

8 MCAR 4

6-1-82

1 Department of Economic Security

2

3 Adopted Rules Governing the Unemployment Insurance Program

4 Relating to Payment of Benefits and Collection of Employer Taxes

5

6 Rules as Adopted

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Chapter One: General Definitions

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

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

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

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

18

Chapter Two: Benefits

19 8 MCAR S 4.3001 Applicability. Rules 8 MCAR SS 4.3001-4.3011  
20 apply to determinations of a claimant's eligibility for regular  
21 benefits as defined in Minn. Stat. S 268.071, subd. 1, clause  
22 (7) and to extended benefits pursuant to Minn. Stat. SS  
23 ~~268-03-268-24~~ S 268.071, subds. 1-6.

24 8 MCAR S 4.3002 Definitions. For the purposes of 8 MCAR SS  
25 4.3001-4.3011 the following terms have the meanings given them.

26 A. Credit week. "Credit week" means any week within the  
27 base period for which wages in the required amount have been  
28 paid or were due and payable but not paid for performing  
29 services or for vacation periods. Except for vacation payments,  
30 those payments which are wages as defined in Minn. Stat. S  
31 268.04, subd. 25 or department rules but for which the  
32 individual performs no services within the calendar week shall  
33 not be used to establish a credit week.

34 B. Labor market area. "Labor market area" means the  
35 geographic area in which the claimant can reasonably be expected

1 to seek and find employment. In determining the labor market  
 2 area, the commuting patterns of persons with the same or similar  
 3 occupations residing in the claimant's locality shall be  
 4 considered.

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

11 8 MCAR S 4.3003 Able to work.

12 A. Generally. A claimant To be able to work a claimant must  
 13 have the physical and mental ability to perform the usual duties  
 14 of his customary occupation or the usual duties of other work  
 15 for which he is reasonably fitted by training, experience or  
 16 capability and which is gainful employment engaged in by others  
 17 as a means of livelihood as an employee under conditions  
 18 ordinarily existing during a normal work week. The burden of  
 19 establishing ability to work is on the claimant, but there will  
 20 be no presumption that a claimant is not able to work.

21 B. Particular situations. In determining whether a claimant  
 22 is able to work the department will consider the facts and  
 23 circumstances of the claimant's particular situation. The  
 24 determination shall be made by applying the criteria listed in  
 25 ~~1-4~~ 1. and 2.

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

31 ~~2. Medical separation from work. A claimant who was~~  
 32 ~~separated from employment due to his own serious illness must~~  
 33 ~~demonstrate his ability to perform other work to be deemed able~~  
 34 ~~to work.~~

35 ~~3. No presumption of inability to work. There will be no~~  
 36 ~~presumption a claimant is not able to work.~~

1           4- 2. Ability to work part-time only. Normally a  
 2           --  
 3 claimant is required to be able to work and available for  
 4 full-time work for all shifts which are customary for his  
 5 occupation. However, a claimant whose physical or mental  
 6 condition restricts his availability to part-time work or to a  
 7 particular shift ~~will~~ shall be deemed able to work if there is a  
 8 reasonable possibility of obtaining work within these  
 9 restrictions are jobs in his labor market area consistent with  
 10 the limitations or such jobs can be expected to arise within a  
 11 reasonable period of time.  
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11 8 MCAR S 4.3004 Available for work.

12       A. Generally. Except as provided in 8 MCAR S 4.3003 B.2., a  
 13 claimant is considered available for work only if he is ready  
 14 and willing to accept full-time suitable employment work. There  
 15 must be no restrictions, either self-imposed or created by  
 16 circumstances, which prevent accepting employment full-time  
 17 work. A restriction does not prevent accepting employment  
 18 full-time work if there are good favorable prospects for  
 19 obtaining employment full-time work within the restrictions  
 20 within a reasonable period of time.  
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21       B. Absence from labor market area. A claimant who is absent  
 22 from his labor market area for personal reasons is presumed to  
 23 be not available for work. However, an absence of two days or  
 24 less from his labor market area due to a family emergency or for  
 25 other compelling personal reasons does not make him unavailable  
 26 for these days This presumption is rebuttable.  
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27       C. Alien status. A claimant who is an alien must present  
 28 proof that he is authorized under federal law to work in the  
 29 United States to be available for work.  
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30       D. Change of residence. A claimant who has moved  
 31 permanently moves to an area where his chances of securing work  
 32 are materially lessened and who does not make a diligent shall  
 33 expand his work search, expand his availability to other  
 34 occupations, and accept the prevailing wages, hours and other  
 35 conditions of work is not available for work in the labor market  
 36 to which he moves.  
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1 E. Claimant cannot be contacted. Unless good cause exists  
 2 for the failure to be reachable by the department a claimant who  
 3 cannot be reached after reasonable efforts by the department for  
 4 referral to possible employment is not available for work.

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

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

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

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

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

1 is not available for work.

2 K. Self-employment. A claimant is not available for work if  
 3 he is self-employed and no longer seeking other suitable work as  
 4 -----  
 4 an employee because of his being self-employed or if he is  
 5 -----  
 5 planning to be become self-employed and he is devoting time and  
 6 -----  
 6 effort to his self-employment so that he cannot accept work  
 7 during customary hours for his occupation or other suitable work  
 8 will not accept other suitable work.

9 L. Time or shift restriction. Except as provided in 8 MCAR  
 10 -----  
 10 S 4.3003 B.2., a claimant who imposes restrictions on the hours  
 11 -----  
 11 of the day or days of the week which he is willing to work which  
 12 are not normal for his usual occupation or other suitable work  
 13 is not available for work. A claimant who imposes restrictions  
 14 on the hours of the day or days of the week which he is willing  
 15 to seek work which prevent him from meeting the work search  
 16 requirements of the department is not available for work.

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

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

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

29 8 MCAR S 4.3005 Actively seeking work.

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

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

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

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

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

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

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

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

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

29 8. Respond to want ads for suitable work; or

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

33 C. Number of contacts. The number of employer contacts  
34 required to be considered actively seeking employment varies.  
35 In determining adequacy of work search in terms of the number of  
36 contacts required the department will consider the employment

1 opportunities as well as the qualifications of the claimant and  
2 normal practices and methods of seeking work.

