

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Department of Labor + Industry
(Agency or Board)

Regulation No. LS1 thru 18 (new)

Subject: Fair Labor Standards

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

NOV 26 1973 11:40 am

BY Eda Staudenmaier
AUTH. SIGNATURE EJ

Stamped and filed with the Secretary of State 11-26-73

Rev. 9-72

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of Rules and Regulations of the Department of Labor and Industry Governing Fair Labor Standards.

CERTIFICATE

I hereby certify that the attached 275 labels & 4 sheets constitute the complete list of persons, associations, and other interested groups who as of 2:00 o'clock P .M., this 29th day of August, 1973, have requested pursuant to M.S. 1971 Sec. 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Arlen I. Erdahl

ARLEN I. ERDAHL
Secretary of State

By Neil Dion

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of the Proposed Adoption of Rules and Regulations of the Department of Labor and Industry Governing Fair Labor Standards.

AFFIDAVIT OF MAILING

ARCHIE VINITSKY, being first duly sworn, deposes and says:

That on the 31st day of August, 1973, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, true and correct copies thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

/s/ Archie Vinitsky

Subscribed and sworn to before me

this 31st day of August, 1973.

/s/ Lloyd E. Willie

Lloyd E. Willie
Notary Public, Goodhue County, Minn.
My Commission Expires Mar. 13, 1975.

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE E. I. MALONE

COMMISSIONER OF LABOR & INDUSTRY

In the matter of the Proposed Adoption of Rules and Regulations of the Department of Labor and Industry Governing Fair Labor Standards.

ORDER FOR HEARING

To effectively implement Laws of Minn. 1973, Ch. 721, Commissioner of the Department of Labor and Industry deems it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in me by Laws of Minn. 1973, Ch. 721, Sec. 8.

NOW, THEREFORE, IT IS ORDERED this 29 day of August, 1973, that a public hearing on the proposed rules captioned above be held in Hearing Room D, Fifth Floor, Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, October 3, 1973, commencing at 10:00 A.M., and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard.

IT IS FURTHER ORDERED, that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA
Department of Labor and Industry

E. I. Malone

Commissioner

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE E. I. MALONE, COMMISSIONER

DEPARTMENT OF LABOR AND INDUSTRY

In the matter of the Proposed Adoption of Rules and Regulations of the Department of Labor and Industry Governing Fair Labor Standards.

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to M.S. 1971, Sec. 15.0412, Subd. 4, in the above-entitled matter, in Hearing Room D, Fifth Floor, Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, on October 3, 1973, commencing at 10:00 A.M., and continuing until all representatives or other interested groups of persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing.

The Commissioner proposes to adopt rules and regulations relating to minimum wage and overtime compensation standards, with specific regard to the following:

A. Definitions of the following terms:

1. executive, administrative and professional personnel
2. outside salesman
3. gratuitous employment
4. hours worked
5. regular rate of pay
6. workweek
7. tip credit

B. Regulations Governing:

1. procedures in contested cases
2. meal allowance
3. lodging allowance
4. additional services
5. minimum wage for minors
6. other special items in a particular case
7. handicapped workers
8. learners
9. records.

Copies of the proposed rules are now available and may be obtained by writing to the Director of Fair Labor Standards Division of the Department of Labor and Industry, Space Center, Fifth Floor, 444 Lafayette Road, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing.

E. I. Malone

E. I. MALONE, COMMISSIONER
DEPARTMENT OF LABOR AND INDUSTRY

MINNESOTA FAIR LABOR STANDARDS ACT REGULATIONS

AS RECOMMENDED BY THE FAIR LABOR STANDARDS ADVISORY COMMITTEE

SEPTEMBER 5, 1973

I. The following regulations are pursuant to M.S. 721, Sec. 3, Subd. 7 (4 and 5):

A. EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL

The exemption for bona fide executive, administrative, and professional personnel is granted only according to the following tests. The primary duties of the employee rather than his title indicate whether he is exempt.

EXECUTIVE fulfills each of the following items:

1. manages a department of at least two full-time people;
2. has authority to hire or fire or suggest changes in employees' status;
3. regularly exercises discretionary powers;
4. either
   a. devotes less than 20% of time worked (or 40% in retail or service establishments) to non-exempt work,
   b. owns 20% or more of the business,
   c. has sole charge of an independent or branch establishment;
5. receives at least $125 per week in salary.

ADMINISTRATOR fulfills each of the following items:

1. either
   a. performs office or nonmanual work directly related to business operations or management policies,
   b. administers an educational system or subdivision thereof in work relating to academic instruction;
2. regularly exercises discretion and independent judgment and makes important decisions;
3. either
   a. directly assists owner or bona fide executive or administrator,
   b. performs supervised work only along lines requiring special training or experience,
   c. executes special assignments;
4. devotes less than 20% of time worked (or 40% in retail or service establishments) to non-exempt work;
5. receives at least $125 per week in salary or fee.

PROFESSIONAL fulfills each of the following items:

1. either
   a. performs work requiring advanced knowledge in a field of learning customarily acquired by prolonged specialized intellectual study (not a general academic education, an apprenticeship, or training in routine mental or physical processes),
   b. performs original work dependent on his own creativeness in a recognized field of artistic endeavor,
   c. is a certified teacher working as such or recognized as such in the school system where he works;

2. consistently exercises judgment and discretion;
3. performs predominantly intellectual work so varied that the output cannot be standardized by time necessary for accomplishment;
4. devotes less than 20% of his hours worked to activities not essential to his professional work;
5. receives at least $140 per week in salary or fee.

B. OUTSIDE SALESMAN

Salesman is defined as one who makes sales of, or obtains orders or contracts for, materials, services, or the use of facilities for which payment will be made. An outside salesman is hired for the express purpose of performing such duties away from his employer's place(s) of business and conducts no more than 20% of his sales on those premises. Incidental deliveries, collections, and other non-sales or non-solicitation work that is directly related to the primary sales duties shall not be considered non-exempt work.

