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## **REPORT TO THE LEGISLATURE**

### **RULE REVIEW REPORT MANDATED BY MINN. STAT. §14.3691**

#### **MINNESOTA DEPARTMENT OF LABOR AND INDUSTRY**

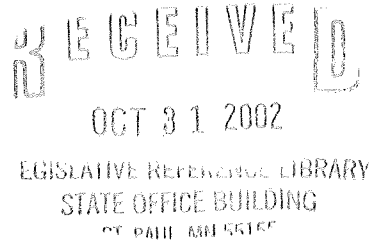
**AUGUST 1, 2002**

— Minn. Stat. 14.3691 Subd. 1 —

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Sec. 4 Subd. 1 —

**Report distributed to:**

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**Cost of preparing this report.** In compliance with Minnesota Statutes, section 3.197, the cost of preparing this report is approximately \$2,800.00.

Any questions concerning the contents of this report may be directed to Beth Hargarten at (651) 284-5350.

## **LABOR STANDARDS**

### **Parts 5200.0020 – 5200.0280 and 5200.0790. Fair Labor Standards Act.**

These rules address portions of the minimum wage, overtime and payment of wages laws. Virtually all of these rules are necessary guidelines, definitions and procedures to ensure compliance with and enforcement of the Minnesota Fair Labor Standards Act and should remain in effect. Generally, Parts 5200.0020 through 5200.0170 provide detail and clarity to requirements of the law for minimum wage, what would constitute and require overtime wages, and timely and complete payment of all wages and wage supplements, while Parts 5200.0180 through 5220.0270 provide detail and clarity to provisions of the law with respect to exemptions or exclusions from the wage and hour requirements. Minn. Rules Part 5200.0100 clarifies that employer records stating the hours that employees work required by statute must include a.m. and p.m. designations; this is necessary in order for anyone to be able to determine how many hours were actually worked. This designation is necessary for the enforcement of the minimum wage and overtime laws, since hours worked can occur any time in a 24 hour period, and it is necessary for enforcement of Child Labor Laws concerning late hours of work. Parts 5200.0120 and 5200.0121 are needed to clarify and define the term “hours worked” for purposes of minimum wage and overtime. They list the types of things that an employee does and must be paid for. They also clarify when an employee must be paid for on-call time and inactive duty time. They clarify when a meal time does and does not need to be paid. Finally, they provide allowance for an employer and employee to reach an agreement to exclude certain night time hours, albeit hours required to be on work premises, from paid time. Parts 5200.0130, 5220.0140, 5220.0160 and 5200.0170 as well as 5200.0060 to 5200.0080 provide detail as to how the calculation of regular rate of pay, for overtime and some minimum wage purposes, is accomplished in order that everyone, both employers and employees, knows in advance both what is included in the calculation of hours and wages, how they will be calculated, and what credits might apply. Parts 5200.0030 and 5200.0040 provide for the payment of full wages to disabled workers who are performing full duties, but otherwise allow for certificates as required by Minn. Stat. §177.28, subd. 5. Finally, Parts 5200.0090 and 5200.0150 clarify the requirements of the law, including Minn. Stat. §177.24, subd. 4 and §181.79, regarding full and timely payment of all wages to employees.

Minn. Rules Parts 5200.0180 through 5200.0210 are needed to provide definition, guidance and procedural methods in determining the exempt status of an employee under Minn. Stat. §177.23, subd. 7 (6) of Minnesota’s Fair Labor Standards Act (MFLSA). Parts 5200.0190 through 5200.0210 each have two tests (Subparts 1 and subparts 2) to determine whether one who is otherwise an employee is exempted from the requirements of the MFLSA. These rules are needed, but updating is suggested below. Part 5200.0211 defines what “salary” is for purposes of the exemptions under Minn. Stat. §177.23, subd. 7 (1), (2) and (6). Parts 5200.0220 and 5200.0221 define categories of workers that are either exempt or have limited exposure to the protections. Parts 5200.0230 to 5200.0270 are needed to clarify exemptions given in Minnesota Statutes §177.23, subd. 7. Part 5220.0251 details Department obligations when employees that are owed wages cannot be found, and Part 5200.0280 sets out details for, and clarification of, the statutory

whistleblower and truthful-reason-for-termination laws. All are needed to perform the Division of Labor Standards' legislated functions.

***The following amendments are recommended:***

- Part 5200.0020 should be updated to changes made to Minn. Stat. §177.24, Subd. 1 (c), providing 90 days of training wage for employees under age 20.
- Parts 5200.0030 and 5200.0040 can be update to replace the outdated terms "handicapped" and "nonhandicapped" with the terms "disabled" and "nondisabled."
- Delete obsolete language in Parts 5200.0050, 5200.0080 and 5200.0170. Delete an incorrect reference in Part 5200.0050.
- Make changes in Part 5200.0121 which will provide us with a more clear record of agreements between employers and employees in regard to which hours may be designate as sleeping time.
- Clarify in Part 5200.0160 that any room or meal credit granted the employer and to be included in the employee's remuneration should also be shown on the employee's earning statement.
- Update salary levels in Parts 5200.0190 through 5200.0210. These levels are used as part of a test to determine whether one who is otherwise an employee is exempted from the requirements of the MFLSA. These levels should be replaced by a formula that will keep current with the minimum wage, even if that should change.

**Parts 5200.0290 – 5200.0420. Apprenticeship Programs and Agreements.**

These rules provide necessary procedures for the voluntary apprentice program administration. The parts are adopted pursuant to Minnesota Statutes §178.041, subds. 1 and 2. The rules set out procedures for establishing voluntary apprenticeship programs, procedures for terminating, canceling and transferring apprenticeship agreements, minimum standards for apprenticeship agreements, procedures for determining apprentice wages, procedures for certifying completion, duties of sponsors, equal opportunity and discrimination provisions, and maintenance of records. No changes are recommended for these rules.

