MINNESOTA CODE OF AGENCY RULES

RULES OF THE DEPARTMENT OF ECONOMIC SECURITY

1982 Reprint

All rules as in effect on September 15, 1982

Prepared by

THE OFFICE OF REVISOR OF STATUTES
Room 3, State Capitol, St. Paul, Minnesota 55155

Distributed by

STATE REGISTER AND PUBLIC DOCUMENTS DIVISION
DEPARTMENT OF ADMINISTRATION
117 University Avenue, St. Paul, Minnesota 55155

DEPARTMENT OF ECONOMIC SECURITY

Chapter One: General Definitions

Chapter Two: Benefits

Chapter Three: Taxation

Employment Security

ES 7	Unemployment compensation fund receipts and disbursements.
ES 13	Information in files and records of the department confidential.
ES 14	Contributions by employers.
ES 15	Adjustments and refunds of contributions.
ES 16	Settlement agreements and cancelation of claims.
ES 18	Separation notice required from employers.
ES 21	Payment of benefits for partial unemployment.
ES 22	Payment of benefits to interstate claimants.
ES 22.1	Combining of wage credits pursuant to interstate reciprocal arrangements.
ES 23	Determination of claims for benefits and appeals.
ES 24	Experience rating and rate determinations; reviews and appeals.
ES 25	Hearings to determine liability.
ES 26	General provisions applicable to all hearings.
ES 29	Claims for extended benefits.
ES 30	Payment of benefits to individuals in approved training.

C010-0092

8 MCAR S 4.0010 Summer youth employment.

A. Purpose. This rule adopted pursuant to Minnesota Statutes, section 268.33 is designed to establish a procedure for the allocation of funds under the Youth Employment Act of 1977, Minnesota Statutes, sections 268.31 to 268.36, and to establish contracting, operating, and invoicing procedures to be utilized in the expenditure of the funds.

B. Definition of terms. The following terms used in this rule shall have the meanings given them.

1. "Act" means the Youth Employment Act of 1977, Minnesota Statutes, sections 268.31 to 268.36.

2. "Commissioner" means the Commissioner of the Minnesota Department of Economic Security.

3. "Contract" means an agreement entered into between a prime sponsor or a political subdivision or a nonprofit organization and the commissioner for the operation of a youth employment program under the act.

4. "Department" means the Minnesota Department of Economic Security.

5. "Prime sponsor" means a unit of government, combination of units of government, a rural concentrated employment grantee, or an Indian reservation, which has entered into a grant with the United States Department of Labor to provide comprehensive manpower services under the federal Comprehensive Employment and Training Act of 1973 (P.L. 93-203).

6. "Program employer" means an organization which employs a person under the program established by the act.

7. "Subcontract" means an agreement entered into between a prime sponsor and a political subdivision or nonprofit organization, or both, for the operation of a youth employment program under the act.

C. Allocation of funds. The commissioner shall allocate funds available under the act as follows:

1. Allocations to counties.

a. Fifty percent of the funds available under the act shall be allocated to counties on the basis of each county's share of the estimated youth population of the state which is 14 through 21 years of age.

b. Fifty percent of the funds available under the act shall be allocated to counties according to each county's share

of the estimated youth population of the state which is 14 through 21 years of age, adjusted for:

(1) Historic summer unemployment rates in the county as evidenced by official labor force estimates for the months of June, July and August for the most recent three-year period for which such data is available;

(2) The county's proportion of families below the poverty level as evidenced by 1970 United States Census figures as adjusted by reference to more recent population surveys, provided that reference to more recent population surveys shall be made only if such data is available for all counties in the state; and

(3) Estimates of postsecondary school enrollment in the county as evidenced by validated statistics from the Minnesota Higher Education Coordinating Board or, in their absence, by the most recent United States Census data.

c. The method of allocation to counties expressed mathematically shall be as follows:

$$A_{ci} = \frac{0.5(YP_{ci})}{YP_s} + \frac{0.5F(YPA_{ci})\ (U_{ci})(P_{ci})}{\sum_{i=1}^{n} (YPA_{ci})\ (U_{ci})(P_{ci})}$$

where: (1) A_{ci} = allocation to the i^{th} county;
(2) F = funds available under the act;
(3) YP_{ci} = youth population 14 through 21 years of age in the i^{th} county, determined by interpolation for the current year from projections of the state demographer;
(4) YP_s = same as (3) above for the state;
(5) YPA_{ci} = youth population as in (3) above, but adjusted for postsecondary school enrollment as referenced in C.1.b.(3);
(6) U_{ci} = most recent three year average of official labor force unemployment rates for the months of June, July, and August for the i^{th} county; and
(7) P_{ci} = percent of all families with income below the poverty level in the i^{th} county as evidenced by the 1970 United States Census or more recent population surveys as referenced in C.1.b.(2).

2. Allocation to cities and Indian reservations. After the commissioner has made an allocation to each county, each county's allocation shall be divided as follows.

a. Each city within the county which has a total population of 2,500 or more shall receive that portion of the county's allocation which is proportionate to the population of the city as compared to the total population of the county as evidenced by the most recent United States Bureau of Census estimates. Each Indian reservation within the county shall receive that portion of the county's allocation which is proportionate to the population of the Indian reservation as compared to the total population of the county as evidenced by 1970 United States Census figures.

b. The remainder of the county allocation, that part which is not allocated to cities and Indian reservations under C.2.a., shall be allocated to the county as a whole.

D. Contracting procedures. Each prime sponsor will be offered a contract for the amount of funds allocated to its area. Upon the offer of a contract, each prime sponsor may exercise the following options:

1. Sign the contract for the entire amount of the allocation and directly administer the program;

2. Sign the contract for the entire amount of the allocation and subcontract the operation of the program to political subdivisions or nonprofit organizations, or both, within the prime sponsor's jurisdiction;

3. Designate all or a part of the allocation to be directly used by a state agency, political subdivision or a nonprofit organization; or

4. Decline the offer of the contract. In such a case, the commissioner shall offer to contract directly with the cities, Indian reservations and counties in the prime sponsor's area.

E. Operation procedures.

1. Regular program. Youth who are at least 14 years of age but less than 22 years of age at the time they are to begin employment under the program established by the act are eligible for program employment. Approximately 50 percent of the youth hired should be from families which meet the criteria for economically disadvantaged as established by the Employment and Training Administration of the United States Department of Labor at 20 Code of Federal Regulations, sections 675.4 and 675.5-10 (1980). However, if there are insufficient eligible youth from economically disadvantaged families available for employment to meet this goal within an area under the jurisdiction of a prime sponsor which has received an allocation under C., and the prime sponsor certifies such insufficiency to the department and the department concurs, the criteria shall be waived with respect to the funds allocated to the area. Hereinafter, this portion of the program is referred to as the "regular program."

2. Postsecondary program. Notwithstanding E.1., at least 33-1/3 percent of the funds allocated to the prime sponsor area are to be used to hire youth who are at least 18 years of age, or a high school graduate, but less than 22 years of age who are certified by the department as intending to enroll or are enrolled in a postsecondary educational institution. Approximately 50 percent of the youth hired should be from families which meet the criteria for economically disadvantaged as established by the Employment and Training Administration of the United States Department of Labor at 20 Code of Federal Regulations, sections 675.4 and 675.5-10 (1980). However, if there are insufficient eligible youth from economically disadvantaged families available for employment to meet this goal within an area under the jurisdiction of a prime sponsor which has received an allocation under C., and the prime sponsor certifies such insufficiency to the department and the department concurs, the criteria shall be waived with respect to the funds allocated to the area. Hereinafter, this portion of the program is referred to as the "postsecondary program." A partial waiver from this part may be obtained in accordance with the procedures set forth in G.

3. To obtain eligible youth, program employers must place

a job order with the department and may employ only those youth referred by the department.

4. Eligible youth not designated as supervisors shall be paid the federal minimum wage for a period not to exceed 40 hours per calendar week and for not more than 12 weeks.

5. A program employer may designate one eligible youth as supervisor for every ten youth in its employ under the Act. Program employers who employ at least five but less than ten youth may designate one youth as a supervisor. Youth designated as supervisors shall be paid the federal minimum wage plus 25 cents per hour for up to 40 hours per week for a period not exceeding 12 weeks.

6. Upon signing a contract or subcontract program employers may begin employing eligible youth referred by the department; however, no youth may be employed while attending school as a full-time student. No youth may be employed beyond September 30th of each calendar year.

F. Invoicing. The department shall reimburse contractors for wages paid to eligible youth, employer's contributions to FICA paid in behalf of such youth and workers' compensation insurance costs for such youth. Invoices and specific procedures for reimbursement will be furnished to program employers by the department.

G. Reallocation procedures.

1. Funds may be reallocated within a county or between a county and a city or between counties under the following circumstances:

a. The city or county originally allocated the funds according to the formula in C. refuses the funds; or

b. The city or county originally allocated the funds gives its permission for those funds to be used in another city or county.

c. In addition, the prime sponsors may reallocate up to the equivalent of one full-time slot or position not to exceed $1,000 between any subdivision above for the purpose of simplified administration of the program.

2. Prime sponsors may shift funds from the postsecondary portion of their program to the regular portion of their program provided that they certify in writing to the department that they are unable to obtain sufficient youth who meet the criteria set forth in E.2., and the department concurs.

3. During the period of the contract, the department may shift funds from one prime sponsor to another prime sponsor with the mutual consent of both prime sponsors if the prime sponsor releasing the funds certifies that such funds are surplus and

unlikely to be used within his area by the end of the contract period and the prime sponsor receiving the funds certifies that the funds are likely to be used before the end of the contract period.

0010-0092

8 MCAR S 4.0012 Weatherization assistance for low-income people.

A. Purpose. The purpose of this rule is to develop and implement a state weatherization assistance program under the authority of Minnesota Statutes, section 268.37 in the dwellings of low-income persons in order both to aid those persons least able to afford higher utility costs and to conserve needed energy.

B. Administration of grants. Grants awarded under this rule shall be administered in accordance with the following:

1. "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments," issued as Office of Management and Budget Circular A-102 Revised and found in the Federal Register, volume 42, pages 45828-45891 (1977).

2. "Grants and Agreements With Institutions of Higher Education, Hospitals, and other Nonprofit Organizations," issued as Office of Management and Budget Circular A-110 and found in the Federal Register, volume 41, pages 32016-32037 (1976).

3. "Audit of Federal Operations and Programs," issued as Office of Management and Budget Circular A-73 and found in the Federal Register, volume 43, pages 12404-12406 (1978).

4. "Cost Principles for State and Local Governments," issued as Office of Management and Budget Circular A-87 and found in the Federal Register, volume 46, pages 9548-9554 (1981).

5. "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects," issued as Office of Management and Budget Circular A-95 and found in the Federal Register, volume 40, pages 2052-2065 (1976).

6. "Notification to States of Grant-in-Aid Information," issued as United States Treasury Circular 1082 and found in the Federal Register, volume 41, page 2652 (1976).

7. "Withdrawal of Cash From the Treasury for Advances Under Federal Grant and Other Programs," issued as United States Treasury Circular 1075 and found in the Code of Federal Regulations, title 31, section 205 (1980).

C. Definitions. As used in 8 MCAR S 4.0012 the following terms have the meanings given them.

1. "Agency" means an organization that receives funds under this rule to operate a weatherization program.

2. "Assistant commissioner" means the Assistant Commissioner of the Division of Training and Community Services of the Department of Economic Security.

3. "Community action agency" means a private corporation or public agency as defined in Minnesota Statutes, section 268.53, subdivision 1.

4. "Commissioner" means the Commissioner of the Department of Economic Security.

5. "Conditioned space" means an area inside the building envelope where the air temperature can be altered by a heating or cooling device.

6. "Cosmetic items" means items that only enhance the esthetic appearance of the property. Some examples of "cosmetic items" are finishes, decorative fenestration, and elevation materials such as aluminum siding, board and batten, clapboard, brick, stone, shakes and asphalt siding.

7. "Cost of employment" means compensation for services as defined in Office of Management and Budget Circular A-87, Attachment B, A.10, A.13, and A.14, as cited in B.4.

8. "Department" means the Department of Economic Security.

9. "Dwelling unit" means a house or household. It includes stationary mobile homes, homes, apartments, and groups of rooms or single rooms occupied as separate living quarters.

10. "Elderly person" means a person who is 60 years of age or older.

11. "Eligible dwelling unit" means a dwelling unit that is occupied by a low-income family unit.

12. "Family unit" means all persons living together in a dwelling unit.

13. "Grantee" means an organization that receives funds under this rule to operate a weatherization program.

14. "Grantor" means the Division of Training and Community Services, Department of Economic Security, State of Minnesota.

15. "Handicapped person" means a person who, in the opinion of a qualified medical person, is permanently physically or mentally disabled. "Qualified medical person" means a qualified physician or chiropractor authorized to practice his profession in the State of Minnesota.

16. "Heating degree days" means the difference in temperature, in degrees Fahrenheit between the mean temperature for the day and 65 degrees Fahrenheit on any day when the mean

temperature is less than 65 degrees Fahrenheit. Data for this factor is from Monthly Normals of Temperature, Precipitation and Heating and Cooling Degree Days, 1941-1970, issued by the National Oceanic and Atmospheric Administration (United States Department of Commerce, 1973).

17. "Heating or cooling source" means a device that can raise or lower temperatures in a dwelling unit as part of the permanent heating, ventilating, and air conditioning system installed in the dwelling unit. It includes furnaces, heat pumps, stoves, boilers, heaters, fireplaces, air conditioners, fans, and solar devices.

18. "Independent contractor" means an entity that furnishes materials or provides labor or both in the weatherization of buildings of low-income persons.

19. "Indian tribe" means any tribe, band, nation, or other organized group or community of Native Americans, including any Alaska native village, or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act, United States Code, title 43, sections 1601-1628 (1977 and Supplement III 1980), which:

a. is recognized as eligible for special programs and services provided by the United States to Native Americans because of its status as Native American; or

b. is located on or near a federal or state reservation or rancheria.

20. "Low-income" means having a total household income in relation to family size which:

a. is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Federal Office of Management and Budget in Code of Federal Regulations, title 45, section 1060 (1981); or

b. is the basis for which cash assistance payments have been paid during the preceding 12-month period under Titles IV and XVI of the Social Security Act, Statutes at Large, volume 49, page 620, chapter 531 (1935), codified in scattered sections of United States Code, volume 42.

21. "Mechanical equipment" means control devices or apparatus that is primarily designed to improve the heating or cooling efficiency of a dwelling unit and that will be permanently affixed to an existing heating or cooling source. It includes a flue damper, clock setback thermostat, filter, and replacement limit switches.

22. "Multifamily dwelling unit" means a dwelling unit that is located in a structure containing more than one dwelling unit.

23. "Number of low-income, owner-occupied dwelling units in the county" means the number of those dwelling units in a county as determined by the department.

24. "Number of low-income, renter-occupied dwelling units in the county" means the number of those dwelling units in a county as determined by the department.

25. "Repair material" means an item necessary for the effective performance or preservation of weatherization materials. "Repair material" includes lumber used to frame or repair windows and doors that could not otherwise be caulked or weather-stripped, and protective materials, such as paint, used to seal materials installed under this program. "Repair material" also includes furnace efficiency modifications limited to:

a. replacement burners;

b. devices for modifying fuel openings, including one-time replacement of furnace filters; and

c. electrical or mechanical furnace ignition systems that replace standing gas pilot lights.

26. "Regional clearinghouse" means the local Regional Development Commission that has the authority under Title IV of the Intergovernmental Cooperation Act of 1968, United States Code, volume 42, sections 4231-4233 (1977), to review and comment with respect to projects funded by the federal and state governments.

27. "Rental dwelling unit" means a dwelling unit occupied by a person who pays periodic sums of money to occupy the dwelling unit.

28. "Separate living quarters" means those in which the occupants do not regularly live and eat with any other persons in the structure and which have either direct access from the outside of the building or through a common hall, or complete kitchen facilities for the exclusive use of the occupants. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements.

29. "Single family dwelling unit" means a structure containing no more than one dwelling unit.

30. "State" means the state of Minnesota.

31. "Weatherization crew" means a group of weatherization laborers with a weatherization supervisor.

32. "Weatherization laborer" means a person who performs weatherization and repair activities necessary to complete work on eligible dwelling units. The work may include auditing,

inspecting, delivery, and physical warehousing of weatherization materials and equipment.

33. "Weatherization project" means a project conducted in a single geographical area which undertakes to weatherize dwelling units that are thermally inefficient.

34. "Weatherization supervisor" means a person who inspects weatherization and repair activities and who is responsible for crew laborers' conduct, performance, and evaluation.

35. "Weatherization materials" means materials used to weatherize homes as defined in Code of Federal Regulations, title 10, sections 456.101-456.914 (1980) amended by Federal Register, volume 45, pages 63449, 63453, 63793 (1980).

D. Allocation of funds. The department shall allocate funds by county to eligible grantees with a demonstrated ability to administer and deliver weatherization services. The department shall determine whether or not a grantee has a demonstrated ability to administer and deliver weatherization services by taking into account the criteria in 3. Equal weight shall be given to each of the criterion. The department shall also allocate funds to eligible grantees who have been engaged in contracting for the construction and repair of real property.

1. All contracts between the state and a grantee will run for six months beginning July 1.

2. A grant shall be terminated if the department determines, after a public hearing conducted by the Office of Administrative Hearings, that the grantee has been ineffective in meeting the purpose of Minnesota Statutes, section 268.37.

3. In making a determination under 2., the department shall evaluate the performance of the grantee and shall consider:

a. how quickly the weatherization project achieves the goals of Minnesota Statutes, section 268.37;

b. whether the grantee has adhered to the plan submitted;

c. the quality of work performed through the grantee; and

d. the number, qualifications, and experience of staff members of the grantee.

E. Grant applications.

1. Applications to the department must contain a plan for the use of state funds which is submitted not later than 30 days after receipt of written notice from the department of the availability of funds for each year. The department shall

review each timely application and if the submission complies with the applicable provisions of this rule, approve a final budget and issue a notice of grant award.

2. Each application must include:

a. the name and address of the grantee responsible for administering the program;

b. a financial schedule which indicates the monthly funding requirements based on projected production;

c. staffing patterns for all weatherization personnel to allow local program grantees to attain production goals;

d. a written review of the plan by the regional clearinghouse; and

e. a statement by grantee ensuring that:

(1) no dwelling unit may be weatherized without written documentation that the unit is eligible for weatherization as provided in 8 MCAR S 4.0012;

(2) there is an outreach process used to obtain applications together with a description of that process; and

(3) it will establish a priority system for client applications.

3. Each application must state the minimum number of dwelling units to be completed by each grantee which are to be established by the department.

4. The grantee shall insure that no eligible dwelling unit receives more than $750 in material and that each dwelling unit is weatherized according to the priority list established by the department as found in Exhibit 8 MCAR S 4.0012 E.4.-1 or Exhibit 8 MCAR S 4.0012 E.4.-2. The department shall waive the $750 restriction for individual eligible dwelling units on written application documenting that the material costs on the applicant's dwelling exceed $750 and that all activities are eligible according to the agency's priority list. A waiver will be granted if the eligible dwelling exceeds 1500 square feet, or is two story, or requires more than 16 storm windows. If a waiver is granted, the total material expenditures may not exceed $1,000. For purposes of Exhibit 8 MCAR S 4.0012 E.4.-1 and Exhibit 8 MCAR S 4.0012 E.4.-2, home types have the following meanings:

a. "Type I" means homes with accessible attics;

b. "Type II" means homes with inaccessible basements;

c. "Type III" means homes with solid walls;

d. "Type IV" means homes with knee wall construction;

e. "Type V" means mobile homes.

Exhibit 8 MCAR S 4.0012 E.4.-1

WEATHERIZATION PRIORITIES FOR HOME TYPES I-IV 8-28-81

Weatherization deliverers will follow the priority list given below. If the particular activity listed currently exists or cannot be done, then an explanation must be made on the Retro Tech Job Sheet. If the client will not permit certain activities, then a statement with an explanation of the refusal to permit work, signed by the client, must be in the file.

Priorities

I. General Heat Waste

A. Caulk all exterior envelope infiltration points including:

1. Window and door frames.

2. Sill plates.

3. Foundation cracks.

4. Corners of buildings.

5. Under door sills.

6. Around all electrical & plumbing entrances.

7. All other infiltration areas.

B. Install hot water heater jackets except where a vent damper is present.

C. Insulate hot water pipes in accessible unheated space.

D. Weatherstrip movable windows and doors between conditioned and unconditioned space, including basement doors, attic scuttles and knee wall entrances.

E. Install gaskets on electrical boxes located on the interior side of exterior walls.

F. Replace or reset broken or loose glass.

II. Insulate Attic area

A. To R-38

B. Vent in accordance with FHA/HUD Minimum Property Standards. (No vapor barrier 1 to 150 ratio; with vapor barrier 1 to 300 ratio.)

C. Insulate attic scuttle doors to R-30; dam access area allowing entry to attic.

III. Insulate exterior walls to minimum of R-11.

IV. Insulate rim joist area to a minimum of R-19 with vapor barrier on warm side.

V. Insulate above-grade foundation walls to R-11. When insulation is applied to interior side of the foundation wall, extend insulation 2 feet below grade.

On crawl space, either insulate perimeter foundation wall to R-11 or floor to minimum of R-19 where freezing of pipes is not a factor.

VI. Install storm windows on single-glazed windows where storm windows are missing or existing storm windows are deteriorated beyond repair.

VII. Install new primary doors and windows only where old ones are beyond repair and cannot be weatherstripped.

Optional Items--Only after all of the required items are completed and if maximum material limit has not been reached.