C. GRATUITOUS EMPLOYMENT

Gratuitous service is voluntarily donated work performed by a person who receives for it no monetary compensation or other valuable consideration. He may be reimbursed for out-of-pocket expenses needed to perform the services, but only if these expenses are itemized. The acceptance of an expense allowance (that is, a gross sum provided him with no itemized list of expenses) makes the individual non-exempt.

"Non-profit organization" is defined as a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earning of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.

II. The following regulations are pursuant to M.S. 721, Sec. 5, Subd. 1:

A. HOURS WORKED

Hours worked include training time, call time, cleaning time, waiting time, or any other time when the employee must be either on the premises of the employer or involved in the performance of duties in connection with his employment. Rest periods of less than 20 minutes may not be deducted from total hours worked.

B. REGULAR RATE OF PAY

In calculating overtime compensation due, the regular rate of pay is determined by dividing the employee's remuneration in any workweek by the total hours worked. Payments which are not considered part of the employee's remuneration (for the purposes of calculating regular rate of pay) include:

- reimbursement for expenses incurred on the employer's behalf;
- premium payments for overtime work or work on Saturdays, Sundays, holidays--if the premium rate is at least 1½ times the normal rate;
- bonuses given at the employer's discretion (as to both time and amount of payment);
- cash or other valuables in the nature of gifts on special occasions;
- payments for occasional periods when no work is performed due to vacation, holiday, or illness.

Overtime pay earned shall be paid on the regular payday for the pay period. Credit granted the employer for such items as meals must be included in the employee's remuneration total.

C. WORKWEEK

The period of time used for determining compliance with the minimum wage rate, overtime compensation, and designation as a part-time employee is the workweek, which is defined as a fixed and regularly recurring period of 168 hours--seven consecutive 24-hour periods. This is true whether the employee is paid on an hourly, piecework, commission, or any other basis. Once the workweek is established, it remains fixed, although it may be changed if the change is intended as permanent rather than as an evasion of the overtime provisions. If no workweek is designated, it shall follow the calendar week.

No employer shall be deemed to have violated Section 5, Subdivision 1 by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 4, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

III. The following regulations are pursuant to M.S. 721, Sec. 8 Subd. 3:

A. MEAL ALLOWANCES

A meal allowance is credited toward the minimum wage only when the meal is furnished by the employer and accepted by the employee. The employer shall not require the employee to accept meals as a condition of employment. A meal is defined as an adequate portion of a variety of wholesome, nutritious foods and shall include at least one food from each of the following four groups: fruits or vegetables; cereals, bread or potatoes; eggs, meat or fish; milk, tea or coffee, except that for breakfast, eggs, meat or fish may be omitted if both cereal and bread are offered. The employer must keep a record of meals accepted by the employee.

Meals must be consistent with the employee's work shift. Meal periods of less than twenty minutes may not be deducted from hours worked, nor may meal periods be deducted where the employee is not entirely free from work responsibility.

The meal allowance is $.90 per meal for adults
.80 per meal for minors.

B. LODGING ALLOWANCES

A lodging allowance is credited toward the minimum wage only for lodging furnished by the employer and accepted by the employee. Lodging means living accommodations which are adequate, decent, and sanitary according to usual and customary standards.

The lodging allowance is $1.15 per day for adults
$1.05 per day for minors.

C. ADDITIONAL SERVICES

Deductions from the minimum wage may not be made for shortages in money receipts or merchandise, for uniforms, or for breakages. These are considered matters separate from wages. No employee shall be required to contribute directly or indirectly from the minimum wage for the purchase or maintenance of uniforms. The term "uniform" means wearing apparel and accessories of distinctive design or color required by the employer to be worn by the employee as a condition of employment.

D. MINIMUM WAGE FOR MINORS

The minimum wage rate for minors under 18 shall be $1.62 per hour. Employers claiming an employee is under 18 must have his birthdate, substantiated by a birth certificate or an age certificate issued by the Department of Labor and Industry (through the local Superintendent of Schools), included in the payroll records kept for such an employee.

E. OTHER SPECIAL ITEMS

Other special items in a particular case which are not specifically outlined by law or regulation shall be ruled on by the Commissioner of Labor and Industry.

F. PROCEDURES IN CONTESTED CASES

Procedures in contested cases shall be as outlined in Minn. Reg. Attorney General Chapter 4, Model Rules for Contested Cases.

IV. The following regulation is pursuant to M.S. 721, Sec. 8, Subd. 4:

TIP CREDIT

A gratuity (or tip) is a sum of money presented by a customer to a service person at the place of service performance. It is a gift in recognition of a service done for the customer.

A service person is one who in a given situation performs the main services for a customer and is tobe considered the recipient of the gratuity for purposes of wage calculation. Any other employee who benefits because the recipient shares the gratuity with him shall not have such remuneration used in the calculation of his wages.

No tip credit will be allowed unless the employer has a signed statement from the employee for each pay period that a certain sum of money (credit given for up to 25% of appropriate minimum wage rate) was received in tips during that pay period. The employer's records must also indicate that the employee receives at least $20 per month in gratuities. If the employee does not, no tip credit can be allowed.

"Gift," as used herein, is defined as a sum of money voluntarily transferred from one person to another without expectation of recompense.

V. The following regulation is pursuant to M.S. 721, Sec. 8, Subd. 5:

A. HANDICAPPED WORKERS

Special subminimum wage rates may be applied for handicapped workers only by special permit from the Division of Labor Standards. If no permit is issued, the worker, no matter how severely handicapped, must be paid the minimum wage. The subminimum rate will be based on the extent to which the worker's performance is limited but may not fall below 50% of the minimum wage.

In no case may a profit-making organization employ handicapped workers for more than 10% of its total work force.

