

1 Department of Labor and Industry

2

3 Adopted Permanent Rules Relating to Workers' Compensation; Rules
4 of Practice

5

6 Rules as Adopted

7 5220.0105 INCORPORATION BY REFERENCE.

8 The following documents are incorporated by reference only
9 to the extent specifically referenced in chapter 5220. The
10 documents in items A and B are not subject to frequent change,
11 although new editions may occasionally be published. The
12 documents in item C are revised annually. All documents are
13 available through the Minitex interlibrary loan system.

14 A. The Dictionary of Occupational Titles, fourth
15 edition, 1991, United States Department of Labor, is available
16 for purchase through the Superintendent of Documents, United
17 States Government Printing Office, Washington, DC 20402.

18 [For text of items B and C, see M.R.]

19 5220.2510 SCOPE AND PURPOSE.

20 Chapter 5220 governs all workers' compensation matters
21 before the commissioner of the Department of Labor and Industry
22 and the Office of Administrative Hearings. The Joint Rules of
23 Practice of the Workers' Compensation Division and the Office of
24 Administrative Hearings in chapter 1415 also govern workers'
25 compensation matters.

26 5220.2520 DEFINITIONS.

27 Subpart 1. Scope. Terms used in parts 5220.2510 to
28 5220.2960 have the meanings given them in part 1415.0300 and
29 this part and Minnesota Statutes, section 176.011.

30 [For text of subps 2 to 8, see M.R.]

31 Subp. 9. [See repealer.]

32 Subp. 10. [See repealer.]

33 5220.2530 FIRST REPORT OF INJURY.

34 The first report of injury must be fully completed and



1 submitted to the division within the time limits established by
2 Minnesota Statutes, section 176.231. It must be on a form
3 prescribed by the commissioner, containing substantially the
4 following:

5 A. information identifying the employee, employer,
6 insurer, and any adjusting company, including numbers
7 identifying the employer, insurer, adjusting company, and
8 insurer class code;

9 B. claim numbers and Occupational Safety and Health
10 log number;

11 [For text of item C, see M.R.]

12 D. information regarding employment status and
13 occupation, including date of hire;

14 E. information regarding the circumstances of the
15 injury, including the date, place, time, persons or objects
16 involved, and the date notice was received by the employer and
17 insurer;

18 [For text of item F, see M.R.]

19 G. information regarding lost time from work; and

20 H. information identifying the treating physician.

21 Failure to file the report in a timely manner may result in
22 the assessment against the employer or insurer of the penalty
23 set out in part 5220.2820 and against the insurer of the penalty
24 set out in part 5220.2770.

25 5220.2540 PAYMENT OF TEMPORARY TOTAL, TEMPORARY PARTIAL, OR
26 PERMANENT TOTAL COMPENSATION.

27 Subpart 1. Time of payment. Payment of compensation must
28 be commenced within 14 days of:

29 [For text of items A and B, see M.R.]

30 C. an order by the division, compensation judge, or
31 workers' compensation court of appeals requiring payment of
32 benefits which is not appealed. A party's consideration of an
33 appeal does not excuse payment beyond the 14-day time limit.
34 When an appeal is not filed, payments made after the 14th day
35 are subject to penalties and interest under parts 5220.2760 and

1 5220.2780.

2 Once temporary total or permanent total disability benefits
3 have been commenced, they must continue to be paid on a regular
4 basis at the intervals the employee would have received wages
5 from the employer had the employee continued working. Less
6 frequent payments may be arranged by written agreement of the
7 parties. With the initial payment of temporary total or
8 permanent total disability benefits, the insurer must notify the
9 employee in writing of the day of the week that further payments
10 will be made and the frequency with which payments will be
11 made. If the initial payment is a first and final payment, then
12 notification need not be sent.

13 The same time limits apply to payments of temporary partial
14 disability benefits. If the current wage varies so that wage
15 documentation for calculation of temporary partial disability
16 benefits is necessary, payment is due ten days following the
17 date the employee or employer sends wage verification to the
18 insurer.

19 [For text of subp 2, see M.R.]

20 ~~Subp. 2a. Suitable employment. If a rehabilitation plan~~
21 ~~has been completed, the employee is ineligible for~~
22 ~~rehabilitation services, or the employee has not requested~~
23 ~~rehabilitation services, a job which pays at least 50 percent of~~
24 ~~the gross weekly wage on the date of injury is economically~~
25 ~~suitable under Minnesota Statutes, section 176.101, subdivision~~
26 ~~3e, if the job represents the employee's current earning~~
27 ~~capacity and that earning capacity cannot reasonably be expected~~
28 ~~to significantly change.~~

29 Subp. 3. Notice to division. The insurer must keep the
30 division advised of all payments of compensation and amounts
31 withheld and amounts paid for attorney fees by the filing of
32 interim status reports each year and upon specific request by
33 the division.

34 The insurer must also file with the division proof of
35 payment which must indicate the amount of compensation paid and
36 the date when the first payment was made, at each of the

1 following times:

2 A. when the insurer makes the first payment to the
3 employee following the injury;

4 B. when payments are reinstated after they have been
5 previously discontinued by a notice of intention to discontinue
6 benefits or an order of the division under part 5220.2640,
7 subpart 7;

8 C. when monitoring period compensation is commenced
9 under Minnesota Statutes, section 176.101, subdivision 3i; and

10 D. when payments are commenced by order of the
11 division, a compensation judge, the workers' compensation court
12 of appeals, or the Minnesota Supreme Court.

13 [For text of subp 4, see M.R.]

14 Subp. 5. Removal from the labor market. An employee who
15 voluntarily removes himself or herself from the labor market is
16 no longer entitled to temporary total, temporary partial, or
17 permanent total disability benefits. A removal from the labor
18 market has occurred when the employee is released to return to
19 work by a health care provider and the employee retires or the
20 employee's opportunities for gainful employment or suitable
21 employment are significantly diminished due to the employee's
22 move to another labor market.

23 Subp. 6. ~~Permanent-total-disability.--An-employee-shall~~
24 ~~not-be-found-to-be-permanently-and-totally-disabled-within-the~~
25 ~~meaning-of-Minnesota-Statutes, section-176.101, subdivision-5,~~
26 ~~clause-(2), unless-the-employee-has-not-refused-a-suitable-job~~
27 ~~under-Minnesota-Statutes, section-176.101, subdivision-3e, and~~
28 ~~the-employee:~~

29 A. ~~has-a-permanent-partial-disability-rating-of-at~~
30 ~~least-20-percent-of-the-whole-body,~~

31 B. ~~has-a-permanent-partial-disability-rating-of-at~~
32 ~~least-17-percent-of-the-whole-body, and:~~

33 ~~(1)-is-over-45-years-old,~~

34 ~~(2)-has-not-earned-a-high-school-diploma-or-its~~
35 ~~equivalent, or~~

36 ~~(3)-has-been-employed-during-the-three-years~~

1 immediately-preceding-the-disability-only-in-jobs-classified-by
2 the-Dictionary-of-Occupational-Titles,-fourth-edition,-1991,-at
3 specific-vocational-preparation-level-three-or-below;

4 C.--has-a-permanent-partial-disability-rating-of-at
5 least-14-percent-of-the-whole-body-and-has-two-of-the-following
6 three-characteristics:

7 (1)-is-over-45-years-old;

8 (2)-has-not-earned-a-high-school-diploma-or-its
9 equivalent;

10 (3)-has-been-employed-during-the-three-years

11 immediately-preceding-the-disability-only-in-jobs-classified-by
12 the-Dictionary-of-Occupational-Titles,-fourth-edition,-1991,-at
13 specific-vocational-preparation-level-three-or-below;

14 D.--has-a-permanent-partial-disability-rating-of-at
15 least-ten-percent-of-the-whole-body,-and:

16 (1)-is-over-45-years-old;

17 (2)-has-not-earned-a-high-school-diploma-or-its
18 equivalent;-and

19 (3)-has-been-employed-during-the-three-years

20 immediately-preceding-the-disability-only-in-jobs-classified-by
21 the-Dictionary-of-Occupational-Titles,-fourth-edition,-1991,-at
22 specific-vocational-preparation-level-three-or-below;

23 E.--has-been-evaluated-by-the-vocational
24 rehabilitation-unit-of-the-division-and-it-has-been-found-by
25 that-unit-that-the-employee-would-be-unlikely-to-be-able-to
26 secure-anything-more-than-sporadic-employment-resulting-in-an
27 insubstantial-income-even-after-the-employee-had-received-all
28 appropriate-services-under-Minnesota-Statutes,-section-176.102;
29 or

30 F.--has-diligently-searched-for-employment-for-a
31 period-of-at-least-two-years-and-has-been-unable-to-secure
32 anything-more-than-sporadic-employment-resulting-in-an
33 insubstantial-income.--To-show-that-a-diligent-search-has-been
34 made,-the-employee-must-keep-a-detailed-record-of-the-job-search
35 if-the-employee-is-capable-of-doing-so.--As-time-progresses,-the
36 employee-must-expand-the-area-in-which-a-job-is-sought.--If

~~1 there are no jobs available in the occupation in which the
2 employee has training or experience, the employee must expand
3 the job search to include jobs outside of the employee's
4 training or experience but which have been identified by the
5 vocational rehabilitation unit of the division or the employee's
6 qualified rehabilitation consultant as jobs the employee is
7 physically able to perform and which would provide or be
8 consistent with a rehabilitation plan to eventually provide an
9 economically suitable wage under part 5220.2540, subpart 2a.~~

10 Subp. 7. Apprentices, temporary partial disability
11 benefits. An apprentice, upon return to the same apprenticeship
12 program in the same position or a similar position to that held
13 on the date of injury, has not suffered a loss of earning
14 capacity where the wage upon return to the apprenticeship
15 program is the same or greater than the wage on the date of
16 injury. Temporary partial disability benefits are not owing
17 where there is no loss in earning capacity.

18 5220.2550 PAYMENT OF PERMANENT PARTIAL DISABILITY, INCLUDING
19 IMPAIRMENT COMPENSATION AND ECONOMIC RECOVERY COMPENSATION.

20 Subpart 1. Time of payment. Permanent partial disability
21 must be paid at the time specified in Minnesota Statutes,
22 sections 176.021 and 176.101. When permanent partial disability
23 compensation is being paid periodically following the payment of
24 temporary total benefits or following or concurrent with the
25 payment of temporary partial benefits, the payments must be
26 continued without interruption at the same intervals that the
27 temporary benefits were paid. When the employee reaches maximum
28 medical improvement, the insurer must request an initial
29 assessment of any permanent partial disability from the
30 employee's physician.

31 A. When the extent of permanent partial disability is
32 not disputed, upon receipt of a medical report containing a
33 permanency rating or medical information from which the insurer
34 may determine a rating, the employer or insurer must, within 30
35 days:

1 [For text of subitems (1) and (2), see M.R.]