I. Clock set back thermostats.

II. Storm doors.

Exhibit 8 MCAR S 4.0012 E.4.-2

MOBILE HOME PRIORITIES 8-28-81

Priorities for Type V Home

I. General Heat Waste

A. Caulk all exterior envelope infiltration points including:

1. Window and door frames.

2. Corners of buildings.

3. Under door sills.

4. Around all electrical and plumbing entrances.

5. Along all siding seams.

6. Around all "through the wall" accessories.

B. Install hot water heater jackets on electrical water heaters, or

Insulate water heater closet on gas and oil fired water

heaters.

C. Insulate hot water pipes where accessible.

D. Replace all worn weather stripping on all moveable windows.

E. Weatherstrip all exterior prime doors.

F. Replace or reset broken or loose glass.

II. Insulate ceiling to maximum extent possible not to exceed R-38 and install at least two 8-inch round vents or equivalent.

III. Insulate floor to maximum extent possible not to exceed R-38.

IV. Install storm windows on those single glazed windows where the original storm is either missing or damaged beyond repair.

V. Install new prime doors and windows where existing ones are beyond repair.

Optional Items (Only after all required items are completed.)

I. Replace damaged or missing storm door.

II. Repair and tighten skirting--certify that permanent vent equaling 36 sq. in. per 25 lineal feet of skirt is installed if skirting repair is done.

F. Allowable expenditures. Expenditures shall be limited to:

1. the cost of purchase, delivery, and storage of weatherization materials;

2. transportation of weatherization materials, tools, equipment, and work crews to a storage site and to the dwelling work site;

3. maintenance, operation, and insurance of vehicles to transport items in 2.;

4. maintenance of tools and equipment;

5. purchases of tools, equipment, and vehicles;

6. payments to an independent contractor for furnishing materials or providing labor or both in the weatherization of dwellings of low-income persons;

7. the cost of employment of weatherization supervisors;

8. the cost of employment of weatherization laborers;

9. the cost, not to exceed $150 per dwelling unit, for

repair materials and repairs to the heating source necessary to make the installation of weatherization materials effective;

10. building permits where applicable;

11. the cost of liability insurance for weatherization projects for personal injury and property damage;

12. administrative expenses not to exceed 7.5 percent of each grantee's allocation;

13. weatherization of a building containing eligible rental dwelling units if at least 66 percent of the rental units in the building are eligible dwelling units and if the landlord or landlord's agent agrees in writing that the grantee may do the weatherization work and that rents will not be raised because of the weatherization work.

All purchases in 5. with an acquisition value of $300 or more must have written approval from the department. Purchasing must follow procedures outlined in Office of Management and Budget Circulars A-87, A-102, and A-110, as cited in B.

G. Unallowable expenditures. Grant funds may not be used for any of the following purposes:

1. to weatherize a dwelling unit that has been weatherized previously with grant funds from the United States Department of Energy or state assistance under Minnesota Statutes, section 268.37 or 8 MCAR S 4.0012, unless the dwelling unit has been damaged by fire, flood, or an act of God, and repair of the damage to weatherization materials is not paid for by insurance;

2. to weatherize a dwelling unit that is vacant or designated for acquisition or clearance by a federal, state, or local government program within 12 months from the date weatherization of the dwelling unit would be scheduled to be completed; or

3. to purchase cosmetic items, remodeling items, or a heating or cooling source.

H. Oversight responsibility. The department shall supervise the projects of the grantees in the following manner:

1. At least once every three months the department shall monitor and evaluate the operation of projects carried out by the grantees receiving financial assistance under 8 MCAR S 4.0012 through on-site inspections, reviews of reports submitted by grantees and inspection of their books and records.

2. The grantee shall give the department access, for the purpose of audit and examination, to any books, documents, papers, information, and records of any weatherization project receiving financial assistance under 8 MCAR S 4.0012.

3. The commissioner shall conduct an annual audit of the records of a grantee receiving financial assistance under this rule.

I. Record keeping. Record keeping shall be in accordance with Office of Management and Budget Circular A-87 as cited in B.4. Each grantee receiving state financial assistance under this rule shall keep records the department requires, including records which fully disclose the amount and disposition by each grantee of funds received under 8 MCAR S 4.0012, the total cost of the weatherization project for which the assistance was given or used, including all sources and amounts of funds for the project or program, and other records the department deems necessary for an effective audit and performance evaluation.

J. Monthly reports. Each grantee receiving financial assistance under this rule shall submit a monthly program performance report and a monthly financial report or invoice to the department.

K. Granting process. When the department approves an application for a grant, it shall notify the grantee, in writing, of the approval. The department and the grantee shall sign a grant contract. The grant contract must specify what report requirements and other grant requirements must be met prior to any obligation of funds. Payments on grant contracts shall be made on the basis of grantee activity in the program. Cash on hand in excess of 30-day program requirements shall not be delivered. Payments to grantees shall be reviewed in comparison to expenditures to determine cash needs. Grantees shall report expenditures monthly on forms to be supplied by the department. The department shall require the grantees to project the next month's cash needs on the previous month's expenditure report. If the grantee determines that it cannot fulfill its obligations under the plan in whole or part, the grantee may request an amendment or revision of the existing approved plan and resubmit a new plan or amendments within 30 days after the written notice of request for consideration. The request from the grantee must be in writing detailing its specific views with supporting data and arguments.

L. Variances.

1. The department shall grant a variance to the use of materials required by 8 MCAR S 4.0012 C.35. if it appears that:

a. product or test standards have changed; and

b. granting the variance would not adversely affect the public health or safety; and

c. granting the variance would not conflict with applicable building codes.

2. A grantee may submit to the department a written request for a variance documenting the need to include or

exclude additional or existing materials required by 8 MCAR S 4.0012 C.35. If the agency initiates the variance as a result of a United States Department of Energy directive it will notify all grantees in accordance with 3. If the agency denies a request for a variance it shall notify the applicant, in writing, of the reasons for the denial.

3. The department shall notify all grantees, in writing, that a variance has been granted. Notification will be issued within 30 days after the granting of the variance.

0010-0092

8 MCAR S 4.0080 Definitions.

Unless otherwise indicated in these regulations, the terms below are defined as follows:

A. "Act" means Rehabilitation Services for the Severely Disabled, Minnesota Statutes, sections 121.71 to 121.714.

B. "Administrator" means the director of community long term sheltered workshop programs.

C. "Commissioner" means the Commissioner of Education in the State Department of Education.

D. "Workshop" means a long term sheltered workshop.

E. "Long term sheltered employment program" means the provision of paid employment for an indefinite period of time, for severely handicapped persons unable to meet production standards required in competitive employment. The wages paid in long term sheltered employment are in excess of 25 percent of the applicable minimum.

F. "Work activity program" means the provision of purposeful activity, having a productive or work component for which wages are paid, but where the level of productivity is less than that required in sheltered employment (generally 25 percent of the applicable minimum). The work activity program may be transitional in nature or may be considered as an appropriate outcome.

G. "Commensurate wage" means a rate of pay which, when paid to a non-handicapped worker performing the same kind and quality of work, would yield to that non-handicapped worker the minimum wage or prevailing wage, whichever is higher. When clients paid a commensurate wage earn less than the minimum or prevailing wage, it is a result of the limitations imposed by their disability.

H. "Prevailing wage" means the wage rate for a specific job prevalent in the area or community in which the work activity or sheltered employment program exists.

8 MCAR S 4.0081 Purpose.

"The purpose of this act is to improve rehabilitation services for the severely disabled in Minnesota by providing for the development and continuation of long term sheltered workshops and work activity centers." Minnesota Statutes, sections 121.71 to 121.714.

8 MCAR S 4.0082 Eligible applicants.

A. An application for funding may be submitted at any time by a city, village, borough, town, county, non-profit organization or any combination thereof, which operates or proposes to operate a public or non-profit long term sheltered employment or work activity program.

B. In cities there shall be a minimum population base and specified geographic area which the workshop shall serve. The commissioner may, in particular cases, permit modifications of this population range if he finds that such modifications will not impair the purposes of the act.

C. The applicant shall have a long term sheltered workshop or work activity center board of directors of not less than nine members to be selected in such manner, be representative of such groups, and function as outlined in section 4 of the act.

D. The applicant shall provide assurance that no person shall be denied service on the basis of race, creed, color, or national origin.

E. The applicant shall adhere to all pertinent state, federal and local laws pursuant to the operation of a workshop or work activity center.

8 MCAR S 4.0083 Eligible costs.

A. The grant may not exceed an amount equal to 75 percent of the normal operating expenses of the long term sheltered employment or work activity program;

B. Wages paid to long term sheltered workers or work activity participants are to be excluded in determining operating costs;

C. Funds eligible for matching are those received from local taxation or appropriation, gifts, or funds from other sources, including income derived from subcontract or manufacturing work in excess of that required to pay wages, provided such funds are not state funds.

8 MCAR S 4.0084 Application content.

A. Applications for funding shall be submitted to the administrator in the form and detail required and shall include:

1. A description of both the existing and proposed program of services;

2. A description of the existing and proposed staffing plans;

3. A proposed budget and actual expenditures made in the year previous to the application;

4. A description of community support for the workshop;

5. An agreement to make such administrative and financial reports and to keep such records and accounts as may be required and to make such records and accounts available for audit purposes.

010-0092

8 MCAR S 4.0085 Clientele served.

Severely disabled persons eligible for services are those individuals possessing physical, mental, emotional, or behavioral disabilities who, as a result of such disability, are unable to enter the competitive labor market either temporarily or permanently. Clients referred to the long term sheltered employment program workshop shall have had appropriate rehabilitation services, such as vocational evaluation and personal adjustment training, in order to render an adequate decision as to the suitability of placement in the workshop.

8 MCAR S 4.0086 Standards of service.

These standards govern the operation of any facility engaged in, or seeking to engage in, the provision of long term sheltered employment or work activity services, and they set forth the requirements necessary for any such program to be funded or certified (see EDU 492.)

A. Purposes.

1. General standards.

a. The purposes of the long term sheltered employment or work activity program are clearly stated in appropriate publications for distribution to staff, clientele and referral sources;

b. The long term sheltered employment or work activity program describes the habilitation or rehabilitation problems or conditions for which it provides services;

c. The long term sheltered employment or work activity program describes in detail the services it provides;

d. There is a systematic procedure for professional and administrative review of program effectiveness in relation to the stated purposes of the work activity program.

B. Organization and administration.

1. General standards.

a. Unless operated by a governmental agency, the long term sheltered employment or work activity program is, or is part of, a legally constituted nonprofit corporate entity under the appropriate federal, state and local statutes;

b. The make-up of the facility's governing body is in accordance with the requirements of Minnesota Statutes, sections 121.71 to 121.715:

c. There is a staff organizational chart which specifies the lines of authority, responsibility and communication.

2. Additional standards for work activity center programs.

a. Where the work activity program is a cooperative effort involving two distinct organizations, there is a written agreement which details the responsibilities of each organization and which includes, as a minimum, the following:

(1) Staff supervision and training;

(2) Contract negotiation and bidding;

(3) Issuance of payroll checks;

(4) Maintenance of production records;

(5) Client supervision and programming.

b. Where a work activity program takes place in, or is administered by, a daytime activity center, the DAC is licensed by the Department of Public Welfare;

c. The work activity program is the administrative responsibility of a full-time paid staff member of the administering facility;

d. Where the work activity program is operated by a daytime activity center, it has an established relationship with an advisory body.

C. Fiscal management.

1. General standards.

a. The long term sheltered employment and/or work activity programs are identified as separate and distinct

entities in the accounting system of the administering organization;

b. The long term sheltered employment or work activity program operates on an annual budget which:

(1) Reflects and anticipates the program's needs for realizing its goals;

(2) Is used during the year as a yardstick to assess the accomplishment of budgetary goals.

c. The accounting system enables the administering organization to clearly identify both the costs and income attributable to the long term sheltered employment or work activity program;

d. The facility has a risk protection program adequate to preserve its assets and to compensate its staff, volunteers, clientele, and the public for reasonable claims for which the facility is liable.

2. Additional standards for work activity programs.

a. In bidding and executing contracts, an overhead markup of at least 50 percent on direct labor is utilized.

3. Additional standards for long term sheltered employment programs.

a. In bidding and executing contracts, an overhead markup of at least 75 percent on direct labor is utilized.

D. Program.

1. General standards.

a. There is evidence that the facility has made continuous efforts to insure the availability of significant work to meet the needs and objectives of the long term sheltered employment or work activity programs;

b. Work supervisors, responsible for implementing the long term sheltered employment or work activity plan, have a clear understanding of the goals for the individual client and the methods to be used in reaching those goals;

c. Whenever clients are engaged in production activity, there is a minimum of one supervisor for every 12 workers;

d. Each long term sheltered employee or work activity center participant (or parent/guardian if appropriate) receives a written statement for each pay period which indicates gross pay, hours worked and all deductions;

e. There is evidence that continuing efforts are made to maximize productivity level of each long term sheltered employee or work activity participant;

f. There is a written plan for each long term employee or work activity participant which describes the goals and objectives of the services to be provided as well as the expected outcomes;

g. The progress of each long term sheltered employee or work activity participant is reviewed on a quarterly basis and the results of that review are recorded.

2. Additional standards for work activity programs.

a. The work or production activities are carried out in a physically separate environment from other program or service activities; (NOTE: The same area may be utilized for production activities if all other activities cease in that area during the time production work is carried out.)

b. When the work activity program operates independently, either from a daytime activity center or sheltered workshop, there is evidence that the other program needs of the participants have been considered and provided directly through the work activity program, or made available for other resources. These other services may include, but would not be limited to:

(1) Recreation;

(2) Self care;

(3) Socialization;

(4) Education.

3. Additional standards for long term sheltered employment programs.

a. Personnel policies for all long term workers are established in writing and available to all workers;

b. Enough work is available to provide employment for each long term worker 75 percent of the work days during the year.

E. Records and reports.

1. General standards:

a. A client case record is maintained at the long term sheltered employment or work activity program site for each program participant;

b. The source of all recorded data is clearly stated;

c. As a minimum, the case record contains the following basic information:

(1) Results of the initial assessment;

(2) A description of the program plan;

(3) Progress reports which relate to the program plan;

(4) The case closure summary.

A yearly review of client records is made by the staff to insure compliance with the above standards;

Policies and procedures have been established to insure confidentiality of all case records.

F. Wage and hour.

1. General standards:

a. The program has the appropriate federal wage and hour certificate;

b. All handicapped workers are paid a wage commensurate with that paid non-handicapped workers in the community;

c. For each piece rated job there is a written record of the procedure utilized in establishing that piece rate;

d. Where a client is involved in nonpiece rated work, there is a written record of the procedure used in establishing the hourly rate for the client;

e. The hourly rate of pay for nonpiece rate workers is reviewed at least semi-annually and a written record maintained of this review.

2. Additional standards for long term employment program.

a. All long term employees are paid at least 25 percent of the applicable minimum wage.

G. Health and safety.

1. General standard: The long term sheltered employment or work activity program shall comply with all applicable regulations of the Department of Labor and Industry and the State Fire Marshall's office.

0010-0092

8 MCAR S 4.0087 Workshop board of directors.

A. The number, appointment, representation, term, and

functions of the long term sheltered workshop board shall be as prescribed in Minnesota Statutes, sections 121.71-121.714.

B. Those workshops in operation prior to the act shall integrate the principles prescribed in Minnesota Statutes, section 121.713 respect to workshop board of directors where it is possible to do so.

8 MCAR S 4.0088 Approval of application.

Applications for funding will be evaluated to determine the feasibility and effectiveness of the proposed and existing program in achieving the purposes of the act, the adherence to appropriate laws, the adherence to the standards of service, the conformance with the state workshops and rehabilitation facilities plan, and the eligibility of the applicants. Approval or disapproval of applications will be in printed form to the applicant with reasons for disapproval, in that event. The commissioner may require that a technical assistance consultation precede the award of any grant.

8 MCAR S 4.0089 Allocations and priorities.

A. Allocations. Allocations of available funds for long term sheltered workshop programs shall be made by the commissioner as prescribed in Minnesota Statutes, section 121.714, subdivision 2.

B. Priorities. After the commissioner, at the beginning of each fiscal year, has allocated available funds to long term sheltered employment or work activity programs for disbursement during the fiscal year and in the event there are inadequate funds appropriated to meet the approved plan and budget of the applicants, the following priorities shall be considered:

1. Relative needs of the population served by the existing or proposed program.

2. Availability of local community support.

3. Effectiveness of the services of the program.

4. Availability of other methods of funding.

5. Submittal of application, plan and budget within the required period.

NOTE: In general, existing workshops will have priority over proposed workshops in order that already existing programs can be continued.

8 MCAR S 4.0090 Grant awards.

All grant awards shall be in writing, shall set forth the amount of funds granted, and shall constitute for such amounts the encumbrance of state funds available for such purpose on the date of the award. The initial award shall also specify the grant period (not in excess of one year) for which support is contemplated if the activity is satisfactorily carried out and state funds are available. For continuation support, grantees must make separate application each year prior to the date set for submission of the continuation application and in the form and detail required.

0010 8092

8 MCAR S 4.0091 Payments.

Payments under this authority shall be made on the basis of periodic claims submitted by the long term sheltered employment or work activity program detailing services provided during that period of time. The commissioner may determine, for each program, an equitable per diem rate of reimbursement.

8 MCAR S 4.0092 Certification.

A. Purpose: To insure that all long term sheltered employment and work activity programs meet minimum standard of operation;

B. General policies.

1. Program certification under this authority shall be a requirement for funding through the division of vocational rehabilitation;

2. A certificate issued under these provisions does not replace or modify any certificates issued by the United States Department of Labor or the Minnesota State Department of Labor and Industry, for purposes of subminimum wage payments;

3. A single certificate will be issued for a facility, and that certificate will specify the type and location of all approved programs;

4. In the case of work activity programs operated cooperatively between two separate organizations, the certificate will be issued to the organization responsible for payment of wages;

5. A program will be certified when it is found to be in substantial compliance with the established standards;

6. No certificate shall be issued for a period of time in excess of two years;

7. A provisional certificate may be issued to a new sheltered employment of work activity program for a specified period of time, not to exceed one year;

8. An applicant for certification shall have the right to appeal any decision of the agency. The regulations of the department, as outlined in Chapter Thirty; EDU 590-619, Procedures for Contested Cases, shall be utilized.

C. Application procedures.

1. Any facility operating, or proposing to operate a long term sheltered employment or work activity program, shall submit an application for certification in the form prescribed by the commissioner;

2. The facility shall receive 30 days prior notification of the proposed date of the on-site review;

3. Within 30 days following completion of the on-site review, the facility will be provided with a complete set of findings and the review team's decision on certification.

3000-3108

Chapter One: General Definitions

8 MCAR S 4.3000 Definitions. For the purpose of chapters one, two and three the following terms have the meanings given them.

A. Commissioner. "Commissioner" means the Commissioner of the Department of Economic Security or his duly authorized representative.

B. Department. "Department" means the Minnesota Department of Economic Security.

C. Unemployment office. "Unemployment office" means a location where the department offers unemployment insurance claim services.

Chapter Two: Benefits

8 MCAR S 4.3001 Applicability. Rules 8 MCAR SS 4.3001-4.3011 apply to determinations of a claimant's eligibility for regular benefits as defined in Minnesota Statutes, section 268.071, subdivision 1, clause (7) and to extended benefits pursuant to Minnesota Statutes, section 268.071, subdivisions 1 to 6.

8 MCAR S 4.3002 Definitions. For the purposes of 8 MCAR SS 4.3001-4.3011 the following terms have the meanings given them.

A. Credit week. "Credit week" means any week within the base period for which wages in the required amount have been paid or were due and payable but not paid for performing services or for vacation periods. Except for vacation payments, those payments which are wages as defined in Minnesota Statutes, section 268.04, subdivision 25 or department rules but for which the individual performs no services within the calendar week shall not be used to establish a credit week.

B. Labor market area. "Labor market area" means the geographic area in which the claimant can reasonably be expected to seek and find employment. In determining the labor market area, the commuting patterns of persons with the same or similar occupations residing in the claimant's locality shall be considered.

C. Seasonal worker. "Seasonal worker" means a claimant whose employer customarily suspends or significantly curtails operations for regularly recurring periods or whose usual occupation cannot be performed for any employer in the labor market area because climatic conditions prohibit performance of the normal duties of the occupation.

8 MCAR S 4.3003 Able to work.

A. Generally. To be able to work a claimant must have the physical and mental ability to perform the usual duties of his customary occupation or the usual duties of other work for which he is fitted by training, experience or capability and which is gainful employment engaged in by others as a means of livelihood. The burden of establishing ability to work is on the claimant, but there will be no presumption that a claimant is not able to work.

B. Particular situations. In determining whether a claimant is able to work the department will consider the facts and circumstances of the claimant's particular situation. The determination shall be made by applying the criteria listed in 1. and 2.

1. Medical evidence. Where doubt exists as to the claimant's ability to work the department shall require him to furnish medical evidence of his ability to work. Failure of the claimant to furnish requested medical evidence shall result in a suspension or a denial of benefits.

2. Ability to work part-time only. Normally a claimant is required to be able to work and available for full-time work for all shifts which are customary for his occupation. However, a claimant whose physical or mental condition restricts his availability to part-time work or to a particular shift shall be deemed able to work if there are jobs in his labor market area consistent with the limitations or such jobs can be expected to arise within a reasonable period of time.

3000-3107

8 MCAR S 4.3004 Available for work.

A. Generally. Except as provided in 8 MCAR S 4.3003 B.2., a claimant is considered available for work only if he is ready and willing to accept full-time suitable work. There must be no restrictions, either self-imposed or created by circumstances, which prevent accepting full-time work. A restriction does not prevent accepting full-time work if there are favorable prospects for obtaining full-time work within the restrictions within a reasonable period of time.