Sheltered workshops are excluded from the above percentage limitations of numbers of employees and percentage of minimum wage, but not from the requirement for a permit.

B. LEARNERS

A learner is a student enrolled in a state approved high school vocational on-the-job training program in which supervision is provided by the school for the on-the-job experiences, a training plan is established for each individual student learner, and school credit is given for job experiences. For the first 300 hours of employment, the learner shall be paid at a rate of not less than $1.62 per hour.

VI. The following regulation is pursuant to M.S. 721, Sec. 10:

By definition, "hours worked each day" includes beginning and ending time of work each day, which must include A.M. and P.M. designations.

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Steven M. Gunn, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Steven M. Gunn

STEVEN M. GUNN
Special Assistant
Attorney General

Dated: Oct. 29, 1973.

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA DEPARTMENT

OF LABOR AND INDUSTRY

In the matter of the Proposed Adoption of Rules and Regulations of the Department of Labor and Industry Governing Fair Labor Standards.

AFFIDAVIT

Kurt G. O. Pinke, being duly sworn on oath deposes and says:

1) I am an employee of the Fair Labor Standards Division of the State of Minnesota.

2) On the 29th day of August, 1973, I went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 29th day of August, 1973, in response to the above request, the Secretary of State provided me with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Kurt G. O. Pinke

Subscribed and sworn to before me

this 29 day of August, 1973.

Lloyd E Willie

LLOYD WILLIE
Notary Public, Goodhue County, Minn.
My Commission Expires Mar. 13, 1975

Notary Public, County, Minn.

My Commission Expires

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA DEPARTMENT

OF LABOR AND INDUSTRY

IN THE MATTER OF THE
PROPOSED RULES AND
REGULATIONS GOVERNING
FAIR LABOR STANDARDS

STATEMENT OF NEED

The need for the adoption of regulations covering the subjects of Regulations LS REG 1 through LS REG 18 derive from the mandate of the legislature as set down in Laws 1973, c. 721, sec. 8 which specifies that the Department of Labor and Industry shall establish regulations covering each of the subject areas covered by said regulations which are attached hereto. Section 8 further set as a requirement that the regulations required by Section 8 be established by November 1, 1973.

Pursuant to Section 8 an advisory committee composed of an equal number of not more than three representatives each of employers and employees and of not more than three disinterested persons representing the public was appointed by the Commissioner of Labor and Industry and were consulted on the making of the regulations required by Section 8. Advisory committee action was taken on all subject areas for which regulations were required. No regulation proposed is proposed in opposition to a majority of the committee members. Each proposed regulation was supported by a majority of the committee after their consideration at four (4) meetings held on various dates before the public hearing held herein and one (1) meeting held after the public hearing.

Discussions were held at the five (5) meetings and each of the subject areas covered by LS REGS 1 through 18 were discussed in depth. The advisory committee made recommendations as to what language should be adopted for the various subject areas. A majority

of the committee found that it was preferable to set the wage rate for minors at $1.62 per hour and further believed that it was the intent of the legislature that such be done. Similar judgments were made by a majority of the committee members on other provisions as is indicated both in the transcript of the public hearing and in the minutes of the various advisory committee meetings.

In sum, the adoption of the proposed regulations are necessary to fulfill the requirements and mandate of the legislature as found in Laws 1973, c. 721, sec. 8. The transcript, record, minutes of advisory committee meetings and files support the regulations as proposed.

E. I. Malone

E. I. MALONE, Commissioner
Department of Labor and Industry

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA DEPARTMENT

OF LABOR AND INDUSTRY

IN THE MATTER OF THE
PROPOSED RULES AND
REGULATIONS GOVERNING
FAIR LABOR STANDARDS

FINDINGS OF FACT

The above-entitled matter came on for hearing before the undersigned on the 3rd day of October, 1973, at 9:30 a.m. in Hearing Room D, Fifth Floor, Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, after proper notice required by law was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files, and proceedings herein, I find the following:

1. Authority for the adoption of regulations identified as LS REG 1 through LS REG 18 is found in Laws 1973, c. 721, sec. 8.

2. A need does exist for the regulations as proposed. Laws 1973, c. 721, sec. 8, mandates that the Department of Labor and Industry establish regulations covering those subject areas which are covered by the proposed regulations. All of the regulations are new regulations and are not amendments of existing regulations.

3. The advisory committee appointed pursuant to Section 8, made recommendations to the Department on all of the subject matter areas covered by the legislative mandate. Recommendations were made only when a majority of the committee was in agreement on a recommendation. All of the proposed regulations reflect either a majority recommendation made by the committee or language required by Ch. 721 on each subject area. Some modifications have been made in some proposed

regulations as a result of reviewing the transcript and record of the public hearing and noting changes and modifications which were suggested by the public.

4. The proposed regulations, LS REG 1 through LS REG 18, conform to the legislative mandate as is clearly shown by the minutes of advisory committee meetings, and the transcript and record of the public hearing held herein.

Dated: October 29, 1973.

E. I. Malone

E. I. Malone, Commissioner
Department of Labor and Industry

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA DEPARTMENT

OF LABOR AND INDUSTRY

IN THE MATTER OF THE
PROPOSED RULES AND
REGULATIONS GOVERNING
FAIR LABOR STANDARDS

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the Minnesota Department of Labor and Industry on the 3rd day of October, 1973, at 9:30 a.m. in Hearing Room D, Fifth Floor, Veterans Service Building, 20 West 12th Street and Columbus Avenue, St. Paul, Minnesota, after proper notice required by law was served upon all persons, associations, and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules;

NOW THEREFORE, IT IS ORDERED that these regulations identified as LS REG 1 through LS REG 18 be, and hereby are, adopted this 29 day of October, 1973, pursuant to authority vested in me by Laws 1973, c. 721, sec. 8.

E. I. Malone

E. I. Malone, Commissioner
Department of Labor and Industry

Dated this 29th day of
October, 1973.

