interest has been deleted. (Revisor's Copy, page 30, line 14)

Subpart 2. Waiver. This proposed subpart is now located in existing part 3315.6100, subpart 2. Proposed language has been added to indicate a mandatory waiver of interest by the department under limited circumstances. It is reasonable to waive appropriate interest where payment is late because of circumstances beyond the employer's control. What constitutes appropriate waiver, however, may vary. For example, if part of the payment delay is the fault of the employer and part is not, the proportionate share attributable to the employer's fault must be paid but the remainder would be waived. (Revisor's Copy, page 30, line 19)

Subpart 3. Delays attributable to the department or its agents. This proposed subpart is new material. This subpart is necessary in order to define the phrase "unreasonable delay attributable to the department" as used in subpart 2 above. It is reasonable to allow the department 30 days in which to respond before the delay would be attributable to the department. For example, a period of 30 days is often needed to review an employer's claim history and to calculate an experience rate. (Revisor's Copy, page 30, line 28)

Subpart 4. Application. This proposed subpart is now located in existing part 3315.6100, subpart 3, and no new material has been added. (Revisor's Copy, page 31, line 3)

Subpart 5. Substantiation required. This proposed subpart is new material. This proposed subpart places the burden on the employer to substantiate the extenuating circumstances for the payment delay. It is necessary to place the burden on the employer because the employer is in a better position than the department to ascertain the cause for the delay. Furthermore, the burden on the employer is reasonable because it is the employer who would benefit from a showing of departmental delay. (Revisor's Copy, page 31, line 8)

3315.2410 VOLUNTARY CONTRIBUTIONS

Subpart 1. Purpose and scope. This proposed subpart is new material. This subpart is necessary in order to clarify the statutory provisions in Minnesota Statutes, section 268.06, subdivision 24. This subpart is reasonable as an introduction to the statutory material in section 268.06 which allows employees with experience rates to "buy down" their employee benefit charges and effectively lower their experience rates. (Revisor's Copy, page 21, line 34)

Subpart 2. Time limit. This proposed subpart is new material although the same time limit was found in repealed part

3315.6200, subpart 2. The proposed subpart provides for a 120-day cut off period after which an employer may not reduce a contribution rate through voluntary contributions. This is a necessary provision because Minnesota Statutes, section 268.06, subdivision 24, mandates such a 120-day period. An experience rate is effective for a calendar year. Consequently, the 120-day limitation for making a voluntary contribution would logically commence on January 1st where tax paying employers are involved. This subpart further states that the 120-day period begins from the first date of coverage for new employers. It is reasonable to use the first date of covered employment to determine the start of the 120-day period for new employers since new employers may not have been liable for the entire calendar year. By using a different commencement date for the two types of employers this subpart affords all employers an equal amount of time for making a voluntary contribution. (Revisor's Copy, page 22, line 3)

Subpart 3. Partial voluntary contribution. This proposed subpart is new material. This subpart is necessary in order to explain the department's method of applying partial voluntary contributions. This subpart specifies that partial voluntary contributions are applied against the most recent benefit charges; such a provision is reasonable because it benefits the employer by removing charges that would otherwise adversely effect the employer's experience rating account for the longest time. This subpart also provides that the employer cannot target the partial contribution to reduce a specific claimant's charges since allowing such direct targeting would require elaborate detailed accounting for each charge, including those removed, for up to five years. This accounting would be necessary because of the potential adjustments resulting from benefit redeterminations or other adjustments. Consequently, benefit charges subsequently removed from the employer's experience rating account cannot result in a credit or refund unless the adjustment causes a negative balance in the account. It is reasonable to refund or credit a negative balance because the department has no means to use a negative balance in rate computation. (Revisor's Copy, page 22, line 11)

Subpart 4. Payment of surcharge required. This proposed subpart is new material. This subpart is necessary because it advises employers who are contemplating a voluntary contribution that the 25 percent surcharge required by Minnesota Statutes, section 268.06, subdivision 6, will be a portion of any voluntary contribution unless the provisions of subpart 5 below apply. Language providing for the surcharge's proportional inclusion in voluntary contributions is reasonable. Such a provision alerts employers to the fact that 80 percent of each voluntary contribution will be used to remove benefit charges while the remainder is applied to the surcharge. The 80 percent figure is the mathematical result when the 25 percent surcharge is applied to payments. (Revisor's Copy, page 22, line 22)