**Parts 5200.0500 – 5200.0800 and 5200.0810 – 5200.0850. Employment Agencies.**

These rules are necessary for two primary functions. First, they give detail and clarity to the legislation, providing for the licensing of employment agencies, in Chapter 184 of Minnesota Statutes. Parameters of appropriate business dealings for an employment agency and guidance with respect to relationship to an applicant are detailed. Second,

Parts 5200.0810 to 5200.0850 set out the procedures to be followed by parties that wish to contest an action or lack thereof in this area of the law. The right to a hearing and the process by which to attain it are detailed. No changes are recommended in the rules.

#### **Parts 5200.0010 and Parts 5200.0900 – 5200.0960. Child Labor**

These rules give detail and clarity to the Child Labor provisions of Minnesota Statutes. The most extensive rules are necessary to define prohibited hazardous employment for minors under 16 years old (Parts 5200.0920 and 5200.0910) and for minors under 18 years old (Part 5200.0910) in order to promote the best interests of minors including their health, welfare and safety. Both Minn. Stat. §181A. 04, subd. 5, and Minn. Stat. §181A. 09, subd. 2, require the development and promulgation of these rules. The rules also give detail and clarity to the requirement that employers obtain from job applicants and maintain for employees valid proof of age of minors. Criminal liability for violation is detailed.

Minn. Rules Parts 5200.0900 and 5200.0930 to 5200.0960 provide detail and clarity to the exceptions to the prohibited employments of minors. Part 5200.0900 provides definition for statutory language at Minn. Stat. §181A.07, subd.4. The remaining parts give detail to the exemptions and set out procedures for requesting them, as well as guidelines for the Department to approve an employer's request for exemption from a specified provision of the Child Labor Law. These are needed for a consistent, standardized procedure that ensures that an exemption will be in the best interests of a minor and that the health, education or welfare of the minor will not be affected by the exemption.

#### ***The following amendments are recommended:***

- Minn. Rule Part 5200.0010 can be changed to reflect the recent statutory change at Minn. Stat. §181A. 06, adding the I-9 as proof of age. A change could also be made at Section B of Part 5200.0910 clarifying “explosives or pyrotechnics” in light of the new statute relating to public safety and modifying the definition of fireworks

#### **Parts 5200.1000 – 5200.1120. Prevailing Wage.**

These rules are necessary to administer the state's prevailing wage law, sometimes called the Little Davis-Bacon act. (Minnesota Statutes §§ 177.41 to 177.44) This is a minimum wage law, which requires workers on construction projects funded wholly or in part with state funds to be paid the prevailing wage rate, at a minimum, for work on these projects. The law provides that the prevailing wage rate is the rate paid to the largest number of workers engaged in that class of labor within the area, a formula known as the arithmetic mode, and provides the Commissioner of Labor and Industry shall investigate to determine the prevailing rate. These rules set forth the survey process by which that investigation is done and the method for certifying the prevailing wage rates for the

various classes of labor so construction workers and contractors will know the minimum wage rates applicable. Rates are set for the various classes of labor in highway-heavy construction and commercial construction. The rules also set forth the master job classifications. The department surveys for the wages being paid in each class of labor and certifies the prevailing rate to be paid at a minimum.

***The following amendments are recommended:***

- In “Basis for Highway and Heavy Construction Determinations”, Part 5200.1030, the rule should be amended to clarify that the commissioner may initiate rulemaking if the work is not covered by an existing class of labor and creating a new class of labor is necessary. This subpart provides that, upon the request of a contracting agency, the department assigns an additional class of labor and wage rate for a project, if the project involves work performed by a class of labor not defined in the rules. It also provides that the department must initiate rulemaking within 90 days. The commissioner already has authority in place to adjust job classifications when necessary.
- In “Master Job Classifications”, Part 5200.1100 changes in the classifications are needed to reflect common industry practice, state of the art advances creating new classes of labor or equipment, and skill level classifications pursuant to collectively bargained agreements and industry practice. The types and manner of work are constantly changing in construction. The master job classifications have not been altered since early 1997 and industry practice changes since then indicate necessity for adding, deleting and modifying a significant number of job classifications now.

**OSHA**

**Chapter 5203. Safety Account Grant and Loan Program.**

Penalties assessed against workers’ compensation insurers and self-insured employers for violations of the provisions of the workers’ compensation law are deposited in the Assigned Risk Safety Account. The funds in this account are then use to provide grants and loans to employers for the purpose of improving safety in the employer’s work environment. The Safety Grant Program awards funds up to \$10,000 to qualifying employers for projects designed to reduce the risk of injury and illness to their workers. This chapter of rules implements the safety account grant and loan program by establishing the criteria and procedural conditions under which the commissioner may award grants or loans for the costs of implementing safety recommendations. No changes to this chapter of rules are recommended at this time.

**Chapter 5210. Occupational Safety and Health Administration.**

Pursuant the Minnesota Occupational Safety and Health Act of 1973, the Commissioner of the Department of Labor and Industry is required to promulgate rules necessary for the Department to carry out its responsibilities under the Act. (Minn. Stat. §182.657 )

Minnesota Rules Chapter 5210 sets out procedures for the adoption of standards, for employees to access exposure and medical records, for the investigation and citation of occupational safety and health hazards, for conducting contested case hearings, for recording and reporting occupational injuries and illnesses, for reviewing requests for variances and for filing discrimination claims. Under Minn. Stat. §182.655, the portions of the chapter that address the standards and variances are exempt from the Administrative Procedure Act. This rules chapter underwent extensive revision in the early 1990s primarily in response to statutory changes to Minnesota Statute Chapter 182. But for the possibility of technical amendments, no changes are recommended for these rules.