2 B. When the extent of permanent partial disability is
3 disputed, upon receipt of a medical report containing a
4 permanency rating or medical information from which the insurer
5 may determine a rating, the employer or insurer must, within 30
6 days:

7 (1) make a minimum lump sum payment or begin
8 periodic payments based on the minimum undisputed permanent
9 partial disability ascertainable; and

10 [For text of subitem (2), see M.R.]

11 C. If permanent partial disability benefits are not
12 currently payable under Minnesota Statutes, section 176.101,
13 inform the employee in writing of the disability rating and the
14 time when the permanent partial disability payment will be
15 payable by statute.

16 Subp. 2. Notice of benefit payment.

17 [For text of item A, see M.R.]

18 B. For injuries on or after January 1, 1984, when the
19 insurer makes a lump sum payment of permanent partial disability
20 benefits or begins periodic payment, the employer or insurer
21 shall fully complete, serve on the employee, and file with the
22 division a notice of permanent partial disability benefits which
23 must be on a form prescribed by the commissioner, containing
24 substantially the following information:

25 [For text of subitems (1) to (5), see M.R.]

26 (6) instructions to the employee concerning any
27 disagreement about the payment;

28 [For text of subitems (7) and (8), see M.R.]

29 (9) copies of medical reports containing
30 disability ratings or medical information upon which the insurer
31 bases the rating;

32 [For text of subitems (10) and (11), see M.R.]

33 ~~Subp. 2a. Inability to return to former employment. An~~
34 ~~employee is not "unable to return to former employment" within~~
35 ~~the meaning of Minnesota Statutes, section 176.101, subdivision~~
36 ~~3t, paragraph (b), when the employee returns to suitable~~

1 ~~employment-with-the-employer-~~

2 [For text of subps 3 and 4, see M.R.]

3 5220.2555 RETRAINING COMPENSATION.

4 An employee who has been approved for retraining under
5 Minnesota Statutes, section 176.102, subdivision 11, may
6 petition the commissioner or a compensation judge for additional
7 compensation, not to exceed 25 percent of the compensation
8 otherwise payable, if the employee will incur a special,
9 unusual, or unique circumstance during the retraining period
10 that would otherwise reduce the likelihood that the retraining
11 plan will be successfully completed. Additional compensation is
12 not warranted under this subpart if the circumstance on which
13 the request is based is compensable as a cost of the
14 rehabilitation plan under Minnesota Statutes, section 176.102,
15 subdivision 9. The commissioner or a compensation judge may
16 order an award of additional compensation and specify the amount
17 to be awarded. When the employee is entitled to additional
18 compensation for retraining, the compensation shall begin on the
19 first day the special, unusual, or unique circumstance of the
20 retraining is present but not before the start of the retraining
21 program, and shall stop at any time the special, unusual, or
22 unique circumstance is no longer present. The commissioner or
23 compensation judge may determine the date of commencement and
24 the date of discontinuance of the additional compensation.

25 5220.2560 ATTACHMENT AND GARNISHMENT OF BENEFITS.

26 Workers' compensation benefits are not subject to
27 attachment or garnishment, although they may be withheld under
28 Minnesota Statutes, sections 518.54, subdivision 6, and 518.611,
29 and paid for child support or spousal maintenance if the other
30 requirements of those statutes are met. Upon request, the
31 insurer shall file with the division a statement of the amount
32 being withheld from the employee's benefits and paid to the
33 county or obligee, a copy of the order for withholding of
34 income, and verification of payments made.

1 5220.2570 DENIALS OF LIABILITY.

2 [For text of subpart 1, see M.R.]

3 Subp. 2. Denial of liability form. A denial of primary
4 liability under Minnesota Statutes, section 176.221, subdivision
5 1, except a letter denial under subpart 4 or 5, must be fully
6 completed and on a form prescribed by the commissioner,
7 containing substantially the following:

8 [For text of items A to D, see M.R.]

9 E. a specific reason for the denial which must be in
10 language easily readable and understandable to a person of
11 average intelligence and education and a clear statement of the
12 facts forming the basis for the denial. A denial which states
13 only that the injury did not arise out of and in the course and
14 scope of employment or that the injury was denied for lack of a
15 medical report, for example, is not specific within the meaning
16 of this item;

17 F. a copy of a medical report or summary of any
18 health care provider contact which forms a basis for the denial;
19 and

20 G. instructions to the employee if the employee
21 disagrees, including the availability of rehabilitation
22 benefits, the statute of limitations for filing a workers'
23 compensation claim, and the address and telephone numbers of
24 division offices the employee may contact for information.

25 Subp. 3. Notice of intention to discontinue benefits. A
26 denial of primary liability filed more than 30 days after notice
27 to or knowledge by the employer of a work-related injury which
28 is required to be reported to the commissioner under Minnesota
29 Statutes, section 176.231, subdivision 1, and for which benefits
30 are being paid must be made by a notice of intention to
31 discontinue benefits under part 5220.2630 and must clearly
32 indicate that its purpose is to deny liability for the entire
33 claim.

34 Subp. 4. Letter denial for new period of temporary total.
35 A denial of liability for temporary total disability benefits
36 for a new period of lost time due to a previous work-related

1 injury must be in writing and include:

2 [For text of items A to D, see M.R.]

3 E. a specific reason for the denial in language
4 easily readable and understandable to a person of average
5 intelligence and education and a clear statement of the facts
6 forming the basis for the denial.

7 Subp. 5. Letter denial for other benefits. A denial of
8 liability for a portion of benefits or any other compensation
9 where primary liability has been accepted must be in writing and
10 include:

11 [For text of items A to D, see M.R.]

12 E. a specific reason for the denial in language
13 easily readable and understandable to a person of average
14 intelligence and education and a clear statement of the facts
15 forming the basis for the denial.

16 Subp. 6. Service. The employer or insurer shall serve on
17 the employee the form or letter under subparts 1 to 5 with any
18 relevant medical or other reports attached and file a copy with
19 the division.

20 [For text of subp 7, see M.R.]

21 Subp. 8. [See repealer.]

22 Subp. 9. Penalty; timeliness. Failure to pay or deny in a
23 timely manner may result in the assessment of the penalties in
24 parts 5220.2770 and 5220.2790.

25 Subp. 10. Penalty; frivolous denial.

26 A. A frivolous denial under Minnesota Statutes,
27 section 176.225, subdivision 1, clause (a), includes one which:

28 (1) does not state facts indicating that an
29 investigation has been completed or that a good faith effort to
30 investigate has been attempted; or

31 (2) states a basis which is a clearly inaccurate
32 statement of fact or the applicable law.

33 B. In addition to any workers' compensation benefits
34 due and a penalty under subpart 9, a penalty may be assessed by
35 the division or compensation judge under parts 5220.2760 and
36 5220.2770 and Minnesota Statutes, sections 176.221, subdivision

1 3a, and 176.225, subdivision 1, for a frivolous denial.

2 Subp. 11. Penalty; nonspecific denial. A nonspecific
3 denial as defined in subpart 2, item E; 4, item E; or 5, item E,
4 may result in the assessment of a penalty in the amount of \$300
5 under Minnesota Statutes, section 176.84, subdivision 2. A
6 penalty for a nonspecific denial may be assessed without regard
7 to the substantive validity of the denial of benefits. A
8 penalty under this subpart may be assessed in addition to the
9 penalties described in subparts 9 and 10 and is payable to the
10 special compensation fund.

11 5220.2580 CLAIM FOR REFUND FROM EMPLOYEE OR DEPENDENT;
12 OVERPAYMENTS.

13 Subpart 1. Request for refund. All requests for refunds
14 or reimbursements by an insurer for payments made under a
15 mistake of fact or law, which were allegedly not received by an
16 employee or dependent in good faith, must be made in writing to
17 the employee with a copy immediately mailed to the attorney
18 representing the employee or dependent, if any, and upon request
19 to the division.

20 Subp. 2. Contents of request. All requests must contain
21 the following information:

22 [For text of items A to C, see M.R.]

23 D. the mistake of fact or law which forms the basis
24 for the claimed overpayment;

25 E. the reason the insurer believes the payments were
26 not received in good faith; and

27 F. a statement informing the employee that, if the
28 employee has any questions regarding the legal obligations to
29 repay any claims for overpayment alleged to have not been
30 received in good faith, the employee should contact either a
31 private attorney or the division.

32 Subp. 3. Overpayments. The insurer that overpaid benefits
33 that were received by the employee in good faith may take the
34 credit allowed under Minnesota Statutes, section 176.179, after
35 giving notice to the employee of the information in subpart 2,

1 items A to F. Benefits paid pursuant to Minnesota Statutes,
2 section 176.239, subdivision 3, are not overpaid benefits unless
3 so ordered by a compensation judge under Minnesota Statutes,
4 section 176.239, subdivision 9.

5 5220.2605 DISPOSITION OF COVERAGE ISSUES.

6 Subpart 1. **Motion.** If an answer filed under Minnesota
7 Statutes, section 176.321, raises an issue related to
8 independent contractor or employment status, a party may move to
9 bifurcate the issue or issues for immediate and expedited
10 resolution upon affidavit or, if requested by any party, an oral
11 hearing.

12 Subp. 2. **Filing.** The motion must be filed with the
13 division, or the office if the matter has been certified to the
14 office, within ten days after the filing of the answer. The
15 motion, which must be served upon the petitioner or petitioner's
16 attorney and other parties to the proceedings, must include (1)
17 an affidavit of service; (2) evidence relied on in support of
18 the motion by verified affidavits; (3) any request and reasons
19 for an oral hearing; and (4) if desired, a written brief not
20 exceeding 25 pages in support of the motion. Other parties to
21 the proceeding may respond to the motion within 20 days after
22 the service of the motion under this part by submission of
23 affidavits and, in its discretion, a written brief not exceeding
24 20 pages. The movant will have ten days from service of a
25 response to the motion to file affidavits and, if desired, a
26 written brief not exceeding ten pages in rebuttal to any issue
27 raised in opposition to the motion.

28 Subp. 3. **Decision; hearing.** The judge may determine the
29 motion on the basis of the written matter submitted, or may, on
30 the judge's own motion or upon motion of a party, schedule a
31 hearing. If a hearing is scheduled, the parties must be served
32 with notice of hearing at least 20 days before the hearing. The
33 parties may present the issues fully, including the right to
34 introduce evidence supplementing that presented by affidavit and
35 the right to cross-examine adverse witnesses.

1 Subp. 4. **Appeal.** Whether or not a hearing is held, the
2 judge shall issue a decision based on the facts presented. This
3 decision may be appealed to the Workers' Compensation Court of
4 Appeals.

5 Subp. 5. **Hearing on the merits.** The commissioner or
6 compensation judge shall schedule a hearing on other issues not
7 decided under this subpart, if needed, following a final
8 decision on the motion under this subpart and any related appeal.