Subpart 5. Surcharge cancellation. This proposed subpart is new material. This subpart specifies that the surcharge will be cancelled where benefit charges are attributable to a catastrophe. This is necessary because Minnesota Statutes, section 268.06, subdivision 24, provides for such a cancellation. It is reasonable to clarify that cancellation applies only where a voluntary contribution is made; all benefit charges remaining in the employer's account will be subject to the surcharge for rate computation purposes. (Revisor's Copy, page 22, line 30)

Subpart 6. Status of benefit charges not reimbursed. This proposed subpart is new material. This subpart states that benefit charges remaining after voluntary contributions are made will still affect the employer's rate computation. It is necessary and reasonable to clearly inform employers that any remaining benefit charges are available for rate computation purposes. (Revisor's Copy, page 23, line 5)

3315.2610 NONPROFIT ORGANIZATIONS

Subpart 1. Proof of exemption. This proposed subpart is new material. This subpart requires a nonprofit organization to document its status as a nonprofit organization described in section 501 (c) (3) of the Internal Revenue Code of 1986 before it may elect to reimburse benefit charges in lieu of paying taxes. Minnesota Statutes, section 268.06, subdivision 28, applies only to this specific type of nonprofit entity. It is reasonable to require a copy of the exempt determination because the burden of showing nonprofit status should rest with the electing organization. (Revisor's Copy, page 23, line 10)

Subpart 2. Timely election to reimburse in lieu of paying tax. This proposed subpart is new material. This subpart informs eligible entities that their normal status is a taxpaying one and that affirmative action must be taken to change to a reimbursing status. This subpart is necessary because the reimbursement method is a choice available to qualified organizations by statute and this subpart reasonably provides for the reimbursement election. Furthermore, this subpart specifies that an untimely request for reimbursement election remains active until the time period for election in the subsequent year. This is a reasonable provision because it prevents duplicative filings of the notice of election and it preserves the right of election for a future time. (Revisor's Copy, page 23, line 17)

3315.2750 GOVERNMENT ACCOUNTS

This proposed part is new material. This part informs governmental entities that their normal status is a reimbursing

one and that affirmative action must be taken to change to a taxpaying status. This part is necessary in order to clarify the provisions of Minnesota Statutes, section 268.06, subdivision 25, which directs that governmental entities use the reimbursing method, and Minnesota Statutes, section 268.06, subdivision 31, which provides such employers the option to elect the taxpaying method. The part provides that the time limit for electing the taxpaying method by governmental entities is the same as the time limit for electing the reimbursement method by nonprofit organizations. This is reasonable in order to provide consistent treatment and to promote administrative efficiency. (Revisor's copy, page 23, line 28)

3315.2810 REIMBURSING ACCOUNTS

Subpart 1. Eligibility. This proposed subpart is new material. This subpart clarifies which entities are qualified to reimburse the unemployment compensation fund rather than pay taxes to the fund. It is necessary to clearly establish eligibility for reimbursement and reasonable to provide a general statement of eligibility at the beginning in subpart 1. (Revisor's Copy, page 24, line 3)

Subpart 2. Change in method of payment. This proposed subpart is new material. This subpart is necessary in order to specify the treatment of benefit charges when an entity changes from one payment method to another. This is especially important where an employer changes payment methods and an employee's claim is based on periods under both methods. Consequently, some benefit charges must be reimbursed and some must be used for rate computation purposes. The subpart reasonably does not relieve an employer of its responsibility to reimburse benefits that were based on wages paid during the time it was on the reimbursing method, even when it changes to the taxpaying method. Conversely, the subpart reasonably provides that benefit charges remaining in the employer's experience rating account, including charges resulting from a split base period, will be used for future rate computations should the employer revert back to a taxpaying status. (Revisor's Copy, page 24, line 9)

Subpart 3. Payment due date. This proposed subpart is new material. This subpart clarifies when payment is due for reimbursing accounts. The subpart is necessary and reasonable because of Minnesota Statutes, section 268.06, subdivision 28, clause (2). The subpart allows for an extension of a due date to the next business day when the date falls on a Saturday, Sunday or legal holiday. Such an extension is reasonable because it is a common business practice. Providing for an extension is necessary because the statute is silent on the matter. (Revisor's Copy, page 24, line 22)