RULES AND REGULATIONS

RELATING TO FAIR LABOR STANDARDS DIVISION

LS Reg 1 Minimum Wage Rate for Minors. The minimum wage rate for minors under 18 shall be $1.62 per hour. Employers claiming an employee is under 18 must have his brithdate, substantiated by a birth certificate or an age certificate issued by the Department of Labor and Industry (through the local Superintendent of Schools), included in the payroll records kept for such an employee.

LS Reg 2 Learners and Apprentices. A learner is a student enrolled in a state approved high school vocational on-the-job training program in which supervision is provided by the school for the on-the-job experiences, a training plan is established for each individual student learner, and school credit is given for job experiences. For the first 300 hours of employment, the learner shall be paid at a rate of not less than $1.62 per hour.

LS Reg 3 Handicapped Worker Permits. Subminimum wage rates may be paid to handicapped workers only after receiving a permit from the Labor Standards Division. If no permit is issued, a worker, no matter how severely handicapped, shall be paid the minimum wage. The subminimum rate will be based on the extent to which the worker's performance is limited but in no case may it fall below 50% of minimum wage. Permits issued prior to January 1, 1974, will remain in effect for the duration stated therein.

No profit-making organization may employ handicapped workers at a subminimum wage for more than 10% of its total work force unless granted a special permit by the Commissioner of Labor and Industry to exceed the the 10% limitation.

Sheltered workshops are excluded from the above percentage limitations of numbers of employees and percentage of minimum wage, but not from the permit requirement.

LS Reg 4 Equal Pay for Handicapped. Where a handicapped person is now performing or is being considered for employment where he will perform work which is equal to work performed by a non-handicapped person such handicapped person shall be paid the same wage as a non-handicapped person with similar experiences.

LS Reg 5 Part-time Rates. Part time employees may not be paid wages below the minimum rates established for adults and minors, except where otherwise provided for by regulation.

LS Reg 6 Meal Allowance. A meal allowance is credited toward the minimum wage only when the meal is furnished by the employer and accepted by the employee. The employer shall not require the employee to accept meals as a condition of employment. A meal is defined as an adequate portion of a variety of wholesome, nutritious foods and shall include at least one food from each of the following four groups: fruits or vegetables; cereals,

bread or potatoes; eggs, meat or fish; milk, tea or coffee, except that for breakfast, eggs, meat or fish may be omitted if both cereal and bread are offered. The employer must keep a record of meals accepted by the employee.

Meals must be consistent with the employee's work shift. Meal periods of less than twenty minutes may not be deducted from hours worked, nor may meal periods be deducted where the employee is not entirely free from work responsibility.

The meal allowance is $.90 per meal.

LS Reg 7 Lodging Allowance. A lodging allowance is credited toward the minimum wage only for lodging furnished by the employer and accepted by the employee. Lodging means living accommodations which are adequate, decent, and sanitary according to usual and customary standards.

The lodging allowance is $1.15 per day.

LS Reg 8 Tip Credit. No tip credit will be allowed unless the employer has a signed statement from the employee for each pay period that a certain sum of money (credit given for up to 25% of applicable minimum wage rate) was received in tips during that pay period. The employer's records must also indicate that the employee receives at least $20 per month in gratuities. If the employee does not, no tip credit can be allowed.

A gratuity (or tip) is a sum of money presented by a customer to a service person at the place of service performance. It is a gift in recognition of a service done for the customer.

A service person is one who in a given situation performs the main services for a customer and is to be considered the recipient of the gratuity for purposes of wage calculation. Another employee who benefits because the recipient shares the gratuity with him shall not have such remuneration used in the calculation of his wages.

"Gift," as used herein, is defined as a sum of money voluntarily transferred from one person to another without expectation of repayment.

Gratuities presented to a service person via inclusion on a charge or credit card will be credited to that pay period for which they appear on the service person's tip statement.

Money presented by customers at a banquet as a tip to be divided among the serving people may be credited to that pay period for which it appears on the service persons' tip statements.

LS Reg 9 Deductions. Deductions from the minimum wage may not be made for shortages in money receipts or merchandise, for uniforms, or for breakages. These are considered matters separate from wages. No employee shall be required to contribute directly or indirectly from the minimum wage for the purchase or maintenance of uniforms. The term "uniform" means wearing apparel and accessories of distinctive design or color required by the employer to be worn by the employee as a condition of employment.

LS Reg 10 Records. By definition, "hours worked each day" includes beginning and ending time of work each day, which shall include A.M. and P.M. designations, and such designations shall be included in the employer's records.

LS Reg 11 Other Special Items. Other special items in a particular case which are not specifically outlined by law or regulations shall be ruled on by the Commissioner of Labor and Industry.

LS Reg 12 Hours Worked. Hours worked include training time, call time, cleaning time, waiting time, or any other time when the employee must be either on the premises of the employer or involved in the performance of duties in connection with his employment. Rest periods of less than 20 minutes may not be deducted from total hours worked.

LS Reg 13 Regular Rate of Pay. In calculating overtime compensation due, the regular rate of pay is determined by dividing the employee's remuneration in any workweek by the total hours worked. Payments which are not considered part of the employee's remuneration (for the purposes of calculating regular rate of pay) include:

reimbursement for expenses incurred on the employer's behalf

premium payments for overtime work or work on Saturdays, Sundays, Holidays or scheduled days off - - if the premium rate is at least 1½ times the normal rate;

bonuses given at the employer's discretion (as to both time and amount of payment);

cash or other valuables in the nature of gifts on special occasions

payments for occasional periods when no work is performed including but not limited to vacation, holiday, or illness;

payments made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan, if amounts are determined without regard to production or efficiency;

contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees.

Overtime pay shall be paid no later than the payday immediately following the regular payday for the pay period in which it was earned. Credit granted the employer for such items as meals must be included in the employee's remuneration total.