3 D. Type of work sought. A claimant will generally be  
4 allowed to seek work in his usual trade or occupation before  
5 being required to seek other types of work that may be  
6 suitable. The length of time allowed to seek work at his usual  
7 trade or occupation will be governed by the availability of that  
8 work in the labor market area where he is seeking work. A  
9 claimant will be required to seek work outside his customary  
10 occupation if one of the following conditions prevails:-

11 1- There are available openings outside the claimant's  
12 customary occupation and there are few workers unemployed in the  
13 locality for whom these openings would be more suitable than for  
14 the claimant;

15 2- The claimant's prospects of securing work in his  
16 customary occupation are not as favorable as his prospects of  
17 securing work outside his customary occupation; or

18 3- Work which exists outside the claimant's customary  
19 occupation is suitable for the claimant. A claimant will be  
20 allowed to limit his work search to work in his usual or  
21 customary trade or occupation if he has favorable prospects of  
22 returning to work in his usual trade or occupation within a  
23 reasonable period of time under 8 MCAR S 4.3007 J. The length  
24 of time allowed to a claimant to limit his work search to work  
25 in his usual trade or occupation will be governed by the  
26 availability of that work in the labor market area where he is  
27 seeking work. When the claimant does not have favorable  
28 prospects, he shall be available for other suitable work under  
29 guidelines in 8 MCAR S 4.3006 E.

30 E. Permanent and temporary work. Except as provided in 8  
31 MCAR S 4.3006 C., claimants are required to actively seek  
32 suitable permanent work. However, a claimant who is on a  
33 temporary layoff and who has a verifiable assurance of return to  
34 work may limit his search for employment to temporary work.

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

1 seek work.

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

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

15 8 MCAR S 4.3006 Suitable work.

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

20 B. Policy. The suitable work provisions of Minn. Stat. SS  
21 268.03-268.24 and 8 MCAR SS 4.3006-4.3008 shall be administered  
22 so as to promote the department's dual responsibilities of  
23 ensuring that benefits are paid to only those persons who are  
24 involuntarily unemployed through no fault of their own and, as  
25 promptly as possible, matching workers with jobs which best  
26 utilize their skills, knowledges, and abilities. Toward this  
27 end, "suitable work" is to be interpreted to recognize a  
28 worker's skills and abilities but not to provide a haven for  
29 those who do not wish to work.

30 Ideally, the department could match job seekers with jobs  
31 in their usual occupation with wages, hours, and other  
32 conditions of work identical to those previously enjoyed. As a  
33 practical matter economic conditions may prohibit this ideal and  
34 so a reasonable alternative must be developed. Any reasonable  
35 alternative should be based on the policy that it is best for  
36 employers, workers and society as a whole to maximize use of



1 existing skills and abilities for the largest number of workers  
2 possible under the existing economic conditions, temporary or  
3 permanent, of the labor market area.

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

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

- 16 1. if the position offered is vacant due directly to a  
17 strike, lockout, or other labor dispute;
- 18 2. if the wages, hours, or other conditions of the work  
19 offered are substantially less favorable to the individual than  
20 those prevailing for similar work in the locality;
- 21 3. if, as a condition of being employed, the individual  
22 would be required to join a union or to resign from or refrain  
23 from joining any bona fide labor organization; or
- 24 4. if the individual is in training with the approval of  
25 the commissioner.

26 E. General. In determining what is suitable work,  
27 the department shall give primary guidelines for determining  
28 suitable work must give consideration to the temporary or  
29 permanent nature of the unemployment claimant's separation from  
30 employment and whether it be temporary or permanent and the he  
31 has favorable prospects of the individual finding work in his  
32 usual or related occupations customary occupation within a  
33 reasonable period of time. The specific statutory  
34 interpretations of Rules 8 MCAR SS 4.3007-4.3008 shall also be  
35 considered in light of the following general guidelines:

- 36 1. For persons who have a verifiable assurance of work in

1 the near future within six weeks, suitable work consists of is  
 2 limited to available, temporary work in their usual or a related  
 3 trade or occupation or substantially equivalent employment in  
 4 the labor market area;

5 2. For persons with a verifiable assurance of work in the  
 6 more distant future than six weeks, suitable work includes  
 7 available, temporary work under 1. or other temporary work in a  
 8 related trade or occupation for which the claimant is reasonably  
 9 suited by virtue of his education, training, work experience or  
 10 ability and which is a reasonable departure from his usual  
 11 occupation;

12 3. For seasonal workers suitable work includes  
 13 temporary work under 2. in their usual occupation or a related  
 14 occupation which provides conditions of employment approximating  
 15 their past employment; however, Other employment is suitable if  
 16 it meets the following conditions:

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

19 b. There are few, if any, unemployed workers for whom  
 20 these openings would be more suitable;

21 c. The opening is one for which the claimant is  
 22 reasonably fitted by virtue of his being able to perform the  
 23 work; and

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

26 4. For persons without a verifiable assurance of work,  
 27 suitable work is permanent work in their usual or related  
 28 occupations substantially equivalent employment which provides  
 29 wages and conditions of employment approximating those of their  
 30 past employment if their prospects of finding the work are  
 31 favorable. If prospects are unfavorable, work at lower skill or  
 32 wage levels is suitable if there are few, if any, workers  
 33 unemployed in the locality for whom these openings would be more  
 34 suitable than for the claimant, the claimant is reasonably  
 35 suited for the work by virtue of education, training, work  
 36 experience or ability and the work offered is a reasonable

1 departure from his usual occupation.

2 In general, "near future" as used in 1- means six weeks or  
3 less and "more distant future" as used in 2- means more than six  
4 weeks.

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

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

11 8 MCAR S 4.3007 Statutory terms interpreted.

12 A. Generally Applicability. The terms and phrases used in  
13 Minn. Stat. S 268.09, subd. 2 as guidelines for determining  
14 suitability of work shall have the meanings and explanations  
15 given in B.-R.

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

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

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

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

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

1 claimant is aware of the terms and conditions of employment.

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

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

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

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

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

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

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

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

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

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

17 7. The claimant's verifiable assurances of work.

18 K. Distance of the available work from his residence. To  
19 determine suitability in terms of distance, all factors must be  
20 considered, including distance, proximity to transportation,  
21 cost of transportation, type of transportation, transportation  
22 schedules and time required for transportation. This  
23 determination is made not only in comparison to the claimant's  
24 most recent job but also in relation to that which is customary  
25 in his occupation. If it is customary in the claimant's  
26 occupation to relocate or change job sites, regardless of  
27 distance, then the work requiring relocation is suitable. To  
28 determine the suitability of work located outside the locality  
29 of the claimant's residence, the factors to be considered are  
30 the claimant's prospects for equally steady work in his home  
31 area, the duration of his unemployment, the remuneration offered  
32 as related to the cost of transportation, and the distance to  
33 the place of employment.

34 L. Wages. The wages offered must approximate the prevailing  
35 wage for the work to be suitable. To determine suitability of  
36 work in terms of wages the total earnings must be considered.