#### **Chapter 5215. Occupational Safety and Health Review.**

This chapter sets out the procedures by which the Occupational Safety and Health Review Board reviews and decides appeals from final decisions and orders of the Commissioner of the Department of Labor and Industry. Minnesota Chapter §182.664 establishes the Occupational Safety and Health Review Board for the purpose of reviewing and deciding “appeals from final decisions and orders of the commissioner, including decisions issued by administrative law judges, petitions to vacate final orders of the commissioner, and with the agreement of the parties, may review and decide petitions for decisions based on stipulated facts.” The chapter sets out procedures for service and notice of appeals, pre-hearing processes, pleadings, motions and post-hearing processes. This chapter underwent extensive revision in the early 1990s primarily in response to statutory changes to Minnesota Statute Chapter 182. But for the possibility of technical amendments, no changes are recommended for these rules.

#### **APPRENTICESHIP**

##### **Parts 5200.0290 - 5200.0420. Apprenticeship Programs and Agreements.**

These rules provide necessary procedures for the voluntary apprentice program administration. The parts are adopted pursuant to Minnesota Statutes, section 178.041, subds. 1 and 2. The parts set out procedures for establishing voluntary apprenticeship programs, procedures for terminating, canceling and transferring apprenticeship agreements, minimum standards for apprenticeship agreements, procedures for determining apprentice wages, procedures for certifying completion, duties of sponsors, equal opportunity and discrimination provisions, and maintenance of records. No changes are recommended for these parts.

#### **Chapter 5227. Labor Education Advancement Programs.**

Each year the Apprenticeship unit at the Department of Labor and Industry disburses grants to community-based organizations serving targeted populations for the purpose of facilitating the participation of minorities and women in apprenticeable trades and occupations. This chapter of rules governs the application process and the criteria to be

used in the selection of organizations to receive these grants. No changes to these rules are recommended.

## **WORKERS' COMPENSATION DIVISION**

### **Parts 1415.0100 to 1415.3500 - Joint Rules of the Office of Administrative Hearings and Department of Labor and Industry on Litigation Procedures**

These rules govern workers' compensation litigation practice and procedure, which are needed to provide parties with consistency and guidance when litigating workers' compensation disputes. However, the rules are outdated because they have not been amended since their original adoption in the early 1980s.

*The following amendments are recommended to reflect changes in the law and technology:*

- The rules govern workers' compensation judges (formerly known as settlement judges) at the Department of Labor and Industry and Compensation Judges at the Office of Administrative Hearings. However, in 1998 the legislature transferred the settlement judges and their corresponding functions to the Office of Administrative Hearings. Therefore, some of the rules that still refer to the settlement judges and proceedings before judges at the Department should be updated to reflect the transfer and the current structure and authority of the Office of Administrative Hearings and the Commissioner of Labor and Industry. The Department and the Office of Administrative Hearings will also consider whether joint rules are still needed in light of this transfer.
- The Department of Labor and Industry has changed its filing system from a paper-based system to an imaged system. The Department is also working toward electronic filing of certain documents. The joint rules governing filing of litigation documents should be updated to reflect the increased use and availability of electronic communication.
- The statute governing attorney fees (Minn. Stat. §176.081) was amended in 1995, and since 1999 the Minnesota Supreme Court and the Workers' Compensation Court of Appeals have issued several significant decisions regarding this statute. The rules governing attorney fees should be updated to reflect the statute and caselaw.
- Minn. Stat. §176.361, governing intervention in a workers' compensation dispute by parties who have an interest in the outcome, was amended in 2002. The rules governing intervention should be updated to reflect the amended statute.
- Minn. Stat. §176.191, governing payment of workers' compensation benefits under a temporary order has been amended since the rules were adopted. The



rules governing petitions and payment of benefits under a temporary order should be amended to reflect the current statute.

***Rules in this section recommended for repeal are:***

**Part 1415.0900. Notice of Claim for Workers' Compensation Benefits.**

The requirement that a notice of a claim for workers' compensation benefits must be given to the opposing party before a claim petition is filed is obsolete. The statute from which this was derived (Minn. Stat. §176.271, subd. 2) no longer contains this requirement.

**Part 1415.1500. Default Award.**

In 1986 this rule was declared inconsistent with Minn. Stat. §176.331 by the Minnesota Supreme Court. That statute was amended in 1987 to specify the procedure for when an Answer to a Claim Petition is not timely filed. Therefore the rule should be repealed.

**Chapter 5217. Medical and Rehabilitation Reviews.**

This chapter is needed to govern the procedural operations of the Medical Services Review Board (MSRB), established by Minn. Stat. §176.103, and the Rehabilitation Review Panel (RRP), established by Minn. Stat. §176.102. By statute, the MSRB and RRP advise the Commissioner about workers' compensation medical and vocational rehabilitation matters, and make recommendations or issue orders concerning sanctions against health care providers and qualified rehabilitation consultants who violate workers' compensation laws and rules. The RRP is also authorized to review orders of the commissioner concerning registration of QRCs. The rules govern election of officers, quorums, meetings, disqualification of a Board or Panel member, and the process by which contested discipline or registration cases are brought before the MSRB or RRP.

***The following amendments are recommended:***

- The only change being considered to this chapter is to repeal Part 5217.0600, which requires the MSRB and the RRP to schedule monthly meetings. It is not a cost effective use of state resources or members of the board and panel to require that meetings be scheduled monthly, even where there is little or no business for the board or panel to consider.

**Chapter 5218. Managed Care.**

Workers' compensation managed care plans were authorized by the legislature in 1992 as part of an overall program to address increasing costs of medical services in workers' compensation. (Minn. Stat. §176.1351) The rules govern the certification process and operational requirements for managed care plans, including: applications for certification; provider networks; the coverage responsibility of managed care plans;

notice of rights and responsibilities to employees; plan reporting requirements; commencement and termination of contracts with participating providers; use of health care providers who are not participating plan providers; charges and fees; dispute resolution; utilization review and peer review; medical case management; audits; and investigation and handling of complaints against managed care plans.