9 5220.2610 ADMINISTRATIVE CONFERENCES.

10 Subpart 1. **Scope.** This part governs administrative
11 conferences conducted under Minnesota Statutes, sections 176.106
12 and 176.239.

13 Subp. 2. **Notice.** Unless the issue will be decided on the
14 basis of written submissions, or unless the parties agree on a
15 shorter notice period, the division must notify the parties and
16 intervenors or potential intervenors under Minnesota Statutes,
17 section 176.361, of the date, time, and place of the conference
18 at least ten working days before the conference date. The
19 qualified rehabilitation consultant, if one is assigned, must be
20 notified of a rehabilitation conference. The special
21 compensation fund must be notified of all administrative
22 conferences where the fund is reimbursing benefits to an insurer
23 or self-insurer under Minnesota Statutes, section 176.131 or
24 176.132, or a claim has been made under the above referenced
25 statutes against the fund for benefits by any of the parties, or
26 the fund is paying benefits under Minnesota Statutes, section
27 176.191. The notice must include the statutory authority to
28 hold the conference and indicate whether issues from another
29 petition or request form have been joined for consideration at
30 the conference. Telephone notice of the conference at least
31 three working days before the conference date is sufficient for
32 a discontinuance or other expedited conference if timely service
33 of notice by mail cannot be made.

34 Subp. 3. **Appearances.** All parties and the qualified
35 rehabilitation consultant, if the conference is conducted under

1 Minnesota Statutes, section 176.106 concerning rehabilitation
2 services, must be given notice and the opportunity to attend
3 administrative conferences or, at their option, to present
4 documents on their behalf. A person who has an interest in the
5 outcome of the conference such that the person may either gain
6 or lose by the decision may attend the conference. A party may
7 be represented by an attorney. The employee and insurer or
8 designated person having authority to act on behalf of the party
9 regarding the matter in dispute is required to attend an
10 administrative conference under Minnesota Statutes, section
11 176.239, unless health reasons, distances, or other good cause
12 prevents attendance. If absent because of distance, the
13 employee and insurer or authorized designee of the employee and
14 insurer must be available by telephone at the scheduled
15 conference time.

16 Subp. 4. [See repealer.]

17 Subp. 5. **Information considered.** The presiding official
18 shall permit the parties to present their positions and reports
19 or other documents or exhibits relevant to the issues involved.
20 Reasonable opportunity for parties to refute statements or other
21 information submitted must be allowed. Copies of documents
22 submitted must be simultaneously supplied to the other parties.

23 Subp. 6. **Concurrent litigation.** When the same or a nearly
24 identical issue in the same case is pending with the office, the
25 workers' compensation court of appeals, or another court, the
26 division must decline to issue a decision and defer to the
27 office or court to avoid inconsistent determinations.

28 Subp. 7. **Continuance.** Continuances are disfavored and
29 will be granted only upon a showing of good cause for the
30 inability or failure to appear at a conference. Good cause
31 generally means that circumstances beyond the control of the
32 party or party's representative prevent attendance at the
33 scheduled time. Before a continuance is granted, the division
34 must consider receiving written arguments and supporting
35 documentation in place of the scheduled conference.

36 Subp. 8. **Intervenors.** If, at the time of the conference,

1 the division determines that a potential party has not been
2 notified of the conference, the conference must be canceled or
3 continued, the parties may enter into an agreement which does
4 not compromise the rights of the potential party, or the
5 division must issue a decision which does not compromise the
6 rights of the potential party. A potential party is a person
7 who has an interest in the outcome of the conference under
8 Minnesota Statutes, section 176.361, such that the person may
9 either gain or lose by the decision to be made following the
10 conference.

11 Subp. 9. **Decision.** The decision following an
12 administrative conference shall include a determination
13 concerning the rights an intervenor or potential intervenor
14 under Minnesota Statutes, section 176.361, may have in the
15 dispute. The decision must include a statement indicating the
16 right to request a formal hearing and explain how to initiate
17 the request.

18 Subp. 10. **Testimony cost.** The division shall not order
19 reimbursement of costs for testimony at an administrative
20 conference.

21 5220.2620 MEDICAL DISPUTES.

22 Subpart 1. **Definition.** For purposes of this part, the
23 following term has the meaning given.

24 "Medical issues" means all health care rendered under
25 Minnesota Statutes, sections 176.135 and 176.136, and
26 determinations by the division under Minnesota Statutes,
27 sections 176.103 and 176.106, and includes:

28 A. whether the charge is a reasonable charge as
29 described and allowed by chapter 5221 and Minnesota Statutes,
30 section 176.136;

31 B. the reasonableness and necessity of a medical
32 service or treatment as described and allowed by chapter 5221
33 and Minnesota Statutes, sections 176.135 and 176.136;

34 C. the need for a second opinion prior to surgery;

35 D. a request for change of primary health care

1 provider;

2 E. the employee's cooperation with medical treatment;

3 F. the inability to secure a health care provider

4 report;

5 G. the relationship of the health care to the work

6 injury;

7 H. the assessment of penalties or interest for

8 untimely response to medical billings and failure to provide at

9 an administrative conference a specific reason for nonpayment of
10 the items in dispute;

11 I. the availability of medical services from a

12 managed care organization under Minnesota Statutes, section

13 176.1351; and

14 J. other problems related to medical treatment and

15 supplies.

16 Subp. 2. **Medical claim, request.** An employee or insurer

17 may initiate a medical claim by filing a medical request form

18 with the division. A medical request form may be filed by a

19 health care provider as defined by Minnesota Statutes, section

20 176.011, subdivision 24, where the insurer has denied payment on

21 the basis that a charge is excessive under Minnesota Statutes,

22 section 176.136, subdivision 2. A claim is not denied based on

23 excessiveness where the insurer asserts that the injury did not

24 arise out of and in the course of employment or where the

25 disputed treatment is for a condition which the insurer asserts

26 is not wholly or partly casually related to the work injury.

27 The requesting party shall serve the medical request form and

28 attachments on the other parties, including the employee,

29 insurer, employer, and any health care provider and other person

30 having an interest in the outcome such that the person may

31 either gain or lose by the resulting decision. The requesting

32 party shall specify the medical issues in dispute and attach

33 supporting documents. A health care provider filing a medical

34 request form must attach evidence of the insurer's denial of

35 payment based on excessiveness, an itemized statement of

36 charges, and the appropriate record as defined in part

1 5221.0100, subpart 1a. The requesting party must also specify
2 the name and address of any third party who has paid or has been
3 ordered to pay to reimburse medical or treatment expense, and
4 the claim or policy number, if known. At the time the medical
5 request form is filed, the requesting party must mail a copy of
6 the medical request form to third parties who have paid
7 benefits. A claim petition containing medical issues only may
8 be treated in the same manner as a medical request form under
9 this subpart if the insurer is not disputing that the injury
10 arose out of and in the course of employment.

11 Subp. 3. **Medical claims response.** If the employee or
12 health care provider has filed a medical request form, the
13 insurer must file a medical response form with the division and
14 serve copies on the other parties no later than 20 days after
15 service of the medical request form or within the time period
16 provided by part 5221.6050, subpart 7. Failure to file a
17 required form will be considered in the determination of
18 disputed issues, penalties, and interest charges, and may result
19 in a determination based solely on the written submissions of
20 the requester when an administrative conference is not scheduled.

21 Subp. 4. [See repealer.]

22 Subp. 5. **Medical claim; denial of liability.** If a medical
23 request form has been mistakenly filed in a case in which
24 initial issues of liability exist, the matter may be set for a
25 settlement conference before a judge of the division under
26 Minnesota Statutes, section 176.305, or the requester will be
27 instructed to file a claim petition, intervene in another
28 proceeding, or other procedure as the division directs.

29 Subp. 6. [See repealer.]

30 Subp. 7. [See repealer.]

31 Subp. 8. [See repealer.]

32 Subp. 9. [See repealer.]

33 Subp. 10. [See repealer.]

34 Subp. 11. [See repealer.]

35 Subp. 12. **Penalties.** Where payment of medical charges is
36 not made in compliance with part 5221.0600 and Minnesota

1 Statutes, section 176.135, a penalty may be assessed under part
2 5220.2740.

3 5220.2630 DISCONTINUANCE OF COMPENSATION.

4 Subpart 1. Generally. When an insurer proposes or intends
5 to reduce, suspend, or discontinue an employee's benefits, it
6 shall file one of the following documents described in this
7 part. A form need not be filed when an insurer increases or
8 decreases an employee's periodic temporary partial benefit due
9 to changes in the employee's earnings while employed, provided
10 that a payment continues to be made based on the employee's
11 actual earnings.

12 Subp. 2. Petition. The filing of a petition to
13 discontinue compensation with the division under part 1415.1000
14 and Minnesota Statutes, section 176.238, subdivision 5,
15 commences a formal action to reduce, suspend, or discontinue
16 compensation. A petition is required to reduce, suspend, or
17 discontinue permanent total benefits if a judicial or
18 administrative order finding permanent total status was
19 previously issued. The division shall refer the matter to the
20 office under Minnesota Statutes, section 176.238.

21 Subp. 3. Notice of benefit payment.

22 A. The employer or insurer may make a lump sum or
23 final payment of the benefit indicated by the filing of a notice
24 of benefit payment with the division and service of the notice
25 on the other parties at the time that the payment occurs when
26 the payment represents:

27 (1) a lump sum payment of full permanent partial
28 disability compensation;

29 (2) a final periodic payment of impairment
30 compensation or economic recovery compensation;

31 (3) a final payment under an award, order, or
32 stipulation;

33 (4) for injuries occurring before August 1, 1975,
34 where the employee is not permanently totally disabled, a final
35 payment of temporary total disability or for injuries occurring

1 before May 28, 1977, a final payment of temporary partial
2 disability based on a statutory maximum number of weekly
3 payments; or

4 (5) a final payment of monitoring period
5 compensation.

6 B. A notice of benefit payment must be fully
7 completed and on the form prescribed by the commissioner,
8 containing substantially the relevant information described in
9 part 5220.2550, subpart 2.

10 Subp. 4. Notice of intention to discontinue benefits.

11 A. To discontinue temporary total, temporary partial,
12 or permanent total benefits in situations not specified in
13 subpart 3, the employer or insurer must serve upon the employee
14 and file with the division a notice of intention to discontinue
15 benefits or a petition under subpart 2. The insurer may serve
16 and file a notice of intention to discontinue permanent total
17 benefits under this subpart only where no judicial or
18 administrative decision finding permanent total status was
19 previously issued. The notice of intention to discontinue
20 benefits must be accompanied by a form prescribed by the
21 commissioner with which to request an administrative conference
22 on the proposed discontinuance. The form must contain the
23 employer's name, the date of the injury or disease, and the
24 name, social security number, and address of the employee and a
25 space for the employee to indicate the reason the employee
26 objects to the proposed discontinuance.