1 These include the wage rate, hours of work, method of payment,  
2 overtime practices, bonuses, incentive payments and fringe  
3 benefits. When the offered work is at a rate of pay lower than  
4 the claimant's former rate consideration must be given to the  
5 length of the claimant's unemployment and the proportion of  
6 difference in the rates. The importance of the difference  
7 between the wages offered and the previous rate decreases as the  
8 period of unemployment increases. Work which may not be  
9 suitable because of lower wages during the early weeks of the  
10 claimant's unemployment may become suitable for him as his  
11 duration of unemployment lengthens and it becomes evident that  
12 prospects are remote for obtaining work in line with prior  
13 wages. A wage that is below the person's previous wage may be  
14 suitable if it is not substantially less favorable than that  
15 prevailing for similar work in the community.

16 M. Hours. To determine suitability of work in terms of  
17 hours, the arrangement of hours in addition to the total number  
18 of hours are to be considered. An offer to work on a second,  
19 third, rotating or split shift is suitable work if ~~workers are~~  
20 ~~generally hired on these shifts~~ it is customary in the trade or  
21 occupation in the labor market area. However, the shifts are  
22 always suitable for individuals who customarily work for  
23 employers who use several shifts.

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

31 O. Substantially less favorable to the individual. Whether  
32 provisions of the work offered are substantially less favorable  
33 to the individual can be determined only by comparison of the  
34 conditions of the work offered to those prevailing for similar  
35 work in the local labor market area. The conditions of work  
36 offered are not compared to the previous work of the

1 individual. Both the extent of the difference as well as its  
 2 effect on the worker shall be considered. If the work offered  
 3 has differences of no substantial consequence for the worker, it  
 4 will not be considered to be substantially less favorable. If  
 5 the wages offered are more than ten percent below the prevailing  
 6 rate of pay or less than the applicable federal or state minimum  
 7 wage for the type of work being considered, it will be  
 8 considered to be substantially less favorable than that  
 9 prevailing for similar work in the locality.

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

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

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

24 8 MCAR S 4.3008 Reemployment offer. A claimant is considered to  
 25 have refused an offer of suitable reemployment from a base  
 26 period employer unless the terms and conditions of the offer are  
 27 substantially less favorable than the terms and conditions under  
 28 which the principal part of the wage credits were earned with  
 29 that employer in the claimant's base period were earned with  
 30 that employer.

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

35 A refusal of reemployment shall be with good cause if the  
 36 claimant previously separated from that employment because of

1 his own serious illness and the work offered would adversely  
2 affect that illness.

3 8 MCAR S ~~4.009~~ 4.3009 Partial benefits exemption. 8 MCAR SS  
4 4.3001-4.3008 shall not apply to a claimant with respect to a  
5 claim for partial unemployment benefits.

6 8 MCAR S 4.3010 Benefit claim procedure.

7 A. Purpose and scope. This rule defines claim procedure and  
8 eligibility criteria under Minn. Stat. S 268.08, subd. 1.

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

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

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

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

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

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

32 D. Part-time unemployment office. Any individual who  
33 resides in an area in which there is a part-time unemployment  
34 office may report in person at that office and file a new or  
35 reactivated claim for benefits effective as of the Sunday of the



1 first week of the individual's unemployment, provided that his  
2 first day of unemployment is subsequent to the last previous day  
3 that service was provided by the part-time unemployment office.  
4 No claim shall be effective more than 28 days prior to the  
5 calendar week in which the individual reports to file the claim.

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

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

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

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

32 I. Late filed claim. Any individual who fails to file a  
33 continued claim in the manner and at the time and place  
34 specified by the department may report in person or by mail and  
35 file the claim within 14 days following the date specified by  
36 the department. Waiting period credit or benefits for each week

1 that was covered by the delinquent claim shall be authorized if  
2 the claimant is otherwise eligible. No credit or benefits shall  
3 be authorized for subsequent weeks which were not claimed  
4 properly.

5 Any individual who for good cause fails to file a continued  
6 claim in the manner and at the time and place specified by the  
7 department may file the claim in person or by mail not more than  
8 35 days following the expiration of his benefit year. The  
9 claimant, if otherwise eligible, shall be entitled to waiting  
10 period credit or benefits for each week that good cause for  
11 failure to report is established.

12 J. Assistance in filing claim. The department shall make  
13 -----  
14 reasonable efforts to assist claimants who because of physical  
15 -----  
16 impairment or inability to communicate in the English language  
17 -----  
18 cannot provide information necessary to file benefit claims  
19 -----  
20 without assistance.  
21 -----

17 K. Requirement to notify department of address and telephone  
18 -----  
19 changes. The claimant's address and telephone number on a new  
20 -----  
21 or reactivated claim form shall constitute the last known  
22 -----  
23 address and telephone number for purposes of mailing notices of  
24 -----  
25 determination or otherwise contacting the claimant unless a  
26 -----  
27 written notice of address or telephone change is received by the  
28 -----  
29 unemployment office where his claim is on file. Any change of  
30 -----  
31 address or telephone number shall constitute the last known  
32 -----  
33 address or telephone number for only those transactions  
34 -----  
35 occurring after written notice was received.  
36 -----

27 8 MCAR S 4.3011 Week of unemployment.

28 A. Scope and purpose. This rule further defines "week" as  
29 defined under Minn. Stat. S 268.04, subd. 23.

30 B. Week calculated, labor dispute. An individual's week of  
31 unemployment shall consist of the consecutive seven-day period  
32 beginning with the day on which registration is made effective  
33 except following the termination of a labor dispute. Following  
34 termination of a labor dispute, week of unemployment is the  
35 remainder of the calendar week in which the labor dispute  
36 ended. An individual, if otherwise eligible, shall be entitled

1 to one-fifth credit for each day, excluding Saturday, following  
2 the date on which the labor dispute ended.

3 Chapter Three: Taxation

4 8 MCAR S 4.3100 Definitions.

5 A. Generally. Unless the context otherwise requires, terms  
6 used in 8 MCAR SS 4.3100-4.3108 shall be construed in the sense  
7 in which they are defined in Minn. Stat. SS 268.03-268.24, or in  
8 these or other rules of the department.

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

13 8 MCAR S 4.3101 Wages.

14 A. Purpose. This rule further defines "wages" as defined in  
15 Minn. Stat. S 268.04, subd. 25, and used in Minn. Stat. SS  
16 268.03-268.24, 8 MCAR SS 4.3101-4.3108, interpretations, forms  
17 and other official pronouncements issued by the department.