There are currently four certified managed care plans within the workers' compensation system. The rules are needed to provide a certification process in the event there is another application for certification and to monitor and ensure quality services for injured workers. One change that is being considered is to permit managed care plans to negotiate fees with health care providers. However, the effect on health care costs and treatment provided to injured workers will need to be studied further before a final decision on this amendment is made. The Workers' Compensation Advisory Council may consider this proposal as part of its review of medical costs this year. There are clarification changes that could be made to other parts of the rules, but since the program has been in effect since 1993 the clarifications can wait until the decision on fees is made.

#### **Chapter 5219. Medical Record Cost Reimbursement; Independent Medical Examination Fees.**

Parts 5219.0100 to 5219.0300 provide a fee schedule for reimbursement for copies of medical records related to a current claim for workers' compensation. The rules are needed to comply with Minn. Stat. §176.137, subd. 7, which requires the Commissioner to adopt by rule a schedule of reasonable charges for copies of medical records. The Department has considered adopting the schedule of fees for the cost of copies in Minn. Stat. §144.335, subd. 5. When enacted in 1992 for reimbursement for copies of general health records, Minn. Stat. §144.335 established the same reimbursement amounts as in this rule, but with an annual adjustment based on the consumer price index. Since this would increase the already rising medical costs in the workers' compensation system, the Department will seek the advice of the Workers' Compensation Advisory Council before proposing the application of that statute to workers' compensation medical records.

Part 5219.0500 establishes maximum fees for workers' compensation independent medical examinations. The rules as adopted provide that the maximum IME fees must be annually adjusted in the same manner as the conversion factor is adjusted for the relative value fee schedule in chapter 5221. The Workers' Compensation Advisory Council will be asked to consider the adjustment factor as part of its review of workers' compensation medical costs this year.

#### **Chapter 5220. Rehabilitation and Compensation.**

##### **Parts 5220.0100 to 5220.1900. Workers' Compensation Vocational Rehabilitation**

These rules govern vocational rehabilitation services for injured workers who are unable to return to their job because of a work-related injury. Minnesota Statutes, §176.102, subd. 2 requires the Commissioner to monitor and supervise rehabilitation services and

requires the Commissioner to establish by rule a fee schedule for rehabilitation services. Minnesota Statutes, §176.82, subd. 2 authorizes rules that are necessary to implement and administer the rehabilitation provisions of chapter 176; establish qualifications necessary to be a QRC or vendor of rehabilitation services; provide for penalties against insurers who fail to provide a rehabilitation consultation as required by law; and prescribe forms and reporting requirements for rehabilitation services. The original rehabilitation rules were adopted in 1980, with revisions in 1984, 1987, 1992, 1993, and 2000.

The Department has been working on revisions to the rehabilitation rules. Drafts of possible changes were provided to 166 interested persons and organizations, and were discussed at monthly meetings of the Rehabilitation Review Panel between January 2000 and June 2001. The changes were further revised in response to this public input. The draft amendments, which have the support of the Rehabilitation Review Panel:

- Amend the time frames for filing certain rehabilitation forms for consistency with statutory criteria and to facilitate timely reporting by rehabilitation providers and insurers.
- Clarify the process for objecting to a rehabilitation provider's consultation determination, and provide for a penalty against an insurer who fails to refer the employee for a timely consultation to ensure timely provision of rehabilitation services.
- Minimize disputes by specifying the rate at which the employer must reimburse the employee for compensable mileage; clarifying the employee's right to select a QRC consistent with caselaw; and clarifying procedures and standards for obtaining certification by QRC interns.
- Minimize the regulatory burden on rehabilitation providers by merging two rehabilitation report forms; eliminating certain certification, residency and fee reporting requirements; and updating certification requirements for consistency with changes in national standards.
- Amend rules governing QRC conduct to ensure objectivity in the performance of rehabilitation services and facilitate communication among other parties involved in the rehabilitation effort.
- There has also been a proposal to increase maximum fees for rehabilitation providers, including an increase in the cost of living adjustments from a maximum of 2% to 5% per year. The Workers' Compensation Advisory Council will consider the rehabilitation fees and annual adjustment factor when it considers workers' compensation medical costs this year.

#### Parts 5220.2510 to 5220.2960. Department Rules of Practice

Minnesota Statutes, §175.17 provides that "The commissioner shall adopt reasonable and proper rules governing rules of practice before the workers' compensation division in matters that are not before a compensation judge." Minn. Stat. §176.82 authorizes the Commissioner to promulgate rules and forms to implement the workers' compensation law. The Department's penalty authority is found in Minn. Stat. §176.221, subd. 3 and 3a; 176.225, subd. 1 and 5; 176.138; 176.129, subd. 10; 176.231; 176.238; 176.181,

subd. 3; and 176.194. Minn. Stat. §176.231 and 176.251 impose on the commissioner the duty to keep informed of the nature and extent of all injuries and disabilities, and requires the commissioner to supervise and require prompt and full compliance with all provisions of the workers' compensation law relating to the payment of compensation.

In order to comply with the statutory mandate that the commissioner keep informed of all injuries and ensure prompt payment of compensation, the rules of practice are needed to:

- specify forms that must be filed by insurers and self-insured employers to report injuries, denials of liability, and payments made under the workers' compensation law;
- govern procedures and forms for administrative conferences and mediation at the department, medical disputes, and the discontinuance of benefits;
- specify the procedures for and amount of penalties that will be assessed where an insurer fails to: make a timely report of injury; pay or properly deny a claim; pay under an order of the commissioner or compensation judge; timely pay benefits; properly discontinue benefits; or file a required report.; and
- provide a procedure for objecting to penalties; payment of dependent's benefits; and examining workers' compensation files.