LS Reg 14 Workweek. The period of time used for determining compliance with the minimum wage rate, overtime compensation, and designation as a part-time employee is the workweek, which is defined as a fixed and regularly recurring period of 168 hours--seven consecutive 24 hour periods. This is true whether the employee is paid on an hourly, piecework, commission, or any other basis. Once the workweek is established, it remains fixed, although it may be changed if the change is intended as permanent rather than as an evasion of the overtime provisions. If no workweek is designated, it shall follow the calendar week.

The Commissioner of Labor and Industry may upon receiving application made by an employer establish a different period of time to be used as workweek for purposes of this regulation.

No employer shall be deemed to have violated Section 5, Subdivision 1 by employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified therein, if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable to him under section 4, and (2) more than half his compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commissions, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw or guarantee.

LS Reg 15 Executive, Administrative, Professional Personnel. The exemption for bona fide executive, administrative and professional personnel is granted only by meeting each criterion of either definition test I or definition test II. The primary duties of the employee rather than his title indicate whether the exemption applies.

EXECUTIVE test one

a. receives at least $200 per week in salary;
b. manages the enterprise by which he is employed or a recognized department or subdivision thereof;
c. customarily directs the work of two or more other employees.

EXECUTIVE test two

a. receives at least $125 per week in salary;
b. manages a department of at least two full-time people;
c. has authority to hire or fire or suggest changes in employees' status;
d. regularly exercises discretionary powers;
e. either
   (1) devotes less than 20% of time worked (or 40% in retail or service establishments) to non-exempt work, or
   (2) owns 20% or more of the business, or
   (3) has sole charge of an independent or branch establishment.

ADMINISTRATIVE test one

a. receives at least $200 per week in salary or fee;
b. either
   (1) performs office or nonmanual work directly related to management policies or general business operations, or
   (2) performs functions in the administration of a school system or subdivision thereof, in work directly relating to academic instruction;
c. regularly exercises discretion or independent judgment.

ADMINISTRATIVE test two

a. receives at least $125 per week in salary or fee;
b. either
   (1) performs office or nonmanual work directly related to business operations or management policies, or
   (2) administers an educational system or subdivision thereof in work relating to academic instruction;

c. regularly exercises discretion and independent judgment and makes important decisions;
d. either
   (1) directly assists owner or bona fide executive or administrative employee, or
   (2) performs supervised work only along lines requiring special training or experience, or
   (3) executes special assignments;
e. devotes less than 20% of time worked (or 40% in retail or service establishments) to non-exempt work.

PROFESSIONAL test one

a. receives at least $200 per week in salary or fee;
b. either
   (1) performs work requiring advanced knowledge in a field of science or learning, or
   (2) performs work as a teacher in the activity of imparting knowledge, or
   (3) performs work requiring invention, imagination, or talent in a recognized field of artistic endeavor;
c. consistently exercises discretion and judgment.

PROFESSIONAL test two

a. receives at least $140 per week in salary or fee;
b. either
   (1) performs work requiring advanced knowledge in a field of learning customarily acquired by prolonged specialized intellectual study (not a general academic education, an apprenticeship, or training in routine mental or physical processes), or
   (2) performs original work dependent on his own creativeness in a recognized field of artistic endeavor, or
   (3) is a certified teacher working as such or recognized as such in the school system where he works;
c. consistently exercises judgment and discretion;
d. performs predominantly intellectual work so varied that the output cannot be standardized by time necessary for accomplishment;
e. devotes less than 20% of his hours worked to activities not essential to his professional work.

LS Reg 16 Outside Salesman. Salesman is defined as one who makes sales of, or obtains orders or contracts for, materials, services, or the use of facilities for which payment will be made. Incidental deliveries, collections, and other non-sales or non-solicitation work that is directly related to the primary sales duties shall be considered the work of a salesman. An outside salesman is hired for the express purpose of performing such duties away from his employer's place(s) of business and conducts no more than 20% of his sales on those premises. His hours of non-outside sales work may not exceed 20% of the hours worked by employees who are not outside salesmen.

LS Reg 17 Gratuitous Service. Gratuitous service is voluntarily donated work performed by a person who receives for it no monetary compensation or other valuable consideration. He may be reimbursed for out-of-pocket expenses needed to perform the services, but only if these expenses are itemized. The acceptance of an expense allowance (that is, a gross sum provided him with no itemized list of expenses) makes the individual non-exempt.

"Non-profit organization" is defined as a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earning of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation.

LS Reg 18 Procedures in Contested Cases. (see next page)

LS Reg 18 Procedures in Contested Cases.

Rule 1 Introduction. No person before this Agency shall have his rights, privileges or duties determined without regard for fundamental fairness. To that end, these rules are intended to assure that all parties to contested cases before this Agency are provided a speedy and just hearing. Such hearing shall include:

(a) Adequate notice of involvement to all interested persons;

(b) The opportunity to consult with the Agency informally to attempt to resolve conflicts on issues;

(c) Notice at each state of the proceedings sufficient to provide the opportunity to prepare therefor;

(d) An objective decision supported by substantial evidence from the record.

Rule 2 Definitions.

(a) Agency. Agency means Minnesota Department of Labor and Industry.

(b) Contested Case. Contested case means a proceeding before the Agency in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after an Agency hearing.

(c) Party. Party means any person whose legal rights, duties, or privileges may be determined in a contested case. The term "party" shall include the Agency except when the Agency participates in the contested case in a neutral or quasi-judicial capacity only.

(d) Person. Person means any individual, partnership, corporation, joint stock company, unincorporated association or society, municipal corporation, or any government or governmental subdivision, unit or agency, other than a court of law.

(e) Hearing Officer. Hearing officer means the person or persons appointed by the Agency pursuant to Rule 3 hereof, to hear and determine the contested case.