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

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

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

- 31 1. Dwelling unit rent, utilities, meals, exchange of  
32 services or other goods or services that are to compensate for  
33 an employee's services;
- 34 2. Vacation pay or payment in lieu of vacation;
- 35 3. Termination, severance, or dismissal payment or

1 payment in lieu of notice whether notice is required or not;

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

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

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

16 7. Payments for accrued sick leave when not related to a  
17 specific absence due to sickness or injury, regardless of  
18 whether or not the employer maintains a sick pay plan as defined  
19 in Minn. Stat. S 268.04, subd. 25, clause (2);

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

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

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

35 11. Payments made directly or indirectly to an individual  
36 to perform or assist in performing the work of any employee of

1 the employer provided that the employer had actual or  
2 constructive knowledge that the work was being performed;

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

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

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

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

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

35 15. Amounts withheld or deducted from an employee's  
36 ~~earning~~ earnings because of a deferred compensation agreement  
-----

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

8 E. Tips and gratuities.

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

- 12 a. Added to the customer's bill by the employer;  
13 b. Added to the bill by a customer using credit for  
14 the purchase;  
15 c. Disbursed by the employer from a tip pool; or  
16 d. Reported to the employer in compliance with the  
17 Internal Revenue Code of 1954.

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

- 21 a. Received directly from the customer;  
22 b. Distributed from a tip pool, whether controlled by  
23 the employer or employees; or  
24 c. Received as part of a plan or system under which  
25 the person initially receiving them, whether directly from the  
26 customer or from a tip pool, distributes a portion of the tips  
27 to other employees.

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

30 F. Valuing non-cash remuneration.

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

- 34 a. The fair market value of meals or any value agreed  
35 upon between the employer and employee if it is not less than  
36 the allowance as provided in Minn. Stat. SS 177.21-177.35, the

1 Minnesota fair labor standards act, and rules promulgated  
2 thereunder;

3           b. The value of rent of a house, apartment or other  
4 lodging, furnished to an employee that would be paid by an  
5 employee for similar or equivalent accommodations, but in no  
6 event less than the allowance provided in Minn. Stat. SS  
7 177.21-177.35 and rules promulgated thereunder; or

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

11           2. If the ~~department~~ commissioner determines that the  
12 reasonable fair market value is other than as determined by the  
13 employer ~~it may he shall~~, after affording the employer  
14 reasonable opportunity for the submission of relevant  
15 information, determine the reasonable cash value of board, rent,  
16 housing, meals, or similar advantage.

17           G. Employee equipment.

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

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

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

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

1 only the amount attributable to services performed shall be  
2 wages.

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

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

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

15 2. Customary and reasonable directors' fees paid to  
16 individuals who are not otherwise employed by the corporation of  
17 which they are directors;

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

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

24 5. Payments for periods of sickness or injury after the  
25 end of six calendar months after the calendar month in which the  
26 employee last worked for the employer, if the payments are made  
27 by an employer who does not maintain a regular sick pay plan as  
28 defined in Minn. Stat. S 268.04, subd. 25, clause (2);

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

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

34 8. Amounts paid specifically as advances or  
35 reimbursements for traveling or other bona fide ordinary and  
36 necessary expenses incurred or reasonably expected to be



1 incurred in the business of the employer. Traveling and other  
2 reimbursed expenses must be identified either by making separate  
3 payments or by specifically indicating the separate amounts  
4 where both wages and expense allowances are combined in a single  
5 payment;

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

10 10. Any payment to or on behalf of an employee under a  
11 plan or system established by an employer, which makes  
12 provisions for his employees generally or for a class or classes  
13 of his employees for the supplementation of unemployment  
14 benefits under the written terms of an agreement, contract,  
15 trust arrangement, or other instrument if the plan or system  
16 provides benefits which are only supplemental to, and does not  
17 replace or duplicate any state or federal unemployment  
18 compensation. The plan or system must provide that funds are to  
19 be used solely for the supplementation of state unemployment  
20 benefits. Potential recipients of the plan or system must be  
21 required to file for unemployment benefits in accordance with  
22 state law. The plan or system shall not allow the assignment of  
23 benefits or the payment of any consideration in lieu of any  
24 benefit upon the employee's withdrawal from the plan or system,  
25 his termination of employment or the termination of the plan or  
26 system. The plan or system must not be designed for the purpose  
27 of avoiding the payment of unemployment taxes on moneys  
28 disbursed from its plan or system.

29 8 MCAR S 4.3102 Employment.

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

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

35 2. "Employing unit" has the meaning given to it in Minn.  
36 Stat. S 268.04, subd. 9, and includes any individual or type of

1 organization that engages, retains, or secures the services of,  
2 an individual.

3 3. "Employment" has the meaning given to it in Minn.  
4 Stat. S 268.04, subd. 12, and includes the services of any  
5 individual performed for an employing unit under its direction,  
6 rule or control as to both the method of performing or executing  
7 the services and the result to be effected or accomplished.  
8 Whether an individual is performing services in employment shall  
9 be determined by the preponderance of the evidence.

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

13 B. Obtaining a determination or opinion. If an employing  
14 -----  
15 unit is unsure of the status of an individual performing  
16 -----  
17 services for it, the employing unit may obtain a written  
18 -----  
19 determination by submitting all relevant facts to the  
20 -----  
21 commissioner on questionnaires prescribed for these  
22 -----  
23 determinations. The determination shall be final unless a  
24 -----  
25 written protest is filed with the commissioner as set forth in  
26 -----  
27 Minn. Stat. S 268.12, subd. 13. If any person contemplates  
28 -----  
29 hiring or engaging a worker to perform services and is unsure if  
30 -----  
31 the services would be deemed employment, a written opinion may  
32 -----  
33 be obtained by submitting information about the proposed work  
34 -----  
35 arrangement, as the hiring person perceives it will be, on  
36 -----  
37 questionnaires prescribed by the commissioner. The  
38 -----  
39 commissioner's opinion does not have the effect of a  
40 -----  
41 determination and is not subject to appeal. The person  
42 -----  
43 requesting the opinion shall clearly indicate that the situation  
44 -----  
45 is hypothetical and that an opinion, rather than a  
46 -----  
47 determination, is being sought. If an individual is hired or  
48 -----  
49 engaged to perform the services in question, a determination may  
50 -----  
51 be obtained. This paragraph in no way limits the department's  
52 -----  
53 authority under Minn. Stat. S 268.12, subd. 13, clause (1) to  
54 -----  
55 make determinations on its own motion.

56 B. C. Procedures for determining control. The department  
57 -----  
58 may shall determine if control exists by:  
59 -----

- 1           1. Reviewing written contracts between the individual and
- 2 the employing unit;
- 3           2. Interviewing the individual or employing unit;
- 4           3. Obtaining statements of third parties;
- 5           4. Examining regulatory statutes governing the
- 6 organization, trade or business;
- 7           5. Examining the books and records of the employing unit;
- 8 and
- 9           6. Any other appropriate means Making any other
- 10 investigation necessary to determine if the elements of control
- 11 specified in D. exist.

12       E. D. Evidence of control. Paragraphs 1.-12-13. describe

13 criteria for determining if there is control over the method of

14 performing or executing services. The total circumstances must

15 be considered to determine if control is present.