Subpart 4. Application of partial payments. This proposed subpart is new material. This subpart is necessary in order to establish what constitutes normal processing of reimbursements. It is reasonable to apply reimbursements received from an employer to the oldest outstanding benefit charges since this is a commonly accepted accounting principle. However, it is also reasonable to allow the employer the flexibility of directing a reimbursement to a specific benefit charge if requested by the employer. (Revisor's Copy, page 24, line 29)

EMPLOYER COVERAGE AND TERMINATION OF COVERAGE

3315.3210 DEFINITIONS

Subpart 1. Scope. This proposed subpart is new material. The definitions in this part are necessary since they are unique and crucial to making succession determinations for establishing immediate statutory coverage. These definitions are reasonable because they facilitate such determinations in an efficient and consistent manner and because they inform employers of the elements in successorship criteria. (Revisor's Copy, page 25, line 1)

Subpart 2. Assets. This proposed subpart is new material. This definition is necessary because the term is used in Minnesota Statutes, section 268.04, subdivision 10, clause (2), and in part 3315.3220. The definition is reasonable because it borrows from generally accepted accounting principles. For purposes of these rules, however, real estate is excluded from the definition. Real estate ownership is reasonably excluded because such ownership is a weak factor in showing full succession by acquisition. Full succession is shown where one employer acquires substantially all the assets of another employer and thereby intends to continue an entire organization, trade or business; such a continuation is often unrelated to real estate ownership and can occur with or without such ownership. Furthermore, the inclusion of real estate in the definition could result in the incorrect determination of full succession rather than partial succession. The value of real estate could be large in relation to the value of the trade or business and would account for an inordinately high percentage of total assets. An acquiring employer may have only intended to continue a part of a trade or business but the inclusion of real estate could increase the percentage of assets purchased above the 70 percent mark; above 70 percent of the market value of assets the employer would be deemed to have acquired substantially all of the assets and to have made a full succession. (Revisor's Copy, page 25, line 4)

Subpart 3. Business. This proposed subpart is new material. This definition is necessary because the term is used in

Minnesota Statutes, section 268.04, subdivision 10, clause (2), and in part 3315.3220. The definition is reasonable because it adopts the commonly understood meaning of the word, i.e., an entity producing or distributing goods or services. This definition also is reasonable to distinguish it from the term "trade", defined in subpart 6 below. (Revisor's Copy, page 25, line 8)

Subpart 4. Organization. This proposed subpart is new material. This definition is necessary because the term is used in Minnesota Statutes, section 268.04, subdivision 10, clause (2), and in part 3315.3220. The definition is reasonable because it recognizes the legal structure as distinct from the operation of a business. The definition reasonably encompasses corporate board authority, corporate hierarchy, security owner rights and interests, and employee classification. (Revisor's Copy, page 25, line 11)

Subpart 5. Substantially all of the assets. This proposed subpart is new material. This definition is necessary because the phrase is used in Minnesota Statutes, section 268.04, subdivision 10, clause (2), and in part 3315.3220. The definition is reasonable, because it is based on the department's experience in this area. The 70 percent figure is derived from longstanding department policy and from department appellate decisions concerning the characterization of full succession. The phrase must be defined because of its vital link in determining if a sale or transfer of an organization, trade or business results in full or partial succession. This definition will assure consistent determinations. (Revisor's Copy, page 25, line 14)

Subpart 6. Trade. This proposed subpart is new material. This definition is necessary because the term is used in Minnesota Statutes, section 268.04, subdivision 10, clause (2), and in part 3315.3220. The definition reasonably recognizes that customers are an important element in the continuity of a business. A stable clientele is a criterion for meeting the test for succession under section 268.04, subdivision 10, clause (2). (Revisor's Copy, page 25, line 17)

3315.3220 ACQUISITIONS

Subpart 1. Scope. This proposed subpart is new material. This subpart is necessary and reasonable because the department's experience shows that some employers involved in business changes do not perceive of themselves as predecessors or successors. This subpart informs employers that immediate statutory liability can occur as the result of certain acquisitions. (Revisor's Copy, page 25, line 19)