27 B. A notice of intention to discontinue benefits must
28 be fully completed and on the form prescribed by the
29 commissioner, containing substantially the following:

30 [For text of subitems (1) to (3), see M.R.]

31 (4) the type of benefits being reduced or
32 discontinued;

33 (5) the legal reason or reasons for the proposed
34 discontinuance or reduction, stated in language which may easily
35 be read and understood by a person of average intelligence and
36 education, and in sufficient detail to inform the employee of

1 the factual basis for the discontinuance or reduction;

2 [For text of subitems (6) to (8), see M.R.]

3 (9) the date the notice was served on the
4 employee and the employee's attorney;

5 (10) verification and information identifying the
6 person making the proposal to discontinue benefits;

7 (11) instructions to the employee, including who
8 to contact for more information and how to request a conference
9 or hearing;

10 (12) copies of relevant medical reports; and

11 (13) copies of any other relevant documents.

12 Supporting documents must be attached to all copies of the
13 discontinuance notice when served.

14 C. The liability of the insurer to make compensation
15 payments continues at least until the notice of intention to
16 discontinue benefits is received by the division and served on
17 the employee and the employee's attorney, except that benefits
18 may be discontinued on the date the employee returned to work
19 and temporary partial benefits may be discontinued as of the
20 date the employee ceased employment. ~~Where benefit amounts are
21 difficult to determine because the employee's circumstances have
22 changed, payments up to the date of the notice may be averaged
23 based on benefit payments in the 26 weeks before the change.~~

24 Continuation of benefits following service and filing of a
25 notice of intention to discontinue benefits is set out in part
26 5220.2640, subpart 3.

27 Subp. 5. [See repealer.]

28 Subp. 6. Penalties. Where compensation is discontinued,
29 reduced, or suspended in violation of this part, a penalty may
30 be assessed under parts 5220.2720, 5220.2760, and 5220.2790.

31 5220.2640 DISCONTINUANCE CONFERENCES.

32 Subpart 1. Purpose. The purpose of an administrative
33 conference under Minnesota Statutes, section 176.239, is to
34 determine whether reasonable grounds exist for a discontinuance
35 of weekly benefits. The conference is an informal procedure to

1 encourage discussion and clarify issues. If the parties do not
2 reach an agreement on the issues, they will be resolved by a
3 decision of the division. If all affected parties consent, or
4 if notice of joinder of rehabilitation or medical issues has
5 been given under part 5220.2610, subpart 2, rehabilitation and
6 medical issues may also be discussed and clarified and decisions
7 issued under Minnesota Statutes, sections 176.102, 176.103, and
8 176.106.

9 Subp. 2. Request. The employee may request that the
10 division schedule an administrative conference to discuss a
11 proposed discontinuance of benefits. If the proposed
12 discontinuance is based on a reason other than a return to work,
13 the employee's request for a conference must be personally
14 delivered, received by, or telephoned to the department no later
15 than 12 calendar days from the date a notice of intention to
16 discontinue benefits, which was served on the employee and the
17 employee's attorney, was received by the division. If the
18 proposed discontinuance is based on a return to work, the
19 employee's request must be received by the division within 30
20 days of the reported date of the employee's return to work.
21 Allowance will be made, if appropriate, for nonreceipt or delay
22 under Minnesota Statutes, section 176.285.

23 If the insurer discontinues, reduces, or suspends benefits
24 without properly serving and filing a notice of intention to
25 discontinue benefits and with the required attachments in a
26 situation in which a notice of intention to discontinue benefits
27 was required under part 5220.2630 and Minnesota Statutes,
28 section 176.238, the employee may request an administrative
29 conference within 40 days after the employee received the last
30 payment but no later than 12 days after a notice of intention to
31 discontinue benefits is properly served and filed, or 30 days
32 after the employee returned to work if the notice is properly
33 served and filed within 14 days after the insurer has notice of
34 the employee's return to work.

35 The employee's request should be on the form provided by
36 the insurer under part 5220.2630, subpart 4, item A.

1 Subp. 3. Continuation of benefits.

2 A. If an employee requests an administrative
3 conference within the time set out in this part, benefits must
4 be paid through the date of the conference unless:

5 (1) the employee has withdrawn the request for a
6 conference;

7 (2) the commissioner determines that no
8 conference is necessary and allows the discontinuance;

9 (3) the employee fails to appear at the
10 conference without good cause ~~and no continuance is allowed~~;

11 (4) the employee has returned to work in which
12 case benefits are due through the date of the employee's return
13 to work;

14 (5) the employee is receiving temporary partial
15 benefits and the employee is no longer employed;

16 (6) the employee dies;

17 (7) no plausible information is presented by the
18 employee to dispute the proposed discontinuance of the benefits;

19 (8) notice of maximum medical improvement was
20 served more than 90 days before the administrative conference;

21 (9) an approved retraining plan ended more than
22 90 days before the administrative conference;

23 (10) the employee has failed to make a good faith
24 effort to participate in the rehabilitation plan before the
25 administrative conference, but is making a good faith effort at
26 the time of the conference, in which case benefits may be
27 discontinued between the date the notice of intention to
28 discontinue benefits was served and filed and the administrative
29 conference date;

30 (11) the workers' compensation claim was
31 mistakenly accepted by the insurer and primary liability for the
32 entire injury is now denied;

33 (12) the employee has received temporary partial
34 benefits for the maximum period allowed under Minnesota
35 Statutes, section 176.101, subdivision 2;

36 (13) the employee has completely recovered from

1 the injury; or

2 (14) the employee has voluntarily retired from
3 the labor market.

4 B. If an employee's request for a continuance under
5 part 5220.2610, subpart 7, is granted and the employee is
6 awarded ongoing benefits, benefits must be paid through the date
7 of the conference and continuing. If the employee's request for
8 a continuance is granted and the employee is not awarded
9 benefits, benefits need not be paid during the period of
10 continuance. If the employer or insurer requested the
11 continuance, benefits must be paid during the period of
12 continuance. If the employee and insurer's joint request for a
13 continuance is granted, benefits must be paid during the period
14 of continuance unless the employee agrees in writing to waive
15 the interim payment and await a decision regarding payment under
16 subpart 7 following the administrative conference.

17 Subp. 4. Scheduling. Subject to part 5220.2610, subpart
18 7, a discontinuance conference must be set within the time
19 limits set by this subpart. Following a notice of intention to
20 discontinue benefits, the division shall schedule an
21 administrative conference no later than ten calendar days after
22 the division's receipt of a timely request for a conference. If
23 no notice of intention to discontinue benefits was filed as
24 required by part 5220.2630 and the employee requests a
25 conference, the division shall schedule a conference no later
26 than ten calendar days after the division's receipt of the
27 employee's request if the conference request is received within
28 40 days from the date the employee's last benefit payment was
29 received.

30 Subp. 5. [See repealer.]

31 [For text of subp 6, see M.R.]

32 Subp. 7. The decision. The decision must be based on
33 information presented at the conference and information from the
34 division file relating to the department's authority to decide
35 the issue, and information contained in the notice of intention
36 to discontinue benefits and any attachments. The division shall

1 mail a copy of the decision to the parties no later than five
2 working days from the date of the conference.

3 Subp. 8. [See repealer.]

4 Subp. 9. Penalties. Penalties may be imposed for an
5 improper discontinuance of compensation under part 5220.2720 and
6 Minnesota Statutes, section 176.238, subdivision 10, and for
7 unreasonable or inexcusable delay or other grounds under parts
8 5220.2760 and 5220.2790 and Minnesota Statutes, section 176.225,
9 subdivisions 1 and 5.

10 5220.2655 SMALL CLAIMS COURT OPERATIONS.

11 Subpart 1. Jurisdiction. Only claims within the
12 jurisdictional limits of Minnesota Statutes, section 176.2615,
13 as described in items A to D, may be brought in small claims
14 court. The claim may be heard in small claims court if all
15 parties agree to submit the claim to the jurisdiction of the
16 small claims court and:

17 A. the claim is for rehabilitation benefits only
18 under Minnesota Statutes, section 176.102;

19 B. the claim is for medical benefits only under
20 Minnesota Statutes, section 176.135;

21 C. the claim in its total amount does not equal more
22 than \$5,000; or

23 D. where the claim is for apportionment or for
24 contribution and reimbursement, no counterclaim in excess of
25 \$5,000 is asserted.

26 Subp. 2. Statement of claim. An employee, employer,
27 insurer, self-insured employer, or claims service agent for a
28 self-insured employer or insurer may file a statement of claim
29 in a format or form prescribed by the commissioner which has
30 been signed by all parties or with signed attachments of the
31 parties consenting to the jurisdiction of the small claims
32 court. The statement of claim must provide:

33 A. the name and social security number of the
34 employee;

35 B. the address and telephone number of the employee;

1 C. the name, title, address, and telephone number of
2 the insurer's claim representative and claim number;

3 D. the name, address, and telephone number of the
4 potential intervenor or other payor or provider of benefits
5 received by an employee following an alleged work-related
6 injury;

7 E. a statement of the benefits claimed, including, if
8 appropriate, value in dollars;

9 F. attached supporting documentation;

10 G. defenses to the claim and supporting
11 documentation;

12 H. the statement that the judge's award or order
13 determining the dispute is final and that the matter may not be
14 appealed, used as evidence, or further considered in any other
15 forum or proceeding; and

16 I. a statement providing for mutual waiver of
17 representation by attorneys if the parties agree.

18 Subp. 3. **Notice.** The department shall notify all parties
19 by mail of the date, time, and place of the small claims court
20 hearing.

21 Subp. 4. **Hearing.** All parties must appear at the hearing
22 fully prepared with the witnesses, exhibits, and evidence the
23 parties choose to present to the presiding judge. Parties may
24 agree to appear without representation by attorneys.

25 Participation of attorneys is permitted to the extent that the
26 judge determines is helpful to the resolution of the case.

27 Attorney's fees shall be awarded subject to the limitations of
28 Minnesota Statutes, section 176.081, only if the judge
29 determines that the attorney's participation was significantly
30 instrumental in the disposition of the case.

31 Subp. 5. **Decision.** The judge shall issue findings and an
32 order deciding the issues within three working days of the
33 completion of the hearing. No appeals can be taken. In the
34 event of a settlement, the judge shall issue a settlement order
35 within three working days of receipt of a settlement agreement.

1 5220.2670 MEDIATION.

2 Subpart 1. Evaluation for mediation. The commissioner may
3 refer, or any party to a workers' compensation matter or dispute
4 may, at any stage of the proceedings, request evaluation of a
5 disputed matter by the mediation unit to determine suitability
6 of the matter for further action by the unit. If the matter is
7 found to be suitable for resolution by the mediation process,
8 the mediation unit will contact the parties or their attorneys,
9 if they are represented, to attempt conciliation or schedule a
10 mediation session.