16           1. Authority over individual's assistants. Hiring,

17 supervising, and payment of an individual's assistants by the

18 employing unit shows Control over the individual is indicated

19 when the employing unit hires and pays the individual's

20 assistants and supervises the details of the assistant's work.

21           2. Compliance with instructions. Control exists when an

22 individual is required to comply with instructions about when,

23 where and how he is to work. Some individuals may work without

24 receiving instructions because they are highly proficient in

25 their line of work, however, the control factor is present if

26 the employing unit has the right to instruct or direct.

27 Instruction may be oral or may be in the form of manuals or

28 written procedures which show how the desired result is to be

29 accomplished. Control is indicated when an individual is

30 required to comply with detailed instructions about when, where,

31 and how he is to work including the order or sequence in which

32 the service is to be performed. Mere suggestions as to detail

33 or necessary and usual cooperation where the work furnished is

34 part of a larger undertaking, does not normally evince control.

35 Some individuals may work without receiving instructions because

36 they are highly proficient in their line of work; nevertheless,

1 the control factor is present if the employing unit has the  
 2 right to instruct or direct the methods for doing the work and  
 3 the results achieved. Instructions may be oral or may be in the  
 4 form of manuals or written procedures which show how the desired  
 5 result is to be accomplished. However, instructions required by  
 6 state or federal law or regulation or general instructions  
 7 passed on by the employing unit from a client or customer,  
 8 generally does not evince control.

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

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

27 5. Personal performance. If the services must be  
 28 rendered personally it indicates that the employing unit is  
 29 interested in the method as well as the result. Personal  
 30 performance might not be indicative of control if the work is  
 31 very highly specialized and the worker is hired on the basis of  
 32 his professional reputation, as in the case of a consultant  
 33 known in academic and professional circles to be an authority in  
 34 the field. Control is indicated if the services must be  
 35 personally rendered to the employing unit. Personal performance  
 36 of a very specialized work, when the worker is hired on the

1 basis of professional reputation, as in the case of a consultant  
 -----  
 2 known in the academic and professional circles to be an  
 -----  
 3 authority in the field, is a less reliable indicator of  
 -----  
 4 control. Lack of control may be indicated when an individual  
 -----  
 5 has the right to hire a substitute without the employing unit's  
 6 knowledge or consent.

7       6. Establishment of work sequence. If a person must  
 8 perform services in the order or sequence set for him by the  
 9 employing unit it indicates the worker is subject to control.  
 10 Often, because of the nature of an occupation, the employing  
 11 unit does not set the order of the services, or sets them  
 12 infrequently, however, it is sufficient to show control if the  
 13 employing unit retains the right to do so. Existence of a  
 -----  
 14 continuing relationship. The existence of a continuing  
 -----  
 15 relationship between an individual and the person for whom he  
 -----  
 16 performs services is a factor tending to indicate the existence  
 -----  
 17 of an employer-employee relationship. Continuing services may  
 -----  
 18 include work performed at frequently recurring, though somewhat  
 -----  
 19 irregular intervals, either on call of the employing unit or  
 -----  
 20 whenever work is available.  
 -----

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

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

1 of control.

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

6 10. Amount of time. If the worker must devote his full  
7 time to the activity, control is indicated. Full time does not  
8 necessarily mean an eight hour day or a five or six day week.  
9 Its meaning may vary with the intent of the parties, the nature  
10 of the occupation and customs in the locality. Full time  
11 services may be required even though not specified in writing or  
12 orally. For example, a person may be required to produce a  
13 minimum volume of business which compels him to devote all of  
14 his working time to that business, or he may not be permitted to  
15 work for anyone else.

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

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

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

31 D. E. Independent contractor or employee, factors to  
32 consider. Among the factors to be considered, in addition to  
33 factors of control, when determining if services are employment  
34 are those listed in 1.-7-8.

35 1. Availability to public. That an individual makes his  
36 services available to the general public on a continuing basis

1 is usually indicative of independent status. An individual may  
2 offer his services to the public in a number of ways including  
3 having his own office and assistants, displaying a sign in front  
4 of his home or office, holding a business license, having a  
5 listing in a business directory or a business listing in a  
6 telephone directory, or advertising in a newspaper, trade  
7 journal or magazine.

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

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

23       4. Obligation. An individual working in employment  
24 usually has the right to end his relationship with his employer  
25 at any time he wishes without incurring liability, although he  
26 may be required to provide notice of his termination for some  
27 period in advance of the termination. An independent worker  
28 usually agrees to complete a specific job. He is responsible  
29 for its satisfactory completion and is liable for failure to  
30 complete the job.

31       5. Substantial investment. A substantial investment by a  
32 person in facilities used by him in performing services for  
33 another tends to show an independent status. The furnishing of  
34 all necessary facilities by the employing unit tends to indicate  
35 the absence of an independent status. Facilities include  
36 equipment or premises necessary for the work, but not tools,

1 instruments, clothing, and similar items that are provided by  
 2 individuals working in employment as a common practice in their  
 3 particular trade. A substantial expenditure of time or money  
 4 for an individual's education is not necessarily indicative of  
 5 an independent relationship. Substantial investment means a  
 6 monetary investment representing something of considerable  
 7 worth, in relation to the overall requirements of the person's  
 8 chosen profession, trade, occupation or vocation.

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

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

21       E- 8. Services in the course of the employing unit's  
 22       -- organization, trade or business. Services that are in the  
 23 course of the employing unit's organization, trade or business  
 24 consist of services which are a part or process of the employing  
 25 unit's organization, trade or business and ancillary or  
 26 incidental services. An individual who performs services which  
 27 are a part or process of the employing unit's trade or business  
 28 is in employment and does not have independent status Services  
 29 which are a part or process of the employing unit's trade or  
 30 business are generally performed by individuals in employment.  
 31 -----  
 32 Therefore, it is a consideration in determining the status of an  
 33 individual. This consideration, as with all other  
 34 -----  
 35 considerations, is not a sole determinative factor. "Part" and  
 36 -----  
 "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



1 and repairing automobile bodies in an automobile body paint and  
 2 repair shop. Part refers to any other services which are  
 3 essential to the operation or maintenance of the organization,  
 4 trade or business, for example, routine cleaning of premises and  
 5 maintenance of tools, equipment and buildings. Ancillary or  
 6 incidental services include landscaping the areas around an  
 7 automobile body paint and repair shop. Other services that meet  
 8 the part, process or ancillary classification are those services  
 9 in connection with purchasing, receiving, storing, pricing,  
 10 displaying, selling and delivery of merchandise and housekeeping  
 11 services required for the safety and comfort of customers and  
 12 the general public or to maintain the premises in a manner as to  
 13 promote business.