B. Absence from labor market area. A claimant who is absent from his labor market area for personal reasons is presumed to be not available for work. This presumption is rebuttable.

C. Alien status. A claimant who is an alien must present proof that he is authorized under federal law to work in the United States to be available for work.

D. Change of residence. A claimant who moves to an area where his chances of securing work are materially lessened shall expand his work search, expand his availability to other occupations, and accept the prevailing wages, hours and other conditions of work available in the labor market to which he moves.

E. Claimant cannot be contacted. Unless good cause exists for the failure to be reachable by the department a claimant who cannot be reached after reasonable efforts by the department for referral to possible employment is not available for work.

F. Failure to report. A claimant who fails without good cause to report as directed to a job service office of the Department of Economic Security is not available for work. The department may presume that a claimant who fails without good cause to report as directed to an unemployment office to discuss his eligibility for benefits is not available for the days that he fails to report. A claimant who fails to report as directed to an unemployment office to discuss his eligibility for benefits for a prior period will be determined eligible or ineligible for the prior period based solely on the facts available to the office if the claimant has made no effort within 14 days to report to the office to establish eligibility.

G. Incarcerated. A claimant who is incarcerated and who is unable to accept employment under a work release program is not available for work.

H. Labor market area. A claimant must offer his services unequivocally to the labor market area to be available for work.

I. Length of unemployment. As a claimant's duration of unemployment lengthens, prospects for obtaining employment in the customary occupation or other work in a reasonable time may change. Therefore, work that is unsuitable at one point in time may become suitable at another point. To be available for work, a claimant must be ready and willing to accept different work which becomes suitable as his prospects for customary work change. Thus, he may be required to broaden the geographic area in which he will accept work, seek and accept employment on a different shift, accept counseling for possible retraining or change in occupation, or seek and accept employment and the prevailing wages in a new occupation.

J. Seasonal worker. A seasonal worker who is not willing to accept suitable work in other occupations during the off season is not available for work.

K. Self-employment. A claimant is not available for work if he is self-employed and no longer seeking other suitable work or if he is planning to become self-employed and will not accept other suitable work.

L. Time or shift restriction. Except as provided in 8 MCAR S 4.3003 B.2., a claimant who imposes restrictions on the hours of the day or days of the week which he is willing to work which are not normal for his usual occupation or other suitable work is not available for work. A claimant who imposes restrictions on the hours of the day or days of the week which he is willing to seek work which prevent him from meeting the work search requirements of the department is not available for work.

M. Transportation. A claimant to be available for work must have transportation from his residence to his labor market area.

N. Union membership. A claimant who is seeking work only through his union is not available for work unless he is in an occupation or trade where it is customary that substantially all the hiring in that locality is done through his union. He must submit evidence, when required by the department, that he is a union member in good standing, is registered with the union for work and is in compliance with other union rules.

O. Wage restriction. A claimant who has demanded wages exceeding those customary in his labor market area for the type of work he is seeking is not available for work.

3000-3108

8 MCAR S 4.3005 Actively seeking work.

A. Generally. A claimant must make reasonable, diligent efforts to actively seek suitable work for each week for which he files a claim. Reasonable, diligent efforts are those that a person in similar circumstances would make if genuinely interested in obtaining suitable employment under the existing conditions in the labor market area. A claimant who fails to make reasonable, diligent efforts to actively seek suitable work or who limits the search to positions that are not available or are above his training, experience and qualifications is not actively seeking suitable work.

B. Scope of work search. A claimant is not actively seeking work if he has not sought suitable work in accordance with specific and reasonable instructions of the department. The claimant may be required to do any or all of the following to establish that he is actively seeking suitable work:

1. Register with the department's job service and report to the department's job service office when such reports are a required part of an active work search and may improve his opportunities of finding work;

2. Register with his union hiring or placement facility and meet the union requirements concerning dispatch to a job;

3. Register with a placement facility of his professional organization;

4. Register with a placement facility of a school, college, or university;

5. Apply for employment with former employers; however, claimants may refuse to reapply for work with employers if the claimant previously terminated employment with the same employer with a good cause attributable to the employer and the conditions constituting good cause for the prior quit continue to exist and will affect the claimant upon reemployment;

6. Make application with employers who may reasonably be expected to have suitable openings;

7. Make applications or take examinations for suitable openings in the civil service of a governmental unit;

8. Respond to want ads for suitable work; or

9. Perform any other reasonable action which the department finds to constitute an effective means of seeking work suitable to the claimant.

C. Number of contacts. The number of employer contacts required to be considered actively seeking employment varies. In determining adequacy of work search in terms of the number of contacts required the department will consider the employment opportunities as well as the qualifications of the claimant and normal practices and methods of seeking work.

D. Type of work sought. A claimant will be allowed to limit his work search to work in his usual or customary trade or occupation if he has favorable prospects of returning to work in his usual trade or occupation within a reasonable period of time under 8 MCAR S 4.3007 J. The length of time allowed to a claimant to limit his work search to work in his usual trade or occupation will be governed by the availability of that work in the labor market area where he is seeking work. When the claimant does not have favorable prospects, he shall be available for other suitable work under guidelines in 8 MCAR S 4.3006 E.

E. Permanent and temporary work. Except as provided in 8 MCAR S 4.3006 C., claimants are required to actively seek suitable permanent work.

F. Seasonal workers. A claimant who is seasonally unemployed is not relieved of the responsibility to actively seek work.

G. Incarcerated worker. A claimant who is incarcerated and who is unable to seek work is not actively seeking work.

H. Filing and reporting only. If due to economic conditions within the labor market area the department finds that for a particular occupation or class of claimants the existence of suitable job openings other than those listed with a union hiring hall, professional organization or similar placement facility or the department are so few that any effort to search for openings would be fruitless to the claimant and burdensome to employers, then registering with and maintaining the requirements for referral by the hiring hall or placement facility or the department shall constitute an active search for employment.

3000-3108

8 MCAR S 4.3006 Suitable work. Widow

A. Applicability. Rules 8 MCAR SS 4.3006-4.3008 shall be used in determining if an individual is disqualified from receiving regular benefits by failing to apply for or accept suitable work or suitable reemployment without good cause.

B. Policy. The suitable work provisions of Minnesota Statutes, sections 268.03 to 268.24 and 8 MCAR SS 4.3006-4.3008 shall be administered so as to promote the department's dual responsibilities of ensuring that benefits are paid to only those persons who are involuntarily unemployed through no fault of their own and, as promptly as possible, matching workers with jobs which best utilize their skills, knowledges, and abilities. Toward this end, "suitable work" is to be interpreted to recognize a worker's skills and abilities but not to provide a haven for those who do not wish to work.

Ideally, the department could match job seekers with jobs in their usual occupation with wages, hours, and other conditions of work identical to those previously enjoyed. As a practical matter economic conditions may prohibit this ideal and so a reasonable alternative must be developed. Any reasonable alternative should be based on the policy that it is best for employers, workers and society as a whole to maximize use of existing skills and abilities for the largest number of workers possible under the existing economic conditions, temporary or permanent, of the labor market area.

C. Suitable work. In general, suitable work is available work in the claimant's labor market area which is reasonably related to a claimant's qualifications. In determining whether a particular job is suitable, the department shall consider the degree of risk involved to the claimant's health, safety, and morals; the claimant's physical fitness; the claimant's prior training and experience; the claimant's length of unemployment and prospects of securing local work in his customary occupation; and the distance of the work from the claimant's residence.

D. Unsuitable work. Work is not suitable under any of the following conditions:

1. if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

2. if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

3. if, as a condition of being employed, the individual would be required to join a union or to resign from or refrain from joining any bona fide labor organization; or

4. if the individual is in training with the approval of the commissioner.

E. General. In determining what is suitable work, the

department shall give primary consideration to the temporary or permanent nature of the claimant's separation from employment and whether he has favorable prospects of finding work in his usual or customary occupation within a reasonable period of time. Rules 8 MCAR SS 4.3007-4.3008 shall also be considered in light of the following general guidelines:

1. For persons who have a verifiable assurance of work within six weeks, suitable work is limited to available, temporary work in their usual trade or occupation or substantially equivalent employment in the labor market area;

2. For persons with a verifiable assurance of work in more than six weeks, suitable work includes available, temporary work under 1. or other temporary work in a related trade or occupation for which the claimant is suited by virtue of his education, training, work experience or ability;

3. For seasonal workers suitable work includes temporary work under 2. Other employment is suitable if it meets the following conditions:

a. There are available openings in a lower skilled or paid occupation; and

b. The work pays a wage equaling at least 150 percent of the claimant's weekly benefit amount.

4. For persons without a verifiable assurance of work, suitable work is permanent work in their usual or substantially equivalent employment which provides wages and conditions of employment approximating those of their past employment if their prospects of finding the work are favorable. If prospects are unfavorable, work at lower skill or wage levels is suitable if there are few, if any, workers unemployed in the locality for whom these openings would be more suitable than for the claimant, the claimant is reasonably suited for the work by virtue of education, training, work experience or ability and the work offered is a reasonable departure from his usual occupation.

"Verifiable assurance" means an assurance that can be confirmed by claimant or employer information or independent department knowledge of the situation.

Paragraph 2. may be applied only when the claimant does not have favorable prospects for finding work in his usual trade or occupation or substantially equivalent employment.

3004
3104
8 MCAR S 4.3007 Statutory terms interpreted.

A. Applicability. The terms and phrases used in Minnesota Statutes, section 268.09, subdivision 2 shall have the meanings and explanations given in B.-R.

B. To apply. "To apply" means that the claimant must comply with all necessary application processes, beginning with the notice to appear for the interview with the job service and including actually calling at the place of business of the prospective employer when so advised by the department.

C. Failure to apply. "Failure to apply" includes any willful action or neglect which demonstrates a lack of good faith in applying for employment.

D. Failure to accept. "Failure to accept" consists of a direct statement of refusal by the claimant or the claimant's failure to take reasonable steps to accept suitable work after it has been offered to him.

E. Available, suitable work. "Available, suitable work" means that there is a definite job or vacancy to apply for or accept. Work is not available to the claimant when the employer finds the claimant unqualified for the position.

F. Of which he was advised. "Of which he was advised" means that a claimant was made aware of a job by the department and offered an opportunity to apply for it. Although the employer's name need not be provided to the claimant unless he accepts the referral, the job must be described in sufficient detail so the claimant is aware of the terms and conditions of employment.

G. Risk involved to his health and safety. Work is not suitable for a claimant if the employment presents a risk to his health or physical condition which is not usually customary to that occupation. Extra hazardous work shall not be suitable work unless the claimant has training or experience in that occupation. When a claimant has a demonstrated fear of performing a particular employment that employment shall not be suitable employment. A claimant's loss of ability to avoid previously accepted hazards must be considered.

H. His physical fitness. To determine suitability of work in terms of the claimant's physical fitness the department shall consider the type of work the claimant has most recently performed, any existing physical conditions, whether the work requires any physical ability the claimant does not possess, and other factors affecting his physical ability to perform the work. If the claimant's physical condition prevents him from doing the work the work is unsuitable. Medical evidence may be required to support the claimant's statement that the work offered is not suitable because of the claimant's physical condition.

I. Prior training and experience. Work that requires a skill or particular training which the claimant does not already possess may be unsuitable. However, if the claimant lacks the skills and training needed to perform offered work, that work may be suitable if as part of the job the claimant is provided with the training necessary to develop the work skills needed or if the time and effort required to develop the skills is minimal.

J. Prospects of securing work in his customary trade or occupation. If the prospects of a claimant finding work in his usual trade or occupation are unfavorable, then work in other occupations may be suitable work if the general conditions of 8 MCAR S 4.3006 are satisfied. In determining whether a claimant's prospects in a reasonable period of time are favorable or unfavorable, the department shall consider the following factors:

1. Whether the claimant's particular skill or trade is not in demand because of protracted economic conditions, technological changes or other reasons;

2. The number of unemployed persons seeking employment in the claimant's customary trade or occupation compared to the number of positions available;

3. The extent of the claimant's training and experience in his customary trade or occupation compared to the training and experience of other individuals seeking similar work if openings are limited;

4. The extent to which the claimant has investigated or exhausted the prospects available in his labor market area;

5. The length of time normally required to find work in the claimant's usual trade or occupation;

6. The prospects of work in his customary trade or occupation compared to the prospects of other suitable work;

7. The claimant's verifiable assurances of work.

K. Distance of the available work from his residence. To determine suitability in terms of distance, all factors must be considered, including distance, proximity to transportation, cost of transportation, type of transportation, transportation schedules and time required for transportation. This determination is made not only in comparison to the claimant's most recent job but also in relation to that which is customary in his occupation. If it is customary in the claimant's occupation to relocate or change job sites, regardless of distance, then the work requiring relocation is suitable.

L. Wages. The wages offered must approximate the prevailing wage for the work to be suitable. To determine suitability of work in terms of wages the total earnings must be considered. These include the wage rate, hours of work, method of payment, overtime practices, bonuses, incentive payments and fringe benefits. When the offered work is at a rate of pay lower than the claimant's former rate consideration must be given to the length of the claimant's unemployment and the proportion of difference in the rates. The importance of the difference between the wages offered and the previous rate decreases as the period of unemployment increases. Work which may not be suitable because of lower wages during the early weeks of the

claimant's unemployment may become suitable for him as his duration of unemployment lengthens and it becomes evident that prospects are remote for obtaining work in line with prior wages. A wage that is below the person's previous wage may be suitable if it is not substantially less favorable than that prevailing for similar work in the community.

M. Hours. To determine suitability of work in terms of hours, the arrangement of hours in addition to the total number of hours are to be considered. An offer to work on a second, third, rotating or split shift is suitable work if it is customary in the trade or occupation in the labor market area. However, the shifts are always suitable for individuals who customarily work for employers who use several shifts.

N. Other conditions of work. The suitability of the work shall be determined by considering the provisions of the employment agreement, whether express or implied, including the physical conditions under which the work is done pursuant to the agreement. The term "other conditions of work" includes but is not limited to provisions for work rules, safety rules, sanitation, heat, light, and ventilation.

O. Substantially less favorable to the individual. Whether provisions of the work offered are substantially less favorable to the individual can be determined only by comparison of the conditions of the work offered to those prevailing for similar work in the local labor market area. The conditions of work offered are not compared to the previous work of the individual. Both the extent of the difference as well as its effect on the worker shall be considered. If the work offered has differences of no substantial consequence for the worker, it will not be considered to be substantially less favorable. If the wages offered are more than ten percent below the prevailing rate of pay or less than the applicable federal or state minimum wage for the type of work being considered, it will be considered to be substantially less favorable than that prevailing for similar work in the locality.

P. Prevailing. Prevailing wages, hours and other conditions of work are those which are offered to those who commence employment in similar work in the locality.

Q. Locality. Locality means the claimant's labor market area.

R. Good cause. A claimant has good cause for refusal of suitable work only when there is some necessitous and compelling reason for refusal. Good cause for refusing a job may, but need not be attributable to the employer. Good cause reasons for refusal are usually personal to the claimant and extraneous to the employment, and are usually of a temporary and emergency nature so as not to detach the claimant from the labor market.

3000-3105 Widen

8 MCAR S 4.3008 Reemployment offer. A claimant is considered to

have refused an offer of suitable reemployment from a base period employer unless the terms and conditions of the offer are substantially less favorable than the terms and conditions under which the principal part of the wage credits were earned with that employer in the claimant's base period.

A refusal of reemployment shall be with good cause if the claimant had previously quit the employment for good cause attributable to the employer and the conditions which were the basis for good cause still exist.

A refusal of reemployment shall be with good cause if the claimant previously separated from that employment because of his own serious illness and the work offered would adversely affect that illness.

3008
3100

8 MCAR S 4.3009 Partial benefits exemption. 8 MCAR SS 4.3001-4.3008 shall not apply to a claimant with respect to a claim for partial unemployment benefits.

8 MCAR S 4.3010 Benefit claim procedure.

A. Purpose and scope. This rule defines claim procedure and eligibility criteria under Minnesota Statutes, section 268.08, subdivision 1.

B. Initial claim. To file a new claim for benefits or to reactivate an inactive claim, an individual shall report in person at an unemployment office and shall there:

1. Present a valid social security account number card or other acceptable evidence of his social security number;

2. File an initial claim for benefits on a prescribed form; and

3. Register for work, except that the initial claim for benefits may also constitute the individual's registration for work if it is determined that normal registration should be waived or postponed.

The claim shall be effective on the Sunday of the calendar week in which the claim is reactivated or filed.

C. Claim acceptance form. If the unemployment office cannot provide claim service on a given day an individual shall be given a claim acceptance form to verify his attempt to file a claim on that date. If the individual presents a claim acceptance form to one of the local unemployment service offices within 14 days from the date of issuance of the claim acceptance form or when service is next provided in a part-time unemployment office, the initial claim shall be backdated as if filed in the calendar week in which the claim acceptance form was issued.

D. Part-time unemployment office. Any individual who resides in an area in which there is a part-time unemployment office may report in person at that office and file a new or reactivated claim for benefits effective as of the Sunday of the first week of the individual's unemployment, provided that his first day of unemployment is subsequent to the last previous day that service was provided by the part-time unemployment office. No claim shall be effective more than 28 days prior to the calendar week in which the individual reports to file the claim.

E. Permitted benefit years. An initial claim for benefits shall not establish a benefit year which begins prior to the Sunday next following the end of any previous benefit year except as otherwise provided by rule or law.

F. Withdrawal of claim. An initial claim for benefits which has been filed with the department may not be withdrawn by the claimant or otherwise terminated by the department except as provided by other rule or law.

G. Continued claim. A continued claim is a certification to the completion of one or more weeks of unemployment and a request for benefit credit for that period. To establish eligibility for benefits or waiting period credit for a week or weeks of unemployment following a new or reactivated claim an individual shall continue to report in person or by mail and file continued claims as directed by the department to the office responsible for the administration of his unemployment insurance, in this or any other state.

H. Transferred claim. Any claimant filing continued claims covering more than four weeks of benefits through a single area office in this or some other state other than the area office where his initial claim or transferred claim is filed shall transfer his claim to that single office. No claimant shall be ineligible for failure to transfer his claim to another office unless, prior to the filing of a continued claim, the claimant has been directed to transfer his claim and has failed without good cause to comply.

I. Late filed claim. Any individual who fails to file a continued claim in the manner and at the time and place specified by the department may report in person or by mail and file the claim within 14 days following the date specified by the department. Waiting period credit or benefits for each week that was covered by the delinquent claim shall be authorized if the claimant is otherwise eligible. No credit or benefits shall be authorized for subsequent weeks which were not claimed properly.

Any individual who for good cause fails to file a continued claim in the manner and at the time and place specified by the department may file the claim in person or by mail not more than 35 days following the expiration of his benefit year. The claimant, if otherwise eligible, shall be entitled to waiting period credit or benefits for each week that good cause for

failure to report is established.

J. Assistance in filing claim. The department shall make reasonable efforts to assist claimants who because of physical impairment or inability to communicate in the English language cannot provide information necessary to file benefit claims without assistance.

K. Requirement to notify department of address and telephone changes. The claimant's address and telephone number on a new or reactivated claim form shall constitute the last known address and telephone number for purposes of mailing notices of determination or otherwise contacting the claimant unless a written notice of address or telephone change is received by the unemployment office where his claim is on file. Any change of address or telephone number shall constitute the last known address or telephone number for only those transactions occurring after written notice was received.

3000-3100

8 MCAR S 4.3011 Week of unemployment.

A. Scope and purpose. This rule further defines "week" as defined under Minnesota Statutes, section 268.04, subdivision 23.

B. Week calculated, labor dispute. An individual's week of unemployment shall consist of the consecutive seven-day period beginning with the day on which registration is made effective except following the termination of a labor dispute. Following termination of a labor dispute, week of unemployment is the remainder of the calendar week in which the labor dispute ended. An individual, if otherwise eligible, shall be entitled to one-fifth credit for each day, excluding Saturday, following the date on which the labor dispute ended.

Chapter Three: Taxation

8 MCAR S 4.3100 Definitions.

A. Generally. Unless the context otherwise requires, terms used in 8 MCAR SS 4.3100-4.3108 shall be construed in the sense in which they are defined in Minnesota Statutes, sections 268.03 to 268.24, or in these or other rules of the department.

B. Pay period. "Pay period" means that period of time during which the wages due on any regular pay day were earned. If the period exceeds 31 days, then 31 days shall be deemed to constitute a pay period.

8 MCAR S 4.3101 Wages.

A. Purpose. This rule further defines "wages" as defined in Minnesota Statutes, section 268.04, subdivision 25, and used in Minnesota Statutes, sections 268.03 to 268.24, 8 MCAR SS

4.3101-4.3108, interpretations, forms and other official pronouncements issued by the department.

B. Types of wages, generally. "Wages" means remuneration for services. The remuneration may take any form, be paid at various times, and be computed in various ways. Remuneration may be in cash or in a medium other than cash, on the basis of piece work or percentage of profits, or by commission. Remuneration may be paid on an hourly, daily, weekly, monthly, annual or other basis.

C. Paid and payable wages. Wages includes remuneration payable and remuneration paid. "Remuneration payable" is wages that have been earned but that were not paid when due. "Remuneration paid" is wages that have been actually or constructively delivered to, or for the benefit of, an employee.