Under Minn. Stat. 176.061, the department issues orders for distribution of proceeds when injured workers have a tort claim against a third party arising from the same incident as his or her workers' compensation claim. The workers' compensation insurer has a subrogation interest, the amount of which is set out by statute. Part 5220.2690 sets out the requirements to provide information necessary for the Department to issue third party orders. No changes are necessary to the rule.

There are additional rules within this chapter that outline the penalties and procedures when employers or insurers fail to pay mandatory assessments or when they fail to insure as required by the statute. These rules are essential in maintaining compliance with the collection of assessments and in the administration of the mandatory insurance provisions of the law. These rules are necessary, however there are amendments that should be made in order to incorporate changes made to the statute.

***The following amendments are recommended:***

- Several rules should be updated to reflect statutory changes and caselaw pertaining to payment of benefits, attorney fees, the transfer of settlement judges to the Office of Administrative Hearings, and penalties.
- The Department of Labor and Industry has changed its filing system from a paper-based system to an imaged system. The Department is also working toward electronic filing of certain documents. The rules governing filing of documents should be updated to reflect and facilitate the increased use and availability of electronic communication.

- Rules governing payment of dependency benefits could be clarified to facilitate prompt payment of these benefits and minimize disputes.
- The rules governing the assessment of penalties for failure to timely report or pay benefits could be clarified to establish clear expectations of payers. These amendments would facilitate prompt payment of benefits and minimize disputes between the payer and the employee and the payer and the Department.
- The rule governing attachment and garnishment of workers' compensation benefits for child support should be amended to correspond to changes to Minn. Stat. §518.611, subd. 2.

*The following rules are no longer needed and are recommended for repeal:*

- Part 5220.2605 provides an expedited procedure for deciding issues related to whether an injured worker is an employee or an independent contractor. The Workers' Compensation Court of Appeals issued a decision limiting the application of this section. Accordingly, it is rarely, if ever, used and could be repealed.
- Part 5220.2655 governs small claims court operations. Claims are almost never filed under this process. Therefore, the rule could be repealed.
- Part 5220.2960 permits the Commissioner to issue interim notices and orders, which are binding on the Commissioner, but not the parties. This process has never been used since it was adopted in 1995, and therefore could be repealed.

#### **Chapter 5221. Medical Services and Fees.**

The rules in this chapter were adopted in 1992 as a result of a comprehensive legislative package designed to control rising medical costs in the workers' compensation system, including regulation of the utilization and cost of health care services. The legislation required that the Commissioner adopt a uniform billing form for health care providers, a relative value fee schedule, treatment parameters, and a managed care option for employers (discussed above under Chapter 5218.)

This chapter has four categories of rules governing the delivery, payment and reporting of medical services for an injured worker: Medical Rules of Practice; Medical Fee Schedule; Treatment Parameters; and Disciplinary Action and Penalties.

#### **Part 5221.0100 to 5221.0700. Medical Rules of Practice.**

The rules in this section are needed to facilitate the exchange of information between health care providers and employees, employers, insurers, qualified rehabilitation consultants and the Department of Labor and Industry to ensure that workers' compensation claims are paid and managed promptly, and the employee is able to return

to work as soon as possible. The statutory authority for the rules is in Minn. Stat. §176.135, subd. 7, which requires the Commissioner to adopt a uniform billing form for health care providers; §176.231, which authorizes the Commissioner to develop forms and require reports from health care providers related to the nature and extent of the injury and disability; and §176.135, subd. 2, which requires the Commissioner to adopt rules governing change of doctor.

The rules establish a Health Care Provider Report form, which the provider uses to report information to insurers and the Department of Labor and Industry about the employee's condition and treatment, maximum medical improvement and permanent partial disability, information that is necessary to administer the claim. The Report of Work Ability and time frames for responding to questions about the employee's ability to work are prescribed to facilitate the employee's return to work and the insurer's administration of the claim. The rules also specify how medical bills must be submitted to insurers, and prescribe the medical coding and billing forms that various provider groups must use. To the extent possible, these rules and forms incorporate national coding and billing standards consistent with the Administrative Simplification Act in Minn. Stat. Chapter 62J. The rules also incorporate standards governing change of doctor and excessive charges for services to ensure the appropriate utilization of health care services.

The Medical Rules of Practice were updated in 2001, and no further changes are needed at this time.

#### Part 5221.4000 to 5221.4070. Medical Fee Schedule.

The workers' compensation law has provided authority to regulate maximum fees for workers' compensation medical services since 1979. The current law, in Minnesota Statutes, §176.136, requires the Commissioner to adopt a resource-based relative value fee schedule, and authorizes adoption of the relative value fee schedule used for the federal Medicare program. The first Minnesota workers' compensation relative value fee schedule was adopted in 1993. It was updated in 1995, 1997, and 2001.

The Minnesota workers' compensation relative value fee schedule (based on the Medicare fee schedule) contains tables of procedure codes that represent and briefly describe individual health care services. These codes are typically 5 digit numeric codes incorporated from the national Current Procedural Terminology (CPT) coding system. Medicare assigns a relative value unit (RVU) to each of the CPT codes in the schedule. The RVU is then multiplied by a conversion factor (a dollar amount) to determine the maximum fee. The Medicare conversion factor for services in 2001 was \$38.25. Based on statistical criteria set forth in Minn. Stat. §176.136, subd. 1a, the Minnesota workers' compensation conversion factor is \$73.13.

Also incorporated into the workers' compensation fee schedule are the Medicare policies governing payment under the fee schedule, including payment for multiple procedures, co-surgeons, assistant at surgeons, and a "global surgical period" (which provides that the fee covers all services for 10 to 90 days after the surgery).