11 Subp. 2. Conciliation. Conciliation is the resolution of
12 a matter through informal means without conducting a full
13 conference. If the matter is appropriate for conciliation, the
14 mediation unit may conciliate an agreement of the parties.

15 [For text of subps 3 to 5, see M.R.]

16 5220.2680 SECOND INJURY LAW.

17 Subpart 1. [See repealer.]

18 Subp. 2. [See repealer.]

19 Subp. 3. [See repealer.]

20 Subp. 4. [See repealer.]

21 Subp. 5. Notice of intention to claim reimbursement.

22 Notice of intention to claim reimbursement under Minnesota
23 Statutes, section 176.131, subdivision 6, must be on forms
24 prescribed by the division. In a claim under Minnesota
25 Statutes, section 176.131, subdivision 1, forms must be filed
26 within one year after the payment of sufficient weekly benefits
27 or medical expenses to make claim against the special
28 compensation fund. In a claim under Minnesota Statutes, section
29 176.131, subdivision 2, forms must be filed within one year from
30 the first payment of weekly benefits or medical expense. The
31 insurer must file with the division the original and one copy of
32 the notice of intention to claim reimbursement.

33 Subp. 6. Claim for reimbursement. Reimbursement will be
34 made by an order of the division or workers' compensation court
35 of appeals from the special compensation fund on a yearly basis

1 upon application for reimbursement on forms prescribed by the
2 division. The insurer must file the original and one copy of
3 the claim for reimbursement with the division. The application
4 must be verified, set out in detail expenditures made and
5 expenditures for which reimbursement is claimed, and must be
6 supported by medical reports, showing the nature and extent of
7 disability and relationship to the injury and physical
8 impairment for which reimbursement is claimed.

9 5220.2690 SUBROGATION INTEREST IN THIRD-PARTY RECOVERY.

10 [For text of subps 1 and 2, see M.R.]

11 Subp. 3. Determination of subrogation interest. The
12 insurer or employee must comply with the procedures in this part
13 in submitting a petition to the workers' compensation division
14 for an order determining subrogation interest and credit.

15 A. The petition must be on the form prescribed by the
16 commissioner and contain substantially the following:

17 [For text of subitems (1) to (4), see M.R.]

18 (5) the name, address, and telephone number of
19 the attorney for each party if any; and

20 (6) calculation of the subrogation interest,
21 including the future credit amount and the sum payable to the
22 employee.

23 [For text of items B and C, see M.R.]

24 D. If a party disagrees with the petitioner's
25 request, the disagreeing party shall serve an answer on all
26 parties to the third-party action and parties to the workers'
27 compensation proceeding within 20 days of service of the
28 petition. If the answering party disagrees with the
29 petitioner's calculation of the subrogation interest, future
30 credit, or sum payable to the employee, the answering party must
31 propose alternative calculations. The answer and a proof of
32 service must be filed with the division within 20 days of
33 service of the petition.

34 E. Upon receipt of the petition and any answer to the
35 petition, the division will issue an order containing the

1 following:

2 [For text of subitems (1) to (4), see M.R.]

3 F. If an appeal of the order is not received by the
4 division within 30 days, the order will become the final order.

5 [For text of subp 4, see M.R.]

6 5220.2720 IMPROPER DISCONTINUANCES; PENALTY.

7 Subpart 1. Basis. A penalty assessment for improper
8 discontinuance will be made by the division, if appropriate
9 where:

10 A. benefits were discontinued without timely notice
11 to the employee and the employee's attorney as required under
12 part 5220.2630 and Minnesota Statutes, section 176.238;

13 B. the discontinuance occurred despite an
14 administrative determination denying a request to discontinue
15 under part 5220.2640 and Minnesota Statutes, section 176.239;

16 [For text of item C, see M.R.]

17 D. an administrative conference was requested and the
18 request was not withdrawn, the discontinuance occurred before
19 the date of the administrative conference, except where allowed
20 by part 5220.2640, subpart 3; or

21 E. when a notice of intention to discontinue benefits
22 is required to be filed but the discontinuance is retroactive,
23 taking effect prior to the date that the notice of intention to
24 discontinue benefits is served and filed with the division or
25 served on the employee, except as allowed by part 5220.2630.

26 Subp. 2. Amount. When the division makes a determination
27 under subpart 1, notice will be given and fines assessed as
28 follows:

29 A. (1) If an insurer has not had a penalty assessed
30 in the two-year period before the assessment for violation of a
31 particular item in subpart 1, the division will send a warning
32 notice to the insurer that the division has determined the
33 discontinuance is improper. The warning notice will direct the
34 insurer to pay the improperly discontinued benefits and serve
35 and file any required notice of discontinuance within ten days

1 of service of notice or a penalty will be assessed.

2 (2) If the improperly discontinued benefits are
3 not paid and any proper discontinuance filed within the
4 following time periods after the warning notice is served, the
5 division will send notice that a penalty is imposed as follows:

- 6 (a) 11 to 20 days late, \$100;
- 7 (b) 21 to 30 days late, \$300;
- 8 (c) 31 to 60 days late, \$400; and
- 9 (d) over 60 days late, \$500.

10 B. If an insurer has had a penalty assessed in the
11 two-year period before the assessment for violation of an item
12 in subpart 1 and again violates the same item, the following
13 penalties apply if the improperly discontinued benefit is not
14 paid and a discontinuance notice is not filed when required:

- 15 (1) one to ten days late, \$200;
- 16 (2) 11 to 20 days late, \$300;
- 17 (3) 21 to 30 days late, \$400; and
- 18 (4) over 30 days late, \$500.

19 [For text of item C, see M.R.]

20 D. Alternatively, a penalty may be assessed under
21 Minnesota Statutes, section 176.221, subdivision 3, payable to
22 the assigned risk safety account, of up to 100 percent of the
23 amount of compensation to which the employee is entitled.

24 E. In addition to a penalty payable to the special
25 compensation fund or the assigned risk safety account under this
26 part, a penalty may be assessed under part 5220.2760.

27 [For text of subp 3, see M.R.]

28 5220.2740 FAILURE TO PAY OR DENY MEDICAL CHARGES; PENALTY.

29 Subpart 1. **Basis.** Under Minnesota Statutes, section
30 176.221, subdivision 6a, a penalty may be assessed where payment
31 or denial of medical charges is not made in a timely manner as
32 provided in part 5221.0600 and Minnesota Statutes, section
33 176.135.

34 Subp. 2. **Amount.** Under Minnesota Statutes, section
35 176.221, subdivision 3a, a penalty of up to \$1,000 shall be

1 assessed as follows:

- 2 A. one to 15 days late, \$250;
- 3 B. 16 to 30 days late, \$500;
- 4 C. 31 to 60 days late, \$750; and
- 5 D. over 60 days late, \$1,000.

6 Subp. 3. [See repealer.]

7 Subp. 4. Payable to. Penalties assessed under this part
8 are payable to the assigned risk safety account.

9 Subp. 5. Interest. Interest on the sums owed under
10 Minnesota Statutes, section 176.221, subdivision 8, is payable
11 to the health care provider.

12 5220.2750 FAILURE TO MAKE TIMELY PAYMENT OF ECONOMIC RECOVERY
13 COMPENSATION OR IMPAIRMENT COMPENSATION; PENALTY.

14 [For text of subpart 1, see M.R.]

15 Subp. 2. Amount. Under Minnesota Statutes, section
16 176.221, subdivisions 3 and 6a, a penalty of up to 100 percent
17 of the amount owing may be assessed.

18 Subp. 3. Payable to. The penalty is payable to the
19 assigned risk safety account.

20 5220.2760 ADDITIONAL AWARD AS PENALTY.

21 Subpart 1. Basis. Penalties under Minnesota Statutes,
22 section 176.225, subdivision 1, in an amount up to 25 percent of
23 the total amount of the compensation award may be assessed by
24 the division on the grounds listed in that section, including:

- 25 A. underpaying, delaying payment of, or refusing to
26 pay within 14 days of the filing of an order by the division or
27 a compensation judge the workers' compensation court of appeals
28 or the Minnesota Supreme Court unless the order is appealed
29 within the time limits for an appeal. If the payor does not
30 appeal the order, payments made more than 14 days after the
31 order is served and filed are late, however, the division shall
32 not issue a penalty under this part unless payment is made after
33 the 30th day following a final order. A penalty may be issued,
34 however, for a payment after the 14th day and through the 30th
35 day following a settlement award under Minnesota Statutes,

1 section 176.521. Payments made after the 14th day must include
 2 interest pursuant to Minnesota Statutes, section 176.221,
 3 subdivision 7, or 176.225, subdivision 5, to the payee;

4 [For text of item B, see M.R.]

5 C. other violations under Minnesota Statutes, section
 6 176.225, subdivision 1, paragraph (a), (b), (d), or (e).

7 This part does not affect the employee's independent right
 8 to seek penalties by filing a claim petition under Minnesota
 9 Statutes, section 176.271.

10 Subp. 2. **Amount.** A penalty assessed under this part will
 11 be for at least five percent of the compensation owing and shall
 12 be assessed as follows:

13 A. one to five days late, five percent;

14 B. six to 15 days late, ten percent;

15 C. 16 to 30 days late, 15 percent;

16 D. 31 to 60 days late, 20 percent; and

17 E. over 60 days late, 25 percent.

18 [For text of subp 3, see M.R.]

19 5220.2770 FAILURE TO PAY OR DENY; PENALTY.

20 [For text of subpart 1, see M.R.]

21 Subp. 2. **Amount.** The commissioner's designee must use the
 22 following procedure to determine the amount of the penalty.

23 [For text of item A, see M.R.]

24 B. Calculation of the amount of the penalty will be
 25 in the following manner:

26 [For text of subitems (1) and (2), see M.R.]

27 (3) the penalty due for the number of days late
 28 is calculated under Minnesota Statutes, section 176.221,
 29 subdivision 3.

30 [For text of item C, see M.R.]

31 D. Where no compensation has been paid but the
 32 insurer has failed to file a denial of liability within the
 33 statutory 14- or 30-day limit on a claim required to be reported
 34 to the division, a penalty of up to \$1,000 may be assessed under
 35 Minnesota Statutes, section 176.221, subdivision 3a, as follows:

- 1 (1) one to 15 days late, \$100;
- 2 (2) 16 to 30 days late, \$150;
- 3 (3) 31 to 60 days late, \$350; and
- 4 (4) over 60 days late, \$500.

5 If the insurer has been assessed five or more penalties for
6 violation of this item in the two-year period before the
7 assessment, a penalty of \$1,000 shall be assessed for a
8 subsequent violation.

9 E. Where the insurer has filed a frivolous denial
10 under part 5220.2570, subpart 10, a penalty may be assessed
11 under Minnesota Statutes, section 176.221, subdivision 3a, as
12 follows:

- 13 (1) one to five violations in the two-year period
14 before the assessment, \$500; and
- 15 (2) six or more violations in the two-year period
16 before the assessment, \$1,000.