D. Types of wages. Wages include the monetary value of:

1. Dwelling unit rent, utilities, meals, exchange of services or other goods or services that are to compensate for an employee's services;

2. Vacation pay or payment in lieu of vacation;

3. Termination, severance, or dismissal payment or payment in lieu of notice whether notice is required or not;

4. That portion of the payment which compensates for services rendered received in the form of an award or allowance in accordance with a contractual agreement or settlement reached through any arbitrator, regulatory agency or court;

5. Profits, sometimes referred to as dividends, other than those designated as capital gain distributions or return of capital, distributed or allocated to officers and shareholders who perform services for a corporation organized under the rules of Subchapter S of the Internal Revenue Code of 1954. The distribution or allocation of undistributed profits is reportable at the time it is received by, or credited to the account of, the officers and shareholders;

6. The value of any consideration, award, bonus or prize which accrues before separation from employment;

7. Payments for accrued sick leave when not related to a specific absence due to sickness or injury, regardless of whether or not the employer maintains a sick pay plan as defined in Minnesota Statutes, section 268.04, subdivision 25, clause (2);

8. Idle time or standby compensation paid by an employer for a guaranteed minimum number of hours of employment per week when employees are to be available for a specific period of time and payment is made to them for idle time even if they do not render services for the minimum number of hours;

9. Advances or draws against future earnings, when paid, unless the payments are designated as a loan or return of capital on the books of the employer at the time of payment;

10. Amounts paid to corporate shareholders or officers, although designated as loans, where repayments are not made pursuant to a payoff schedule, lack business purpose and fail to provide for the payment of reasonable interest, if the shareholders or officers perform services for the corporation for remuneration below that which would approximate reasonable compensation for services;

11. Payments made directly or indirectly to an individual to perform or assist in performing the work of any employee of the employer provided that the employer had actual or constructive knowledge that the work was being performed;

12. Payments made for services as a caretaker. Unless there is a contract or other proof to the contrary, remuneration shall be considered as being equally received by a married couple where the employer makes payment to only one spouse, or by all tenants of a household who perform services where two or more individuals share the same dwelling and the employer makes payment to only one individual;

13. Payments made for services by a migrant family. Where services are performed by a married couple or a family and an employer makes payment to only one individual each worker shall be considered as having received an equal share of the remuneration unless there is a contract or other proof to the contrary;

14. An employer's vehicle furnished to an employee to the extent the vehicle is used for personal purposes. If the employee has use of the vehicle without charge, the amount deemed to be wages shall be $200 per month or, if for less than a calendar month, $7 for each day that the employee has use of the vehicle for personal purposes. If the employee reimburses the employer for the use of the vehicle, the amount deemed to be wages shall be determined as follows:

a. If the employee reimburses the employer at an established rate of less than 20 cents per mile for each mile of personal use, the amount deemed to be wages shall be the difference, if any, between the amount reimbursed and 20 cents per mile; or

b. If the employee reimburses the employer at an established daily, weekly or monthly rate, the amount deemed to be wages shall be the difference, if any, between the amount reimbursed and $200 per month or, if for less than a month, $7 for each day that the employee has use of the vehicle for personal purposes;

15. Amounts withheld or deducted from an employee's earnings because of a deferred compensation agreement which an

employee agrees to participate in or which is part of an employment contract. A deferred compensation agreement generally means an arrangement between the employee and the employer for the withholding or deduction of a specific amount from his earnings, to be distributed to the employee by the employer or a third person at a later time, usually in post-retirement years.

E. Tips and gratuities.

1. Accounted for to the employer. Tips and gratuities are accounted for to the employer in various manners or forms including when they are:

a. Added to the customer's bill by the employer;

b. Added to the bill by a customer using credit for the purchase;

c. Disbursed by the employer from a tip pool; or

d. Reported to the employer in compliance with the Internal Revenue Code of 1954.

2. Paid to an employee by a customer. Tips and gratuities are considered paid to an employee by a customer if they are:

a. Received directly from the customer;

b. Distributed from a tip pool, whether controlled by the employer or employees; or

c. Received as part of a plan or system under which the person initially receiving them, whether directly from the customer or from a tip pool, distributes a portion of the tips to other employees.

Under a.-c. the tips are considered as being paid by the customer to the person ultimately receiving them.

F. Valuing non-cash remuneration.

1. Except as this rule may otherwise provide, the cash value of remuneration for personal services payable in any medium other than cash shall be:

a. The fair market value of meals or any value agreed upon between the employer and employee if it is not less than the allowance as provided in Minnesota Statutes, sections 177.21 to 177.35, the Minnesota fair labor standards act, and rules promulgated thereunder;

b. The value of rent of a house, apartment or other lodging, furnished to an employee that would be paid by an employee for similar or equivalent accommodations, but in no

event less than the allowance provided in Minnesota Statutes, sections 177.21 to 177.35 and rules promulgated thereunder; or

c. The fair market value, determined when received, of any other remuneration for services unless a higher value is agreed upon between the employer and the employee.

2. If the commissioner determines that the reasonable fair market value is other than as determined by the employer he shall, after affording the employer reasonable opportunity for the submission of relevant information, determine the reasonable cash value of board, rent, housing, meals, or similar advantage.

G. Employee equipment.

1. The wages of the operator and supplier of a truck, bulldozer, tractor or similar equipment whose remuneration includes wages for personal services as well as the cost of operating and hiring the equipment shall, in the absence of an agreement between the parties, be determined as follows:

a. The value of that part of the total remuneration received which is wages for personal services shall not be less than the prevailing wage scale for similar services by operators of equipment of the same size and type in the locality where the services are performed; or

b. If there is no prevailing wage in the locality in which the services are performed, 40 percent of the total remuneration received from the employer shall constitute wages.

2. Payments to an employee that include advances or reimbursements for use of his personal vehicle of up to 9,000 pounds gross vehicle weight in the employer's business are wages unless the amount attributable to the use of the vehicle is separately paid or stated as prescribed in H.8. and the advance or reimbursement is not unreasonable or arbitrary in which case only the amount attributable to services performed shall be wages.

3. If the commissioner finds that the wage determination of the equipment operators or employees who use their personal vehicles in the employer's business prescribed by 1. and 2. would be unreasonable or arbitrary in a particular case, then the commissioner shall determine the amount of the wages of the employee involved.

H. Exempt wages. The term "wages" shall not include:

1. The value of any special discount or mark down allowed to an employee in goods purchased from or services supplied by the employer where the purchases are optional and do not constitute regular or systematic remuneration for services rendered;

2. Customary and reasonable directors' fees paid to

individuals who are not otherwise employed by the corporation of which they are directors;

3. Moneys allowed to employees for reimbursement of meal expenses when employees are required to perform work after their regular hours;

4. Any payment made to or on behalf of an employee by the employer for legal or dental service plans if provided for all employees generally or for a class or classes of employees;

5. Payments for periods of sickness or injury after the end of six calendar months after the calendar month in which the employee last worked for the employer, if the payments are made by an employer who does not maintain a regular sick pay plan as defined in Minnesota Statutes, section 268.04, subdivision 25, clause (2);

6. Compensation, reimbursement, fees, meals or other remuneration paid or provided through a court to an individual for services performed as a juror;

7. Royalties to an owner of a franchise, license, copyright, patent, oil, mineral or other right;

8. Amounts paid specifically as advances or reimbursements for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer. Traveling and other reimbursed expenses must be identified either by making separate payments or by specifically indicating the separate amounts where both wages and expense allowances are combined in a single payment;

9. Remuneration paid to radio and television artists which represents residual payments and which is accrued subsequent to the production of musical jingles, spot announcements, radio transcriptions and film sound tracks; or

10. Any payment to or on behalf of an employee under a plan or system established by an employer, which makes provisions for his employees generally or for a class or classes of his employees for the supplementation of unemployment benefits under the written terms of an agreement, contract, trust arrangement, or other instrument if the plan or system provides benefits which are only supplemental to, and does not replace or duplicate any state or federal unemployment compensation. The plan or system must provide that funds are to be used solely for the supplementation of state unemployment benefits. Potential recipients of the plan or system must be required to file for unemployment benefits in accordance with state law. The plan or system shall not allow the assignment of benefits or the payment of any consideration in lieu of any benefit upon the employee's withdrawal from the plan or system, his termination of employment or the termination of the plan or system. The plan or system must not be designed for the purpose

of avoiding the payment of unemployment taxes on moneys disbursed from its plan or system.

8 MCAR S 4.3102 Employment.

A. Definitions. For the purpose of 8 MCAR S 4.3102 the following terms have the meaning given to them.

1. "Control" is the power to instruct, direct or regulate the activities of an individual whether or not the power is exercised.

2. "Employing unit" has the meaning given to it in Minnesota Statutes, section 268.04, subdivision 9, and includes any individual or type of organization that engages, retains, or secures the services of, an individual.

3. "Employment" has the meaning given to it in Minnesota Statutes, section 268.04, subdivision 12, and includes the services of any individual performed for an employing unit under its direction, rule or control as to both the method of performing or executing the services and the result to be effected or accomplished. Whether an individual is performing services in employment shall be determined by the preponderance of the evidence.

4. "Method" is the way, procedure or process for doing something; the means in attaining a result as distinguished from the result itself.

B. Obtaining a determination or opinion. If an employing unit is unsure of the status of an individual performing services for it, the employing unit may obtain a written determination by submitting all relevant facts to the commissioner on questionnaires prescribed for these determinations. The determination shall be final unless a written protest is filed with the commissioner as set forth in Minnesota Statutes, section 268.12, subdivision 13. If any person contemplates hiring or engaging a worker to perform services and is unsure if the services would be deemed employment, a written opinion may be obtained by submitting information about the proposed work arrangement, as the hiring person perceives it will be, on questionnaires prescribed by the commissioner. The commissioner's opinion does not have the effect of a determination and is not subject to appeal. The person requesting the opinion shall clearly indicate that the situation is hypothetical and that an opinion, rather than a determination, is being sought. If an individual is hired or engaged to perform the services in question, a determination may be obtained. This paragraph in no way limits the department's authority under Minnesota Statutes, section 268.12, subdivision 13, clause (1) to make determinations on its own motion.

C. Procedures for determining control. The department shall determine if control exists by:

1. Reviewing written contracts between the individual and the employing unit;

2. Interviewing the individual or employing unit;

3. Obtaining statements of third parties;

4. Examining regulatory statutes governing the organization, trade or business;

5. Examining the books and records of the employing unit; and

6. Making any other investigation necessary to determine if the elements of control specified in D. exist.

D. Evidence of control. Paragraphs 1.-13. describe criteria for determining if there is control over the method of performing or executing services. The total circumstances must be considered to determine if control is present.

1. Authority over individual's assistants. Control over the individual is indicated when the employing unit hires and pays the individual's assistants and supervises the details of the assistant's work.

2. Compliance with instructions. Control is indicated when an individual is required to comply with detailed instructions about when, where, and how he is to work including the order or sequence in which the service is to be performed. Mere suggestions as to detail or necessary and usual cooperation where the work furnished is part of a larger undertaking, does not normally evince control. Some individuals may work without receiving instructions because they are highly proficient in their line of work; nevertheless, the control factor is present if the employing unit has the right to instruct or direct the methods for doing the work and the results achieved. Instructions may be oral or may be in the form of manuals or written procedures which show how the desired result is to be accomplished. However, instructions required by state or federal law or regulation or general instructions passed on by the employing unit from a client or customer, generally does not evince control.

3. Oral or written reports. Control is indicated if regular oral or written reports relating to the method in which the services are performed must be submitted to the employing unit. Periodic reports relating to the accomplishment of a specific result may not be indicative of control if, for example, the reports are used to establish entitlement to partial payment based upon percentage of completion of a job, or the reports are needed to determine compliance with the terms of a contract. Completion of receipts, invoices and other forms customarily used in the particular type of business activity or required by law does not constitute written reports.

4. Place of work. Doing the work on the employing unit's premises is not control in itself; however, it does imply that the employer has control, especially when the work could be done elsewhere. When work is done off the premises it does indicate some freedom from control; however, in some occupations, the services are necessarily performed away from the premises of the employing unit and are still considered to be in employment.

5. Personal performance. Control is indicated if the services must be personally rendered to the employing unit. Personal performance of a very specialized work, when the worker is hired on the basis of professional reputation, as in the case of a consultant known in the academic and professional circles to be an authority in the field, is a less reliable indicator of control. Lack of control may be indicated when an individual has the right to hire a substitute without the employing unit's knowledge or consent.

6. Existence of a continuing relationship. The existence of a continuing relationship between an individual and the person for whom he performs services is a factor tending to indicate the existence of an employer-employee relationship. Continuing services may include work performed at frequently recurring, though somewhat irregular intervals, either on call of the employing unit or whenever work is available.

7. Right to discharge. The right to discharge is a very important factor indicating that the right to control exists particularly if the individual may be terminated with little notice, without cause, or for failure to follow specified rules or methods. An independent worker generally cannot be terminated if he produces an end result which measures up to his contract specifications. Contracts which provide for termination upon notice or for specified acts of nonperformance or default are not solely determinative of the right to control. That a right to discharge is restricted because of a contract with a labor union or with other entities does not mean there is not control.

8. Set hours of work. The establishment of set hours of work by the employing unit indicates control. Where fixed hours are not practical because of the nature of the occupation, a requirement that the worker work at certain times is an element of control.

9. Training. Training of an individual by an experienced employee working with him, by required attendance at meetings, and by other methods, is a factor of control especially if the training is given periodically or at frequent intervals.

10. Amount of time. If the worker must devote his full time to the activity, control is indicated. Full time does not necessarily mean an eight hour day or a five or six day week. Its meaning may vary with the intent of the parties, the nature of the occupation and customs in the locality. Full time services may be required even though not specified in writing or

orally. For example, a person may be required to produce a minimum volume of business which compels him to devote all of his working time to that business, or he may not be permitted to work for anyone else.

11. Tools and materials. The furnishing of tools, materials and supplies by the employing unit is indicative of control over the worker. When the worker furnishes these items it indicates a lack of control, but lack of control is not indicated if the individual provides tools or supplies customarily furnished by workers in the trade.

12. Expense reimbursement. Payment by the employing unit of either the worker's approved business or traveling expenses, or both, is a factor indicating control over the worker. A lack of control is indicated when the worker is paid on a job basis and has to take care of all incidental expenses.

13. Satisfying requirements of regulatory and licensing agencies. If an employing unit is required to enforce standards or restrictions imposed by regulatory or licensing agencies, such action does not evince control.

E. Independent contractor or employee, factors to consider. Among the factors to be considered, in addition to factors of control, when determining if services are employment are those listed in 1.-8.

1. Availability to public. That an individual makes his services available to the general public on a continuing basis is usually indicative of independent status. An individual may offer his services to the public in a number of ways including having his own office and assistants, displaying a sign in front of his home or office, holding a business license, having a listing in a business directory or a business listing in a telephone directory, or advertising in a newspaper, trade journal or magazine.

2. Compensation on job basis. A person working in employment is usually paid by the hour, week or month. Payment on a job basis is customary where the worker is independent. Payment by the job may include a predetermined lump sum which is computed by the number of hours required to do the job at a fixed rate per hour or periodic partial payments based upon a percent of the total job price or the amount of the total job completed. The guarantee of a minimum salary or the granting of a drawing account at stated intervals with no requirement for repayment of the excess over earnings indicates the existence of employment.

3. Realization of profit or loss. An individual who is in a position to realize a profit or suffer a loss as a result of his services is generally independent, while the individual who is working in employment is not in that position.

4. Obligation. An individual working in employment

usually has the right to end his relationship with his employer at any time he wishes without incurring liability, although he may be required to provide notice of his termination for some period in advance of the termination. An independent worker usually agrees to complete a specific job. He is responsible for its satisfactory completion and is liable for failure to complete the job.

5. Substantial investment. A substantial investment by a person in facilities used by him in performing services for another tends to show an independent status. The furnishing of all necessary facilities by the employing unit tends to indicate the absence of an independent status. Facilities include equipment or premises necessary for the work, but not tools, instruments, clothing, and similar items that are provided by individuals working in employment as a common practice in their particular trade. A substantial expenditure of time or money for an individual's education is not necessarily indicative of an independent relationship. Substantial investment means a monetary investment representing something of considerable worth, in relation to the overall requirements of the person's chosen profession, trade, occupation or vocation.

6. Simultaneous contracts. If an individual works for a number of persons or firms at the same time, it indicates an independent status because the worker is usually free from control by any of the firms. It is possible that a person may work for a number of people or firms and still be an employee of one or all of them.

7. Responsibility. An employing unit is usually responsible for the negligence, personal behavior and work actions of a person working in employment in his contacts with customers and the general public during times that he is performing services for the employing unit. An independent worker is usually accountable for his own actions.

8. Services in the course of the employing unit's organization, trade or business. Services that are in the course of the employing unit's organization, trade or business consist of services which are a part or process of the employing unit's organization, trade or business and ancillary or incidental services. Services which are a part or process of the employing unit's trade or business are generally performed by individuals in employment. Therefore, it is a consideration in determining the status of an individual. This consideration, as with all other considerations, is not a sole determinative factor. "Part" and "process" are not synonymous. Process refers to those services which directly carry out the fundamental purposes for which the organization, trade or business exists, for example, painting and repairing automobile bodies in an automobile body paint and repair shop. Part refers to any other services which are essential to the operation or maintenance of the organization, trade or business, for example, routine cleaning of premises and maintenance of tools, equipment and buildings. Ancillary or incidental services include

landscaping the areas around an automobile body paint and repair shop. Other services that meet the part, process or ancillary classification are those services in connection with purchasing, receiving, storing, pricing, displaying, selling and delivery of merchandise and housekeeping services required for the safety and comfort of customers and the general public or to maintain the premises in a manner as to promote business.

F. Independent status, determination. When determining if an individual is in employment or is an independent contractor the factors considered must be weighed to make a determination of the relationship under the facts of the particular case. There are five essential factors to be considered. The two most important are those:

1. That indicate the right or the lack of the right to control the means and manner of performance; and

2. To discharge the worker.

The other essential factors to be considered are: the mode of payment; furnishing of materials and tools; and control over the premises where the work is performed.

Other factors, including some not specifically identified in this rule, may be considered if a determination is inconclusive when applying the essential factors, and the degree of their importance may vary depending upon the occupation or work situation being considered and why the factor is present in the particular situation.

G. Agent-drivers and salespersons. Certain classes of agent-drivers, salespersons and commission persons are statutory employees even though they are independent contractors under common law rules. Minnesota Statutes, section 268.04, subdivision 12, clause (1)(b) sets forth the conditions which must be present for members of each class to be employees.

1. Full-time. In the case of a traveling or city salesperson, other than an agent-driver or commission-driver, Minnesota Statutes, section 268.04, subdivision 12 provides that the individual must be engaged on a full-time basis. "Full-time" means the number of hours in the calendar week during which individuals engaged in the same or similar occupations usually or customarily perform services, except that any week during which an individual worked 40 hours or more providing those services shall be deemed to be full-time.

2. Substantial investment in facilities. Agent-drivers, commission-drivers, and traveling or city salespersons to be employees must not have a substantial investment in facilities, other than facilities for transportation, used in connection with the performance of the services.

a. "Facilities" means equipment or premises necessary to perform the work. Inventory, clothing and items not actually

required to adequately perform the assigned tasks are not facilities.

b. "Substantial investment" refers to a monetary investment representing something of considerable worth in relation to the overall investment requirements in the distribution or sale of the particular product involved.

H. In employment by federal law. An individual is in employment if he performs services which are subject to Section 3300 of the Internal Revenue Code of 1954 (Federal Unemployment Tax Act) or performs services which are required by federal law to be covered employment by state law.

I. In employment, general inclusions. The following services described in 1.-3. are considered to be in employment:

1. Services performed by an employee as an insurance agent, insurance solicitor or real estate salesperson for the pay period in which payments for the services not constituting commissions were paid or became due and payable. The exclusionary provisions of Minnesota Statutes, section 268.04, subdivision 12, clauses (15)(m) and (o) apply to services which require a Minnesota real estate or insurance agent's sales license and to those individuals, except corporate officers, possessing the license. Services of corporate officers, who are employees by statute, shall not be considered in the application of this exclusionary provision. Noncommission remuneration includes guaranteed salary, training allowance, bonus, and draws or advances against future earnings as described in 8 MCAR S 4.3101 D.9. For the purpose of this paragraph commission means remuneration paid to individuals as a direct result of a sale, including the percentage of the sale price paid to the salesperson responsible for the sale, and payments including overrides, listing fees, and closing fees which are related to the sale;

2. Services performed as election judges; and

3. Services performed by factory demonstrators who are placed by a manufacturer or distributor in stores and other locations to aid in the sale of products, who are hired by, who are paid directly or indirectly by, and who work under the direction of the manufacturer or distributor, although this direction may be delegated to the retailer, are in the employment of the manufacturer or distributor making the placement. If the retailer, not acting as an agent for the manufacturer or distributor, hires, directs and pays the demonstrator directly, the retailer is the employer. If the wages are paid in part by the manufacturer or distributor, and in part by the retailer, the demonstrator is in the employment of both. Each is required to pay contributions on the part of the remuneration which it pays, provided that it is an employer under Minnesota Statutes, sections 268.03 to 268.24.

J. Casual labor.

1. Casual labor not in the course of the employing unit's trade or business, although excluded from the term employment by Minnesota Statutes, section 268.04, subdivision 12, clause (15)(b), is conditionally included as employment under the provisions of Chapter 23, Section 3300 of the Internal Revenue Code of 1954 (Federal Unemployment Tax Act). Minnesota Statutes, section 268.04, subdivision 12, clause (6) provides that the term employment shall include any service which is deemed to be employment under the Federal Unemployment Tax Act; therefore, casual labor is considered employment unless it meets the exclusionary provisions of that act. The exclusionary provisions of that act are in 2.