14 F. Independent status, determination. When determining if  
 15 an individual is in employment or is an independent contractor  
 16 the factors considered must be weighed to make a determination  
 17 of the relationship under the facts of the particular case. The  
 18 weight to be given to a factor is not always constant and there  
 19 may be other factors not specifically identified in this rule  
 20 that should be considered. The degree of -----  
 21 essential factors to be considered. The two most important are  
 22 those: -----

- 23 1. That indicate the right or the lack of the right to  
 24 control the means and manner of performance; and -----
- 25 2. To discharge the worker.  
 -----

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

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

35 G. Agent-drivers and salespersons. Certain classes of  
 36 agent-drivers, salespersons and commission persons are statutory

1 employees even though they are independent contractors under  
2 common law rules. Minn. Stat. S 268.04, subd. 12, clause (1)(b)  
3 sets forth the conditions which must be present for members of  
4 each class to be employees.

5 1. Full-time. In the case of a traveling or city  
6 salesperson, other than an agent-driver or commission-driver,  
7 Minn. Stat. S 268.04, subd. 12 provides that the individual must  
8 be engaged on a full-time basis. "Full-time" means the number  
9 of hours in the calendar week during which individuals engaged  
10 in the same or similar occupations usually or customarily  
11 perform services, except that any week during which an  
12 individual worked 40 hours or more providing those services  
13 shall be deemed to be full-time.

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

19 a. "Facilities" means equipment or premises necessary  
20 to perform the work. Inventory, clothing and items not actually  
21 required to adequately perform the assigned tasks are not  
22 facilities.

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

27 H. In employment by federal law. An individual is in  
28 employment if he performs services which are subject to Section  
29 3300 of the Internal Revenue Code of 1954 (Federal Unemployment  
30 Tax Act) or performs services which are required by federal law  
31 to be covered employment by state law.

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

34 1. Services performed by an employee as an insurance  
35 agent, insurance solicitor or real estate salesperson for the  
36 pay period in which payments for the services not constituting

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

17 2. Services performed as election judges; and

18 3. Services performed by factory demonstrators who are  
 19 placed by a manufacturer or distributor in stores and other  
 20 locations to aid in the sale of products, who are hired by, who  
 21 are paid directly or indirectly by, and who work under the  
 22 direction of the manufacturer or distributor, although this  
 23 direction may be delegated to the retailer, and they are in the  
 24 employment of the manufacturer or distributor making the  
 25 placement. If the retailer, not acting as an agent for the  
 26 manufacturer or distributor, hires, directs and pays the  
 27 demonstrator directly, the retailer is the employer. If the  
 28 wages are paid in part by the manufacturer or distributor, and  
 29 in part by the retailer, the demonstrator is in the employment  
 30 of both. Each is required to pay contributions on the part of  
 31 the remuneration which he it pays, provided that they are  
 32 employers it is an employer under Minn. Stat. SS 268.03-268.24.

33 J. Casual labor.

34 1. Casual labor not in the course of the employing unit's  
 35 trade or business, although excluded from the term employment by  
 36 Minn. Stat. S 268.04, subd. 12, clause (15)(b), is conditionally

1 included as employment under the provisions of Chapter 23,  
2 Section 3300 of the Internal Revenue Code of 1954 (Federal  
3 Unemployment Tax Act). Minn. Stat. S 268.04, subd. 12, clause  
4 (6) provides that the term employment shall include any service  
5 which is deemed to be employment under the Federal Unemployment  
6 Tax Act; therefore, casual labor is considered employment unless  
7 it meets the exclusionary provisions of that act. The  
8 exclusionary provisions of that act are in 2.

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

30       K. Localized employment.

31       1. If an employee works in more than one state, it is  
32 necessary to determine if the employment is localized in, and  
33 reportable to Minnesota. In making this determination, only the  
34 regular services for which the employee was hired, and not those  
35 characterized as incidental, temporary, transitory or an  
36 isolated transaction are to be considered. An employee's

1 services are considered localized in Minnesota in any calendar  
2 quarter in which 80 percent or more of his regular services are  
3 performed in Minnesota.

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

7 a. The employer does not provide other facilities;

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

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

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

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

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

21 L. Multi-state employment. When an individual's services  
22 are not localized, and absent any reciprocal agreement provided  
23 for in Minn. Stat. S 268.13, subd. 1, clause (1), the employee  
24 is a "multi-state" worker and the application of the tests  
25 listed in 1.-4. below is required, to determine whether the  
26 services are reportable to Minnesota.  
-----

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

1 base of operations.

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

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

17       4. Service not covered under the laws of any other state  
18 or Canada. If 1.-3. do not apply, and the individual's services  
19 are not covered under the laws of any other state or Canada, the  
20 services are covered under Minn. Stat. SS 268.03-268.24 if the  
21 services are directed and controlled from Minnesota.

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

24       1. Minn. Stat. S 268.04, subd. 12, clause (15)(p) does  
25 not apply to an individual who performs services as an  
26 independent contractor and in employment within the same pay  
27 period, but does apply to all employment defined in Minn. Stat.  
28 S 268.04, subd. 12, except clauses (10)(a) and (b), relating to  
29 certain employees of religious organizations.

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

35       3. Although not applicable to services by an individual  
36 referred to in Minn. Stat. S 268.04, subd. 12, clauses (10)(1)

1 (a) and (b), other services performed by the same individual are  
2 subject to all other provisions of Minn. Stat. SS 268.03-268.24.

3 N. Previously excluded employment. If within a calendar  
4 year an individual's services and remuneration should no longer  
5 be excluded because his employing unit has met the employment or  
6 wage requirement for that individual's class of workers all of  
7 the previously excluded employment for that class within the  
8 same calendar year is subject to the provisions of Minn. Stat.  
9 SS 268.03-268.24. The previously excluded wages for all workers  
10 in that class of employment are reportable in the calendar  
11 quarters in which the wages were paid or were due and payable.

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

25 P. Employment, special exclusion. In the trucking industry,  
26 -----  
27 an owner-operator of a vehicle which is licensed and registered  
28 -----  
29 as a truck, tractor, or truck-tractor by a governmental motor  
30 -----  
31 vehicle regulatory agency is an independent contractor, not an  
32 -----  
33 employee, while performing services in the operation of his  
34 -----  
35 truck, if each of the following factors are substantially  
36 -----  
37 present:

- 38 1. The individual owns the equipment or holds it under a  
39 -----  
40 bona fide lease arrangement;
- 41 2. The individual is responsible for the maintenance of  
42 -----  
43 the equipment;
- 44 3. The individual bears the principal burdens of the  
45 -----

1 operating costs, including fuel, repairs, supplies, vehicle  
 2 insurance, and personal expenses while on the road;

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

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

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

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

16 8 MCAR S 4.3103 Agricultural labor.