Minnesota Statutes, §176.136 provides that annual updates to the fee schedule may be adopted under the expedited rulemaking procedures of Minn. Stat. §14.386 (a). This can require publication of more than 8000 codes and relative value units in the Federal Register, which is expensive and time consuming. While no changes to the existing rules are proposed, the Department will ask the Workers' Compensation Advisory Council to consider recommending amendments to Minn. Stat. §176.136 to allow direct use of Medicare tables as published in the Federal Register each year in lieu of publishing the schedule in the State Register. The Department will also ask the Advisory Council to review the statistical criteria for establishing and annually updating the conversion factor for the workers' compensation fee schedule.

Finally, also under consideration is a recommendation of the Medical Services Review Board to amend the definition of mechanical traction to provide fee schedule coverage for treatment with newer types of traction equipment. The Board recommended the same amendment to the treatment parameters.

#### Part 5221.6010 to 5221.6600. Medical Treatment Parameters.

Minnesota Statutes, §176.883, subd. 5 requires the Commissioner to adopt rules establishing standards and procedures for health care provider treatment, including criteria for diagnosis and treatment of the most common work-related injuries, surgical procedures, appliances and equipment, diagnostic imaging procedures, inpatient hospitalization and chronic pain. According to the statute, the rules are intended to be used to determine whether a provider of health care services "is performing procedures or providing services at a level or with a frequency that is excessive, unnecessary, or inappropriate based on accepted medical standards for quality health care."

Permanent rules were adopted in 1995 governing diagnosis, treatment, surgery and chronic management of back and arm injuries. Since then the Department's medical consultant, in consultation with the Workers' Compensation Medical Services Review Board, has recommended updates to the rules governing imaging and diagnostic and therapeutic injections, and the use of newer types of traction. The recommended changes would also add new parameters for lower extremity injuries, thoracic outlet syndrome, and the long term use of narcotics as appropriate for treatment of chronic pain consistent with Minn. Stat. §152.125.

#### Part 5221.8900. Disciplinary Action; Penalties

This part is needed to establish procedures for investigating complaints that a health care provider's conduct or services violate a workers' compensation law or rule as required by Minn. Stat. §176.103. This part governs receipt of the complaint, investigation, meetings with the provider, resolution by instruction or written agreement, and referral to the Medical Services Review Board after hearing before an administrative law judge, for penalties. The rules need to be updated to reflect revised penalty procedures in Minn. Stat. §176.103, subd. 3(b).

## **Chapter 5222. Benefit Reimbursement; Notice of Coverage.**

### **Part 5222.0100. Reimbursement of Supplementary Benefits**

This rule specifies the procedures by which an employer may apply for an administrative finding of permanent total disability under Minn. Stat. 176.132, subd. 4. The rule is used and should not be repealed. However, one possible amendment would be to allow for an offset of MERF benefits.

### **Part 5222.2000. Insurance Verification**

This rule governs filings by insurers of insurance coverage notices. The rule is used and should not be repealed.

#### ***The following amendments are recommended:***

- Update language in a portion of the rule to reflect current technology.
- Clear up confusion between the rule and the statute (Minn. Stat. §176.185) regarding a grace period after which a cancellation of an insurance policy becomes effective.

## **Chapter 5223. Permanent Partial Disability Schedule.**

The Commissioner is required to adopt a permanent partial disability (PPD) schedule under Minn. Stat. §176.105. The PPD schedule is a list of physical impairments and corresponding percentages of disability. The percentages of disability listed in the PPD schedule are converted to a monetary award, as specified in Minn. Stat. §176.101, subd. 2a, that is paid to injured employees who have suffered permanent disability because of a work injury.

The PPD schedule was first enacted in 1983, and was extensively amended in 1993. Based on experience with the PPD schedule since 1993, the Department has identified some technical errors that need to be corrected and language that needs clarification. The draft changes would clarify definitions, instructions and confusing wording; update the schedule to reflect current medical procedures; correct erroneous cross-references; and clarify rating procedures and medical conditions subject to rating. The changes generally reflect what was intended when the schedule was adopted in 1993.

## **Chapter 5224. Independent Contractor Rules.**

These rules were promulgated to create “safe harbors” for employers and other entities that were trying to determine whether they or their entity was an “employer” liable to insure itself for workers compensation coverage for workers.



For 34 specific occupational areas that were ambiguous, the rules list criteria that, if substantially met, will assist an entity in determining whether the relationship that it has with a person is, for workers compensation purposes, an employment relationship or whether, instead, it is an “independent contractor” relationship. These occupational areas can be found under Parts 5224.0020 through 5224.0312. If the independent contractor criteria listed in the occupational rule subparts are substantially met, the entity can be fairly assured, or “safe” in knowing that the label given to the relationship will be consistent with what a court would ultimately determine.

The remaining subparts of the rules contain general criteria for relationships that do not fall into one of the specified occupational areas. (Parts 5224.0320 – 5224.0340) Because of the legal significance of the ability-to-control factor, Part 5224.0330 lists factors that can be used to determine whether a particular entity has the right to control the means and manner of a person’s work performance. Finally, Part 5224.0340 lists factors that the courts have noted as significant in making the determinations as to whether a particular relationship is an employment relationship or a contract with an independent contractor.

***The following amendments are recommended:***

- In 1996, language was added to the workers’ compensation statute that specifically outline criteria necessary for independent contractor status for those individuals in the construction industry. It is possible that persons are deemed statutory employees in the construction industry under the new language, potentially overruling their status under previous law, including these rules. This qualification (that independent contractors in the construction industry are deemed employees) to these rules could be added by way of rule amendment to place most of the workers’ compensation provisions pertinent to these determinations in one place.