2. Service not in the course of the employing unit's trade or business, performed in any calendar quarter by an employee is excluded employment unless the cash remuneration earned for the service is $50 or more, and the service is performed by an individual who is regularly employed by the employing unit. For the purpose of this paragraph, an individual shall be deemed to be regularly employed if for some portion of each of 24 days or more, whether or not consecutive, during the current or preceding quarter the individual performs service that is not in the course of the employing unit's trade or business. Cash remuneration includes checks and other monetary media of exchange. Remuneration paid in any other medium, such as lodging, food, or other goods or commodities, is disregarded in determining if the cash remuneration test is met. Casual labor not in the course of the employing unit's trade or business includes service that does not promote or advance the trade or business of the employing unit; for example, work performed in connection with the employing unit's hobby or recreational activities, or work as an employee in repairing the employing unit's private home. Service for a corporation cannot be considered as nonbusiness or casual labor.

K. Localized employment.

1. If an employee works in more than one state, it is necessary to determine if the employment is localized in, and reportable to Minnesota. In making this determination, only the regular services for which the employee was hired, and not those characterized as incidental, temporary, transitory or an isolated transaction are to be considered. An employee's services are considered localized in Minnesota in any calendar quarter in which 80 percent or more of his regular services are performed in Minnesota.

2. Regular services include those services performed in an office located in the home of the employee if all of the following conditions are met:

a. The employer does not provide other facilities;

b. The office meets the requirements of the Internal Revenue Code of 1954 for the deduction of business related expenses; and

c. The services performed are an integral part of the employee's regular duties.

3. Incidental, temporary, transitory and isolated services include:

a. Attending periodic meetings or returning to one's residence which is located outside his area or territory, by salespersons or others who normally perform services within a given area or territory; and

b. Any other services which are apart from or not a permanent part of an employee's regular duties.

L. Multi-state employment. When an individual's services are not localized, and absent any reciprocal agreement provided for in Minnesota Statutes, section 268.13, subdivision 1, clause (1), the employee is a "multi-state" worker and the application of the tests listed in 1.-4. below is required, to determine whether the services are reportable to Minnesota.

1. Base of operations. If an individual's services are not localized in any state and some services, other than those determined to be incidental, temporary, transitory or isolated transactions, are performed in Minnesota and the base of operations is in Minnesota, the employee's entire services are reportable to Minnesota. "Base of operations" means the place, usually permanent in nature, from which the employee starts his work, to which he customarily returns, and to which the employer may direct instructions to the employee. A branch office of the employer or the place of residence of the employee could be a base of operations.

2. Direction and control. If an individual's services are not localized in any state and the base of operations test does not apply, all of the services are reportable to Minnesota if Minnesota is the state from which the employer exercises general direction and control over the employee, and if some services, other than those determined to be incidental, temporary, transitory or isolated services, are performed in Minnesota.

3. Residence. If an individual's services are not localized within any state and the base of operations and the direction and control tests do not apply, the individual's entire services are reportable to Minnesota if the individual's residence is located in Minnesota and some services, other than those determined to be incidental, temporary, transitory, or isolated transactions are performed in Minnesota.

4. Service not covered under the laws of any other state or Canada. If 1.-3. do not apply, and the individual's services are not covered under the laws of any other state or Canada, the services are covered under Minnesota Statutes, sections 268.03 to 268.24 if the services are directed and controlled from Minnesota.

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

1. Minnesota Statutes, section 268.04, subdivision 12, clause (15)(p) does not apply to an individual who performs services as an independent contractor and in employment within the same pay period, but does apply to all employment defined in Minnesota Statutes, section 268.04, subdivision 12, except clauses (10)(a) and (b), relating to certain employees of religious organizations.

2. If an individual's services within the pay period consist of 50 percent or more of excluded employment none of that individual's services for that pay period are taken into account nor does any of that individual's remuneration for that pay period constitute wages.

3. Although not applicable to services by an individual referred to in Minnesota Statutes, section 268.04, subdivision 12, clauses (10) (a) and (b), other services performed by the same individual are subject to all other provisions of Minnesota Statutes, sections 268.03 to 268.24.

N. Previously excluded employment. If within a calendar year an individual's services and remuneration should no longer be excluded because his employing unit has met the employment or wage requirement for that individual's class of workers all of the previously excluded employment for that class within the same calendar year is subject to the provisions of Minnesota Statutes, sections 268.03 to 268.24. The previously excluded wages for all workers in that class of employment are reportable in the calendar quarters in which the wages were paid or were due and payable.

O. Employment, general exclusions. Minnesota Statutes, section 268.04, subdivision 12, clause (10)(d) excludes services which are performed as part of a program designed to relieve unemployment, if the specific program, and not just the employing unit, is assisted or financed by any federal agency or an agency of a state or political subdivision thereof. "Assistance" may be in the form of supervision, advice in organizing and operating the program, but it must be substantial and continuing. Occasional, intermittent or incidental services would not be sufficient to invoke the exclusion. Where other than incidental physical facilities or material are furnished the program by a federal agency, the state or any of its political subdivisions, the program has been "assisted or financed".

P. Employment, special exclusion. In the trucking industry, an owner-operator of a vehicle which is licensed and registered as a truck, tractor, or truck-tractor by a governmental motor vehicle regulatory agency is an independent contractor, not an employee, while performing services in the operation of his truck, if each of the following factors are substantially present:

1. The individual owns the equipment or holds it under a bona fide lease arrangement;

2. The individual is responsible for the maintenance of the equipment;

3. The individual bears the principal burdens of the operating costs, including fuel, repairs, supplies, vehicle insurance, and personal expenses while on the road;

4. The individual is responsible for supplying the necessary personal services to operate the equipment;

5. The individual's compensation is based on factors related to the work performed including a percentage of any schedule of rates or lawfully published tariff and not on the basis of the hours or time expended;

6. The individual generally determines the details and means of performing the services, in conformance with regulatory requirements, operating procedures of the carrier and specifications of the shipper; and

7. The individual enters into a contract that specifies the relationship to be that of an independent contractor and not that of an employee.

3009
3106

8 MCAR S 4.3103 Agricultural labor.

A. Purpose. This rule further defines and clarifies terms used in Minnesota Statutes, section 268.04, subdivision 12, clause (15)(a) and in this rule.

B. Definitions.

1. Agricultural and horticultural commodity. "Agricultural or horticultural commodity" includes nuts, fruits, mushrooms, vegetables, honey, milk, eggs and grain, flowers, cut flowers, trees, sod and shrubbery, animal feed or bedding, grass seed, vegetable and cereal seed, flax, soy beans, sunflower seeds, corn, medicinal herbs and other crops.

2. Commodity. "Commodity" refers to a single product. For example, all apples are one commodity. Apples and peaches are two separate commodities.

3. Crop purchase agreement. "Crop purchase agreement" means an agreement whereby a crop is raised under contract with a buyer.

4. Cultivating. "Cultivating" means cultivating of the soil, irrigating crops, spraying, dusting and other related operations.

5. Farm. "Farm," unless otherwise excluded in this rule,

means land or buildings if their primary use is for raising agricultural or horticultural commodities or for activities generally associated with the operation of a ranch, range, livestock or dairy operation. A farm need not be a specific size and it need not be composed of contiguous plots. The performance of agricultural services does not by itself render the place where they are performed a farm.

6. Fur-bearing animals. "Fur-bearing animals" are animals raised for the eventual use of their fur in the manufacture of clothing or other products.

7. Harvesting. "Harvesting" includes baling hay and straw, shredding fodder, combining small grains, hulling nuts, and course grinding of alfalfa. Horticultural commodities including flowers, trees, shrubbery and plants are harvested when they are taken up for sale or storage.

8. Livestock. "Livestock" is any useful domestic animal kept for use on a farm or raised for sale and profit or for eventual consumption.

9. Poultry. "Poultry" is any domestic fowl raised for meat or eggs and includes chickens, turkeys, ducks and geese.

10. Primary. "Primary" means 70 percent or more.

11. Raising. "Raising" as it pertains to livestock, bees, poultry, fur-bearing animals and wildlife means any or all stages of development, including breeding, which are necessary in their maturing for use on the farm or for sale. Raising does not include services in potting, watering, heeling, or otherwise caring for trees, shrubbery, plants, flowers or similar items that are purchased in saleable condition for the purpose of resale.

12. Terminal market. A "terminal market" includes a packing or processing plant or any place where a farmer-producer customarily relinquishes his economic interest in the commodity, its future form or its destiny.

13. Wildlife. "Wildlife" refers to frogs, birds, fish and all animals belonging to a species or class generally considered wild regardless of the element which they inhabit.

C. Farms, exclusions.

1. Feedlots, hatcheries and horse breeding and training. Feedlots, hatcheries and horse training and breeding enterprises are not in themselves farms although they require services generally considered to be agricultural labor.

2. Wildland. Property left in its wild state with no effort expended to perform common farming operations is not a farm.

D. Farms, inclusions.

1. Wild rice. Land developed for seeding, cultivating and raising wild rice is a farm.

2. Christmas trees. A plot of land used primarily for raising Christmas trees is a farm.

3. Mushrooms. Land and structures used primarily for raising mushrooms is a farm.

4. Wildlife. A parcel of real property used for raising any form of wildlife is a farm.

5. Ranges. Land used primarily for grazing is a farm.

E. Crop purchase agreements, farms, agricultural labor.

1. Farm operator. A person agreeing to purchase a commodity grown under a crop purchase agreement does not by that reason qualify as an operator of a farm even though he conducts some or all of the operations necessary for the production and harvesting of the crops purchased.

2. Agricultural labor. Services performed on a farm in the employ of either party to a crop purchase agreement in connection with the raising and harvesting of crops is agricultural labor.

F. Agricultural labor on farms. Services connected with the following activities must be performed on a farm as defined in Minnesota Statutes, section 268.04, subdivision 12, clause (15)(a)(5) and in this rule, to be agricultural labor:

1. Breeding and training horses;

2. Hatching poultry;

3. Aerial seeding, fertilizing, spraying and dusting including services related to the mixing of the spray or dust material or the loading of the material into the airplane, as well as services related to the measuring of the swaths and the marking and flagging of fields to be dusted or sprayed;

4. Clerical, bookkeeping and other office work in conjunction with the services referred to in Minnesota Statutes, section 268.04, subdivision 12, clause (15)(a)(1); or

5. Holding, feeding and fattening livestock in feed lots.

G. Agricultural labor, conditional situations.

1. Generally. The services described in 2.-5. are not agricultural labor unless they meet the specific requirements set forth in 2.-5. with regard to where and for whom they are performed. When reference is made to "incidental to ordinary

farming operations," that means services of the character ordinarily performed by employees of a farmer or of a farmer's cooperative organization or group as a prerequisite to marketing in its unmanufactured state any agricultural or horticultural commodity produced by the farmer, organization or group.

2. Clerical work. Record keeping and other clerical or office work performed in connection with the functions described in Minnesota Statutes, section 268.04, subdivision 12, clauses (15)(a)(2) and (4) unless they are:

a. Performed in the employ of the owner or tenant or other operator of a farm;

b. Rendered in major part on a farm; and

c. Performed incidentally to ordinary farming operations.

3. Commodity retailing. Retailing agricultural or horticultural commodities, on or off the farm, unless:

a. The services are performed for, and the commodities are produced by the operator of the farm; and

b. Less than 50 percent of the employee's time is devoted to the services. The 50 percent test is to be applied to each employee with respect to either a pay period or 31 days, whichever is less.

4. Waterways work. Services in the construction of canals, reservoirs, waterways or drainage ditches, unless in the employ of the owner or tenant or other operator of a farm.

5. Land clearance. Services in the clearing of stumps, brush and debris from land in preparation for its use as a farm, unless done in the employ of the owner tenant or other operator of the farm.

H. Agricultural labor exclusions.

1. Generally. Services connected with the following activities do not constitute agricultural labor:

a. Breeding, raising and caring for mice, rats and other rodents and creatures commonly held for sale in pet shops or raised for research and experimental purposes;

b. Breeding, raising, caring for, exhibiting and boarding dogs and cats;

c. Racing, exhibiting and boarding horses, including services connected with a riding stable or academy;

d. Lumbering or landscaping;

e. Collecting and processing maple sap into maple syrup or sugar;

f. Trapping animals;

g. Harvesting native wild rice not grown on land developed specifically for that purpose; or

h. Raising and harvesting worms.

2. Packing plants. Services performed in the employ of any person other than the operator of a farm in hauling crops to a packing plant and services within the plant do not constitute agricultural labor.

I. Agricultural labor, separate commodities. The services with respect to each commodity are to be considered separately in determining whether the conditions set forth in Minnesota Statutes, section 268.04, subdivision 12, clause (15)(a)(4) have been satisfied.

8 MCAR S 4.3104 Domestic service.

A. Purpose. This rule further defines and clarifies terms used in Minnesota Statutes, section 268.04, subdivision 12, clause (14) and in this rule.

B. Definitions.

1. Domestic service. "Domestic service" means work ordinarily performed as an integral part of household duties that contribute to the maintenance of the employer's private home or administers to the personal wants and comforts of the employer and other members of the employer's household. In general domestic service includes work performed by cooks, waiters, waitresses, butlers, housekeepers, housemen, watchmen, governesses, maids, companions, nursemaids, valets, baby sitters, laundresses, furnace men, caretakers, gardeners, footmen, grooms, seamstresses, handymen and chauffeurs of family automobiles. Domestic service performed for fraternities and sororities also includes services performed by housemothers.

2. Local college club. "Local college club" means a club operated and controlled by and for the benefit of students enrolled at a university or college.

3. Private home. "Private home" means the fixed abode of one or more persons. Any shelter used as a dwelling may be considered as a private home including a tent, boat, trailer, or a room or suite in a hospital, hotel, sanatorium, or nursing home. A cooperative boarding and lodging facility may also be a private home. In an apartment house, each apartment, together with its stairways, halls, and porches is a private home. Parts of the premises devoted to common use, such as an office, furnace room, lawns, public stairways, halls and porches, are

not a part of the private home. If a facility is used mainly as a commercial rooming or boarding house only that part of the house which is used as the operator's living quarters is considered to be a private home.

C. Domestic service, general.

1. Non-domestic service, treatment. If service performed by an employee in or around the private home of an employing unit is not domestic service within the meaning of this rule, it is subject to the other provisions of Minnesota Statutes, section 268.04, subdivision 12.

2. Maintenance of the employer's private home. Domestic service in connection with the maintenance of an employer's private home is service which contributes directly to the protection, cleaning and normal maintenance, in contrast to major repair projects, of the home and surrounding area. It does not include service which is not ordinarily a part of home duties or which involves the use of skilled or specialized training including service performed by persons in the construction trades.

3. Administering to the personal wants and comforts of the employer. Certain services, although performed in or around the private home of the employer are not domestic services because they are too remotely associated with the requirement that they administer to the personal wants and comforts of the employer. Examples of non-domestic services include those performed by a private or social secretary, tutor, librarian, bookbinder, museum assistant and medical nurse.

4. Domestic service performed by relatives. Domestic service performed by relatives, other than that excluded from employment by Minnesota Statutes, section 268.04, subdivision 12, clause (15)(d), is domestic service within this rule if there is a contractual agreement between a relative and the employing unit.

5. Service performed by employees of landlords or rental agencies. Service of a household nature performed in or around rental units by employees of landlords and rental agencies is not domestic service. Service performed by domestic workers in and around the private home of the landlord is not within this exception.

6. Workers obtained through a referral or placement agency. Domestic workers referred to jobs through employment placement agencies that neither supervise nor pay them directly are in the employ of the recipient of the services. However, if an agency is in the business of providing temporary services to clients the agency is the employing unit and the workers are not providing domestic services.

7. Service performed for a minister, priest, rabbi or any other member of a religious order. Service performed in the

private home of a minister, priest, rabbi or any member of a religious order is considered domestic service if the worker is in the employ of the recipient of the service. If the worker is in the employ of the church or religious order the service is excluded employment. The recipient of the service is the employer if the funds for the payment of the domestic worker are not specifically provided by the church or religious order. Funds provided by a congregation of a church are considered as being provided by the church. If funds are not provided by the church specifically for domestic service and the spouse hires, directs and otherwise controls the worker, the spouse is the employer.

8. Registered and licensed practical nurses. Registered nurses performing private duty services are generally performing service as independent contractors if they have full discretion in administering their professional services and are not subject to direction and control. Registered and licensed practical nurses who are engaged by hospitals, nursing homes, physicians, government agencies or commercial businesses generally are not performing services as an independent contractor and the services are non-domestic.

9. Nurses aides and patient helpers. Nurses aides and patient helpers who are engaged to perform services in the private home of the patient, although they may occasionally administer medication, are usually performing services that are primarily domestic in nature. Patient helpers who are selected by patients who require their services, either in the hospital or after returning to their homes, are generally in the employ of the patient.

10. Service authorized or provided by agencies. Any agency providing or authorizing the hiring of homeworkers or personal care attendants in the private home of an individual is the employer of those individuals performing the services and the services are not considered domestic if the recipient would not receive the care unless provided or funded for by the agency. It is immaterial whether the agency pays the homeworker or attendant directly or if the agency provides the funds to the recipient.

D. Location of domestic service.

1. Domestic service is service which is performed only in a private home of the employer, local college club, or local chapter of a college fraternity or sorority.

2. A local college club or local chapter of a college fraternity or sorority does not include an alumni club or chapter or university faculty club.

3009-3105

8 MCAR S 4.3105 Records, reports and payments.

A. Scope. This rule clarifies an employing unit's duty with

regard to records, reports and payments as required under Minnesota Statutes, sections 268.06, subdivision 1; 268.11, subdivisions 2 and 3; and 268.12, subdivision 8.

B. Notification.

1. Establishment of new business or change in an existing business. Each employing unit shall notify the department within 30 days of a change in legal entity, or of the start, transfer, sale, acquisition, or termination of a business, in whole or in part, insofar as the transaction results in the creation of a new or different employing unit or affects the establishment of employer accounts, the assignment of rates, or the transfer of experience records as provided in Minnesota Statutes, section 268.06. If the information as submitted is incomplete, subsequent requests for additional information required in determining liability, modifying an existing account and assigning or transferring of experience rates must be completed, signed and returned to the department in accordance with the instructions on the form or accompanying correspondence.

2. Employer death. The executor, administrator or other legal representative of a deceased employer shall be responsible for notifying the department of the employer's death as soon as possible.

3. Bankruptcy. In the case of bankruptcy or receivership proceedings, or any proceedings for the relief of a debtor who is an employer, the trustee in bankruptcy, receiver, or person designated by order of the court as the one in control of the assets of the debtor shall promptly file notice of the proceedings with the department.

C. Records. Each employing unit shall establish, maintain and preserve records with respect to individuals performing personal services for it for a period of not less than five years after the calendar year in which the remuneration for the services was paid or payable. The records shall show for each individual the following:

1. Name;

2. Social security number;

3. Days in which the individual performed personal services;

4. Location where services were performed;

5. Wages paid and wages due but not paid for personal services, showing separately:

a. Money wages, excluding special payments;

b. Wages paid and wages due but not paid, in any medium other than money, excluding special payments;

c. Special payments such as bonuses, gifts, and prizes, showing separately money payments, other special payments and the character of the payments;

d. Days for which sick pay was paid; and

e. Tips and gratuities paid to an employee by a customer and accounted for by the employee to the employer as defined in 8 MCAR S 4.3101 E.1. and 2.

6. Rate and base unit of pay;

7. Amounts paid as allowances or reimbursement for travel or other activity pertaining to the furtherance of the employing unit's business which were not included as wages. The account shall show each item of expense incurred during each pay period or calendar month;

8. The date of separation and the reason, in detail, for the termination;

9. The complete resident address of the employee; and

10. For each pay period:

a. The beginning and ending dates of the period;

b. The total amount of wages paid and wages due but not paid for personal services performed; and

c. The date of payment.

D. Records, instate and outstate. For services performed within and without Minnesota the records required by C. shall include:

1. The city or county and state in which the employing unit maintains a base of operations, as defined in 8 MCAR S 4.3102 L.1., used by the individual;

2. The city or county and state from which the services are directed and controlled, if the employing unit does not have a base of operations in the states in which an individual performs services; and

3. A list of the states in which the individual performs other than temporary or incidental services and the dates services were performed at each location.

E. Records, covered and uncovered employment. For services performed in both employment and excluded employment within a pay period the records required by C. shall include the hours spent performing services in employment and the hours spent performing excluded services.

F. Filing reports. An employer's tax report must be filed

on a form prescribed by the department, or a reasonable facsimile thereof, not later than the due date for payment of quarterly contributions. Failure to receive forms from the department shall not constitute a valid reason for not filing reports on or before the due date thereof or for not paying any contribution due. Consolidated reports of corporations having common ownership shall be recognized or permitted only if expressly allowed under 8 MCAR S 4.3106. If the report first submitted is erroneous, the employer shall promptly submit the corrected information on forms prescribed by the department and make any additional payment due.

3000-3106

8 MCAR S 4.3106 Consolidated reports.

A. When permitted. Consolidated reports of parent and subsidiary corporations, or other employing units having common ownership, shall be recognized or permitted only in the case of two or more related corporations:

1. Who concurrently employ the same individuals, including officers, whose wages during the calendar quarter are paid by one of the related corporations as a common paymaster; and

2. Whose application for a joint account has been approved by the commissioner or his delegated representative.

B. Related corporations tests. For the purpose of this rule and Minnesota Statutes, section 268.06, subdivision 21, clause (2), corporations are related for an entire calendar quarter if they satisfy one of the following four tests of 1.-4., at any time during that calendar quarter.