17 Subp. 3. **Payable to.** This penalty is payable to the
18 assigned risk safety account.

19 [For text of subp 4, see M.R.]

20 5220.2780 FAILURE TO PAY UNDER ORDER; PENALTY.

21 Subpart 1. **Basis.** Where payment of compensation or
22 expenses is not made within 14 days following an order as
23 required by Minnesota Statutes, section 176.221, subdivisions 6a
24 and 8, the division may assess the penalties provided in
25 Minnesota Statutes, section 176.221, subdivision 3 or 3a,
26 however, the division shall not issue a penalty under this part
27 unless payment is made after the 30th day following a final
28 order. A penalty may be issued, however, for a payment after
29 the 14th day and through the 30th day following a settlement
30 award under Minnesota Statutes, section 176.521. Payments made
31 after the 14th day must include interest to the payee.

32 Subp. 2. **Amount.** The penalty available under Minnesota
33 Statutes, section 176.221, subdivision 3 or 3a, shall be
34 assessed where there has been a failure to pay under an order
35 which has not been appealed. If the payor chooses not to appeal

1 the order, payments made more than 14 days after the order is
2 served and filed are late. Each day after the 14th day is
3 considered a day late. Penalties under Minnesota Statutes,
4 section 176.221, subdivision 3a, shall be assessed as follows:

- 5 A. ~~17~~ one to 15 days late, \$250;
- 6 B. 16 to 30 days late, \$500;
- 7 ~~B.~~ C. 31 to 60 days late, \$750; and
- 8 ~~E.~~ D. over 60 days late, \$1,000.

9 Subp. 3. Payable to. The penalty is payable to the
10 assigned risk safety account.

11 5220.2790 INEXCUSABLE DELAY IN MAKING PAYMENT, INCREASE IN
12 PAYMENT.

13 Subpart 1. Basis.

14 [For text of item A, see M.R.]

15 B. Where other payment of temporary total, temporary
16 partial, permanent total, or permanent partial disability
17 benefits is not made within three business days of the date
18 provided by statute or rule on more than three occasions in any
19 12-month period, the failure is deemed inexcusable.

20 [For text of subps 2 and 3, see M.R.]

21 Subp. 4. Assessment.

22 A. The procedure for assessment of a penalty under
23 subpart 1, item A, must be made as provided in part 5220.2770
24 except that only ten percent of the amount delayed shall be
25 assessed as a penalty under this part.

26 B. The calculation of a penalty under subpart 1, item
27 B, for late payment of temporary total, temporary partial, or
28 permanent total disability benefits must be as follows:

29 [For text of subitems (1) to (3), see M.R.]

30 (4) The penalty is calculated at ten percent of
31 the sum paid in an untimely manner.

32 C. The calculation of a penalty for late payment of
33 permanent partial disability benefits, including economic
34 recovery compensation and impairment compensation under subpart
35 1, item B, must be as follows:

1 [For text of subitem (1), see M.R.]

2 (2) if payment of the sum due is not made within
3 three business days of the due date on more than three occasions
4 in any 12-month period, a penalty of ten percent of the sum paid
5 in an untimely manner is assessed.

6 5220.2810 FAILURE TO RELEASE MEDICAL DATA; PENALTY.

7 [For text of subps 1 and 2, see M.R.]

8 Subp. 3. Amount.

9 A. If a collector or a possessor of medical data was
10 not issued a warning under this part in the preceding year
11 12-month period, the division must send a warning letter before
12 a monetary penalty is assessed. The warning letter must advise
13 the collector or possessor against whom the penalty is sought of
14 the obligation to provide medical data under Minnesota Statutes,
15 section 176.138, and that a penalty will be assessed if it fails
16 to provide the requested data within seven working days after
17 the warning letter and to file written verification of the
18 release of the data or a copy of the data with the division
19 within that time.

20 B. If the requested data is not provided and written
21 verification filed with the division within seven working days
22 after receipt of a required warning letter or the division's
23 request where no warning letter is required, a penalty of \$100
24 shall be imposed. If that collector or possessor has had more
25 than three penalties assessed or warning letters sent for
26 violation of this part in the preceding 12 months, the penalty
27 will be \$200 as well as further penalties under items C and D.

28 C. If the requested data is not provided and written
29 verification filed with the division within 30 days after the
30 date of a required warning letter or the division's request
31 where no warning letter is required, a penalty of \$150 will be
32 imposed.

33 D. If the requested data is not provided and written
34 verification filed with the division within 60 days after the
35 date of a required warning letter or the division's request

1 where no warning letter is required, a penalty of \$200 will be
2 imposed.

3 Subp. 4. Payable to. The amount of any penalty assessed
4 under this part is payable to the assigned risk safety account.

5 5220.2820 FAILURE TO MAKE TIMELY REPORT OF INJURY; PENALTY.

6 Subpart 1. Basis. A penalty may be assessed under
7 Minnesota Statutes, section 176.231, subdivision 10:

8 A. against the employer, if a work-related death or
9 serious injury occurs to an employee and the commissioner is not
10 notified within 48 hours;

11 B. against the employer, if any other injury which
12 must be reported to the division occurs and the first report of
13 injury is received by the insurer more than ten days after the
14 first day of lost time due to the injury or ten days after the
15 date when notice of lost time due to the injury was received by
16 the employer, whichever is later; or

17 C. against the insurer, if:

18 (1) an injury which must be reported to the
19 division occurs;

20 (2) the first report of injury is received by the
21 insurer within the ten-day period described in item B; and

22 (3) the report is received by the division more
23 than 14 days after the first day of lost time due to the injury,
24 or 14 days after the date when notice of lost time due to the
25 injury was received by the employer, whichever is later.

26 Subp. 2. Amount. If the employer or insurer has violated
27 subpart 1 and has had no similar violations in the 12-month
28 period prior to the assessment, an advisory letter informing the
29 employer or insurer of the violation and the statutory
30 requirement must be sent. If the employer or insurer has had
31 one violation of subpart 1 in the past 12 months, a penalty of
32 \$50 must be assessed. If the employer or insurer has had two
33 violations in the past 12 months, a penalty of \$100 must be
34 assessed. If the employer or insurer has had three violations
35 in the past 12 months, a penalty of \$150 must be assessed. If

1 the employer or insurer has had four or more violations in the
2 past 12 months, a penalty of \$200 must be assessed.

3 Subp. 3. Assessment. The penalty must be assessed by
4 letter informing the employer or insurer of the number of
5 violations in the past 12 months on record and the amount of the
6 penalty. The letter must contain instructions for payment.

7 Subp. 4. Payable to. The penalty is payable to the
8 assigned risk safety account.

9 Subp. 5. [See repealer.]

10 5220.2830 OTHER FAILURE TO FILE REPORT IN MANNER OR WITHIN TIME
11 LIMITS PROVIDED; PENALTY.

12 [For text of subpart 1, see M.R.]

13 Subp. 2. Amount. If, after a letter request from the
14 commissioner or authorized designee, a report under this part is
15 not received by the division within 21 days, a penalty of \$50
16 must be assessed. A failure to file a report after a second
17 request will result in an additional penalty assessment of
18 \$150. A subsequent failure will result in penalty assessments
19 of \$200.

20 Subp. 3. Payable to. The penalty is payable to the
21 assigned risk safety account.

22 5220.2840 FAILURE TO MAKE PAYMENT OR REPORT TO SPECIAL FUND;
23 PENALTY.

24 Subpart 1. Due date. For workers' compensation benefits
25 paid from January 1 through June 30, the due date of the
26 completed assessment form and corresponding assessment amount is
27 August 15 of the same calendar year.

28 For workers' compensation benefits paid from July 1 through
29 December 31, the due date of the corresponding assessment amount
30 is March 1 of the following calendar year.

31 Notice of the assessment rate and instructions for payment
32 will be issued by the fund 45 or more days before the due date.

33 Insurers no longer licensed to provide, or no longer
34 providing workers' compensation insurance in Minnesota, and
35 employers no longer self-insured to provide workers'

1 compensation benefits must continue to file the assessment form
 2 until five years have elapsed since a policy of workers'
 3 compensation insurance or self-insurance was provided, or three
 4 years after the last indemnity payment was made, whichever is
 5 later. Insurers not owing an assessment must report zero
 6 liability during the required reporting years.

7 Subp. 2. Basis. A penalty will be assessed under
 8 Minnesota Statutes, section 176.129, subdivision 10, where
 9 either:

10 [For text of item A, see M.R.]

11 B. written certification that the assessment report
 12 and assessment payment will not be made by the due date because
 13 of reasons beyond the control of the insurer or because no
 14 assessment is owing, is not received by the special compensation
 15 fund on or before the due date.

16 Subp. 3. Amount. Within 30 days of the due date, the
 17 special compensation fund will give notice of penalty to those
 18 who have neither filed the completed assessment form and paid
 19 the assessment amount, nor submitted a certified reason for
 20 nonpayment by the due date as follows:

21 A. Either:

22 (1) 2.5 percent of the assessment amount due if
 23 the assessment payment is received at the fund within five days
 24 after the due date;

25 (2) five percent of the assessment amount due if
 26 the assessment payment is received at the fund within six to 30
 27 days after the due date;

28 (3) ten percent of the assessment amount due if
 29 the assessment payment is received at the fund within 31 to 60
 30 days after the due date; or

31 (4) 15 percent of the assessment amount due if
 32 the assessment payment is received at the fund 61 or more days
 33 after the due date;

34 B. \$500, whichever is greater; or

35 C. \$200 for failure to timely report under subpart 2,
 36 item B, that no assessment is due.

1 Subp. 4. Payable to. Both the assessment amount and any
2 penalty due under this part are payable to the assigned risk
3 safety account.

4 [For text of subp 5, see M.R.]

5 5220.2850 FAILURE OF UNINSURED OR SELF-INSURED TO PAY; PENALTY.

6 The fund director, through an authorized designee or
7 representative, will seek reimbursement of benefits paid from
8 the special fund and the penalties provided under Minnesota
9 Statutes, sections 176.181, subdivision 3, and 176.183,
10 subdivision 2, by filing petitions for contribution and
11 reimbursement or recovery, and through other collection
12 mechanisms or remedies available in the civil courts.

13 5220.2860 FAILURE TO INSURE; PENALTY.

14 Penalties for failure to insure will be assessed by the
15 commissioner as provided by Minnesota Statutes, section 176.181,
16 subdivision 3. The employer may object to the penalty as
17 provided in part 5220.2870, except that the objection must be
18 served and filed within ten working days from the date the
19 notice of assessment was served on the employer.

20 5220.2870 PENALTY OBJECTION AND HEARING.