(f) Service; serve. Service or serve means service by registered or certified United States mail, postage prepaid and addressed to the party at his last known address, unless some other manner of service is required by law. An affidavit of mailing shall be attached to a list of the parties to the contested case, which list shall be incorporated in the affidavit by reference.

(g) Initiation. Initiation means the application, complaint or Agency order providing for or requesting commencement of a contested case.

(h) Commencement. Commencement means the beginning of a contested case before the Agency.

Rule 3 Hearing Officers

(a) Appointment. The Agency shall appoint a hearing officer before commencing a contested case.

(b) Qualifications.

(1) Cases to which the Agency is a party. In cases to which the Agency is a party, the hearing officer shall not at the time of appointment be an employee of nor on retainer to the Agency. He shall be an attorney at law unless an attorney at law is not obtainable or unless some other individual is agreed upon by all parties. After appointment the hearing officer shall be considered an employee of the Agency for the sole purposes of (1) compensation if any, and (2) authorization to conduct the hearing and decide the issues. In all other respects he shall be independent of the Agency. All appointments hereunder shall be consistent with the purpose of this Rule, which is to secure as objective and impartial a decision-maker as is legally and financially possible.

(2) Cases to which the Agency is not a party. In cases to which the Agency is not a party, the Agency may appoint any person, including an employee of the Agency or a member or members thereof, as the hearing officer.

(c) Authority of Hearing Officer

(1) Cases to which the Agency is a party. In cases to which the Agency is a party, the appointment of the hearing officer shall, to the extent permitted by law, authorize the hearing officer to hear and decide the case, subject only to the rehearing provisions of Rule 17 hereof.

(2) Cases to which the Agency is not a party. In cases to which the Agency is not a party, the appointment of the hearing officer shall, to the extent permitted by law, grant the hearing officer such authority as the Agency deems necessary and appropriate to hear and decide the case and reserve unto the Agency such authority to decide the case as it deems necessary and appropriate.

(d) Function. Consistent with law and the terms of his appointment, the hearing officer shall hear and decide the contested case. His functions shall include, but not be limited to, the following: hear and rule on preliminary motions, conduct the hearing, make impartial findings of fact upon the evidence presented, make a final or preliminary determination, and make such preliminary, interlocutory or final orders as he deems appropriate.

Rule 4 . Initiating a Contested Case.

(a) Initiation by Application. Any person authorized by law to have his rights, privileges or duties determined after an Agency hearing may initiate a contested case by making application. An application shall contain:

(1) The name and address of the applicant;

(2) A statement of the nature of the determination requested and the reasons thereof;

(3) The names and address of all persons known to the applicant who will be directly affected by such determination; and

(4) The signature of the applicant or his attorney.

(b) Initiation by Complaint. Any person authorized by law to submit to the Agency a complaint that his rights are being abridged, that his privileges are being denied, or that duties owed him are being defaulted upon may initiate a contested case by filing a complaint. A complaint shall contain:

(1) The name and address of the complainant;

(2) The name or names of those against whom the complaint is made;

(3) The relief sought and the grounds therefor; and

(4) The signature of the complainant or his attorney.

(c) Initiation of Agency Order. Where authorized by law, the Agency may order a contested case commenced to determine the rights, duties and privileges of specific parties.

Rule 5 Commencement of Contested Case. Within ten days following receipt of a complaint or application or the adoption of an order by the Agency initiating a contested case, the Agency shall appoint a hearing officer and commence the contested case by serving upon all known parties a copy of the document of initiation and a notice stating:

(a) The commencement of the contested case;

(b) The time and place of the prehearing conference, if any;

(c) The purpose of the prehearing conference;

(d) The name of the hearing officer;

(e) The rights of the parties to counsel and to a formal hearing;

(f) That failure to attend may prejudice the party's right in this and subsequent proceedings; and

(g) These rules or a citation thereto.

Rule 6 Answer. Within twenty days after service (excluding the day of service), an adverse party may interpose an answer to the initiating complaint, application or order. A copy of such answer shall be served on all parties to the contested case. The original, together with an attached affidavit of service, shall be filed with the Agency within five days after service is completed.

Rule 7 Right to Counsel. Any party may be represented by legal counsel throughout the proceedings in a contested case before this Agency.

Rule 8 Informal Disposition. Informal disposition may be made of any contested case or any issue therein by stipulation, agreed settlement, or consent order at any point in the proceedings.

Rule 9 Default. The hearing officer may dispose of a contested case adverse to a party which defaults. Disposition by default shall occur only after the party against whom default is proposed, having notice, fails to appear.

Rule 10 Intervention. Upon timely application any person shall be permitted to intervene in a contested case upon a showing that his legal rights, duties or privileges may be determined or affected in the contested case, unless in the discretion of the hearing officer such person's interest is adequately represented by one or more parties participating in the case.

Rule 11 Consolidation.

(a) Authority. Whenever, before hearing on any contested case, the Agency, either on its own motion or upon petition by any party, determines (a) that separated contested cases present substantially the same issues of fact or law, (b) that a holding in one case would affect the rights of parties in another case and (c) that consolidation would not substantially prejudice any party, the Agency may order such cases consolidated for a single hearing on the merits. Notwithstanding the requirements of this rule, the parties may stipulate and agree to such consolidation.

(b) Notice. Within five days following an order for consolidation the Agency shall serve on all parties a Notice of Consolidation. Such Notice shall contain:

(1) A description of the cases for consolidation;

(2) The reasons for consolidation;

(3) Cancellation of all prehearing conferences for the cases consolidated, and

(4) Notification of the consolidated prehearing conference in the same fashion prescribed for notice of prehearing conferences.

(c) Objection to Consolidation

(1) Petition for Severance. Any party may object to consolidation by filing with the Agency prior to final determination a Petition for Severance from Consolidation, setting forth petitioner's name and address, the designation of his case prior to consolidation, and the reason for his petition. Briefs may be filed, evidence received and oral argument heard at such time as the hearing officer deems proper.