1. Test one. They are either:

a. Members of a parent-subsidiary controlled group which is a group of two or more corporations connected through stock ownership with a common parent corporation if more than 50 percent of the total combined voting power or more than 50 percent of the total value of shares of all classes of stock of each corporation, except the common parent corporation, is owned by one or more of the corporations and the common parent corporation owns stock with more than 50 percent of the total combined voting power of at least one of the other corporations. There shall be excluded in computing the percentage of voting power or value, any treasury stock owned by the subsidiary corporation;

b. Members of a brother-sister controlled group consisting of two or more corporations in each of which five or fewer of the same individuals, estates or trusts own stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of all shares of all classifications of stock of each corporation, taking into account the stock

ownership of each person only to the extent the stock ownership is identical with respect to each corporation;

c. Members of a combined group, which is a group of three or more corporations each of which is a member of a parent-subsidiary or brother-sister controlled group and one of which is a common parent corporation included in a parent-subsidiary controlled group and is included in a brother-sister controlled group; or

d. Life insurance companies subject to income tax under Section 802 of the Internal Revenue Code and the provisions of a., b. or c. are met and all other members of the controlled group are subject to Section 802 of the Internal Revenue Code.

2. Test two. They are a corporation that does not issue stock and 50 percent or more of the board of directors, or other governing body, of each of the corporations are the same, or the same holders possess 50 percent or more of the voting power to elect directors to each corporation.

3. Test three. Fifty percent or more of one corporation's officers are concurrently officers of the other corporation.

4. Test four. Thirty percent or more of one corporation's employees are concurrently employees of the other corporation.

C. Stock defined. For the purpose of this rule "stock" does not include:

1. Non-voting stock which is limited and preferred as to dividends;

2. Treasury stock; or

3. Stock that is treated as excluded stock.

D. Excluded stock, parent-subsidiary. "Excluded stock" for a parent-subsidiary controlled group means:

1. Stock in a subsidiary held in trust that is part of an employee's deferred compensation plan;

2. Stock in a subsidiary owned by an individual who is a principal stockholder or an officer of the parent corporation. A "principal stockholder" is one that owns five percent or more of the voting power or five percent or more of the value of all stock of the parent corporation; or

3. Stock in a subsidiary corporation owned by an employee of the subsidiary corporation but only if the parent or subsidiary corporation restricts or limits the employee's right to dispose of the stock.

E. Excluded stock, brother-sister group. "Excluded stock" for a brother-sister controlled group means:

1. Stock in a member corporation held by an employees' trust if the trust is for the benefit of the employees;

2. Stock in a member corporation owned by an employee of the corporation but only if substantial limits or restrictions are imposed on the employee's right to dispose of the stock. A bona fide reciprocal stock repurchase arrangement will not be considered as one that restricts or limits the employee's right to dispose of the stock; or

3. Stock in a member corporation that is held by a nonprofit educational or charitable organization.

F. Limits on groups. A corporation may be treated as a component member of only one controlled group.

G. Concurrent employment. "Concurrent employment" as used in Minnesota Statutes, section 268.06, subdivision 21 and this rule means the simultaneous existence of an "employment" relationship between an individual and two or more related corporations, as defined in Minnesota Statutes, section 268.04, subdivision 12.

An employment relationship shall require the performance of services by the employee for the employing corporation in exchange for wages which, if not for the provisions of Minnesota Statutes, section 268.06, subdivision 21, clause (2) and this rule, would be reportable by the employing corporation.

The fact that a particular employee is on leave or otherwise temporarily inactive is immaterial in the determination of concurrent employment. Employment is not concurrent with respect to one of the related corporations if there is no employment relationship with that corporation during periods when the employee is not performing services for that corporation.

An individual who does not perform substantial services in exchange for wages for a corporation is presumed not employed by that corporation.

Wages paid to an employee ceasing to be concurrent for services rendered while the employee was in concurrent employment is reportable by the common paymaster. If the employment relationship is nonexistent during a quarter, that employee may not be counted towards the 30 percent test set forth in B.4.

H. Cash payments only. This rule applies only to wages disbursed in money, check or similar instrument by one of the related corporations or its agent, and excludes the value of non-cash compensation such as room and board, received by the common employee from a member corporation other than the common

paymaster.

I. Common paymaster.

1. A "common paymaster" of related corporations is any related member that disburses wages to employees of two or more of the related corporations on their behalf and that is responsible for keeping books and records for the payroll with respect to those employees.

2. The common paymaster is not required to disburse wages to all employees of two or more related corporations, but this rule does not apply to any wages that are not disbursed through a common paymaster.

3. Although a corporation may be treated as a component member of only one controlled group, the related corporations may designate more than one common paymaster but only one common paymaster may be designated for each class of employee.

J. Joint account. A joint account application shall be on forms prescribed by the department. A joint account shall be maintained as a separate unit of the employer account of the common paymaster until that account is terminated or notification is received regarding a change of the common paymaster. A joint account cannot be made retroactive prior to January 1 of the year preceding the year in which the application is received.

K. Joint and several liability. The common paymaster has the primary responsibility for the remittance of any contributions, penalties and interest due on wages it disburses as the common paymaster but each related corporation using the common paymaster is jointly and severally liable for its proportionate share of any unpaid contributions, penalties and interest.

L. Common paymaster responsibilities. The common paymaster has the sole responsibility for filing contribution reports, wage and separation information and protests and appeals pertaining to concurrent employees and to establish effective communications between the related corporations to ensure timely response on all matters affecting claims for unemployment benefits.

M. Reports. Each related corporation which is the employer of an individual will be responsible for reporting the individual's wages and remitting the appropriate contributions for calendar quarters where the related group or concurrent employment conditions are not met, regardless of which corporation disburses the wages.

N. Work other than for common paymaster. If an employee works for a related corporation other than the common paymaster prior or subsequent to the effective period of the agreement, the wages earned and reportable by the employing corporation

shall not be combined with the wages reportable by the common paymaster in determining the maximum taxable wage described in Minnesota Statutes, section 268.04, subdivision 25.

O. Non-related or noncurrent. Where related group or concurrent employment conditions are not met, each employing corporation of an individual shall be responsible for submitting wage and separation information, protests and appeals pertaining to any claim for unemployment benefits of that individual.

P. Wages, wage credits and experience rate factors of a joint account. All wages reportable and benefits charged under the joint account shall remain with that account for contribution, benefit eligibility and experience rating purposes.

Q. Relation cessation. If any corporation ceases to be related the common paymaster shall notify the department within 30 days of the end of the calendar quarter in which the cessation occurs.

R. Termination of agreement. The commissioner may immediately terminate the agreement if it is found that consolidated reporting is not in compliance with this rule, or it is determined that the approved related group changed its common paymaster for the purpose of attaining more favorable experience rates.

S. Written protest. If an application to report under the provisions of Minnesota Statutes, section 268.06, subdivision 21, clause (2) and this rule is denied, or an existing agreement is terminated at the discretion of the commissioner, the denial or termination shall be final unless a written protest is filed with the commissioner as set forth in Minnesota Statutes, section 268.06, subdivision 20.

3000-3108

8 MCAR S 4.3107 Payments of interest.

A. Scope. This rule establishes the conditions upon which interest on contributions due may be waived as provided for in Minnesota Statutes, section 268.16, subdivision 1.

B. Waiver. The commissioner may waive all or part of the interest charges on contributions that are not paid by the due date if:

1. The late payment was caused by department error or misinformation; or

2. The late payment was the result of unreasonable delay not attributable to the employer.

C. Application. Each application for waiver of interest under this rule must be made in writing by the employer or his authorized representative, except that the commissioner may on his own motion waive interest if in the best interest of the

State of Minnesota.

3000
3108

8 MCAR S 4.3108 Contribution rates.

A. Notice of rate. Any employer determined liable by the department prior to January 1 shall be assigned a contribution rate pursuant to Minnesota Statutes, section 268.06 which shall be mailed on or before March 15 of the year effective.

B. Time limit on voluntary contributions. In no event shall a voluntary contribution paid by an employer pursuant to Minnesota Statutes, section 268.06, subdivision 24 after the expiration of the first 120 days for the period the rate is effective be used in the computation of a new experience ratio.

ES 7 Unemployment compensation fund receipts and disbursements.

(a) All moneys, checks, drafts and United States postal money orders received by the Department of Employment Security in payment of contributions, interest or penalties shall be delivered daily to the state treasurer who shall promptly deposit the same in a bank designated by the commissioner to the credit of the Minnesota unemployment compensation fund, clearing account. At least once each week the state treasurer shall issue his official transfer, transferring all of such funds which have had six days or more in which to clear the banks or other institutions upon which they are drawn, to the credit of the special disbursing account of the unemployment trust fund, c/o Commissioner of Accounts, Treasury Department, Washington, D.C., provided there is at least $25,000 in such clearing account to be transferred.

(b) The commissioner or his authorized representative shall periodically and from time to time requisition moneys from the unemployment trust fund deposited with the secretary of the treasury of the United States to the credit of the state of Minnesota in such amounts as he deems necessary for the payment of benefits under the Minnesota employment security law for a period of not to exceed one calendar quarter and in no case to exceed the amount standing to the account of the state of Minnesota.

(1) Moneys so withdrawn shall be requisitioned to be paid by United States Treasury Department check or checks made payable to the treasurer of the state of Minnesota as custodian of the Minnesota unemployment compensation fund. The state treasurer upon receipt thereof shall immediately deposit the same to the credit of the Minnesota unemployment compensation fund, benefit account, in a bank designated by the commissioner as depository for the Minnesota unemployment compensation fund.

(2) In cases of emergency the commissioner may arrange with the United States Treasury Department to transfer the required amount of money by wire to the credit of the state of Minnesota unemployment compensation fund, benefit account.

(c) All moneys, checks, drafts and United States postal money orders received for the Minnesota unemployment compensation fund from the treasurer of the United States as an advance of money for the payment of unemployment compensation to veterans under Title IV of the Veterans' Readjustment Assistance Act of 1952, as amended, and to federal employees under chapter 85, title 5 of the U.S. Code, shall be promptly deposited in a bank designated by the commissioner to the credit of the Minnesota unemployment compensation fund, benefit account.

(d) All moneys, checks, drafts and United States postal money orders received from an unemployment compensation agency of another state to reimburse the Minnesota unemployment compensation fund for moneys disbursed by the Minnesota Department of Employment Security for payment of benefits to

claimants pursuant to a reciprocal interstate agreement existing between the state of Minnesota, Department of Employment Security, and the unemployment compensation agencies of various other states, shall be promptly deposited in a bank designated by the commissioner to the credit of the Minnesota unemployment compensation fund, benefit account.

(e) The state treasurer, upon receipt of certification and abstract of disbursement signed by the commissioner or his duly authorized representative shall issue state treasurer's checks prepared by the Department of Employment Security and countersigned by the commissioner for the following purposes:

(1) Payment of refunds to persons who have paid contributions, interest and penalties to the Department of Employment Security in excess of the amount legally required pursuant to an order directing such payment signed by the commissioner. Such checks shall be drawn on the unemployment compensation fund, clearing account.

(2) Payment of moneys to various state unemployment compensation agencies in reimbursement of this state's proportionate share of disbursements made by such agencies for payment of benefits pursuant to a reciprocal interstate arrangement or agreement for that purpose existing between the state of Minnesota, Department of Employment Security, and the proper authorities of such other state agency which is a party to such agreement. Such check shall be drawn on the unemployment compensation fund, benefit account.

(3) For transfer of moneys from the unemployment compensation fund, clearing account, to the Minnesota Employment Security contingent fund account covering interest and penalties accrued under the Minnesota employment security law and collected and deposited into the unemployment compensation fund, clearing account, subsequent to April 17, 1945, pursuant to an order signed by the commissioner directing the transfer of such funds.

(4) For the transfer, on or after April 1, 1953, from the clearing account of the unemployment compensation fund to the Minnesota Employment Security administration fund, of court and statutory costs paid by an employer in connection with the institution or prosecution of a suit by the Department of Employment Security to enforce the payment of contributions by such employer and which costs have been included in the remittance received by the department covering payment of contributions due and owing by such employer and deposited in the clearing account of the unemployment compensation fund.

(5) Payment of benefits to unemployed individuals under the Minnesota employment security law and payment of unemployment compensation to veterans under Title IV of the Veterans' Readjustment Assistance Act of 1952, as amended, and to federal employees under chapter 85, title 5 of the U.S. Code, shall be made by the Minnesota Department of Employment Security

warrants or checks drawn against the Minnesota unemployment compensation fund, benefit account. All such warrants or checks shall carry the facsimile signature of the state treasurer and of the commissioner of the Department of Employment Security. All such warrants or checks written and issued in local employment offices of said department shall also be countersigned by a duly authorized cashier of the Department of Employment Security at such local employment offices. The commissioner or his duly authorized representative shall furnish to the state treasurer a post abstract of all warrants or checks countersigned each day by such duly appointed and authorized cashiers.

ES7-30

ES 13 Information in files and records of the department confidential.

(a) Information obtained from any employing unit or individual pursuant to the administration of the Minnesota employment security law or from any written return, report, statement, or determination with respect to the rights to benefits of any individual or any portion of any such document shall be held confidential and shall not be disclosed or open to public inspection in any manner revealing any such information or the individual's or employing unit's identity except as follows:

(1) Information from the records of the Department of Employment Security shall be furnished to any claimant for benefits or his representative upon request for such information to the extent necessary for the proper presentation of such claimant's claim in any proceeding under the Minnesota employment security law; and

(2) Information from the records of the Department of Employment Security may in the discretion of the commissioner be furnished to the following:

(aa) Any agency of any other state or of the United States charged with the administration of an employment security law or the maintenance of a system of public employment offices;

(bb) The Internal Revenue Service of the United States, Department of the Treasury;

(cc) Any agency of this state or the United States charged with the administration of public works or assistance through public employment.

Any such agency or department seeking such information shall file with the Department of Employment Security a written request setting forth therein the nature of the information desired and the purpose for which such information is sought.

(3) Information from the records of the Department of Employment Security may be disclosed in the form of statistical

statements or reports which do not reveal the individual's or employing unit's identity.

(b) Notwithstanding any other provisions of the regulations of the Department of Employment Security:

(1) All copies of form OA-702, or any part thereof, received from the Social Security Administration shall be kept in a confidential file and shall be returned to the Social Security Administration, if and when this department finds it has no further use for them.

(2) The information contained on form OA-702 shall be used only for the administration of the Minnesota employment security law and no information contained therein shall be divulged to any other individual or agency except that such information may be divulged to an authorized agent or agency of the Social Security Administration.

(3) All requests for copies of form OA-702, or any of the information contained thereon, shall be denied, and the person from whom the request is received shall be referred to the regional office of the Social Security Administration.

ES7-30

ES 14 Contributions by employers.

(a) All contributions (excepting voluntary contributions under section 268.06, subdivision 24, of the Minnesota employment security law) required from employers with respect to wages paid and wages overdue and delayed beyond the usual time of payment for employment performed subsequent to January 1, 1963, shall become due and be paid on a quarterly basis on or before the last day of the month next following the calendar quarter for which the contributions have accrued, with the following exception:

Period	Contributions due and Payable on or before
1st quarter 1963	May 15, 1963

(b) The first contribution payment of any employing unit which becomes an employer at any time during a calendar year shall become due on, and shall be paid on or before, the last day of the month next following the close of the quarter in which such employing unit fulfills the conditions with respect to becoming an employer, and shall include contributions accrued for the entire period beginning January 1 of such calendar year up to and including the calendar quarter in which the employing unit fulfills the conditions with respect to becoming an employer; except that:

(1) An employing unit which satisfies the conditions with respect to becoming an employer after June 30 of any calendar year, may, upon application, be authorized to pay its first contribution in installments; provided, however, that no

installment shall be postponed beyond the 31st day of January succeeding the period with respect to which such liability has accrued, and provided further that if the employer fails to pay any installment in full when it falls due, the entire unpaid balance shall be paid upon notice from the department with interest from date of default.

(2) The first contribution payment (with respect to services not previously covered by the law) of any employing unit which elects to become an employer or to have non-subject services performed for it deemed employment shall upon written approval of such election by the commissioner become due on, and shall be paid on or before, the last day of the month next following the close of (1) the calendar quarter which includes the effective date of such election, or (2) the calendar quarter which includes the date of approval, whichever is later in point of time, and shall include contributions with respect to all wages for services covered by such election paid on and after the effective date and not later than the close of the last completed calendar quarter preceding the due date for such contributions; provided that where circumstances so warrant the commissioner may permit the payment of the first contribution in installments as provided in (1).

(c) Wages with respect to employment during the previous pay periods, the amount of which and the persons to whom payable were not determinable during any such previous pay period, shall be deemed to be wages for employment in the pay period in which such wages were paid or determined to be due but not paid.

(d) If the commissioner believes that the collection of any contribution under the provisions of the Minnesota employment security law will be jeopardized by delay, he shall, whether or not the time otherwise prescribed by this rule for making return and paying such contributions has expired, immediately assess such contribution (together with all interest and penalties, the assessment of which is provided for by law). Such contribution, penalties, and interest shall thereupon become immediately due and payable, and immediate notice and demand shall be made by the commissioner for the payment thereof.

ES 15 Adjustments and refunds of contributions.

(a) Contribution reports, when once submitted, will not be returned to employers for correction. Whenever any employer discovers or is notified by the commissioner that the contribution report submitted by him is incorrect resulting in overpayment of contributions due and owing, such employer may file an application for credit allowance or refund within three years from the date on which such overpayment was made. Such application shall be on a form prescribed by the commissioner and furnished by the department which, among other things, shall show the correct amount of contributions claimed to be due for the period involved and the alleged overpayment. Adjustment shall be made by the commissioner in the form of credit

allowance or refund as provided in (b) equal to that portion of contributions erroneously paid which exceeds the benefits paid to claimants as a direct result of the employer's erroneous report.

If the contribution report first submitted by an employer understates the amount of contributions due and owing for a given period, he shall file a supplemental report for such period and make remittance covering all additional contributions due and owing for such period.

(1) If it is apparent, upon examination of any regular or supplemental contribution report that a greater contribution than is required by law has been paid, the commissioner may, within three years from the date of such overpayment, make an adjustment and issue a credit adjustment memorandum for such overpayment.

(2) If it is not apparent from the examination of any regular or supplemental contribution report that a contribution greater than that required by law has been made, any employer or employing unit claiming a credit adjustment shall file with the commissioner a written application for such adjustment within three years from the date on which such overpayment was made. Such credit adjustment shall be granted only after a review of the application which shall set forth such information in the matter as may be required. If, after such review, the adjustment is found to be in order, the commissioner shall issue a credit adjustment memorandum for such overpayment.

(b) Each credit adjustment memorandum issued shall be mailed to the employer entitled thereto at his last known address and he may attach such memorandum to his contribution and wage report to the department for either the first or second reporting period following receipt of such memorandum by him. Upon receipt thereof by the department such credit memorandum will be applied against contributions due for the period covered by his contribution report to which such memorandum is attached and his account will be adjusted accordingly. In any case wherein the employer fails to utilize the credit memorandum issued to him as provided above, the commissioner may cancel such credit memorandum and issue an order directing refund covering such overpayment. If it is impractical to apply any such credit adjustment memorandums against subsequent contributions, the commissioner, upon request of the employer or employing unit or upon his own initiative, may issue an order directing refund covering such overpayment. The state treasurer, upon receipt from the commissioner of an order directing refund, shall issue his warrant (check) made payable in the amount and to the party named in such order.

ES 16 Settlement agreements and cancelation of claims.

(a) Any person who is indebted to the state of Minnesota, Department of Employment Security, because of failure to pay

contributions with respect to any given period required under the Minnesota employment security law may file with the Minnesota Department of Employment Security a vertified application on a form prescribed by the commissioner requesting a compromise settlement of such indebtedness, which application shall set forth in detail:

(1) the full name and address of the applicant; if a co-partnership, the name and address of each such co-partner; and if a corporation, the name of such corporation and the name and address of each statutory officer; and the employer's account number, if any;

(2) the calendar quarters with respect to which the delinquency exists, the amount of contributions owing for each such quarter, the interest accrued thereon and other penalties, if any, and the total amount of indebtedness for contributions, interest and penalties;

(3) the reason for failure to pay such contributions, interest and penalties;

(4) a financial statement of the applicant;

(5) information indicating whether or not the applicant is still engaged in business;

(6) the reason for requesting a compromise of such indebtedness; and

(7) the amount of contributions the applicant is able to pay and the time such payment will be made.

(b) Upon receipt of such application, it shall be considered by the commissioner or the representative or representatives designated by him to consider such matters and pursuant thereto an agreement may be entered into between the applicant and the Department of Employment Security compromising such indebtedness in accordance with the facts in each case as follows:

(1) In any case wherein the indebtedness is past due and owing:

(aa) If the applicant is no longer engaged in business or is insolvent or has established permanent residence in another state or where it is shown to the satisfaction of the commissioner or his representatives that the question of liability was sufficiently doubtful to justify an honest belief on the part of the applicant that he was not liable for such contributions, the indebtedness may be compromised by cancelation of a portion or all of the interest, penalties and costs, if any.

(bb) If the debtor at the time the indebtedness accrued was a co-partnership and is no longer engaged in business, the indebtedness may be compromised and the claim released as

against any member of such co-partnership who was paid his just share of such indebtedness.

(2) In any case wherein the indebtedness is more than two years past due:

(aa) If it is shown to the satisfaction of the commissioner or his representatives that the question of liability was doubtful and controversial justifying an honest belief on the part of the applicant that he was not liable for such contributions, the indebtedness may be compromised by cancelation of a portion or all of the contributions more than two years past due together with all of the interest and penalties accrued thereon.

(3) In any case where the indebtedness is more than four years past due:

(aa) If the applicant is still engaged in business, the indebtedness may be compromised by cancelation of a portion or all of the interest and penalties owing, depending upon the facts in each case.

(bb) If the applicant is no longer engaged in business, the indebtedness may be compromised by cancelation of all accrued interest and penalties, and cancelation of contributions in accordance with what the facts in each case may justify.

(cc) If the applicant is insolvent or has established permanent residence in another state and is no longer engaged in business, the indebtedness may be compromised according to the facts in each case by the cancelation of all accrued interest, penalties, and such portion of the contributions as the commissioner deems proper.