21 A party to whom notice of assessment has been issued may
22 object to the penalty assessment by filing a written objection
23 with the division on the form prescribed by the commissioner.
24 The objection must be served on the special compensation fund if
25 the penalty is payable to the special compensation fund or the
26 assigned risk safety account in addition to filing the objection
27 with the division, and on the employee if the penalty is payable
28 to the employee. The objection must be filed and served within
29 30 days after the date the notice of assessment was served on
30 that party by the division. The written objection must contain
31 a detailed statement explaining the legal or factual basis for
32 the objection and including any documentation supporting the
33 objection. Upon receipt of a timely objection, unresolved
34 issues shall be referred for a hearing to determine the amount

1 and conditions of any penalty. Objections which are not served
2 and filed within the 30-day objection period must be dismissed
3 by a compensation judge.

4 5220.2920 ATTORNEY FEES.

5 Subpart 1. **Applicable principles.** Attorney fees shall be
6 awarded in accordance with this part and Minnesota Statutes,
7 section 176.081, after resolution of a disputed benefit or
8 service issue, whether the matter is settled or a decision is
9 issued.

10 A contingent fee provided by Minnesota Statutes, section
11 176.081, must not be based on the time an attorney spends on a
12 case. It must be based on the amount awarded to a client which
13 was genuinely in dispute. The contingent fee provided by
14 Minnesota Statutes, section 176.081, subdivision 1, is presumed
15 reasonable. If measured on an hourly basis, a contingent fee
16 may seem unreasonably high or unreasonably low. On average,
17 however, the attorney is reasonably compensated but not
18 excessively compensated, on a contingent basis. It is contrary
19 to the legislature's protective policy of administrative
20 regulation of attorney fees in workers' compensation cases under
21 Minnesota Statutes, section 176.081, to allow a contingent fee
22 to stand when it provides a high hourly rate, but to routinely
23 grant excess fees under Minnesota Statutes, section 176.081,
24 subdivision 2, when the contingent fee provides a low hourly
25 rate. The attorney fee in a particular case is not unreasonable
26 simply because the hourly rate is below the attorney's usual
27 billing rate. An attorney who enters into a retainer agreement
28 with an employee or dependent under which the attorney agrees to
29 accept a fee that is less than the fee presumed reasonable by
30 Minnesota Statutes, section 176.081, subdivision 1, may not
31 claim a higher fee unless a new retainer agreement providing a
32 higher fee is executed. If, during the course of representation
33 involving a pending claim, an attorney requests that the client
34 sign a new retainer agreement, the attorney must notify the
35 client by conspicuous notice in the new retainer agreement that

1 the client is not required by law to agree to a fee higher than
2 a fee already negotiated and agreed upon by the attorney and
3 client.

4 Subp. 2. Withholding of attorney fees. Upon receipt of
5 the notice of representation, the employer and insurer may
6 withhold attorney fees on genuinely disputed portions of claims
7 under subpart 5 and Minnesota Statutes, section 176.081.

8 Attorney fees must be withheld on genuinely disputed portions of
9 claims if the employee's attorney so requests.

10 Subp. 3. Statement of fees, petition for disputed or
11 excess attorney fees. The following procedures must be followed
12 in claiming fees.

13 A. If the claim for attorney fees does not exceed the
14 fees allowed by Minnesota Statutes, section 176.081, subdivision
15 1, clause (a), the party claiming fees shall fully complete and
16 file a statement of attorney fees on a form prescribed by the
17 commissioner, including:

- 18 (1) information identifying the employee,
19 employer, insurer, and any adjusting company;
- 20 (2) claim numbers or codes;
- 21 (3) the date of injury or disease;
- 22 (4) ~~in-the-format-provided-in-subpart-5,~~ a list
23 of benefits obtained which were genuinely in dispute and which
24 would not have been recovered without the attorney's
25 involvement, and the total dollar amount of benefits obtained;
- 26 (5) information concerning any retainer received
27 from the employee;
- 28 (6) information concerning expense advancement;
- 29 (7) information regarding the withholding of
30 attorney fees, and the amount of attorney fees previously paid
31 for the same injury;
- 32 (8) the specific dollar amount claimed for
33 attorney fees;
- 34 (9) information regarding the attorney's license
35 to practice law in the state;
- 36 (10) a statement of the statutory basis or other

1 legal authority for attorney fees;

2 (11) a notice regarding how to object to the
3 requested fees;

4 (12) information identifying the employee's
5 attorney; and

6 (13) the number of hours spent in the employee's
7 representation and the attorney's hourly fee.

8 The statement must be accompanied by the retainer
9 agreement, if not previously filed, and proof of service on the
10 employer or insurer, and employee.

11 B. If an attorney claims fees in excess of the amount
12 listed in Minnesota Statutes, section 176.081, subdivision 1,
13 clause (a), or an objection to the statement under item A is
14 filed, or it is requested that fees be assessed against the
15 employer or insurer for refusal to pay rehabilitation or medical
16 benefits or provide rehabilitation or medical services or the
17 requested fees were incurred in connection with an
18 administrative conference under Minnesota Statutes, section
19 176.102, 176.135, 176.136, or 176.239, the attorney shall fully
20 complete and file a petition for disputed or excess attorney
21 fees on a form prescribed by the commissioner, including:

22 (1) information identifying the employee,
23 employer, insurer, and any adjusting company;

24 (2) claim numbers or codes;

25 (3) date of the injury or disease;

26 (4) an exhibit showing specific legal services
27 performed, the date performed, and the time spent;

28 (5) the number of hours spent in the employee's
29 representation and the attorney's hourly fee;

30 (6) a statement of expertise and experience in
31 workers' compensation matters;

32 (7) a complete description of the factual,
33 medical, and legal issues in dispute;

34 (8) the nature of proof required in the case;

35 (9) ~~in-the-format-provided-by-subpart-5,~~ a list
36 of the benefits obtained which were genuinely in dispute and

1 which would not have been recovered without the attorney's
2 involvement, and the total dollar amount of benefits obtained;

3 (10) information concerning any retainer;

4 (11) the amount the employee advanced for

5 expenses;

6 (12) the specific dollar amount claimed in fees;

7 (13) information regarding the withholding of

8 attorney fees, and the amount of attorney fees previously paid

9 for the same injury;

10 (14) a list of the disbursements incurred and if

11 the disbursement has been paid, by whom;

12 (15) information regarding the attorney's license

13 to practice law in the state;

14 (16) a statement of the statutory basis or other

15 legal authority for attorney fees;

16 (17) whether or not a hearing on attorney fees is

17 requested;

18 (18) information identifying the employee's

19 attorney; and

20 (19) where all or a portion of the fee may be

21 payable by the employee, the prescribed notice to the employee

22 requesting that the employee return the attached form within ten

23 days of the employees's receipt of the notice, indicating

24 whether or not the employee agrees that the requested fee should

25 be awarded and notifying the employee of the relevant factors in

26 determining the attorney fee.

27 The petition must be accompanied by a copy of the retainer

28 agreement, if not previously filed, proof of service on the

29 employer or insurer, and employee, and a form prescribed by the

30 commissioner upon which the employee indicates agreement or

31 disagreement with the claim for excess fees.

32 Subp. 4. Fees, objection. If a timely objection to the

33 statement of attorney fees or petition for excess fees is filed,

34 the compensation judge or settlement judge shall use this part

35 and Minnesota Statutes, section 176.081, subdivision 5, to

36 determine whether the fee is justified.

1 Subp. 5. Genuinely disputed portions of claims. The
 2 ~~following information must be included in the statement of~~
 3 ~~attorney fees or petition for excess attorney fees.---Items A and~~
 4 ~~B are~~ This subpart provides the applicable principles for the
 5 commissioner, compensation judge, or workers' compensation court
 6 of appeals to determine whether the benefit paid or payable was
 7 genuinely disputed for the purpose of calculation of a
 8 contingent fee under Minnesota Statutes, section 176.081,
 9 subdivision 1.

10 A. The statement of attorney fees or petition for
 11 excess attorney fees must include, for each benefit paid or
 12 awarded for which an attorney fee is sought:

13 ~~(1) whether the rate or amount of each benefit~~
 14 ~~was disputed and if so, the amount disputed;~~

15 ~~(2) whether the duration of each benefit was~~
 16 ~~disputed and if so, the period for which the benefit was~~
 17 ~~disputed;~~

18 ~~(3) whether eligibility for each benefit was~~
 19 ~~disputed;~~

20 ~~(4) the rate or amount, duration, and period of~~
 21 ~~eligibility for each benefit which was admitted and paid by the~~
 22 ~~insurer at or before the date payment was due;~~

23 ~~(5) the nature of the dispute, containing~~
 24 ~~sufficient detail to allow the parties to agree or disagree with~~
 25 ~~the characterization of the dispute;~~

26 ~~(6) whether the insurer denied primary liability~~
 27 ~~for the claim; and~~

28 ~~(7) in the case of a lump sum award pursuant to~~
 29 ~~an award on stipulation or mediated agreement, subitems (1) to~~
 30 ~~(6) and if the stipulation for settlement or mediated agreement~~
 31 ~~does not allocate the sums awarded to specific benefits, an~~
 32 ~~allocation of the sums awarded to the various types of~~
 33 ~~compensation: sufficient information to allow the fee determiner~~
 34 ~~to apply the principles contained in this subpart.~~

35 B. The principles applicable to determine whether a
 36 benefit was genuinely disputed are as follows:

1 (1) If primary liability had been denied for the
2 claim, all compensation paid or awarded to the employee or
3 dependent other than payment of medical and rehabilitation
4 expenses, is used to compute the attorney's fee.

5 (2) If there was no dispute concerning the rate,
6 amount, duration, or eligibility for a benefit and the benefit
7 was timely paid, the benefit may not be used to compute the fee.

8 (3) The fee may not be computed on the entire
9 amount of a benefit where only a portion of the benefit is
10 disputed. Only the disputed portion of the benefit may be used
11 to compute the fee.

12 (4) If eligibility for the benefit is disputed,
13 the entire benefit during the period for which eligibility was
14 disputed is used to compute the fee.

15 (5) If the rate of the benefit is disputed, only
16 the amount paid or awarded above the rate admitted and timely
17 paid is used to compute the fee.

18 (6) If the duration of the benefit is disputed,
19 only the portion of the benefit not conceded and not timely paid
20 is used to compute the fee.

21 (7) Benefits allegedly admitted but not timely
22 paid may be used to compute the fee.

23 (8) Benefits timely paid may not be used to
24 compute the fee except where primary liability for the entire
25 claim or eligibility for the benefit had been generally denied.

26 (9) The difference between the compensation
27 eventually paid or awarded and the amount admitted and timely
28 paid is used to compute the fee.

29 (10) The following benefits may be used to
30 compute the fee:

31 (a) remodeling compensation pursuant to
32 Minnesota Statutes, section 176.137, which was in dispute under
33 this subpart;

34 (b) a penalty sum awarded to the employee or
35 dependent for a benefit which was in dispute under this subpart;

36 (c) interest on a benefit which was in

1 dispute under this subpart; and

2 (d) a benefit which was in dispute under
3 this subpart although reimbursable to an intervenor.