17 A. Purpose. This rule further defines and clarifies terms  
 18 used in Minn. Stat. S 268.04, subd. 12, clause (15)(a) and in  
 19 this rule.

20 B. Definitions.

21 1. Agricultural and horticultural commodity.

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

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

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

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

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



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

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

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

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

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

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

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

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

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

1 C. Farms, exclusions.

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

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

9 D. Farms, inclusions.

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

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

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

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

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

19 E. Crop purchase agreements, farms, agricultural labor.

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

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

29 F. Agricultural labor on farms. Services connected with the  
30 following activities must be performed on a farm as defined in  
31 Minn. Stat. S 268.04, subd. 12, clause (15)(a)(5) and in this  
32 rule, to be agricultural labor:

33 1. Breeding and training horses;

34 2. Hatching poultry;

35 3. Aerial seeding, fertilizing, spraying and dusting  
36 including services related to the mixing of the spray or dust

1 material or the loading of the material into the airplane, as  
 2 well as services related to the measuring of the swaths and the  
 3 marking and flagging of fields to be dusted or sprayed;

4 4. Clerical, bookkeeping and other office work in  
 5 conjunction with the services referred to in Minn. Stat. S  
 6 268.04, subd. 12, clause (15)(a)(1); or

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

8 G. Agricultural labor, ~~specific~~ specific conditional situations.

9 1. Generally. The services described in 2.-5. are not  
 10 agricultural labor unless they meet the specific requirements  
 11 set forth in 2.-5. with regard to where and for whom they are  
 12 performed. When reference is made to "incidental to ordinary  
 13 farming operations", that means services of the character  
 14 ordinarily performed by employees of a farmer or of a farmer's  
 15 cooperative organization or group as a prerequisite to marketing  
 16 in its unmanufactured state any agricultural or horticultural  
 17 commodity produced by the farmer, organization or group.

18 2. Clerical work. Record keeping and other clerical or  
 19 office work performed in connection with the functions described  
 20 in Minn. Stat. S 268.04, subd. 12, clauses (15)(a)(2) and (4)  
 21 unless they are:

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

24 b. Rendered in major part on a farm; and

25 c. Performed incidentally to ordinary farming  
 26 operations.

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

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

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

35 4. Waterways work. Services in the construction of  
 36 canals, reservoirs, waterways or drainage ditches, unless in the

1 employ of the owner or tenant or other operator of a farm.

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

6 H. Agricultural labor exclusions.

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

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

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

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

16 d. Lumbering or landscaping;

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

19 f. Trapping animals;

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

22 h. Raising and harvesting worms.

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

27 I. Agricultural labor, separate commodities. The services  
28 with respect to each commodity are to be considered separately  
29 in determining whether the conditions set forth in Minn. Stat. S  
30 268.04, subd. 12, clause (15)(a)(4) have been satisfied.

31 8 MCAR S 4.3104 Domestic service.

32 A. Purpose. This rule further defines and clarifies terms  
33 used in Minn. Stat. S 268.04, subd. 12, clause (14) and in this  
34 rule.

35 B. Definitions.

36 1. Domestic service. "Domestic service" means work

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

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

16       3. Private home. "Private home" means the fixed abode of  
17 one or more persons. Any shelter used as a dwelling may be  
18 considered as a private home including a tent, boat, trailer, or  
19 a room or suite in a hospital, hotel, sanatorium, or nursing  
20 home. A cooperative boarding and lodging facility may also be a  
21 private home. In an apartment house, each apartment, together  
22 with its stairways, halls, and porches is a private home. Parts  
23 of the premises devoted to common use, such as an office,  
24 furnace room, lawns, public stairways, halls and porches, are  
25 not a part of the private home. If a facility is used mainly as  
26 a commercial rooming or boarding house only that part of the  
27 house which is used as the operator's living quarters is  
28 considered to be a private home.

29       C. Domestic service, general.

30       1. Non-domestic service, treatment. If service performed  
31 by an employee in or around the private home of an employing  
32 unit is not domestic service within the meaning of this rule, it  
33 is subject to the other provisions of Minn. Stat. S 268.04,  
34 subd. 12.

35       2. Maintenance of the employer's private home. Domestic  
36 service in connection with the maintenance of an employer's

1 private home is service which contributes directly to the  
2 protection, cleaning and normal maintenance, in contrast to  
3 major repair projects, of the home and surrounding area. It  
4 does not include service which is not ordinarily a part of home  
5 duties or which involves the use of skilled or specialized  
6 training including service performed by persons in the  
7 construction trades.

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

16         4. Domestic service performed by relatives. Domestic  
17 service performed by relatives, other than that excluded from  
18 employment by Minn. Stat. S 268.04, subd. 12, clause (15)(d), is  
19 domestic service within this rule if there is a contractual  
20 agreement between a relative and the employing unit.

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

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

34         7. Service performed for a minister, priest, rabbi or any  
35 other member of a religious order. Service performed in the  
36 private home of a minister, priest, rabbi or any member of a

1 religious order is considered domestic service if the worker is  
2 in the employ of the recipient of the service. If the worker is  
3 in the employ of the church or religious order the service is  
4 excluded employment. The recipient of the service is the  
5 employer if the funds for the payment of the domestic worker are  
6 not specifically provided by the church or religious order.  
7 Funds provided by a congregation of a church are considered as  
8 being provided by the church. If funds are not provided by the  
9 church specifically for domestic service and the spouse hires,  
10 directs and otherwise controls the worker, the spouse is the  
11 employer.

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

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

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

1 recipient.

2 D. Location of domestic service.

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

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

9 8 MCAR S 4.3105 Employer Records, reports and payments.

10 A. Scope. This rule clarifies an employer's employing  
11 unit's duty with regard to records, reports and payments as  
12 required under Minn. Stat. SS 268.06, subd. 1; 268.11, subds. 2  
13 and 3; and 268.12, subd. 8.

14 B. Notification.

15 1. Change or transfer of business. The department shall  
16 be notified on reports prescribed by the department within 30  
17 days of the start, change, transfer, sale, acquisition or  
18 termination of a business in whole or in part. Subsequent  
19 requests for additional information required in determining  
20 liability, modifying an existing account and assignment of  
21 experience rates must be completed and returned to the  
22 department within time limits established by the department.

23 Establishment of new business or change in an existing  
24 business. Each employing unit shall notify the department  
25 within 30 days of a change in legal entity, or of the start,  
26 transfer, sale, acquisition, or termination of a business, in  
27 whole or in part, insofar as the transaction results in the  
28 creation of a new or different employing unit or affects the  
29 establishment of employer accounts, the assignment of rates, or  
30 the transfer of experience records as provided in Minn. Stat. S  
31 268.06. If the information as submitted is incomplete,  
32 subsequent requests for additional information required in  
33 determining liability, modifying an existing account and  
34 assigning or transferring of experience rates must be completed,  
35 signed and returned to the department in accordance with the  
36 instructions on the form or accompanying correspondence.