**Chapter 5228. Workers’ Compensation; Fraud Unit.**

Minnesota Statutes § 175.16, Subd. 2 provides that the Department of Labor and Industry shall contain a fraud investigation unit to investigate fraudulent or other illegal practices in the workers’ compensation system and other matters in the department’s jurisdiction. These rules provide the framework under which the Department’s Fraud Unit, known as the Investigative Services Unit, identifies fraud, conducts investigations and makes determinations on which, if any, course of action should be followed. The rules contain definitions; provide direction on identification of suspected fraud; outline the unit’s investigative authority; describe the basic types of fraud involved; set forth the scope of the unit’s investigations; and provide that the investigations are to conclude with a number of various outcomes ranging from no further action to referral for criminal prosecution. The purpose of the rules is to provide the unit, stakeholders in the workers’ compensation system and the public with knowledge and direction as to how the unit will identify and pursue investigation of fraud, primarily in the workers’ compensation system.

***The following amendments are recommended:***

- Laws of Minnesota for 2002, Chapter 331, sections 16 and 17 provide that the powers and duties of the investigative services unit are transferred to Division of Insurance Fraud Prevention in the Department of Commerce effective July 1, 2003. The personnel, property, obligations and unexpended fund balances necessary to conduct the responsibilities under Minnesota Statutes § 175.16, Subd. 2 are also transferred and section 175.16, subd. 2 is repealed. These rules will require amendments to reflect whatever statutory authority or references and other changes the Department of Commerce considers necessary to reflect the transfer.

**Chapter 5229. Workers' Compensation; Miscellaneous.**

**Parts 5229.0100 – 5229.0700. Equitable Apportionment Arbitration.**

These rules set out a procedure by which workers' compensation insurers and self-insured employers can arbitrate among themselves apportionment of the liability for workers' compensation benefits. As required by statute, an employee's right to benefits is not in any way affected by the sharing of liability for benefits among insurers and self-insured employers involved. These rules were developed pursuant to statutory language adopted by the legislature in 1995 which stated that "the parties and the arbitrator must be guided by general rules of arbitrator selection and presumptive apportionment...that are developed and approved by the commissioner of the department of labor and industry." While the statutory language requiring guidance of the rules was repealed in 2001, there is nothing that would prohibit the use of the rules, or some part of them, in such equitable apportionment arbitration, or other arbitration, situations. The rules were developed with significant input from the affected parties since employees' rights to benefits could not be affected. There is, therefore, reason to believe that some of the processes will continue to be used by affected parties.

***The following amendments are recommended:***

- The portion of the rules requiring the Commissioner, in consultation, to appoint an administrator, (Part 5229.0410, Subpart 1) should be repealed to correspond with recently enacted statutory changes.

**Parts 5229.0010 – 5229.0060. Collective Bargaining Agreements.**

Minnesota Statutes § 176.1812 provides a method for employers or groups of employers in the construction industry to negotiate agreements with their union workers regarding certain aspects of the administration and resolution of worker's compensation claims. The collectively bargained agreements (CBAs) regarding workers' compensation may not reduce the benefits as provided to all workers by the Minnesota Workers' Compensation Act. The CBA's may make provisions regarding Alternative Dispute Resolution procedures, an agreed upon limited list of medical providers, an agreed upon limited list

of providers for independent medical examinations, creation of light duty and return to work programs, a limited list of rehabilitation and retraining providers, and establishment of safety committees and safety procedures that are different from the normal provisions in the workers' compensation law.

These rules implement the statutory system under which the department "recognizes" CBAs on workers' compensation before the CBA's are allowed to operate under the law; specify how the department gathers the data the legislature determined would be useful in comparing the performance of CBA plans against the performance of the standard statutory workers' compensation system; and outlines how the state's "recognition" of a CBA may be terminated if the plan operated to reduce workers' benefits. The rules are necessary to provide enough oversight of the operation of CBA plans and the protection of injured workers' benefits as required in the law. At the same time the rules provide the freedom to vary the allowed terms from the standard practices to achieve reduced administrative costs and speed in resolving claims that the parties to the CBAs hope to achieve. No changes are recommended to these rules at this time.

***The following amendments are recommended:***

*(Gary Hall wanted the CBA plans portion of the Rules Report changed to include a recommended amendment that attorneys shall be allowed at ADR proceedings. Our initial draft included no new amendments. To include the change requiring that attorneys be allowed at ADR proceedings, the following should be added and the "no changes" sentence from above should be deleted.):*

- No technical or procedural amendments are needed either to meet the regulatory objectives prescribed by the legislature or to reduce unnecessary burdens on the parties to the CBAs. It is recommended that the rule be amended so that CBA plans are required to have a provision that allows injured workers to have an attorney appear with them at alternative dispute resolution proceedings.

**CODE ADMINISTRATION AND INSPECTION SERVICES**

**Chapter 5225. Boilers and Power Boats.**

**Parts 5225.0010 - 5225.1400. Licenses.**

These rules govern the issuance, renewal and revocation of occupational licenses to operate boilers. These rules are needed to ensure that qualified individuals safely operate boilers in Minnesota in accordance with Minnesota Statutes §§183.501 through 183.52. Further, these rules set forth the basic license requirements and duties, license application procedures, license expiration and renewal requirements, license examination procedures, required boiler operating experience and documentation to qualify for a boiler operator's license, and disciplinary procedures for suspending or revoking a license. Additionally, the rules set forth the attendance requirements for operating boilers by licensed boiler

operators. These rules exist to ensure the safety of boilers when in use. No changes are recommended at this time.

Parts 5225.2050 - 5225.3300. Inspections.

This section of the chapter implements the portions of Minnesota Statutes chapter 183 that govern the inspection of boilers and pressure vessels. These rules set forth the maximum allowable working pressure for boilers and pressure vessels, the construction and repair standards for boilers and pressure vessels, the inspection standards used on boilers and pressure vessels, authorization for owners to repair their own boilers and pressure vessels provided they meet certain criteria, the requirements for a boiler and pressure vessel to be exempt from inspection by a state boiler inspector, and the professional conduct expected of boiler inspectors in Minnesota. These rules exist to ensure the safety of boilers and pressure vessels when in use.