4 (11) Generally, each benefit is evaluated
5 separately, however, if the rate, duration, or eligibility for
6 economic recovery compensation is disputed, the difference
7 between the impairment compensation which was conceded and
8 timely paid and the amount of disputed economic recovery
9 compensation eventually paid or awarded is used to compute the
10 fee.

11 (12) ~~Following an allocation of a lump sum award~~
12 ~~under item A, subitem (7),~~ The principles of this item subpart
13 ~~apply to each portion of the~~ settlement ~~sum to arrive at the~~
14 ~~total disputed compensation awarded to compute the~~
15 fee sums. The A portion of the a lump sum award allocated
16 to medical or rehabilitation expenses must not be used to
17 compute the fee unless the hourly fee associated with the
18 service exceeds the contingent fee available under Minnesota
19 Statutes, section 176.081, subdivision 1, for all other disputed
20 benefits under this subpart that are resolved pursuant to the
21 award. Benefits that have not yet become due and are not in
22 dispute under this subpart may not be used to compute the fee.

23 ~~Subp. 6. Waiver of objection period. The parties may not~~
24 ~~waive by stipulation for settlement or mediation agreement the~~
25 ~~right to object within ten days to the requested attorney fee.~~
26 ~~An agreement by a party in a stipulation for settlement,~~
27 ~~mediation agreement, or similar document to waive the ten-day~~
28 ~~period in which to object to an attorney's fee is not binding on~~
29 ~~the party. The party may, despite the agreement, file an~~
30 ~~objection to the requested fee in any manner provided by~~
31 ~~Minnesota Statutes, section 176.081. The objection to attorney~~
32 ~~fees does not render the party's consent to other terms of the~~
33 ~~agreement ineffective.~~

34 ~~Subp. 7. Defense attorney fees.~~ On August 1 of each year,
35 every insurer ~~and self-insured employer~~ must file with the
36 department its annual statement of attorney fees containing the

1 information required by this subpart for the previous 12-month
 2 period from July 1 to June 31. The insurer ~~or self-insured~~
 3 ~~employer~~ must include defense fees and costs incurred by itself
 4 and its agents and representatives, including but not limited to
 5 adjusting companies, and third-party administrators, ~~and.~~ Costs
 6 include charges for contract service providers such as
 7 surveillance companies and transcription service organizations.
 8 Only defense attorney fees and defense costs which are charged
 9 by the insurer against an individual claim file and which relate
 10 to a contested workers' compensation claim must be reported
 11 under this subpart. Contested workers' compensation claims are
 12 those claims which are the subject of pending or anticipated
 13 workers' compensation litigation. Workers' compensation
 14 litigation includes but is not limited to administrative
 15 conference proceedings, mediation, small claims court, and
 16 settlement proceedings. For the purpose of this subpart, "paid"
 17 includes sums billed or due but not yet paid.

18 A. The annual defense attorney fees and defense costs
 19 statement must include:

20 (1) Total attorney fees paid to outside and
 21 in-house counsel for representation and advice concerning
 22 workers' compensation cases. ~~This includes general advice as~~
 23 ~~well as work connected with specific cases.~~ If in-house counsel
 24 spends 100 percent of work time on workers' compensation cases,
 25 the attorney's full gross wage plus the cost of the employee's
 26 benefit package is reported as attorney fees paid. If a portion
 27 of the attorney's time is attributable to the defense of
 28 workers' compensation cases, the wages and benefits may be
 29 prorated by the respective percentage of wages and benefits
 30 attributable to the ~~general workers' compensation duties and~~
 31 defense of workers' compensation cases. The outside counsel
 32 fees reported must be the total fee paid to all firms for
 33 representation and advice concerning workers' compensation cases.

34 (2) Total paralegal fees paid or cost incurred in
 35 connection with workers' compensation cases. Wages and benefits
 36 of in-house paralegals may be prorated as provided in subitem

1 (1).

2 (3) Deposition costs are reported in this
3 subitem. Other deposition costs such as court reporter fees for
4 time, preparation of a deposition transcript, and copies of
5 depositions, and any costs paid to the deponent must be included
6 in this subitem. Expert witness fees are included under subitem
7 (4). The attorney's fee for a deposition is reported in subitem
8 (1).

9 (4) Expert witness fees, including fees paid to
10 expert witnesses in connection with hearings, depositions, or
11 other workers' compensation proceedings.

12 (5) Independent medical evaluation fees,
13 including all sums paid for health care provider opinions sought
14 by the insurer or self-insured employer under Minnesota
15 Statutes, section 176.155, subdivision 1.

16 (6) Fees for the generation of a medical report
17 not already included in another category of this item.

18 (7) Cost of copies of medical and other data such
19 as personnel files and medical treatment charts.

20 (8) Court filing fees.

21 (9) Transcript costs, including fees for
22 preparation and copies of hearing transcripts.

23 (10) Investigation costs not otherwise reported
24 under this item, including surveillance costs and other services
25 and fees connected with investigations related to litigated
26 claims.

27 (11) Travel and mileage costs, including
28 reimbursement for travel costs associated with litigated cases
29 when these sums are not already reported under another subitem.

30 (12) The total number of injuries to which the
31 fees and costs included on the report are attributable.

32 (13) Other litigation costs not included in
33 subitems (1) to (12) are reported in a miscellaneous category.

34 B. The insurer must collect and make available for
35 review by the department as needed individual case information
36 relating to defense attorney fees and defense costs as provided

1 in this item. This individual case fee information need not be
2 reported annually except as provided by item A. The information
3 specified under this item must be made available to the
4 department upon request and to parties to the claim. The fees
5 listed in item A, subitems (1) and (2), must be collected for
6 individual employee claims by date of injury. All other costs
7 and fees in item A, subitems (3) to (13), may be collected in
8 the aggregate without regard to individual claims. The data
9 collected under item A, subitems (1) and (2), must include:

- 10 (1) the employee's social security number;
11 (2) the date of injury;
12 (3) the Minnesota supreme court registration
13 numbers for all attorneys providing services relating to the
14 injury;
15 (4) the hourly rate, if any, charged by all
16 attorneys and paralegals providing services relating to the
17 injury;
18 (5) the lump sum attorney fees paid for all
19 attorneys providing services relating to the injury; and
20 (6) a sum representing all in-house attorney and
21 paralegal time spent providing services relating to the injury.
22 For the purpose of this subitem, the employer of the in-house
23 attorney or paralegal may establish an hourly rate for the
24 paralegal or attorney's time based on the gross wages and fringe
25 benefits which closely represents the actual payment for the
26 services rendered.

27 C. The attorney fees paid to in-house or outside
28 counsel as reported in this subpart must be approved under
29 Minnesota Statutes, section 176.081, subdivision 2, if the
30 payment exceeds \$13,000 for any injury.

31 Subp. 8- 7. Contingent fee limitations. The contingent
32 fee presumed reasonable under Minnesota Statutes, section
33 176.081, subdivision 1, applies to fees paid to the attorney or
34 attorneys for the employee. It does not apply to each attorney
35 individually, but begins to run from the first claim concerning
36 the injury and continues until the \$13,000 sum is reached

1 without regard to the number of attorneys or claims initiated
2 concerning the same injury. The \$13,000 fee which is presumed
3 reasonable applies separately to fees payable to the attorney or
4 attorneys for the employee, and fees payable to the attorney or
5 attorneys for the insurer. The maximum fee presumed reasonable
6 per injury is \$26,000, half to the attorney or attorneys for the
7 employee and half to the attorney or attorneys for the insurer.
8 Where the only issues in dispute are medical or rehabilitation
9 benefits or services and it was not reasonable to join the
10 rehabilitation or medical issue with other disputed benefit
11 issues, the attorney fee payable for recovery of the benefit or
12 service is payable by the insurer on an hourly basis. If the
13 hourly fee associated with medical or rehabilitation issues
14 exceeds the available contingent fee under Minnesota Statutes,
15 section 176.081, subdivision 1, the available contingent fee
16 shall be awarded as well as a fee payable by the insurer such
17 that the two fees combined compensate the attorney at a
18 reasonable hourly rate.

19 Subp. 9~~7~~ 8. Determinations without a hearing. If an
20 objection to the requested fee has been filed and the interested
21 parties waive their right to a hearing, the fees may be
22 determined without a hearing. A hearing must be scheduled if an
23 objection has been filed and all interested parties have not
24 waived their right to a hearing. Where no objection to the
25 requested fee has been filed, the commissioner, judge, or court
26 before whom the matter is pending shall determine, without a
27 hearing, the amount of attorney fees owing under this part and
28 Minnesota Statutes, section 176.081.

29 5220.2930 DEPENDENT'S BENEFITS.

30 Subpart 1. Allocation of compensation by judge.

31 A. A party may petition for an allocation of benefits
32 under Minnesota Statutes, section 176.111, subdivision 10. The
33 petition may contain a proposed allocation. The petition must
34 be served on all parties and filed with the division within one
35 year after the date of death. If a petition for allocation is

1 not filed in a timely manner and the death occurred after June
2 30, 1981, the allocation will be as provided in subpart 2.

3 [For text of items B and C, see M.R.]

4 [For text of subp 2, see M.R.]

5 Subp. 3. [See repealer.]

6 [For text of subps 4 and 5, see M.R.]

7 5220.2960 COMMISSIONER INTERIM NOTICES AND ORDERS.

8 The commissioner may develop and publish commissioner
9 interim notices and orders concerning matters within the
10 authority of the department. Interim notices and orders do not
11 have the force and effect of law, except where specifically
12 authorized by statute, but may be relied upon by the public
13 until revoked or modified to bind the department. The purpose
14 of an interim notice or order is to provide uniform information
15 and guidance to the public concerning department action. An
16 interim notice or order may be relied upon to bind the
17 department until a statute, appellate court decision, rule, or
18 subsequent commissioner's notice or order conflicts with the
19 notice or order, until the date stated in the notice or order,
20 or until one year after publication, whichever occurs first. An
21 interim notice or order under this part binds the department
22 only if the published notice or order is clearly identified as
23 an interim notice or order and is given an indexing number.

24 REPEALER. Minnesota Rules, parts 5220.2520, subparts 9 and 10;
25 5220.2570, subpart 8; 5220.2590; 5220.2610, subpart 4;
26 5220.2620, subparts 4, 6, 7, 8, 9, 10, and 11; 5220.2630,
27 subpart 5; 5220.2640, subparts 5 and 8; 5220.2650; 5220.2660;
28 5220.2680, subparts 1, 2, 3, and 4; 5220.2730; 5220.2740,
29 subpart 3; 5220.2820, subpart 5; 5220.2880, subpart 2;
30 5220.2890; 5220.2910; 5220.2930, subpart 3; 5220.2940; and
31 5220.2950, are repealed.