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

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

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

- 17           1. Name;
- 18           2. Social security number;
- 19           3. Days in which the individual performed personal  
20 services;
- 21           4. Location where services were performed;
- 22           5. Wages paid and wages due but not paid for personal  
23 services, showing separately:
  - 24               a. Money wages, excluding special payments;
  - 25               b. Wages paid and wages due but not paid, in any  
26 medium other than money, excluding special payments;
  - 27               c. Special payments such as bonuses, gifts, and  
28 prizes, showing separately money payments, other special  
29 payments and the character of the payments;
  - 30               d. Days for which sick pay was paid; and
  - 31               e. Tips and gratuities paid to an employee by a  
32 customer and accounted for by the employee to the employer as  
33 defined in 8 MCAR S 4.3101 E.1. and 2.
- 34           6. Rate and base unit of pay;
- 35           7. Amounts paid as allowances or reimbursement for travel  
36 or other activity pertaining to the furtherance of the employing

1 unit's business which were not included as wages. The account  
 2 shall show each item of expense incurred during each pay period  
 3 or calendar month, ~~or if paid per diem, the dates the employee~~  
 4 was away from home overnight;

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

7 9. The complete resident address of the employee; and

8 10. For each pay period:

9 a. The beginning and ending dates of the period;

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

12 c. The date of payment.

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

16 1. The city or county and state in which the employing  
 17 unit maintains a base of operations, as defined in 8 MCAR S  
 18 4.3102 L.1., used by the individual;

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

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

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

31 F. Filing reports. An employer's tax report must be filed  
 32 on a form prescribed by the department, or a reasonable  
 33 facsimile thereof, not later than the due date for payment of  
 34 ~~quarterly contributions.~~ Failure to receive forms from the  
 35 department shall not constitute a valid reason for not filing  
 36 reports on or before the due date thereof or ~~to pay for not~~

1 paying any contribution due. Consolidated reports of  
-----  
2 corporations having common ownership shall be recognized or  
3 permitted only if expressly allowed under 8 MCAR S 4.3106. If  
4 the report first submitted is erroneous, the employer shall  
5 promptly submit the corrected information on forms prescribed by  
6 the department and make any additional payment due.

7 8 MCAR S 4.3106 Consolidated reports.

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

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

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

18 B. Related corporations tests. For the purpose of this rule  
19 and Minn. Stat. S 268.06, subd. 21, clause (2), corporations are  
20 related for an entire calendar quarter if they satisfy one of  
21 the following four tests of 1.-4., at any time during that  
22 calendar quarter.

23 1. Test one. They are either:

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

36 b. Members of a brother-sister controlled group

1 consisting of two or more corporations in each of which five or  
2 fewer of the same individuals, estates or trusts own stock  
3 possessing more than 50 percent of the total combined voting  
4 power of all classes of stock entitled to vote or more than 50  
5 percent of the total value of all shares of all classifications  
6 of stock of each corporation, taking into account the stock  
7 ownership of each person only to the extent the stock ownership  
8 is identical with respect to each corporation;

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

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

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

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

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

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

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

35           2. Treasury stock; or

36           3. Stock that is treated as excluded stock.

1 D. Excluded stock, parent-subsubsidiary. "Excluded stock" for  
2 a parent-subsubsidiary controlled group means:

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

5 2. Stock in a subsidiary owned by an individual who is a  
6 principal stockholder or an officer of the parent corporation.

7 A "principal stockholder" is one that owns five percent or more  
8 of the voting power or five percent or more of the value of all  
9 stock of the parent corporation; or

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

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

16 1. Stock in a member corporation held by an ~~employee's~~  
17 ~~employees'~~ trust if the trust is for the benefit of the  
18 ~~employees~~;

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

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

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

29 G. Concurrent employment. "Concurrent employment" as used  
30 in Minn. Stat. S 268.06, subd. 21 and this rule means the  
31 simultaneous existence of an "employment" relationship between  
32 an individual and two or more related corporations, as defined  
33 in Minn. Stat. S 268.04, subd. 12.

34 An employment relationship shall require the performance of  
35 services by the employee for the employing corporation in  
36 exchange for wages which, if not for the provisions of Minn.

1 Stat. S 268.06, subd. 21, clause (2) and this rule, would be  
2 reportable by the employing corporation.

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

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

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

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

25 I. Common paymaster.

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

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

35 3. Although a corporation may be treated as a component  
36 member of only one controlled group, the related corporations

1 may designate more than one common paymaster but only one common  
2 paymaster may be designated for each class of employee.

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

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

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

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

31 N. Work other than for common paymaster. If an employee  
32 works for a related corporation other than the common paymaster  
33 prior or subsequent to the effective period of the agreement,  
34 the wages earned and reportable by the employing corporation  
35 shall not be combined with the wages reportable by the common  
36 paymaster in determining the maximum taxable wage described in

1 Minn. Stat. S 268.04, subd. 25.

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

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

11 Q. Relation cessation. If any corporation ceases to be  
12 related the common paymaster shall notify the department within  
13 30 days of the end of the calendar quarter in which the  
14 cessation occurs.

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

21 S. Written protest. If an application to report under the  
22 provisions of Minn. Stat. S 268.06, subd. 21, clause (2) and  
23 this rule is denied, or an existing agreement is terminated at  
24 the discretion of the commissioner, the denial or termination  
25 shall be final unless a written protest is filed with the  
26 commissioner as set forth in Minn. Stat. S 268.06, subd. 20.

27 8 MCAR S 4.3107 Payments of interest.

28 A. Scope. This rule establishes the conditions upon which  
29 interest on contributions due may be waived as provided for in  
30 Minn. Stat. S 268.16, subd. 1.

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

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

36 2. The late payment was the result of unreasonable delay



1 not attributable to the employer.

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

7 8 MCAR S 4.3108 Contribution rates.

8 A. Notice of rate. Any employer determined liable by the  
9 department prior to January 1 shall be assigned a contribution  
10 rate pursuant to Minn. Stat. S 268.06 which shall be mailed on  
11 or before March 15 of the year effective.

12 B. Time limit on voluntary contributions. In no event shall  
13 a voluntary contribution paid by an employer pursuant to Minn.  
14 Stat. S 268.06, subd. 24 after the expiration of the first 120  
15 days for the period the rate is effective be used in the  
16 computation of a new experience ratio.

17

18 Repealer. Department of Economic Security rules ES-1, ES-2,  
19 ES-3, ES-4, ES-5, ES-6, ES-8, ES-9, ES-10, ES-11, ES-12, ES-17,  
20 ES-19, ES-20, ES-27, and ES-28 are repealed.