(c) In any case wherein the debtor is a corporation which has been dissolved or an individual who is deceased and the department's claim has not been reduced to judgment and there are no assets known to the commissioner or his representative out of which collection of a substantial portion of the indebtedness can be enforced, contributions, interest and penalties may be canceled and written off the books of account of the Department of Employment Security; however, in any such case where the department's claim has been reduced to judgment, the matter may be compromised upon payment of such an amount as the commissioner deems advisable and proper.

E57.30

ES 18 Separation notice required from employers.

(a) Any employer upon separation of an employee for any reason other than lack of work or upon a claimant's refusal of an offer of reemployment shall within three days file with the Minnesota Department of Employment Security a separation notice on a form furnished by the department.

(b) Such notice shall be mailed to the Minnesota Department of Employment Security and a copy thereof handed to the worker or mailed to the last known address of the worker if personal delivery is impossible.

(c) Such notice shall set forth:

(1) the employer's name, address and employer account number as registered with the department;

(2) the worker's name and Social Security account number;

(3) the date employment began and the date of separation or refusal of reemployment;

(4) a brief statement of the reason for separation or the offer and refusal of reemployment, and;

(5) such other information as required by such form.

(d) In cases of unemployment due to a strike, lockout, or other labor dispute, the employer shall, within 48 hours, file with the Department of Employment Security at its state office a notice setting forth the existence of such dispute and the approximate number of employees affected.

E51.30

ES 21 Payment of benefits for partial unemployment.

(a) Definitions.

(1) "Partially unemployed individual." A partially unemployed individual is one who, during a particular week earned wages less than his weekly benefit amount, was employed by a regular employer, and worked less than his normal customary full-time hours for such employer because of lack of work.

(2) "Week of partial unemployment." With respect to a partially unemployed individual whose wages are paid on a weekly basis, a week of partial unemployment shall consist of his pay-period week; with respect to a partially unemployed individual whose wages are not paid on a weekly basis, a week of partial unemployment shall consist of a calendar week, provided that the commissioner may, upon his own initiative or upon application, prescribe as to any individual or group of individuals such other period of seven consecutive days as he may find appropriate under the circumstances.

(b) Employer responsibility with respect to furnishing workers with notices of potential eligibility for partial benefits.

(1) Any employer, who regularly employs an individual, shall, after the termination of any week, and not later than the regular pay day for such week, give each such individual a copy of Notice of Potential Eligibility for Benefits for Partial

Unemployment (MES-95) or such other forms containing substantially the same information as may be approved by the commissioner, except as otherwise provided in (2), under either of the following circumstances:

(aa) If, becuase of lack of work in such week, the hours of work of such individual have been reduced by such employer to less than his normal customary full-time hours and less than four full days' work, or the time or dollar earnings equivalent thereof, or

(bb) If, because of lack of work in such week, such individual's earned remuneration is less than the minimum weekly benefit amount provided for by law.

Provided, that no such notice is required from any employer to any employee for any week in which such employee's earned remuneration is equal to or in excess of the maximum weekly benefit amount provided for by law.

(2) The Department of Employment Security, upon the filing of a first claim for partial benefits for a benefit year by an individual, shall promptly notify such individual of his potential rights to partial benefits and shall notify his employer of such individual's weekly benefit amount and benefit year ending date. Upon receipt of such notice, such employer shall record such weekly benefit amount and benefit year ending date upon his payroll records. No notice of potential eligibility for partial benefits is required to be given by an employer in any benefit year to any worker of whose weekly benefit amount and current benefit year ending date the employer has received notice from the Department of Employment Security.

(c) Employer to furnish evidence of partial unemployment.

(1) After any employer has been notified of the weekly benefit amount and current benefit year ending date of any worker in his employ, such employer, until otherwise notified, shall, after the termination of each week and not later than the regular pay day for such week (as described in (a)(2)) which begins within such benefit year and for which week such worker's wages are less than such weekly benefit amount because of the failure of such employer to supply such worker with his normal customary full-time hours of work in such week, furnish such worker with a Low-Earnings Statement (MES-96) as prescribed by the Department of Employment Security signed by the employer, setting forth the information required therein, including the worker's name and social security account number, the beginning and ending dates of such week, the wages earned therein, and a statement that such worker worked less than his normal customary hours during such week because of the failure of such employer to supply such work.

(2) Any employer may substitute for the Low-Earnings Statement written evidence concerning partial unemployment in the form of a pay envelope, pay check stub or copy thereof or

other suitable medium provided that the form containing such evidence has been approved by the commissioner. Approval of such substitute form will be granted only if it contains a provision for certification signed by the employer or other positive identification of the authority supplying the evidence and if it contains all items necessary for establishing the identity of the employer and claimant, the period covered, and the total amount of earnings in each week of such pay period, and such other items as are necessary for ascertaining that the week of partial unemployment was one of less than full-time, and that the individual was not unavailable when work was offered.

(d) Employers to make low earnings reports upon request.

Upon request by the commissioner, employers shall file a report for the individual specified in the request, on a form prescribed by the commissioner, showing with respect to each week covered by the request the individual's total amount of earnings for such week, whether such individual worked less than his normal customary full-time hours because of the failure of such employer to furnish him with such work, and whether the individual earned less than his weekly benefit amount. Such report shall be mailed to the address specified in the request within two business days after its receipt by the employer.

(e) Registration and filing of claims for partial unemployment.

(1) The provisions of ES 19 with respect to registration for work and reporting simultaneously with the filing of a claim for benefits are, in accordance with the provisions of section 268.08, subdivision 1, of the Minnesota employment security law, waived in connection with the filing of a claim for benefits for partial unemployment.

(2) An initial claim or continued claim for benefits for partial unemployment may be filed by any individual in person at any local employment office in the state of Minnesota or with any authorized itinerant agent of the Department of Employment Security on a form supplied for that purpose by the department and such a claim when so filed shall, except as provided in (3), constitute such individual's claim for benefits or for waiting period credit with respect to each week of partial unemployment specified in the claim; provided that such claim shall not be allowed if filed more than 35 days after the individual has been furnished by his employer or the department with information as to his earnings in any such week as provided in (b), (c), or (d), except as provided in (f).

(3) No such claim shall be allowed with respect to any week specified therein unless at the time of filing the individual claiming benefits shall present evidence of his wages consisting of notices of potential eligibility for benefits, or Low-Earnings Statements, executed by his employer, if he has received either of such notices with respect to any week for which benefits are claimed; provided, however, that the loss of

such evidence shall not result in any forfeiture of benefit rights.

(f) Extended period for registration and the filing of claims for good cause.

Notwithstanding the provisions of (e), if the commissioner finds that the failure of any individual to register and file a claim for partial unemployment benefits was due to failure on the part of the employer to comply with any of the provisions of (b), (c), or (d) or to coercion or intimidation exercised by the employer to prevent the prompt filing of such claim, or to failure by the department to discharge its responsibilities promptly in connection with such partial unemployment, the commissioner shall extend the period during which such claim may be filed to a date which shall not be less than one week after the individual has received appropriate notice of his potential rights to benefits and his earnings during the period of such partial unemployment; provided, however, that such period shall not be extended to any date more than 13 weeks after the end of the benefit year during which the week of partial unemployment for which the benefits might otherwise be claimed occurred.

(g) Employers to keep records of partial unemployment.

In addition to the requirements set forth in ES 8 each employer shall keep his payroll records in such form that it would be possible from an inspection thereof to determine with respect to each worker in his employ who may be eligible for partial benefits:

(1) wages earned, by weeks, as described in (a)(2);

(2) whether any week was in fact a week of less than his customary full-time hours;

(3) time lost, if any, by each such worker, due to his unavailability for work.

ES 7-30

ES 22 Payment of benefits to interstate claimants.

(a) This regulation shall govern the Minnesota Department of Employment Security in its administrative cooperation with other states adopting a similar regulation for the payment of benefits to interstate claimants.

(b) Definitions. As used in this rule, unless the context clearly requires otherwise:

(1) "Interstate benefit payment plan" means the plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(2) "Interstate claimant" means an individual who claims benefits under the unemployment compensation law of one or more liable states through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the Minnesota Department of Employment Security finds that this exclusion would create undue hardship on such claimants in specified areas.

(3) "State" includes the District of Columbia and Puerto Rico.

(4) "Agent state" means any state in which an individual files a claim for benefits from another state.

(5) "Liable state" means any state against which an individual files, through another state, a claim for benefits.

(6) "Benefits" means the compensation payable to an individual, with respect to his unemployment, under the unemployment compensation law of any state.

(7) "Week of unemployment" includes any week of unemployment as defined in the law of the liable state from which benefits with respect to such week are claimed, except that no week of less than his customary full-time work and reduced earnings for an individual attached to his regular employer shall be considered a week of unemployment for purposes of this rule.

(c) Registration for work.

(1) Each interstate claimant shall be registered for work, through any public employment office in the agent state when and as required by the law, regulations, and procedures of the agent state. Such registration shall be accepted as meeting the registration requirements of the liable state.

(2) Each agent state shall duly report to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.

(d) Benefit rights of interstate claimants.

(1) If a claimant files a claim against any state, and it is determined by such state that the claimant has available benefit credits in such state, then claims shall be filed only against such state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

For the purpose of this rule, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal

restriction.

(2) Benefit credits in any state shall be deemed to be unavailable for partial unemployment benefit purposes if that state does not provide for the interstate payment of partial unemployment benefits.

(3) The benefit rights of interstate claimants established by this rule shall apply only with respect to new claims (notices of unemployment) filed on or after July 5, 1953.

(e) Claims for benefits.

(1) Claims for benefits or waiting-period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the interstate benefit payment plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(2) Claims shall be filed in accordance with agent-state regulations for intrastate claims in local employment offices, or at an itinerant point, or by mail. With respect to claims for weeks of unemployment in which an individual was not working for his regular employer the liable state shall, under cicumstances which it considers good cause, accept a continued claim filed up to one week, or one reporting period, late. If a claimant files more than one reporting period late, an initial claim must be used to begin a claim series and no continued claim for a past period shall be accepted.

(f) Determinations of claims.

(1) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(2) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

(g) Appellate procedure.

(1) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(2) With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable

state on the date when it is received by any qualified officer of the agent state.

(h) Extension of interstate benefit payments to include claims taken in and for Canada.

This rule shall apply in all its provisions to claims taken in and for Canada.

BST-30

ES 22.1 Combining of wage credits pursuant to interstate reciprocal arrangements. This rule shall govern the Minnesota Department of Employment Security in its administrative cooperation with other states adopting a similar rule for the combining of wage credits pursuant to reciprocal benefit arrangements as provided by Minnesota Statutes 1953, section 268.13, subdivisions 1 and 2.

(a) Basic interstate plan for combining wage credits.

(1) Whenever a claimant has wage credits in two or more states which are parties to an interstate reciprocal arrangement, upon the basis of which arrangement such claimant may be entitled to benefits under the Minnesota employment security law or a similar law of any other participating state in which such wage credits have accrued, but such wage credits are insufficient to qualify such claimant for benefits under the law of any single state in which the wages were earned, such wages shall, in accordance with the interstate arrangement for the combining of wage credits, be deemed to be wages for insured work and the wage credits resulting from wages so earned combined for the purpose of determining the claimant's rights to benefits under the Minnesota employment security law or under a similar law of any other participating state.

(2) The paying state shall be reimbursed for benefits paid by it pursuant to such interstate reciprocal arrangement by each state which has transferred wage credits to such paying state pursuant to such arrangement in the same proportion as the wage credits transferred by each such state bear to the claimant's total combined wage credits.

(3) Benefits paid from the Minnesota unemployment compensation fund pursuant to such interstate reciprocal arrangement shall not be used as a factor in determining the future contribution rate of any employer.

(4) Definitions.

(aa) "Participating state" means any state which is a party to the interstate reciprocal arrangement or agreement.

(bb) "Paying state" means the participating state in which the claim for benefits has been filed.

(cc) "Transferring state" means a participating state

which transfers to the paying state a record of wage credits currently available in such state for the payment of benefits, any part of which is used by the paying state to determine the benefit rights of a claimant.

(b) Extended interstate plan for combining wage credits.

(1) Commencing April 1, 1956, whenever a claimant has wage credits in two or more states which are parties to an interstate reciprocal arrangement, upon the basis of which arrangement such claimant may be entitled to benefits under the Minnesota employment security law or a similar law of any other participating state in which such wage credits have accrued, and such wage credits are sufficient to qualify the claimant for benefits but for less than maximum benefits in any one of such states, benefits to such claimant may be increased but not to exceed the maximum in such state by combining wage credits in such state with wage credits in all participating transferring states in which he has insufficient wage credits for a valid claim.

(2) The paying state shall be reimbursed for benefits paid by it pursuant to such interstate reciprocal arrangement by each state which has transferred wage credits to such paying state in accordance with the reimbursement provisions agreed to by all states participating in such interstate reciprocal arrangement.

(3) Benefits paid from the Minnesota unemployment compensation fund pursuant to such reciprocal arrangement, shall not be charged to the experience rating account of any Minnesota base period employer in any such claim for benefits in excess of the amount such base period employer would have been charged on any such valid claim in which Minnesota is the paying state had benefits not been increased by combining wage credits from one or more other participating states.

Since under this plan wage credits will not be transferred to a participating state if such wage credits are sufficient to establish for the claimant a valid claim for benefits in Minnesota, reimbursements to any other participating state from the Minnesota unemployment compensation fund shall not, in accordance with section 268.06, subdivision 5, clause (2) of the Minnesota employment security law, be charged to the experience rating account of any employer from whom such wages were earned.

(4) Definitions

(aa) "Participating state" means any state which has subscribed to the extended interstate plan for combining wage credits.

(bb) "Paying state" means a participating state, chosen by the claimant, in which he has qualifying wage credits which entitle him to less than maximum benefits in such state.

(cc) "Transferring state" means a participating state

in which the claimant lacks wage credits sufficient to qualify for benefits and which transfers to the paying state a record of the claimant's wages currently available in such state for the payment of benefits, any part of which is used by the paying state to determine the combined-wage claimant's benefit rights under the extended interstate plan for combining wage credits.

(c) Consolidated interstate plan for combining wage credits.

(1) Whenever all of a claimant's wage credits are in states participating under this plan, this plan shall apply regardless of eligibility under either the basic or extended interstate plans for combining wage credits outlined in (a) and (b) provided that whenever some of a claimant's wage credits are in a nonparticipating state this plan shall apply only if the claimant elects to waive combining such employment. In absence of such waiver, the claimant's wage credits shall be combined as outlined in (a) or (b) whichever is applicable.

(2) Unless the language or context clearly indicates otherwise, the following terms shall be given the meanings subjoined to them:

(aa) "consolidated combined wage claim" means a claim filed under this plan;

(bb) "consolidated combined wage claimant" means a claimant who has wage credits in more than one participating state and who as to one or more such states is not monetarily qualified and who has filed a claim under this plan;

(cc) "participating state" means any state which has subscribed to this plan;

(dd) "paying state" means:

.1 As to a consolidated combined wage claimant who is not monetarily qualified in any state, the participating state in which he filed a consolidated combined wage claim if he thereby becomes monetarily qualified. If he does not thus become monetarily qualified, it means the participating state he selects from among those states in which he has wage credits.

.2 As to a consolidated combined wage claimant who is monetarily qualified in one or more states, the participating state selected by the claimant in which he has qualifying wages for less than the maximum benefits in such state.

(ee) "transferring state" means a participating state which transfers to the paying state wage credits in the base period of the paying state.

(3) Claims for benefits shall be filed by a consolidated combined wage claimant in the same manner as any other claimant who is claiming benefits under the employment security law of the paying state. If claims are filed in a state other than the

paying state, the interstate benefit payment provisions of ES 22 shall apply.

(4) Benefits shall be paid from the unemployment compensation fund of the paying state in accordance with the benefit formula of the paying state to the same extent as if all transferred wages were wage credits under the law of the paying state.

(5) Wages paid to a consolidated combined wage claimant during the paying state's base period and reported for that period by a transferring state as currently available shall be included by the paying state in determining benefit rights. Such wages used as the basis for determination of benefits by the paying state shall be unavailable for determining or paying benefits under the employment security law of the transferring state or any other state.

(6) The paying state shall be reimbursed for benefits paid pursuant to the consolidated interstate plan for combining wage credits in the same proportion as the wage credits transferred by each transferring state bear to the claimant's total combined wage credits.

(7) Benefits paid from the Minnesota unemployment compensation fund pursuant to a consolidated combined wage claim shall not be charged to the experience rating account of any Minnesota employer in excess of the amount such employer would have been charged had such benefits not been increased by combining wage credits from other participating states.

(8) Wage credits will not be transferred to a participating state if such credits are sufficient to establish a valid claim for benefits in Minnesota; therefore, reimbursement to any other participating state shall not be charged to the experience rating account of any employer from whom such wage credits were earned.

ES 1-30

ES 23 Determination of claims for benefits and appeals.

(a) Department's determination relating to the validity of a claim.

(1) Whenever an individual reports to file a claim for benefits, he shall be required to furnish separation notices which he has received from base period employers.

(2) Upon the filing of an initial claim for benefits, the department shall send to each base period employer a request for wage and separation information which the employer shall complete and return to the department within seven days after the date on which such form was mailed to the employer. In addition to such other information as may be required, such requests shall be completed by the employer to provide the following information:

(aa) the total wage credits earned in the base period;

(bb) the number of credit weeks which end in the base period;

(cc) the week-ending dates for each calendar week within the base period in which the individual earned less than the amount required to make a credit week and the amount of earnings in each such week;

(dd) the dates on which the worker's employment began and terminated;

(ee) the reason for separation or separations of such individual from the employ of the employer; and

(ff) the employer's protest, if any, relating to the ineligibility or disqualification of the individual.

The commissioner may adopt special procedures for obtaining wage and separation information during periods of mass layoff.

(3) An employer who fails, without good cause, to file the wage and separation information required by this rule within seven days after the date such request was mailed to his last known address shall be liable for a late filing fee of not less than $5 nor more than $25 to be paid to the Department of Employment Security and credited to the contingent fund. For the purpose of this paragraph, "file" means the delivery of the completed request for wage and separation information to the commissioner or any of his agents or representatives or the depositing of the same in the United States mail properly addressed to the department with postage prepaid thereon, in which case the same shall have been filed on the day indicated by the cancelation mark of the United States Post Office Department.

(4) Upon failure of the Department of Employment Security to obtain wage and separation information from an individual's employing unit or employing units, a certification may be filed by said individual setting forth, in addition to other information, the following:

(aa) the name and address of any employing unit for whom said individual performed services during the base period;

(bb) the total number of credit weeks which end within the base period;

(cc) the total base period wage credits earned in insured work with such employing unit;

(dd) the week-ending dates for each calendar week within the base period in which the individual earned less than the amount required to make a credit week and the amount of earnings in each such week;

(ee) the inclusive dates of employment; and

(ff) the reason for separation or separations from the employ of the employing unit.

Such certification shall be accompanied where possible by payroll slips, check stubs, Internal Revenue forms or such other documents which will serve to substantiate the allegations set forth in said certifiction. When such certification as set forth above has been submitted, department records shall be examined to determine if the employing unit is an employer within the meaning of the employment security law, and if it is found that for the period in question such employing unit is subject, information contained in such certification shall be used to determine the individual's benefit rights. In absence of fraud, if a redetermination of benefit rights based on an employer's late report subsequently cancels or reduces the claimant's benefit entitlement, the claimant shall not be required to make repayment to the fund of any benefits paid prior to such redetermination.

(5) Upon receipt of wage and separation information from either the employer's report or a claimant's certification, the department shall make an initial determination as to the validity of such claim and deliver or mail a notice thereof to the claimant and all other interested parties. The claimant or any other interested party may appeal such initial determination to an appeal tribunal designated by the commissioner to hear and determine such matters.

(b) Department's determination relating to ineligibility or disqualification of the claimant.

(1) Any employer upon receiving a request for wage and separation information shall, if in his opinion the claimant should be determined ineligible or disqualified or receive benefits pursuant to said claim, raise the issue of ineligibility or disqualification by completing the separation portion of said form setting forth the facts upon which he bases his contention that the claimant should be determined ineligible or disqualified to receive benefits.

(2) Upon receipt of a protest of eligibility or disqualification filed by an employer on a request for wage and separation information on a valid claim, such issue or issues shall be considered and a determination in writing made with respect thereto and a notice thereof mailed or delivered to the claimant and the employer. The claimant or other interested party may appeal said initial determination to an appeal tribunal.

(3) The commissioner may in his discretion refer any disputed claim directly to an appeal tribunal for a hearing and determination in accordance with the procedure prescribed by this rule with respect to cases heard on appeal.

(c) Appeal to appeal tribunal.

A claimant or any other interested party may appeal, from an initial determination pertaining to the validity of a claim for benefits referred to in (a) (5), or from a determination pertaining to an eligibility or disqualification issue referred to in (b) (2), to an appeal tribunal designated by the commissioner to hear and determine such matters.

(1) The party appealing shall, within seven days after delivery of the notice of determination or within seven days after the date of mailing of said notice, file with the Department of Employment Security at the Employment Office where the claim was filed or at the state office at St. Paul, Minnesota, a notice of appeal, in writing, provided that such appeal may be filed within ten days after the date of delivery or within 12 days after the date of mailing if the commissioner finds that the failure to file such appeal timely was due to compelling good cause. Said appeal shall set forth:

(aa) the name, address, and Social Security account number of the claimant;

(bb) reference to the determination or order from which the appeal is taken;

(cc) the fact that an appeal from such determination is being made; and

(dd) the grounds upon which such appeal is based.