(2) Determination. When such a petition is filed, the hearing officer shall set aside a time for receiving evidence and oral argument, and determining, as a part of the record in the case, whether consolidation prejudices petitioner. If the hearing officer finds that consolidation would prejudice petitioner, he may order such severance or other relief as he deems necessary.

Rule 12 Disqualification. A hearing officer shall withdraw from participation in a contested case at any time prior to the final determination if he deems himself disqualified for any reason. Upon the filing in good faith of a timely and sufficient Petition of Prejudice the hearing officer shall determine the matter as a part of the record and decision in the case.

Rule 13 Prehearing Conference.

(a) Purpose. The purposes of the prehearing conference are to simplify the issues to be determined and to reach a settlement on those issues without the necessity for further hearing.

(b) Procedure. A prehearing conference may be held at the discretion of the hearing officer preparatory to each contested case hearing. The prehearing conference shall be an informal proceeding conducted fairly and expeditiously by the hearing officer. Agreements on the simplification of issues shall be put in the form of stipulations and entered on the record. Any final settlement shall be set forth in a settlement agreement or consent order and made a part of the record.

(c) Dismissal. The hearing officer may, at any stage of the proceedings, including the prehearing conference, after all parties have had an opportunity to present their views, dismiss any sham, capricious or frivolous case or any case not within the Agency's jurisdiction.

(d) Consolidated Prehearing Conference. When cases before the Agency are consolidated pursuant to Rule 11, a consolidated prehearing conference may be held in lieu of separate conferences for each case and notice thereof given as provided in Rule 5.

Rule 14 Notice of Hearing. Not less than thirty days prior to the hearing date the Agency shall serve a notice of hearing on all parties to the case. Such notice shall contain:

(a) The time and place of the hearing;

(b) The purpose and procedure for the hearing;

(c) The issues to be determined; and

(d) The name of the hearing officer who will preside.

Rule 15 The Hearing.

(a) Right to Hearing. All parties shall have the right to a hearing before the Agency, at which hearing the parties may cross-examine witnesses, and present evidence, rebuttal testimony and argument with respect to the issues.

(b) Witnesses. Any party may be a witness or may present witnesses on his behalf at a hearing. All testimony at a hearing shall be under oath or affirmation. Every party shall have the right of cross-examination of witnesses who testify.

(c) Rules of Evidence

(1) General Rules. The hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent men in the conduct of their affairs. The hearing officer shall give effect to the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, immaterial or repetitious may be excluded.

(2) Evidence Must be Offered to be Considered. All evidence to be considered in the case, including all records and documents (except tax returns and tax reports) in the possession of the Agency, shall be offerred and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

(3) Documentary Evidence. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the hearing officer or upon agreement of the parties.

(4) Notice of Facts. The hearing officer may take notice of judicially cognizable facts and, in addition, may notice technical facts within his specialized knowledge. Where final determination rests

on official notice of material facts not appearing in the evidence in the record, a party is entitled, upon timely request, to an opportunity to rebut such facts.

(5) The Standard and Burden of Proof. The party initiating the contested case must prove the facts at issue by a preponderance of the evidence.

(d) The Record

(1) Agency Prepares Record. The Agency shall prepare an official record in each contested case.

(2) What the Record Shall Contain. The record in a contested case shall contain:

(aa) All pleadings (including documents of initiation and commencement and all answers thereto), motions and intermediate rulings;

(bb) Evidence received or considered;

(cc) A statement of matters officially noticed;

(dd) Questions and offers of proof, objections and rulings thereon;

(ee) Proposed findings and exceptions;

(ff) Any decision, opinion or report by the hearing officer; and

(gg) All memoranda or data other than advice of legal counsel submitted to the hearing officer by the Agency staff in connection with the case.

(3) Transcript

(aa) Reporter or Mechanical Device. A verbatim record of the hearing shall be taken by court reporter or recording equipment. A court reporter shall be used if demanded by any party. Unless the Agency agrees to bear the expense of the court reporter, such expense shall be paid by the demanding party.

(bb) Transcript. The verbatim record will not be transcribed unless requested by a party. If a transcript is requested, the Agency may require the requesting party to pay the reasonable cost of preparing the transcript.

(e) Hearing Procedure

(1) Hearing Officer Conduct. The hearing officer shall take no part in any preliminary investigation or inquiry into the facts or issues involved in the contested case except as provided in Rule 13. He shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, including the Agency, its employees or agents, nor, in connection with any issue of law, with any party, including the Agency, its employees or agents, or his representative, except upon notice and opportunity for all parties to participate.

(2) Sequence of Events. Except as set forth in Rule 15 (g), the hearing shall be conducted in the following manner:

(aa) After opening the hearing, the hearing officer shall indicate the following procedural rules:

(i) All parties may present evidence and argument with respect to the issues;

(ii) All witnesses must be sworn and identify the party they represent, if any. They are subject to cross-examination by all parties;

(iii) The rules of evidence as set forth in Rule 15 (c);

(iv) All parties who wish to introduce written matter may have it marked as an exhibit and offer it into evidence.

(bb) A representative of the Agency shall introduce the following exhibits on behalf of the Agency:

(i) Notice of Initiation of Proceedings, supporting documents, if any, and affidavits of service;

(ii) If consolidation has occurred, Notice of Consolidation, supporting documents, if any, and affidavits of service;

(iii) Notice of Hearing, supporting documents, if any, and affidavits of service;

(iv) Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing.

(cc) The party who initiated the contested case may make an opening statement. All other parties may make such statements in a sequence determined by the hearing officer.

(dd) After any opening statements the party who initiated the contested case shall begin the presentation of evidence. He shall be followed by the other parties in a sequence determined by the hearing officer.

(ee) Cross-examination of witnesses shall be conducted in a sequence determined by the hearing officer.