***The following amendments are recommended:***

- Minnesota Rules, Part 5225.2200, which provides for the issuance and display of an inspection or exemption certificate, should be updated to reflect the deployment in 2002 of computer technology to state boiler inspectors that makes this requirement redundant. As a result of new technology, state boiler inspectors have handheld computers that contain this information for all locations and all vessels in the state. As such, the information on the certificates is with inspectors daily – thereby making the printing and mailing of these certificates unnecessary.

Parts 5225.4000 – 5225.5200. Boiler Safety.

These rules clarify the requirements set forth in the portions of Minnesota Statutes Chapter 183 that govern the code requirements for boilers in Minnesota. These rules set the requirements for specific features of boilers, including blowoff tanks, safety valves, water gage, water column shutoffs, steam gage, valves and fittings, stop valves, common main connection, blowoff piping, blowoff piping valves and fittings, feed piping and check valve, feedwater supply, and electric boilers. These rules exist to ensure the safety of boilers while in operation. No changes are recommended for these rules at this time.

Parts 5225.6000 - 5225.7200. Navigation of Power Boats on Inland Waters.

These rules implement the portions of Minnesota Statutes Chapter 183 that govern the inspection and operation of boats carrying passengers for hire on the inland waters in Minnesota. The rules incorporate by reference the applicable code of federal regulations adopted by the United States Coast Guard for the regulation of boats carrying passengers for hire on inland waters. These rules set forth the procedures for obtaining a permit to carry passengers for hire, the requirements for boat inspections, and operator requirements. These rules also set forth the rules for navigation, required equipment, and reporting damage from an accident. These rules exist to ensure the safe operation of boats carrying passengers for hire on the inland waters of the state.

***The following amendments are recommended:***

- These rules should be updated so that they are consistent with current US Coast Guard code of federal regulations governing boats carrying passengers on inland waters.

**Parts 5225.8600 and 5225.8700. Fees and Penalties.**

These rules set the fees for occupational licenses and inspections in accordance with Minnesota Statutes §183.545, and the penalty for owners that do not get their boiler or pressure vessel inspected in accordance with Minn. Stat. §183.42. The license and inspection fees are set in amounts to recover the costs of delivering the applicable service. License fees are set to cover the costs of processing license applications, examinations, renewals, and enforcement. Inspection fees are set to cover the costs of registering and inspecting boilers, pressure vessels, and boats-for-hire; and enforcement of Minnesota Statutes, Chapter 183. No changes are recommended for these rules.

**Chapter 5226. Elevator Permit and Fee Requirement.**

This chapter relates to permits and fees for installing and modifying elevators. The parts and chapter also provide that the permitted installations and modifications are inspected and that a state license is required for certain elevator contractors. In 1993, the elevator permitting and inspection personnel were transferred to the department of administration, building code division by executive transfer order. The rules in the chapter are obsolete in that they refer to the Department of Labor and Industry. The Department of Administration has its own rules concerning elevator permitting and inspection.

***Rules in this chapter recommended for repeal:***

- The entire chapter should not be under the Department of Labor and Industry's jurisdiction. The Office of the Revisor may be able to editorially change the department references and even the chapter number in the existing rule to fit with existing Department of Administration building code rule.

**Chapter 5230. Pipefitters; Power Piping Systems.**

**Parts 5230.0010 - 5230.0020. High Pressure Piping Administration.**

These rules establish the Advisory Council for Pipefitting Examinations and the duties of the of the council's secretary.

***The following amendments are recommended:***

- Several rules are obsolete and the department is in the process of updating them to reflect a statutory change that created the Code Enforcement Advisory Council and that indicated that the administrator for high pressure piping regulation is the

department. The amendments will also include a due process dispute resolution process for subject of license or permit enforcement proceedings.

Part 5230.0030. Qualifications and Duties of Inspectors.

This rule sets forth the qualifications and duties of high pressure piping inspectors employed by the department. This rule exists to ensure the department employs qualified individuals, knowledgeable in the construction of high pressure piping systems, to enforce the high pressure piping code. No changes to this rule are recommended.

Part 5230.0040 - 5230.0210. High Pressure Piping License Requirements and Procedures.

These rules implement Minnesota Statutes §326.48, which requires anyone constructing or installing high pressure piping in Minnesota to have a license issued by the state. These rules set forth the license requirements, qualifications for licensure, license examination requirements, license fees, and the license application and renewal procedures. These rules exist to ensure the construction and installation of safe high pressure piping systems in the state by qualified individuals and businesses. No changes to these rules are recommended.

Part 5230.0250 - 5230.1270. Code for Power Piping Systems (Steam).

These rules implement Minnesota Statutes § 326.48, by prescribing the uniform minimum standards for design, manufacture, test, and installation of power piping systems in Minnesota. These rules exist to ensure that high pressure piping systems constructed and installed in the state are safe and will operate safely. The power piping code is consistent with and modeled after national standards for the construction of high pressure piping systems. No changes to these rules are recommended.

Part 5230.5000 - 5230.6200. Code for Power Piping Systems (Ammonia).

These rules implement Minnesota Statutes §326.48, by prescribing the uniform minimum standards for design, manufacture, test, and installation of ammonia refrigeration piping systems in Minnesota. These rules exist to ensure that ammonia refrigeration piping systems constructed and installed in the state are safe and will operate safely. These rules are consistent with and modeled after existing national standards for the construction and maintenance of ammonia refrigeration piping systems.

***The following amendments are recommended:***

- Several minor amendments to the portion of Code for Power Piping relating to ammonia are recommended and are included in the department's current rulemaking relating to High Pressure Piping Administration. The amendments relate to secondary coolants and certain devices that help keep ammonia emergency pressure relief valves and piping operational.