Subpart 2. Types of acquisitions. This proposed subpart is new material. This subpart is necessary to interpret the meaning of the word "acquire" as the word is used in Minnesota Statutes, section 268.04, subdivision 10, clause (2), and to list the most common types of acquisitions. The department's interpretation of the word acquire is reasonable because each of the listed transactions result in the transfer of an organization, trade, or business from one operator to another due to the efforts of the acquiring party. This interpretation parallels the common definition of the word acquire; under principles of statutory interpretation provided at Minnesota Statutes, section 645.08, clause (1), words should be construed according to their common usage. (Revisor's Copy, page 25, line 26)

Subpart 3. Employers of domestic employees. This proposed subpart is new material. This subpart provides that succession is inapplicable to married employers of domestic employees. If the employers are spouses and one spouse dies, the department will not recognize the existence of a new entity requiring a new account number. The subpart is necessary in order to inform domestic employers of this department practice. It is reasonable to exempt such employers because the fact of their marriage means the business functions as if there were only a single operator. Therefore, after the death of one spouse their account should be taxed at the previous rate rather than at the benefit cost rate assigned to new employers. (Revisor's Copy, page 26, line 2)

Subpart 4. Liability of successor, special situation. This proposed subpart is new material. This subpart is necessary because Minnesota Statutes, section 268.11, subdivision 2, views predecessor and successor accounts as one unit for purposes of coverage and termination of coverage. The subpart reasonably relieves from liability those successors who acquire a business that is eligible for termination of coverage or who have little or no employment at the start of their business. (Revisor's Copy, page 26, line 6)

SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

Unemployment compensation employer taxes often involve small businesses as defined in Minnesota Statutes, section 14.115, subdivision 1. When proposing rules, an agency must consider methods for reducing the impact of the proposed rules on small businesses potentially affected by the rules. The department has considered each of the five methods listed in section 14.115, subdivision 2, clauses (a) to (e).

The first method, set forth in section 14.115, subdivision 2, clause (a), refers to establishing less stringent compliance or

reporting requirements for small businesses.* Since the compliance requirements under the current rules generally are no more stringent than the proposed requirements, the department does not consider the compliance requirements of the proposed rules overly burdensome for affected small businesses. The compliance requirements are unavoidable given the statutory objective of providing coverage under the unemployment compensation program for the vast majority of Minnesota employees. Furthermore, the proposed rules must necessarily impose reporting requirements on all businesses in order to track individual employees and to rate the experience of each employer where applicable. The proposed rules, however, at part 3315.1015, subpart 4, do exempt small businesses from the requirement of using magnetic media when reporting their wage detail data.

The second method is contained in subdivision 2, clause (b). The department is required to assess the possibility of establishing less stringent schedules or deadlines for compliance or reporting requirements for small businesses. The proposed rules will, in general, retain the same deadlines as are currently in place. The deadlines are necessary to meet the statutory mandates of prompt payment of benefits and of solvency of the trust fund. There is no compelling basis for exempting small businesses from deadlines that will ensure these two statutory objective. Also, the quarterly reports and tax payments required under these proposed rules are due at the same time as those for the Minnesota Department of Revenue and the federal Social Security Administration; the Minnesota Department of Revenue and the federal Social Security Administration do not exempt small businesses from reporting and payment deadlines.

The third method in subdivision 2, clause (c), requires consideration of a consolidation or simplification of compliance or reporting requirements for small businesses. The compliance requirements are already familiar to most affected small businesses. A consolidation of the compliance requirements would not be feasible; streamlining the requirements would only undermine the financial stability of the system.

The fourth method at subdivision 2, clause (d), is the establishment of performance standards for small businesses to replace design or operational standards. Since there are no

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*The State of Minnesota does not collect statistics on full time employees only, nor does it collect statistics on gross sales of businesses. However, the data that is collected indicates that more than 94.5 percent of employing units in Minnesota employ fewer than 50 employees. If those businesses grossing less than $4 million are added, the percentage would increase. Providing different requirements for this high percentage of businesses is not reasonable.

design or operational standards contemplated by these rules, this method does not apply.

The fifth method at clause (e) requires the department to consider exempting small businesses from any or all requirements of these proposed rules. For all the reasons previously discussed, this is not feasible. Small businesses are the employers of the vast majority of employees in Minnesota and exempting them would undermine the objective of near universal coverage.

CONCLUSION

The Department of Jobs and Training recommends the adoption of these proposed rules.

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Date

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