The notice of appeal shall be signed by the party appealing. In addition, one copy of such notice of appeal shall be submitted to the Department of Employment Security for each opposing party to the appeal. Copies of said notice of appeal shall at once be mailed by the department to all interested parties in the matter.

(2) All appeals shall be set for a hearing at the earliest possible date. A notice of such hearing shall be mailed to the claimant and all interested parties in the matter which is being appealed at least ten days before the date of hearing, specifying the time and place of hearing.

(3) Disqualification of members of appeal tribunals.

(aa) No member of an appeal tribunal shall participate in the hearing of any appeal in which he has a personal interest.

(bb) Challenges to the personal interest of any member of an appeal tribunal shall be heard and decided by the chairman of the appeal tribunal subject to review by the commissioner.

(cc) In the absence of, or disqualification of, an associate member, the chairman shall hear and determine the matter alone.

(4) Hearing of appeals.

(aa) All hearings shall be conducted in such manner as to constitute a fair hearing in order to ascertain and determine the substantial rights of the parties, and the appeal tribunals shall not be bound by common law or statutory rules of evidence and procedure. All issues pertaining to the matter on appeal before an appeal tribunal shall be considered and passed upon. The claimant or any other party to an appeal before an appeal tribunal may present such evidence as may be relevant. The members of an appeal tribunal may conduct such examination of the parties and witnesses as may be necessary to ascertain all of the facts relevant to the matter on appeal. All testimony shall be given under oath or affirmation. Upon the hearing of an appeal, an appeal tribunal may, upon its own motion, take such additional evidence as it deems necessary.

(bb) The commissiner may in his discretion order any case to be removed from one appeal tribunal to another or to himself for hearing and determination upon notice to the parties pursuant to section 268.10, subdivision 3, of the Minnesota employment security law and (c) (2) of this rule.

(cc) A claimant or his representative may upon application to the Department of Employment Security secure from its records any information necessary for the proper presentation of such claimant's claim for benefits.

(dd) The parties to an appeal, with the consent of the appeal tribunal, may stipulate in writing as to the facts involved. The appeal tribunal may decide the appeal on the basis of such stipulation or, at its discretion, may set the matter for hearing and take such further evidence as it deems necessary to enable it to determine the merits of the claim on appeal.

(ee) All testimony adduced at the hearing shall be recorded, but need not be transcribed unless further appeal is taken from the decision of the appeal tribunal.

(5) Adjournment of hearings.

(aa) The chairman of an appeal tribunal shall exercise his discretion as to when adjournments of hearings may be granted in order to secure all the evidence that is necessary to determine the matter before him.

(bb) If a party fails to appear at the time and place set for hearing, the appeal tribunal may make its findings of fact and decision based upon the evidence available unless it appears to the appeal tribunal that there is good cause for adjournment.

(6) Determination of appeals.

(aa) Following the conclusion of the hearing of an

appeal, the appeal tribunal shall, within a reasonable time, make its findings of fact and decision in writing which shall be signed by members of the appeal tribunal.

(bb) A majority of the appeal tribunal shall be competent to render a decision, and the minority may file a dissent from such decision.

(cc) Decisions made by an appeal tribunal shall be filed in the state office of the Department of Employment Security at Saint Paul, Minnesota. Notice of the filing of the appeal tribunal's decision together with a copy of the decision shall be mailed to the claimant and all other parties to the appeal.

(d) Appeal to the commissioner.

(1) Any interested party may, within 12 days after the date of mailing to such party a notice of the filing of an appeal tribunal's decision, appeal from such decision and obtain a review thereof by the commissioner.

(2) The party appealing shall file at the employment office where the claim was filed, or at the state office of the Department of Employment Security at Saint Paul, Minnesota, a notice of appeal in writing addressed to the commissioner of the Department of Employment Security, setting forth:

(aa) the name, address, and Social Security account number of the claimant;

(bb) reference to the decision from which the appeal is taken;

(cc) the fact that an appeal from such decision is being made; and

(dd) the grounds upon which such appeal is based.

Such notice of appeal shall be signed by the party appealing. In addition, one copy of such notice of appeal shall be submitted to the Department of Employment Security for each party to the matter on appeal other than the appellant.

(3) All hearings before the commissioner shall be scheduled for the earliest possible date and a notice thereof shall be mailed to all parties to the matter to be heard, at least ten days before the date of hearing, specifying the time and place of hearing.

(4) In hearings on appeals before the commissioner, the arguments shall be limited to the transcribed testimony taken before the appeal tribunal, the exhibits, the law, and the rules adopted by the commissioner, and may be made orally or submitted by written briefs, or both.

(5) Applications to the commissioner for leave to take additional evidence:

(aa) The commissioner in his discretion may, prior to or upon the hearing of an appeal before him, or upon application and proper showing made, set aside the findings of fact and decision of the appeal tribunal and remand any matter to the appeal tribunal for the taking of such additional evidence as the commissioner may deem necessary in order to ascertain the substantial rights of the parties to the appeal. Such evidence shall be taken by the appeal tribunal in the manner prescribed for the conducting of hearings on appeal before it. Upon the completion of the taking of additional evidence, the appeal tribunal shall make its findings of fact and decision in writing based upon all of the evidence adduced before it at the original hearing and the hearing to take additional evidence.

(bb) Application to the commissioner for leave to take additional evidence shall be filed with the commissioner not later than five days preceding the date of the hearing on appeal upon proper and sufficient showing made setting forth the names of the witnesses who will testify and the substance of the evidence to which they will testify, or if such evidence is of a documentary nature, the original documents or verified copies thereof shall be attached to such application. In addition one copy of such application, affidavits, and documents shall be submitted for each party to the appeal other than the applicant.

(6) Determination of appeals:

(aa) Following the conclusion of a hearing on appeal, the commissioner shall, within a reasonable time, make his findings of fact and decision in writing.

(bb) Decisions made by the commissioner shall be filed in the state office of the Department of Employment Security at Saint Paul, Minnesota. Notice of the filing of the commissioner's decision together with a copy of the decision shall be mailed to the claimant, to all other parties of the appeal, and to members of the appeal tribunal which heard the appeal in the first instance.

(7) The commissioner's decision is reviewable by the Supreme Court on writ of certiorari as provided for by section 268.10, subdivision 8, of the Minnesota employment security law.

ES 1-30

ES 24 Experience rating and rate determinations; reviews and appeals.

(a) Any employer may within 30 days from the date of mailing notice of charges made against his experience rating account because of benefits paid to claimants, or within 30 days from the date of mailing a notice of his experience rating and contribution rate for any calendar year, file with the Department of Employment Security a notice of protest and

request for review of such determination. Upon receipt of such notice of protest or request for review, the matter will be reviewed and redetermined and notice thereof given to the employer. This redetermination shall be the final determination of the department unless the employer files an appeal therefrom within ten days from the date of such determination.

(b) Appeal to referee.

(1) Any employer may within ten days from the date of mailing of the notice of redetermination file with the Department of Employment Security, Saint Paul, Minnesota 55101, a notice of appeal in writing setting forth:

(aa) the name, address, and Minnesota account number of the employer;

(bb) reference to the redetermination from which the appeal is taken;

(cc) the fact that an appeal from such redetermination is being made; and

(dd) the particular grounds upon which such appeal is based.

The notice of appeal shall be signed by the employer, or his duly authorized representative.

(2) All appeals shall be heard by a referee designated by the commissioner and shall be set for hearing at the earliest possible date and notice of such hearing shall be mailed to the employer at least ten days before the date of hearing, specifying the time and place of such hearing.

(3) Disqualification of a referee:

No referee shall participate in the hearing of any appeal in which he has an interest.

(c) The commissioner may in his discretion order any case to be removed from one referee to another or to himself for hearing and determination upon notice to the parties pursuant to section 268.10, subdivision 3, of the Minnesota employment security law, and (b) (2) of this rule.

(d) Appeal to the commissioner.

(1) Any employer may within 12 days from the date of mailing a notice to him of the filing of a referee's decision appeal from such decision and obtain a review thereof by the commissioner by filing with the Department of Employment Security, Saint Paul, Minnesota 55101, a notice of appeal in writing setting forth:

(aa) the name, address, and Minnesota account number of

the employer;

(bb) reference to the decision from which the appeal is taken;

(cc) the fact that an appeal from such decision is being made; and

(dd) the grounds upon which such appeal is based.

Such notice of appeal shall be signed by the employer appealing.

(2) All hearings before the commissioner shall be scheduled for the earliest possible date and a notice thereof shall be mailed to the employer at least ten days before the date of hearing specifying the time and place of hearing.

(3) Hearing of appeals.

In hearings on appeals before the commissioner, the arguments shall be limited to the transcribed testimony taken before the referee, the exhibits, the law, and the rules adopted by the commissioner, and may be made orally or submitted by written briefs, or both.

(4) Applications to the commissioner for leave to take additional evidence.

(aa) The commissioner in his discretion may, prior to or upon the hearing of an appeal before him, or upon application and proper showing made, set aside the findings of fact and decision of the referee and remand any matter to the referee for the taking of such additional evidence as the commissioner may deem necessary in order to ascertain the substantial rights of the parties to the appeal. Such evidence shall be taken by the referee in the manner prescribed for the conducting of hearings on appeal before him. Upon the completion of the taking of additional evidence, the referee shall make his findings of fact and decision in writing based upon all of the evidence adduced before him at the original hearing and the hearing to take additional evidence.

(bb) Application to the commissioner for leave to take additional evidence shall be filed with the commissioner not later than five days preceding the date of the hearing on appeal upon proper and sufficient showing made setting forth the names of the witnesses who will testify and the substance of the evidence to which they will testify, or if such evidence is of a documentary nature, the original documents or verified copies thereof shall be attached to such application.

(5) Determination of appeals.

(aa) Following the conclusion of a hearing on appeal, the commissioner shall, within a reasonable time, make his

findings of fact and decision in writing.

(bb) Decisions made by the commissioner shall be filed in the state office of the Department of Employment Security at St. Paul, Minnesota 55101.

Notice of the filing of the commissioner's decision together with a copy of the decision shall be mailed to the employer.

(6) The commissioner's decision is reviewable by the Supreme Court on writ of certiorari as provided for by section 268.10, subdivision 8, of the Minnesota employment security law.

ES 25 Hearings to determine liability.

(a) Any employing unit may file an application in writing with the Department of Employment Security requesting a hearing to determine its liability to pay contributions based upon the remuneration paid to an individual or individuals for services performed which contributions the employing unit contends it is not liable to pay, setting forth therein the grounds upon which such contentions are based.

(b) Hearing before referee. Upon the filing of such application or upon his own motion, the commissioner may issue an order for such hearing before a referee in accordance with the provisions contained in section 268.12, subdivision 13, of the Minnesota employment security law.

(1) All such matters shall be heard by a referee designated by the commissioner and shall be scheduled for hearing at the earliest date possible after issuance of such order for hearing. Notice of such hearing, together with a copy of the commissioner's order, shall be served upon the employing unit by registered mail at least ten days before the date of hearing and shall specify the time and place of hearing.

(2) All hearings shall be conducted in such manner as to ascertain and determine the facts in the matter and the referee shall not be bound by common law or statutory rules of evidence and procedure. The employing unit and the Department of Employment Security may present such evidence as may be relevant. The referee may conduct such examination of the exmploying unit and other witnesses as may be necessary to ascertain all of the facts relevant to the matter before him. All testimony taken shall be given under oath or affirmation.

(3) All testimony adduced at the hearing shall be recorded but need not be transcribed unless further appeal is taken from the decision of the referee.

(4) Adjournment of hearings. The referee shall exercise his discretion as to when adjournments of a hearing may be granted in order to obtain all the evidence that is necessary to

determine the matter before him. If an employing unit fails to appear at the time and place set for hearing, the referee may dismiss the matter or make his findings of fact and decision based upon the evidence available and upon the files and records of the department unless it appears to the referee that there is good and sufficient cause for adjournment.

(5) Determination of liability. Upon the conclusion of such hearing, the referee shall within a reasonable time make his findings of fact and decision in writing and shall serve upon the employing unit by registered mail a copy of such findings of fact and decision which shall become final unless within ten days of the mailing by registered mail of a copy thereof to the employing unit an appeal is filed with the commissioner.

(c) Hearing before the commissioner.

(1) The commissioner may on his own motion, within 12 days from the date of mailing to all parties to the hearing before the referee notice of the filing of the referee's findings of fact and decision, order the matter certified to him for review.

(2) Any employing unit which is a party to the hearing may within ten days from the date of mailing to it of a notice of the filing of the referee's findings of fact and decision together with a copy of such findings and decision appeal therefrom and obtain a review of such findings and decision by the commissioner by filing with the Department of Employment Security, Saint Paul, Minnesota 55101, a notice of appeal in writing setting forth:

(aa) the name, address, and Minnesota account number of the employing unit;

(bb) reference to the decision from which the appeal is taken;

(cc) the fact that an appeal from such decision is being made; and

(dd) the grounds upon which such appeal is based.

Such notice of appeal shall be signed by the employing unit so appealing. In addition, one copy of such notice of appeal shall be submitted to the Department of Employment Security for each party to the matter on appeal other than the appellant.

(3) All hearings before the commissioner shall be scheduled for the earliest possible date and a notice thereof shall be mailed to all parties to the matter to be heard, at least ten days before the date of hearing, specifying the time and place of hearing.

(4) In all hearings for review by the commissioner, arguments shall be limited to the transcribed testimony taken

before the referee, the exhibits, the law, and the rules relating thereto, and the arguments may be made orally or submitted by written briefs, or both.

(5) Applications to the commissioner for leave to take additional evidence.

(aa) The commissioner in his discretion may, prior to or upon the hearing before him, or upon application and proper showing made, set aside the findings of fact and decision of the referee and remand any matter to the referee for the taking of such additional evidence as the commissioner may deem necessary in order to ascertain the substantial rights of the parties to the appeal. Such evidence shall be taken by the referee in the manner prescribed for the conducting of hearings on appeal before him. Upon the completion of the taking of additional evidence, the referee shall make his findings of fact and decision in writing based upon all of the evidence adduced before him at the original hearing and the hearing to take additional evidence.

(bb) Application to the commissioner for leave to take additional evidence shall be filed with the commissioner not later than five days preceding the date of the hearing upon proper and sufficient showing made setting forth the names of the witnesses who will testify and the substance of the evidence to which they will testify, or if such evidence is of a documentary nature, the original documents or verfified copies thereof shall be attached to such application. In addition, one copy of such application, affidavits, and documents shall be submitted for each party to the appeal other than the applicant.

(6) Decision of the commissioner.

(aa) Following the conclusion of a hearing before him, the commissioner shall, within a reasonable time, make his findings of fact and decision in writing.

(bb) Decisions made by the commissioner shall be filed in the office of the Department of Employment Security, Saint Paul, Minnesota 55101. Notice of such filing together with a copy of the findings of fact and decision shall be mailed by registered mail to all parties to the hearing.

(d) The commissioner's decision is reviewable by the District Court on writ of certiorari as provided for by section 268.12, subdivision 13, clause (4), of the Minnesota employment security law.

F537.30

ES 26 General provisions applicable to all hearings.

(a) Issuance of subpoenas.

(1) Subpoenas to compel the attendance of witnesses or the production of records in any proceeding before a referee, appeal

tribunal, or the commissioner shall be issued by the referee, chairman of an appeal tribunal, or the commissioner upon a showing being made of the necessity therefor by the party applying for the issuance of the subpoenas.

(2) Witnesses subpoenaed for any hearing before a referee, appeal tribunal, or the commissioner shall be paid witness and mileage fees by the Department of Employment Security in accordance with the following schedules:

(aa) for attending hearings: $1.00 each day;

(bb) for travel in going to and returning from the place of attendance, mileage figured from his residence, if within the state, or from the boundary line of the state where he crossed the same, if without the state: $0.06 per mile.

(b) Representation before a referee, appeal tribunals, and the commissioner.

(1) Any individual may appear for himself in any proceeding before a referee, an appeal tribunal, or the commissioner. Any partnership may be represented by any of its members or any duly authorized representative. Any corporation or association may be represented by an officer or any duly authorized representative.

(2) The commissioner, in his discretion, may refuse to allow any person to represent others in any proceeding before him or any of his duly authorized representatives who is unethical in his conduct or who intentionally and repeatedly fails to observe the provisions of the Minnesota employment security law or the rules and instructions of the commissioner, chairman of an appeal tribunal, referee, or any duly authorized representative of the commissioner. Every hearing shall be conducted with decorum and in an orderly manner.

(c) Any person having filed a notice of appeal from a determination or decision on any issue may withdraw the same by filing with the Department of Employment Security a written notice thereof at any time prior to the hearing on the matter. Whereupon the referee, appeal tribunal, commissioner or his representative before whom such matter is pending shall issue its or his order in writing dismissing said appeal, and the said determination or decision with respect to which the appeal was initiated shall have the same force and effect as if such notice of appeal had not been filed.

(d) The original decisions of referees, appeal tribunals, and the commissioner shall be kept on file at the state office of the Department of Employment Security at Saint Paul, Minnesota.

(e) Copies of all decisions pursuant to hearing by the commissioner, appeal tribunals and referees involving claims for benefits, employers' experience rating and employers' liability will be mailed currently for the period of one year to any

person residing within this state upon payment of $10 in advance and to any person residing within the United States but not within this state upon payment of $15 in advance. Individual copies of such decisions, if available, will be mailed to any person requesting the same upon payment in advance of $0.10 per copy.

Copies will be mailed to public libraries and other public agencies upon request, without cost.

ES 29 Claims for extended benefits.

(a) Any individual in order to establish entitlement to extended benefits under the provisions of section 268.07, subdivision 2, shall report in person to the Minnesota Department of Employment Security at one of its local employment service offices and shall there file a claim for such benefits on a form prescribed by the commissioner. If such individual resides in an area in which the department does not maintain local employment service offices, his claim for benefits may be filed by mail in accordance with the procedures prescribed in ES 22. Such claim shall become effective as of the Sunday of the week in which filed, provided that said claim may be retroactive to the Sunday of the week immediately following the week which exhausted regular benefit entitlement if the failure to file earlier was with good cause.

(b) Upon receipt of a claim for extended benefits, the commissioner shall:

(1) Request information from employers and training facilities as necessary to verify qualifying employment, credit weeks, and training. If any employer or training facility fails to provide information within seven days from the date requested, a certification may be filed by said individual setting forth necessary information and his entitlement may be determined on the basis of this and any other available information. In absence of fraud, if a redetermination based on a late report cancels the claimant's entitlement, the claimant shall not be required to make repayment to the fund of any benefits paid prior to such redetermination.

(2) Determine whether the claimant has either enrolled in or has completed an approved course of training or retraining.

(aa) An individual shall be deemed enrolled during any period in which he has been accepted in an approved training course and said course has not been completed or otherwise terminated. Enrollment during any portion of a week shall qualify the individual for a full week of benefits provided he is otherwise eligible.

(bb) An individual shall be deemed to have completed a training course when he has either satisfactorily completed the requirements of a course of training or if terminated prior to

completion, it has been determined that the individual has attained an employability level whereby he may reasonably be expected to obtain employment and perform satisfactorily on the job.

(cc) A course of training or retraining shall be deemed appropriate and approved for the purpose of establishing entitlement to extended benefits if:

.1 the training or retraining is under a state-federal training program previously approved by the commissioner or in absence of such prior approval if

.2 the training is a planned and systematic sequence of instructions conducted under competent supervision on an individual or group basis leading to a bona fide occupational objective for which there is reasonable expectation of employment.

(dd) The above provisions notwithstanding, no course of training or retraining completed more than ten years prior to the benefit year shall be deemed appropriate for extended benefit purposes.

(3) Issue a determination on rights to extended benefits and deliver or mail a notice thereof to the claimant. Said determination may be appealed in the manner prescribed in ES 23.

(c) Any individual in order to claim weekly benefits shall continue to report in person in accordance with the instructions of the local employment service office provided that the continued claim may be filed by mail if the commissioner finds it impractical for him to report at the office as specified.

(d) An individual's extended benefit amount shall be payable in the same amount and under the same terms and conditions as if his entitlement were for regular benefits payable under the provisions of sections 268.03 through 268.25, provided that an individual shall not be deemed unavailable for work by reason of his enrollment in training.

ES 30 Payment of benefits to individuals in approved training.

(a) This rule shall govern the Minnesota Department of Manpower Services in its administration of the Minnesota manpower services law, sections 268.08 and 268.09, as they relate to payment of benefits to persons in approved training.

(b) An individual's enrollment in a training course shall be approved for the purposes of sections 268.08 and 268.09 if the commissioner finds that:

(1) Reasonable and suitable work opportunities for which the individual is fitted by training, experience and physical capabilities do not exist in his locality.

(2) The training course is commensurate with the individual's abilities and is designed to prepare him for available employment.

(3) The training is conducted by an agency, educational institution, or employing unit which has been approved by the Minnesota Department of Education to conduct training programs. Provided, however, that any agency, educational institution, or employing unit which is not subject to regulation and approval by the Department of Education may be approved by the commissioner if he finds that the curriculum, facilities, staff, and other essentials are adequate to achieve the training objective.

(4) The training is vocational in nature or short-term academic training vocationally directed to an occupation or skill for which there are or are expected to be reasonable work opportunities available to the individual.

(5) The training program consists of at least 25 hours per week of supervised activity.

(c) An individual who is otherwise eligible under the provisions of sections 268.03 to 268.24 shall not be denied benefits for any week in which he is enrolled in an approved training course if the following conditions, and each of them, are met:

(1) he has filed a claim on a form prescribed by the commissioner;

(2) a duly designated person connected with the training course has certified that the individual has been making satisfactory progress in the course; and

(3) he has maintained satisfactory progress and attendance provided that his weekly benefit amount shall be reduced by one-fifth for each day of unexcused absence from training.