(ff) When all parties and witnesses have been heard, opportunity shall be offered to present rebuttal evidence and final argument, in a sequence determined by the hearing officer. Such rebuttal and final argument may be in a form of written memoranda, oral argument or both.

(gg) After final argument, the hearing shall be closed or continued at the discretion of the hearing officer. If continued, it shall be either (a) continued to a certain time and day, announced at the time of the hearing and made a part of the record, or (b) continued to a date to be determined later which must be upon not less than five days written notice to the parties.

(f) Decorum

(1) The hearing officer may prohibit the operation of a television, newsreel, motion picture, still or other camera, or of lights or other devices used in connection with the camera in the hearing room while the hearing is in progress, if such operation would, in his opinion, interfere with or disrupt the hearing. The hearing officer may also prohibit the operation of mechanical recording devices in the hearing room while the hearing is in progress, if such operation would, in his opinion, interfere with or disrupt the hearing.

(2) Other Conduct. Pursuant to and in accordance with the provisions of M.S. 1971, Section 624.72, no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the hearing officer shall read this rule to those persons causing such interference or disruption and thereafter proceed as he deems appropriate.

(g) Cases to Which Agency is Not a Party. In cases which the Agency has initiated pursuant to Rule 4 (c), but to which the Agency is not a party, the hearing procedure shall be conducted in a sequence determined by the hearing officer in accordance with law or Agency statute or rule. In such cases the burden of proof shall be as the hearing officer determines in accordance with law or Agency statute or rule. In all such cases the hearing procedure sequence and the burden of proof shall be determined by the hearing officer and stated in a prehearing order notice to all parties.

Rule 16 The Agency Decision.

(a) Basis for Determination

(1) The Record. No factual information or evidence, except tax returns and tax reports, which is not a part of the record shall be considered by the hearing officer or the Agency in the determination of a contested case.

(2) Experience, Technical Competence and Specialized Knowledge. The hearing officer may use his experience, technical competence and specialized knowledge in the evaluation of the evidence presented in the case.

(b) Proposal for Decision

(1) Need for Proposal, Exceptions and Argument. Whenever in a contested case the Agency has retained the authority to render a final decision, intends to make such final decision and has not heard or read the evidence, the decision, if adverse to a party to the proceeding other than the Agency, shall not be made until a Proposal for Decision has been served, and an opportunity has been afforded each party adversely affected to file exceptions and present argument, whether written or oral or both, to the Agency.

(2) Service and Contents. The Proposal for Decision shall be served on all parties to the case. The Proposal shall contain:

(aa) A statement of the proposed decision;

(bb) The reasons for such decision. Each reason shall consist of a concise statement of the conclusions upon each contested issue of fact necessary to the decision;

(cc) A final date for the filing of exceptions by parties adversely affected;

(dd) A statement of the right of parties adversely affected to present argument.

(c) Decisions and Orders

(1) Formal Decision or Order with Reasons Required. Every decision or order rendered by the hearing officer or the Agency in a contested case shall be in writing or stated in the record and shall be accompanied by a statement of the reasons therefor. The statement of reasons shall include a concise statement of the conclusions upon each contested issue of fact necessary to the decision.

A decision or order on a petition for severance, petition for intervention, petition of prejudice, on noticed facts which are challenged, or on a petition for rehearing shall be rendered in accordance with this rule.

(2) Service and Contents. Every decision or order shall be served on all parties to the case. It shall contain:

(aa) A statement of the decision or order in the case;

(bb) A statement of the reasons therefor;

(cc) An affidavit of service.

(d) Default. When a party with adequate notice fails to plead or otherwise appear within the time allowed therefor by these rules or by statute, judgment by default may be entered against him.

Rule 17 Rehearing.

(a) Agency Right to Hear. The Agency may, upon request or its own motion and for good cause, shown, reopen, rehear and redetermine a contested case after a final decision adverse to a party to the contested case other than the Agency has been rendered. This right may be exercised until it is lost by appeal or the granting of a writ of certiorari or until a reasonable time has run, but in no event shall the time exceed the time allowed by statute for appeal or six months, whichever is shorter.

(b) Obtaining a Rehearing

(1) Parties other than the Agency. At any time prior to the Agency's loss of the right to rehear a contested case, any party to that case may request a rehearing by filing a petition for rehearing. Such petition shall contain:

(aa) The name and address of the petitioner;

(bb) The agency designation for the case;

(cc) The reasons for the petition.

(2) The Agency. The Agency may, on its own motion, for good cause stated in the record, reopen, rehear and redetermine a contested case if the decision in that case was adverse to a party to that case other than the Agency.

(3) Default Judgments. A party against whom a default has been adjudged pursuant to Rule 16 (d) may obtain a rehearing upon a timely showing of good cause for his failure to appear or plead.

(4) Determination. The Agency shall grant or deny a petition for rehearing as a part of the record in the case. Such petition shall be granted if there appears on the face of the petition and the record irregularities in the proceedings, errors of law occurring during the proceedings, newly discovered material evidence, a lack of substantial evidence to support the decision or good cause for failure to appear or plead. Evidence and argument may be presented at the discretion of the Agency in written or oral form or both by any party to the contested case with respect to the petition.

(c) Notice of Rehearing. Notice of rehearing must be provided in the same manner prescribed for notice of hearing.

(d) Rehearing Procedure. A rehearing in a contested case shall be conducted in the same manner prescribed for the decision after a hearing.

(e) Decision after Rehearing. The decision after rehearing shall be made in the same manner prescribed for the decision after a hearing.

Rule 18 Appeal by Agency. The Agency may appeal pursuant to M.S. § 15.0424 any adverse decision. The Agency shall be deemed a "person" for such purposes.

Rule 19 Emergency Procedures. Nothing contained in these rules is intended to pre-empt, repeal or be in conflict with any rule, regulation or statute which provides for acts by the Agency in an emergency or procedure for conduct by the Agency in such a situation.

Rule 20-25 Reserved for future use.

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